

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

NON-DOMESTIC ALTERNATIVE FUEL PAYMENT APPLICATION SCHEME PASS-THROUGH REQUIREMENT REGULATIONS 2023

Monday 15 May 2023

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The Committee consisted of the following Members:

Chair: JAMES GRAY

Abrahams, Debbie (*Oldham East and Saddleworth*)
(Lab)

† Benn, Hilary (*Leeds Central*) (Lab)

Blake, Olivia (*Sheffield, Hallam*) (Lab)

† Britcliffe, Sara (*Hyndburn*) (Con)

Byrne, Liam (*Birmingham, Hodge Hill*) (Lab)

Cowan, Ronnie (*Inverclyde*) (SNP)

† Everitt, Ben (*Milton Keynes North*) (Con)

† Ford, Vicky (*Chelmsford*) (Con)

† Hollobone, Mr Philip (*Kettering*) (Con)

† Lord, Mr Jonathan (*Woking*) (Con)

† Morrissey, Joy (*Beaconsfield*) (Con)

† Owatemi, Taiwo (*Coventry North West*) (Lab)

† Richards, Nicola (*West Bromwich East*) (Con)

† Seely, Bob (*Isle of Wight*) (Con)

† Solloway, Amanda (*Parliamentary Under-Secretary
of State for Energy Security and Net Zero*)

† Throup, Maggie (*Erewash*) (Con)

† Whitehead, Dr Alan (*Southampton, Test*) (Lab)

Huw Yardley, *Committee Clerk*

† **attended the Committee**

First Delegated Legislation Committee

Monday 15 May 2023

[JAMES GRAY *in the Chair*]

Non-Domestic Alternative Fuel Payment Application Scheme Pass-through Requirement Regulations 2023

4.30 pm

The Parliamentary Under-Secretary of State for Energy Security and Net Zero (Amanda Solloway): I beg to move,

That the Committee has considered the Non-Domestic Alternative Fuel Payment Application Scheme Pass-through Requirement Regulations 2023 (S.I. 2023, No. 428).

It is a great pleasure to be here under your chairmanship, Mr Gray. The regulations were laid before the House on 17 April 2023. Their purpose is to ensure that benefits from applications to the non-domestic alternative fuel payment are passed through to end consumers.

The Government delivered critical support to households, businesses and other non-domestic consumers in response to the unprecedented rise in energy prices. We brought forward emergency legislation and moved at pace to deliver a range of schemes to disburse financial support appropriately. Those schemes include the energy bill relief scheme, which provided a discount on non-domestic consumers' gas and electricity bills.

The non-domestic alternative fuel payment scheme serves a crucial purpose in ensuring that businesses and organisations that are not on the gas grid, but instead rely on alternative fuels for heating, are not left behind and that they receive a comparable level of support to users who are on the gas grid and have received support for their gas usage. Eligible businesses and organisations are entitled to a payment of £150. In the vast majority of cases, consumers will have already received that £150 through the electricity supply accounts registered at qualifying properties. In addition to the basic £150 payment, we are providing a top-up payment to businesses and organisations consuming a very high volume of kerosene heating oil. The top-up payments start at £750.

An application service was opened on 20 March so that eligible non-domestic customers could claim a top-up payment. Additionally, we provided an application process for businesses and organisations to apply for the basic £150 payment in the limited circumstances where they would not have received it through electricity suppliers—for example, for alternative fuel users who do not have an electricity supplier and therefore could not receive a payment through that route.

Previously, we have introduced regulations to ensure that where the £150 payment was paid to an intermediary through its electricity supplier, the intermediary would be obligated to pass the financial benefit on to the end user. Those regulations were laid in February and were debated by this House in March.

Hilary Benn (Leeds Central) (Lab): The explanatory memorandum states that intermediaries should pass on the payment and “must” follow the regulations in calculating the pass-through amount. The next paragraph, 7.8, states that if they do not pass through the whole amount, “they must demonstrate to the end user that the amount they are passing on is just and reasonable”.

How much discretion is there to decide what a reasonable amount is? If it came to a civil debt, referred to in paragraph 7.11, would the court have any role in deciding whether the calculation was fair? I am trying to understand how that will work in practice.

Amanda Solloway: I believe that the right hon. Gentleman pre-empts what I am about to come on to.

The regulations extend the principle of the earlier regulations. They ensure that payments made following an application are subject to the same obligation to pass the financial benefit on to the end user. They also adopt the approach taken by the earlier regulations for this scheme, and for other energy schemes such as the energy bills support scheme and the energy bill relief scheme.

Let me explain exactly how these pass-through regulations work. They make it mandatory for intermediaries to pass through the financial benefit of the scheme to end users. That is needed because in some cases payments may be made to an intermediary and not to the end user of the energy. We need to ensure that payments can be passed on to the end user in a way that is fair.

An end user is an individual, business or organisation that consumes energy and pays for that energy usage through their intermediary—for example, their landlord. That includes a wide range of different arrangements. For example, a tenant may pay their landlord a service charge, or they may pay all-inclusive rent, but they are ultimately paying for the energy consumed at a non-domestic property, so it is only right that they benefit from our support schemes.

As with the other energy price support schemes, the regulations require that support be passed on in a “just and reasonable” way. The regulations were drafted in this way to account for the many kinds of relationships between an intermediary and an end user. If we took a narrow definition of “just and reasonable”, we could run the risk of inadvertently excluding intermediaries from the pass-through requirements. The regulations also accommodate scenarios where intermediaries have multiple end users to pass the support on to, and they make it clear when and how intermediaries should communicate with end users regarding the benefit being passed on.

Our approach to enforcement is consistent with the pass-through regulations for the £150 payment through electricity suppliers, and those for other energy schemes, such as the energy bills support scheme in Great Britain. If an intermediary does not pass on the benefit to a user who is entitled to it, the user will be able to pursue recovery of the benefit through civil proceedings. Should a court rule in the end user's favour, they would be entitled to the payment plus interest, which is set at 2% above the Bank of England's base rate.

Hilary Benn: Having given the Committee the benefit of her explanation, will the Minister give way again?

Amanda Solloway: Yes.

Hilary Benn: I am grateful. If it comes to a civil debt being taken to court, would the court have the ability to decide for itself whether the amount that had been passed through was “just and reasonable”? In other words, could it look at the regulations, interpret them and say, “Actually, intermediary, I don’t think you’ve calculated this correctly, and therefore we are going to award a different amount”?

Amanda Solloway: The right hon. Gentleman makes a really important point. The whole premise of the regulations is to ensure that everyone is treated fairly and that we are passing on the benefits to all the people who should be receiving them. If he would like, I am happy to write with a fuller explanation.

The regulations require intermediaries to provide information to end users. For example, intermediaries must inform end users of the amount of scheme benefit that has been received, the amount that has been passed on and the remedies available to the end user. I thank the Joint Committee on Statutory Instruments for its comments on the enforcement of this requirement. Again, our approach is consistent with that taken in the earlier pass-through regulations for this scheme and the other energy schemes.

With respect to the requirement to pass on information, it is important to reiterate our view that there would be insufficient incentive for end users to make use of an enforcement mechanism, given the time and administrative burden involved in doing so. For this reason, the regulations do not provide a specific enforcement mechanism in relation to the obligation on intermediaries to provide information to the end user. Nevertheless, we consider that there remains value in retaining the requirement in the instrument, on the basis that we expect intermediaries to comply. This is aided by the Government’s publication of guidance on the gov.uk website to ensure that requirements are clear to all parties. The guidance includes template letters to support end users such as tenants, who can use them to contact their landlords should they be concerned about the application of the pass-through requirements.

The regulations are vital to ensure that the support reaches the people it is designed to help. They are essential to the effectiveness of the non-domestic alternative fuel payment across the United Kingdom, and they will ensure that intermediaries pass on the support to the non-domestic energy customers who are most vulnerable to high energy costs. With those reasons in mind, I commend the regulations to the Committee.

4.39 pm

Dr Alan Whitehead (Southampton, Test) (Lab): What the Minister says about the regulations is all good stuff in terms of the need to ensure that high users of kerosene in off-grid industrial and commercial settings get the benefit of £150 and, indeed, of a top-up, as the Minister mentioned, in recognition of the high fuel costs that they are experiencing.

This is, I hope, the last in a dizzying catalogue of secondary legislation, all of which the Minister’s predecessor, the right hon. Member for Beverley and Holderness (Graham Stuart), and I sat here scrutinising over a long period to try to get right the regulations related to all the different areas under consideration for payments. In

this instance, we are considering pass-through requirements. The principle that we should require pass-through in circumstances where an intermediary receives a payment and the end user of the kerosene, in this instance, may not get it because they are not the primary person or organisation to whom the payment goes, is very important as far as the overall legislation is concerned. When we last met to discuss regulations of this sort, I asked the right hon. Gentleman whether they were the last ones. Apparently that was not the case, but I hope these regulations are the last ones. After all, the scheme is pretty much over and done with, but we are still trying to legislate to ensure that we get it right.

As I say, the regulations are well and good—except, as the Minister pointed out, and indeed as the Joint Committee on Statutory Instruments pointed out in relation to another SI, they rather fall down because no one actually has to do anything about them. We have a substantial piece of legislation to try to make sure that people get their money. As my right hon. Friend the Member for Leeds Central acutely pointed out, the intermediary has to write to the end user of the kerosene, in this instance, to tell them that £150 may be coming their way and, if they are not going to get the full amount—there may be reasons for that, due to administration and other costs incurred by the intermediary—what proportion of it might come their way, and that has to be just and reasonable. However, as the Joint Committee pointed out, in law, the intermediary does not actually have to do any of that. It can simply sit on its hands and not tell the end user that they are entitled to £150 and that a portion of it, or otherwise, will come their way. The intermediary can just say nothing and the law will not come after it, because there is no strict liability in the regulations to make anyone do anything.

Yes, there is a theoretical remedy: as with pretty much anything else, if the end user does not get their £150, they can try to recover it as a civil debt through the courts. But, frankly, if someone does not even know they have £150 coming their way because they have not been told in the first place, it is rather difficult for them to take legal action to get hold of it. The intermediary has no legal liability to tell the end user that £150 should be coming their way. Indeed, there is no Government register of those intermediaries that should be passing on the money, so there is no real way of bottoming this out as far as intermediaries are concerned.

The Government have said in response to the Joint Committee on Statutory Instruments that—as the Minister outlined, if I may paraphrase—all this strict liability, for the size of the problem before us, would be an awful faff, and the scheme is coming to an end more or less anyway, so it might be disproportionate. The other odd thing they say, as the explanatory memorandum sets out, is:

“Furthermore, it is considered important to ensure consistency across the pass-through regulations relating to the energy support schemes.”

That means: “We have not done it in other pass-through regulations, so we are not going to do it now. None of them has strict legal liability involved, and they all have that very inadequate, virtually non-existent way of getting any sort of remedy for the £150, so at least we are consistent.” That is not a very good way of going about such things.

[Dr Alan Whitehead]

The Opposition will not oppose the regulations, because it is important for people get their pass-through money if possible. However, the judgment made by the Government is, in effect, to say that it is useful to have incomplete requirements to do various things such as notification, because most people will probably do it, and it is important that they are there as guidance for how to do it. That may well be true, but a number of people might desperately need the money, as the Minister said, but miss out for various reasons. It is not always the case that the people who are intermediaries—perhaps not in this case, but in a number of others, such as park home owners—are necessarily the most completely upright, careful and judicious operators in their organisations. I can see the temptation for some people to say, “Right, we’re not going to have anything to do with this. Nothing much will happen to us, so it’s probably worth our while not to do anything, because we will probably save more money than we might conceivably expend in one or two small legal cases.”

Overall, I do not think that this has been a glorious way to respond to the points made by the Joint Committee on Statutory Instruments. I am not sure that the decision simply to ignore what the Joint Committee said is ultimately supportable, but I hope that the regulations work well and that the people involved get their £150 and their top-up for kerosene. The regulations are well intentioned, given that they are about ensuring that that happens, and we are absolutely with the Government in that desire, but I wonder whether the Minister intends simply to leave the issue or might she possibly have a look, once things are under way, to see if there is a potential problem in the lack of strict legal liability that we think there is at the moment? She may come back to the House at some stage to say either, “Well, it turns out there wasn’t a problem,” or, alternatively, “Hmm, there was a bit of a problem, so how can we get it better next time?”

4.49 pm

Amanda Solloway: I thank the right hon. Member for Leeds Central and the hon. Member for Southampton, Test for their remarks and contributions. I can give my assurance that the Government have been looking at all the schemes and endeavouring to ensure that they are fair and equitable for all. That is the reason for the regulations.

The regulations are necessary to provide that the support of the non-domestic alternative fuel payment scheme, following an application, reaches the businesses and organisations that need it, as we all agree. The £150 payments delivered through electricity suppliers represent the main part of the scheme, but the top-up payment for higher uses of kerosene heating oil plays a crucial role in ensuring that high users of kerosene are able to meet their energy costs at this time of inflated prices.

The top-up payments start at £750 for properties consuming 10,000 litres annually, but they are uncapped and progress upwards in line with the volume of kerosene consumed. The payments support a wide range of non-domestic customers, such as businesses, schools, hospitals and churches, that are not connected to the gas grid. The support is crucial to ensuring that they receive a comparable level of support to users that are on the gas grid. We opened the application process for the top-up payment in March. We additionally opened application routes for the small number of customers that could not receive the £150 payment from an electricity supplier. We are now processing payment as quickly as possible.

The previous pass-through regulations established a set of obligations on intermediaries receiving the basic £150 payment through an electricity supplier to ensure that that support is passed on appropriately to the end users. These regulations rightly ensure that the top-up payments are subject to the same requirements and that end users are protected appropriately. Additionally, they will ensure that the protection is extended to the small number of users that needed to apply for the basic £150 payment.

We are mindful of comments received about these regulations and previous pass-through regulations, but it is important that the non-domestic alternative fuel payment is delivered consistently as a coherent scheme. As the regulations cover only a small part of a wider scheme that is in place already, it is right that we have maintained the approach followed in the previous pass-through regulations for the scheme. We will continue to update and publicise our guidance on the gov.uk website to ensure that end users and intermediaries understand their rights and obligations. We will also continue to seek views and feedback from those impacted by the regulations, as well as key delivery partners. I commend the regulations to the Committee.

Question put and agreed to.

4.52 pm

Committee rose.

