

OFFSHORE MANNING ARRANGEMENTS FOR MARINERS AND CLEARANCE PROCEDURE FOR UNPREDICTABLE CASES

INTRODUCTION

This guidance on National Insurance Contributions (NICs) in respect of the employment of mariners looks at the effect of the forthcoming Social Security (Categorisation of Earners) (Amendment No.2) Regulations 2003 on the use of offshore manning contracts in the shipping industry.

The new Regulations have been laid before Parliament and, subject to them gaining parliamentary approval, will apply from 13th October 2003. The Regulations were introduced following revised legal advice on the effectiveness of offshore manning contracts to avoid National Insurance. This guidance supplements Tax Bulletin 49 which sets out the Inland Revenue's previous views on offshore manning contracts used in the shipping industry.

THE POLICY BACKGROUND

In recent years the UK shipping industry has transferred significant numbers of employment contracts either to non UK members of shipping groups or unconnected offshore employers (offshore manning arrangements). Uncertainty about the application of the NICs rules to such offshore manning arrangements led to the Government to issue guidance in Tax Bulletin 49 published in October 2000. However, that article did not cover the application of the host regulations (Paragraph 9 Schedule 3 of the (Categorisation of Earners) Regulations 1978 SI 1978 No 1689) and their application particularly to mariners working within UK territorial waters, and there remained some uncertainty about their scope in respect of such mariners. A subsequent review of the legislation has concluded that there is a liability for employers' NICs for UK shipping companies that use offshore manning companies in respect of **all** mariners.

A press release on 23 April 2003 explained the new understanding of the legal position, based on legal advice, and that new regulations would be introduced to explicitly exempt mariners whose duties were wholly or mainly outside UK territorial waters from the scope of the host regulation. Following consultation with the Shipping Industry it has been decided to restrict the scope of the new regulations to duties performed inshore, in Category A, B C or D waters. The new regulations clarify that the "host employer" provisions in the Social Security (Categorisation of Earners) (Amendment No.2) Regulations 2003 apply only where the duties of a mariner are performed in Category A,B,C, or D waters. Category A, B, C or D waters are the waters in the Merchant Shipping (Categorisation of Waters) Regulations 1992 and listed in Merchant Shipping Notice 1776. The regulations will exempt from the scope of the host employer's regulations, employment of a mariner outside Category A,B,C or D waters. In view of the lack of clarity in the previous guidance no employers' NICs will be collected under the new interpretation before 13th October 2003, from the shipping companies affected.

ASSUMPTIONS

For the purposes of this guidance it is assumed that:

- the employee/ mariner is liable to pay primary Class 1 NICs;
- Council Regulation (EEC) 1408/71 does not apply;
- No Double Contributions Convention with another country applies to override United Kingdom National Insurance law.

AMENDMENTS TO CATEGORISATION REGULATIONS

The Social Security (Categorisation of Earners) (Amendment) Regulations 2003 amends paragraph 9 of schedule 3 of the Social Security (Categorisation of Earners) Regulations 1978.

Overview

These regulations will come into force on 13th October 2003 and apply to payments of earnings made on or after 13th October 2003.

The new regulations will amend the host employer provisions in Paragraph 9 of schedule 3 to the Social Security (Categorisation of Earners) Regulations 1978 to describe how the host provisions apply where the employee is a mariner.

The host employer provisions in the Categorisation of Earners regulations will now only apply where a mariner is employed by a foreign employer, but performs his duties for a UK host employer, and those duties are performed wholly or mainly in category A, B, C or D waters.

The implication for offshore manning contracts is that where there is a host employer with a place of business in the UK, and the mariner is working wholly or mainly in Category A, B, C or D waters, the host employer, not the contractual employer will be the secondary contributor and be liable to pay NICs. Where the mariner works wholly or mainly outside A, B, C or D waters, offshore manning arrangements will not be affected by the host regulations.

Details

An amendment to paragraph 9 sets out the circumstances where the host employer provisions shall apply to a person who is a "Mariner."

"Mariner" here has the meaning given in regulation 115 of the Social Security (Contributions) Regulations 2001.

Category A, B, C or D waters of the UK are those listed in Merchant Shipping Notice MSN 1776. Copies of the notice can be obtained from the Maritime and Coastal Agency (Communication and Innovation Branch), Spring Place, 105 Commercial Road Southampton, SO15 1EG.

In considering whether duties have been performed wholly or mainly within Category A,B, C or D waters, we will look at the pattern of employment as a whole, rather than measuring the mariner's activity within a particular pay period for National Insurance.

Examples of how “wholly or mainly “ in Category A B C or D waters will be applied

Example 1:

A mariner is engaged by an UK shipping company, through an offshore manning company to work on a ship, which operates on a route, which is mainly outside A, B,C or D waters. The mariner is weekly paid. The duties are performed outside A, B, C, D waters for three weeks but in the fourth week the ship returns to Portsmouth to pick up passengers. NICs are not due because the duties are performed wholly or mainly outside the UK's waters. The shipping company is not liable for employers' NICs, even if the mariner spends most or all of a particular earnings period within the UK.

Example 2:

A mariner engaged through an offshore manning company to work on a ship. Due to heavy weather, the vessel, which usually operates between Newcastle and Bergen, is laid up for a month in the UK. The mariner stays on board. The host employer regulations do not apply, as this time in the UK is not normally part of the mariner's pattern of duties. The duties are not performed wholly or mainly in category A, B, C or D waters.

Example 3:

A ship operating between the UK and Spain detours to an UK port for repairs. This is not ordinarily part of the mariner's duties and we would not seek employers' NICs.

Example 4:

A mariner is engaged under an offshore manning contract to work on a vessel which works mainly within Category C waters in Portsmouth Harbour and in Category D waters. The vessel occasionally puts to sea outside Category D waters but returns to harbour. The duties are performed wholly or mainly with Category A, B, C or D waters and the host employer regulations apply.

Example 5

A mariner is engaged under an offshore manning contract to work on a ferry, which sails between Ramsgate and the Continent. Some duties are performed in category C waters but the majority are performed outside category A, B, C and D waters, whilst the vessel is at sea. The host employer regulations do not apply.

CLEARANCE PROCEDURE FOR UNPREDICTABLE CASES

To assist employers who are concerned about whether their mariners have duties wholly or mainly in category A,B,C or D waters the Inland Revenue has set up a clearance service. Employers are not required to apply for a clearance.

To obtain a clearance, Employers should write to the "**Employer Compliance Unit Manager**" in their local Tax Office. The Employer compliance Manager will be located in the office dealing with their existing PAYE scheme, or if no scheme currently exists, the office dealing with their shore side employees. For many of the employers affected, this will be the Large Business Office they deal with.

On request, Inland Revenue will give clearances covering either:

- all mariners working on a vessel
- individual mariners

The clearance will be given if we are satisfied that the mariner(s) are employed on duties wholly or mainly outside Category A, B C or D waters. A clearance will continue in force until reviewed (after an agreed period) or until the nature of the mariners' duties change. A clearance will usually be given for a tax year. In the first year, clearances will be given for the period to 5 April 2004.

In deciding whether a mariner's duties are wholly or mainly outside Category, B, C or D waters, the Inland Revenue will take a broad view, looking at the overall pattern of the employment. The terms of his contract of employment may be relevant, but only if the actual duties match those specified in the contract.

Appendix 1 contains a standard application for clearance that may be used by an employer.

Appendix 2 contains an example of the type of letter we will issue.

In considering whether to grant a clearance, the Employer Compliance Unit Manager will expect the employer to declare whether an individual mariner or the crew of a particular vessel will be working mainly inside or mainly outside Category A, B, C or D waters. If the mariner were a new starter, we would be content to give a ruling based on the voyages undertaken by the vessel(s) he will be working on. Where a mariner has already been employed by that employer the employer will be expected to declare whether they expect a past pattern of duties (over the last 3 months) to continue over the period of the clearance.

To obtain a clearance, some supporting information will be required to demonstrate the normal pattern of duties. We will not be prescriptive as to the type of evidence required and will not normally require special records to be prepared. We will consider records for a representative sample period.

We will consider any supporting documents that show:

1. The routes the vessel or the mariner usually covers and any plans or schedules for the future.
2. What the routes were over the last 3 months

Employers are not expected to count periods where the vessel was undergoing re-fit or repairs as being inside category A, B, C or D waters.

Once a clearance has been given, we would expect to be bound by that clearance unless it can be shown that the true position has been deliberately misrepresented, or the facts have substantially changed and no attempt has been made to notify us.

If it is clear that the mariner's duties will be wholly or mainly outside category A, B, C or D waters, it will not be necessary for the shipping company to obtain clearance from the Inland Revenue.

APPEALS

Once a payment of earnings has been made to a mariner, and if we are unable to agree liability with the employer, we can provide for a decision to be issued under Section 8 of the Social Security (Transfer of Functions, Etc.) Act 1999 and this decision can be appealed to the tax Commissioners in the normal way.

OTHER COUNTRIES

Queries about EC legislation or reciprocal agreements with other countries should be addressed to Personal Tax Division at the address noted at the end of this article.

SUMMARY

The Social Security (Categorisation of Earners) (Amendment) Regulations 2003 have clarified the application of the host employer rules in respect of mariners.

- Where a mariner works wholly and mainly in category A, B, C or D waters, the "host employer" regulations will treat the UK shipping company as the secondary contributor and liable to pay employers' NICs.
- The host regulations will not apply to offshore manning arrangements where the mariner is employed wholly or mainly outside category A, B, C, or D waters.
- The Inland Revenue will provide a clearance service where there is genuine difficulty in determining whether a company is liable for employers NICs.

FURTHER INFORMATION

National Insurance Contributions

Mark Frampton
Personal Tax Division
Room 165J
Benton Park View
Longbenton
Newcastle Upon Tyne
NE98 1ZZ
Tel: 0191 225 6029
Fax: 0191 225 7029

Mark Frampton@ir.gsi.gov.uk

Appendix 1

APPLICATION FOR CLEARANCE

DOES THE MARINER LISTED BELOW PERFORM HIS DUTIES "WHOLLY OR MAINLY" IN CATEGORY A, B, C OR D WATERS?

Details we need:

Company applying for clearance

Company Name

Company Address

Postcode

Telephone

Address of Registered Office

PAYE Scheme Number

Contractual employer

Vessel Name

Port of Registration

Name of Mariner(s)

National Insurance Number[s] (NINO)

Employer Declaration

I expect that [The mariners listed / all mariners working on the vessels listed will be employed wholly or mainly outside Category A, B, C or D waters because:

[Information about recent voyages, plans for future voyages, patterns of employment e.g.: movements of workers between vessels /routes.]

To the best of my information and belief the above details are correct and are expected to remain so for the tax year to []. I understand that I must notify the Inland Revenue if there is any significant change in circumstances.

Signed

On behalf of

Date

Appendix 2

Thank you for your application for clearance that [] on Vessel []
Perform their duties wholly or mainly outside Category A, B, C or D waters.

I can confirm that on the basis of the facts supplied, the Inland Revenue agree that these Mariners perform their duties wholly or mainly outside Category A, B, C or D waters and you will not be a "host employer" responsible for secondary National Insurance contributions under the Social security (Categorisation of Earners) (Amendment No.2) Regulations 2003.