

Statutory Instrument 1996 No. 491

The Gas (Street Works) (Compensation of Small Businesses) Regulations 1996

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STATUTORY INSTRUMENTS

1996 No. 491

GAS

The Gas (Street Works) (Compensation of Small Businesses) Regulations 1996

Made 29th February 1996

Laid before Parliament 1st March 1996

Coming into force 22nd March 1996

In exercise of the powers conferred on him by paragraph 1(4) of Schedule 4 to the Gas Act 1986^[1] and section 47 thereof^[2] and of all other powers enabling him in that behalf, the Secretary of State hereby makes the following Regulations: —

Citation and coming into force

1. These Regulations may be cited as the Gas (Street Works) (Compensation of Small Businesses) Regulations 1996, shall come into force on 22nd March 1996 and have effect in relation to relevant works begun on or after that date.

Interpretation

2.—(1) In these Regulations, except where the context otherwise requires

—
"the 1991 Act" means the New Roads and Street Works Act 1991;^[3]

"annual turnover" means such turnover determined as mentioned in regulation 4;

"relevant works" means —

(a) in the application of these Regulations to England and Wales, street works within the meaning of section 48(3) of the 1991 Act, including works in respect of the reinstatement of a street required by section 70 of that Act, and

(b) in the application of these Regulations to Scotland, road works within the meaning of section 107(3) of the 1991 Act, including works in respect of the reinstatement of a road required by section 129 of that Act,

except that, where works in respect of the interim reinstatement of a street (or, in Scotland, a road) have been completed, it does not include any subsequent works in respect of the permanent reinstatement of the street (or, in Scotland, the road) and, for the purposes hereof, "interim reinstatement" and "permanent reinstatement" have the meanings which they have in the said section 70 or, as the case may be, in the said section 129;

"small business" has the meaning assigned thereto by regulation 3.

(2) In these Regulations, "company" means a company within the meaning of section 735 of the Companies Act 1985^[4] and, for the purposes of these Regulations, "financial year" in relation to a company shall be determined as provided in section 223 of that Act.

(3) In these Regulations a reference to a regulation is a reference to a regulation thereof and a reference in a regulation to a paragraph is a

reference to a paragraph of that regulation.

Meaning of "small business"

3.—(1) Subject to paragraph (2), for the purposes of these Regulations "small business" means a business conducted at particular premises the annual turnover of which (determined as provided in regulation 4) does not exceed the amount determined as mentioned in paragraph (4).

(2) A business shall not be a small business for the purposes of these Regulations if —

(a) the person conducting that business ("the business in question"), or any related person, conducts one or more like businesses at premises other than those at which the business in question is conducted, and

(b) the annual turnover of the business in question, when aggregated with the annual turnovers of each of the like businesses, exceeds the amount determined as mentioned in paragraph (4).

(3) In paragraph (2), "related person" means —

(a) in relation to an undertaking within the meaning of section 259 of the Companies Act 1985^[5] ("the principal undertaking"), a parent or subsidiary undertaking of the principal undertaking or a subsidiary undertaking of a parent undertaking of the principal undertaking, in each case within the meaning of section 258 of that Act, and,

(b) in relation to any person (including such an undertaking), a connected person of that person within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992.^[6]

(4) For the purposes of the application of these Regulations in relation to particular relevant works, the amount referred to in paragraph (1) or (2) shall be determined by reference to the year beginning with 1st March within which the date on which the relevant works in question were completed falls ("the year in question") and shall be —

(a) in the case of the year beginning with 1st March 1996, £1,000,000, or

(b) in the case of a subsequent year, that amount multiplied by the appropriate factor mentioned in paragraph (5) except that any fraction of £1,000 in that product shall be disregarded.

(5) The appropriate factor referred to in paragraph (4)(b) shall be obtained by dividing the retail price index for the first month of the year in question by the retail price index for March 1996.

(6) A reference in paragraph (5) to the retail price index is a reference to the general index of retail prices (for all items) published by the Central Statistical Office of the Chancellor of the Exchequer; and if that index is not published for any month that reference shall be read as a reference to any substituted index or index figures published by that Office for that month.

Determination of annual turnover

4. In the application of these Regulations in relation to particular relevant works, the annual turnover of a business shall be determined —

(a) in the case of a business conducted by a person other than a company, by reference to the period of a year in respect of which the accounts of the business (or, if the business is part of a larger business and there are no separate accounts, the accounts of that

larger business) are drawn up last ending before the date on which the relevant works in question were completed, or

(b) in the case of a business conducted by a company, by reference to the financial year of that company last ending before that date, except that —

(i) in the case of a business conducted by a person other than a company, if the accounts for the period last ending before the date on which the relevant works in question were completed were for a period longer or shorter than a year or, in the case of a business conducted by a company, the financial year of that company last so ending was a period longer or shorter than a year, the annual turnover of the business shall be determined proportionately by reference to the longer or shorter period in question, and

(ii) where the business was not conducted throughout the period by reference to which the annual turnover would otherwise fall to be determined, or there were no accounts for a period ending, or no financial year ending, before the relevant works in question were completed, the annual turnover thereof shall be taken to be such as, on reasonable assumptions and having regard to such information as is available, appears to be likely to be the annual turnover of the business.

Compensation of small businesses for loss of turnover sustained in consequence of street works

5.—(1) Where —

(a) a public gas transporter executes any relevant works which are not completed within the period of 28 days beginning with the day on which they were begun ("the works in question"), and

(b) any person conducting a small business, as respects that business, sustains, in consequence of the works in question, a loss of turnover during the period mentioned in paragraph (2),

the public gas transporter shall pay to that person, by way of compensation for such loss, an amount calculated as provided in paragraph (3) unless the amount so calculated is less than £500 or does not exceed 2½% of the annual turnover of the business.

(2) The period referred to in paragraph (1)(b) is a period of not less than 28 days —

(a) beginning with —

(i) the day on which the works in question were begun or, if later,

(ii) the day on which such loss was first so sustained or, where different, which immediately followed that on which the small business was last open for business before the day on which such loss was first so sustained, and

(b) ending with —

(i) the day on which such loss was last so sustained or, where different, which immediately preceded that on which the small business was first open for business after the day on which such loss was last so sustained or, if earlier,

(ii) the day 10 days after the completion of the works in question.

(3) The amount of the compensation referred to in paragraph (1) shall be calculated by determining A and B and then subtracting B from A, the

amount so arrived at being the amount of the compensation, where —
"A" is the amount of the profit or loss that could reasonably have been expected to accrue to the small business during the period mentioned in paragraph (2) if the works in question had not been executed, and

"B" is the amount of the profit or loss that accrued to that business during that period, a loss being treated as a negative amount.

- (4) No compensation referable to particular relevant works shall be payable to a person under this regulation unless —
- (a) within 3 months of the completion of those works, he has reserved the right to claim compensation under this regulation by written notice, identifying the works in question, given to the transporter by which those works were executed, and
 - (b) within 6 months of the completion of those works, he has provided that transporter with a statement of facts and a summary of evidence (including, where appropriate, extracts from accounts and other documents) sufficient to establish, *prima facie* —
 - (i) that the person claiming compensation was such a person as is mentioned in paragraph (1)(b) who, as respects a small business, sustained such loss as is there mentioned;
 - (ii) the annual turnover of the small business as respects which that loss was sustained and the annual turnover of any like business referred to in regulation 3(2)(a);
 - (iii) the period satisfying the criteria in paragraph (2) during which that loss was sustained, and
 - (iv) the amount of the compensation for that loss calculated as provided in paragraph (3).

Tim Eggar

Minister for Industry and Energy Department of Trade and Industry

29th February 1996

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations require a public gas transporter which executes street works which are not completed within 28 days to pay compensation for loss of turnover sustained by a small business (defined in *regulation 3*), during a specified period of at least 28 days, in consequence of the works, except where the compensation would be less than £500 or would not exceed 2½% of the annual turnover of the business. The amount of the compensation is the difference between the profit (or loss) which would have accrued to the

business but for the works and the reduced profit (or increased loss) which is a consequence of the works. (*Regulation 5(1), (2) and (3).*)

A person must reserve the right to claim compensation within 3 months of the completion of the street works and submit supporting evidence within 6 months of their completion (*regulation 5(4)*).

A compliance cost assessment of the effect that this instrument would have on the cost of business is available from the Department of Trade and Industry.

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Notes:

[1] 1986 c. 44; paragraph 1(4) of Schedule 4 to the 1986 Act was inserted by paragraph 57 of Schedule 3 to the Gas Act [1995 \(c. 45\)](#). [back](#)

[2] Section 47 was amended by paragraph 53 of Schedule 3 to the Gas Act [1995 \(c. 45\)](#). [back](#)

[3] [1991 c. 22](#). [back](#)

[4] 1985 c. 6; section 223 was inserted by section 3 of the Companies Act [1989 \(c. 40\)](#). [back](#)

[5] 1985 c. 6; sections 258 and 259 were inserted by sections 21(1) and 22 of the Companies Act [1989 \(c. 40\)](#). [back](#)

[6] [1992 c. 12](#). [back](#)

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