

EXPLANATORY MEMORANDUM TO
THE ALTERNATIVE FUEL PAYMENT PASS-THROUGH REQUIREMENT
(ENGLAND AND WALES AND SCOTLAND) REGULATIONS 2023

2023 No. 178

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument requires intermediaries in Great Britain, such as landlords, to pass on benefits received from the Alternative Fuel Payment, as appropriate, to end users, such as tenants who are the intended beneficiaries of the relevant schemes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is Great Britain.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

5. European Convention on Human Rights

- 5.1 The Rt Hon Graham Stuart, the Minister for Energy and Climate, has made the following statement regarding Human Rights:

“In my view the provisions of the Alternative Fuel Payment Pass-through Requirement (England and Wales and Scotland) Regulations 2023 are compatible with the Convention rights”.

6. Legislative Context

- 6.1 Section 19 of the Energy Prices Act 2022 (“the Act”) enables the Secretary of State to impose pass-through requirements on persons to whom energy price support is provided (“intermediaries”) by regulations.
- 6.2 This instrument makes provision for pass-through requirements on intermediaries in respect of the domestic Alternative Fuel Payment in Great Britain.
- 6.3 Previous instruments have used Section 19 to impose pass-through requirements for the delivery of other energy support schemes, for instance, the Energy Bills Support Scheme and Energy Price Guarantee Pass-through Requirement (England and Wales and Scotland) Regulations 2022 which ensure the pass-through requirements took effect in Great Britain for those schemes. Section 19 was also used for the Energy Bill

Support Scheme and Alternative Fuel Payment Pass-through Requirement (Northern Ireland) Regulations 2023.

7. Policy background

What is being done and why?

- 7.1 The Act provides statutory underpinning for, or enables the creation of, energy support schemes to help households, businesses and others with energy costs for winter 2022 and future periods. Failing to offer support could have resulted in financial turmoil for businesses and consumers, as energy bills would have increased much more significantly without intervention. The support schemes enabled by the Act will see a typical household pay significantly less for energy, while businesses will be paying less than half of predicted wholesale costs this winter.
- 7.2 The purpose of section 19 of the Act (requirement to pass on energy price support to end users) is to enable the government to ensure that intermediaries who have received energy price support pass through the benefit obtained to end users (who are the intended beneficiaries of the relevant schemes). For example, the legislation will require landlords with all-inclusive contracts to pass support to their tenants as appropriate.
- 7.3 This instrument will ensure that pass-through requirements for the domestic Alternative Fuel Payment (AFP) are put in place in Great Britain. The AFP will provide £200 of support to domestic users of alternative fuels, such as heating oil, LPG or biomass, in Great Britain. The Alternative Fuel Payment in Northern Ireland was joined with the Energy Bills Support Scheme in Northern Ireland, and provided as a single £600 payment to all households in Northern Ireland. The different delivery mechanism means that separate regulations are required in Great Britain.
- 7.4 Relevant intermediaries are any individual that is in receipt of some or all of an AFP payment (either directly or from another intermediary), and passes on the costs of energy supplied to them under a domestic supply contract to an end user of the energy supplied. This would also cover intermediaries supplying a product (or service) where contractually a component of the price relates directly to the use of energy. Intermediaries may include, but are not limited to, landlords and sublets.
- 7.5 Intermediaries should pass on the payment irrespective of how the end user pays for their energy use. The intermediary should pass the payment in a just and reasonable way and must follow the regulations in calculating the pass-through amount. The instrument sets out what must be taken into account in determining a just and reasonable amount in various circumstances depending on how energy costs are borne by the end user, and whether the intermediary itself bears energy costs related to the benefit concerned, for example for common services provided.
- 7.6 If an intermediary does not pass through the whole of the scheme benefit provided to them, then they must demonstrate to the end user that the amount they are passing on is just and reasonable, including taking into account the extent to which the intermediary's charges to end users reflect the increased cost of energy as a result of the energy crisis. The intermediary must follow the regulations in calculating the pass-through amount.
- 7.7 The intermediary must, within 30 days of a scheme benefit being provided, provide information to the end user in writing. This includes but is not limited to the amount of scheme benefit received, the amount that the intermediary intends to pass through

to the end user, when and how they will pass-through the benefit, and that the end user can recover amounts to which they are entitled to but do not receive as a civil debt.

7.8 The intermediary must ensure the end user receives the pass-through amount as soon as reasonably practicable. The instrument sets out the ways in which a pass-through can be effected.

7.9 Where an intermediary fails to effect a pass-through to which an end user is entitled, that end user may recover the amount from the intermediary as a civil debt. In such cases the end user may claim interest to be paid by the relevant intermediary at a rate of 2% per annum above the Bank of England base rate from 60 days after the intermediary receives the scheme benefit.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 No consolidation is necessary for this instrument.

10. Consultation outcome

10.1 No formal public consultation has taken place on this instrument given the urgency of ensuring households receive the support they need this winter. We will continue to review this instrument as necessary following its implementation based on stakeholder feedback.

11. Guidance

11.1 The Department for Business, Energy and Industrial Strategy has already developed guidance to explain existing pass-through requirements for a range of its energy support interventions in further detail for key stakeholders, including individuals and organisations who may be intermediaries or end users. The guidance is available here: <https://www.gov.uk/government/publications/pass-through-requirements-for-energy-price-support-provided-to-intermediaries>. Guidance will be updated to account for the domestic AFP in Great Britain.

12. Impact

12.1 The impact on business, charities or voluntary bodies is likely very minimal. Only households with a domestic electricity supply contract and domestic electricity meter are eligible for support under the AFP. Relevant intermediaries will be required to provide information to end users which may involve minimal administrative costs.

12.2 The impact on the public sector is minimal. Civil courts will be impacted if end users need and decide to claim civil debts from intermediaries.

12.3 An Impact Assessment for the domestic Alternative Fuel Payment scheme in Great Britain (not these regulations), prior to the payment being doubled to £200, has been published and can be found online here, on pages 28-29: <https://publications.parliament.uk/pa/bills/cbill/58-03/0159/AnnexB.pdf>.

13. Regulating small business

- 13.1 Only domestic households are eligible for support under the AFP, so it is not expected that the legislation applies to activities that are undertaken by small businesses, unless the intermediary is also a small business owner.

14. Monitoring & review

- 14.1 The Department will continue to monitor this instrument following its implementation, including any feedback from stakeholders, and will review as necessary.
- 14.2 This instrument does not include a statutory review clause by virtue of section 28(3)(d) of the Small Business, Enterprise and Employment Act 2015. This is because the instrument relates to the time-limited domestic AFP scheme, which requires all payments to be made by 30th June 2023. The Rt Hon Graham Stuart, the Minister for Energy and Climate, has made the following statement: “A review provision in these Regulations is not included given that they relate to payments under the domestic Alternative Fuel Payment Scheme in Great Britain which must be made by 30th June 2023 at the latest.”

15. Contact

- 15.1 The Energy Affordability Unit (energyaffordabilityunit@beis.gov.uk) at the Department for Business, Energy and Industrial Strategy can be contacted with any queries regarding the instrument.
- 15.2 Ben Golding, Director for Energy Affordability, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Graham Stuart, the Minister for Climate can confirm that this Explanatory Memorandum meets the required standard.