

# **Direction made by the Secretary of State for Business, Energy and Industrial Strategy pursuant to sections 7(3)(a) and 107 of the Electricity Act 1989 and condition 59 of the standard conditions of electricity supply licence**

## **1 Title, commencement and cessation**

- (a) This direction is made by the Secretary of State pursuant to sections 7(3)(a) and 107 of the Electricity Act 1989 and condition 59 of the standard conditions of electricity supply licence. This Direction may be referred to as "the Non-Domestic Alternative Fuel Payment Great Britain Direction" or "the ND AFP Direction" or is referred to herein as "this direction".
- (b) This direction has effect from on 00:01 on 8th February 2023 to 23:59 on 8th February 2024 (both dates inclusive).

## **2 Definitions and interpretation,**

Except where otherwise provided by this paragraph, expressions in this direction which appear in the standard licence conditions have the same meaning as in the standard licence conditions.

In this direction—

"the Act" means the Electricity Act 1989;

"ND AFP" means a support payment totalling £150 which a non-domestic electricity supplier is required to provide to an eligible customer pursuant to this direction;

"the ND AFP guidance" means the guidance relating to this direction issued by the Secretary of State and/or the Authority on or around the date of this Direction and available from the Department of Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET and online at [www.gov.uk](http://www.gov.uk), as amended from time to time;

"alternative fuel" means any fuel used for heating which is not taken from the national gas transmission network in Great Britain;

"the Authority" means the Gas and Electricity Markets Authority established by section 1 of the Utilities Act 2000;

"bundled customer" means an eligible customer whose non-domestic electricity supplier also provides other services to such customer as a bundled product together with such non-domestic electricity supplier's supply of electricity under a Non-Domestic Supply Contract or a Deemed Contract;

"credit customer" means an Eligible Customer supplied pursuant to a Non-Domestic Supply Contract who is neither a prepayment customer nor a fixed direct debit customer;

"customer's bundled account" means the account maintained by the non-domestic electricity supplier recording usage and charges for relevant bundled services provided

by such non-domestic electricity supplier to a bundled customer and which includes the customer's energy account;

"customer's energy account" means the account maintained by the non-domestic electricity supplier recording energy usage and charges held by an eligible customer with a non-domestic electricity supplier pursuant to a Non-Domestic Supply Contract or a Deemed Contract;

"cut-off date" means 10th March 2023 ending at 23:59 hours on that day;

"deemed contract" means, as between a relevant Non-Domestic Electricity Supplier and an Eligible Customer, a Non-Domestic Supply Contract deemed to have been made under Paragraph 3 of Schedule 6 to the Act;

"direct debit customer" means a fixed direct debit customer or a variable direct debit customer;

"eligible customer" for the purposes of this direction means a Non-Domestic Customer who is: (i) on the list of MPANs; and (ii) on the Qualifying Date, is party to a Non-Domestic Supply Contract or a Deemed Contract for electricity supply which relates to the Non-Domestic Premises associated with the MPAN on the list of MPANs;

"end of scheme report" means the report mentioned in paragraph 10(a);

"exception case" is where the non-domestic electricity supplier, having taken all reasonable steps to do so, cannot provide the ND AFP to a person which it has determined to be an eligible customer and notified as such to the Secretary of State (and to the Authority where requested by the Secretary of State) pursuant to paragraph 8, in any of the following categories: (i) where the non-domestic electricity supplier has no forwarding address for the person in circumstances where such person no longer has a Non-Domestic Supply Contract or Deemed Contract with the non-domestic electricity supplier; (ii) where the non-domestic electricity supplier does not have the name of the eligible customer; (iii) where, on the qualifying date, the Non-Domestic Premises were vacant and the non-domestic electricity supplier is not able to establish who the resident account holder is in respect of the Non-Domestic Premises; (iv) where, on the qualifying date, the non-domestic electricity supplier believed there was a non-domestic premises but further investigation revealed that there was no eligible customer at such non-domestic premises or such non-domestic premises does not exist ; (v) where there has been a change in tenancy and a person other than the person notified as an eligible customer was the eligible customer in the Non-Domestic Premises on the qualifying date; (vi) where there was an erroneous transfer of the eligible customer to the non-domestic electricity supplier and the non-domestic electricity supplier cannot subsequently contact that eligible customer;

"external audit" means the auditing process in respect of the ND AFP scheme undertaken by or on behalf of the Secretary of State;

"final date" means 23:59 hours on 30th June 2023;

"fixed direct debit customer" means an Eligible Customer who pays the charges which are payable under their Non-Domestic Supply Contract by way of regular direct debit payments of a fixed amount (which amount may be varied from time to time in accordance with the relevant Non-Domestic Supply Contract);

"ineligible customers" means a non-domestic electricity supplier's customer who on the qualifying date takes a supply of electricity through an MPAN which appears on the list of

MPANs but who does not take a supply by way of a Non-Domestic Electricity Supply Contract;

"insolvency event" means in relation to a non-domestic electricity supplier that—

- (a) the non-domestic electricity supplier is—
  - (i) unable or admits inability to pay its debts as they fall due;
  - (ii) suspends making payments on any of its debts; or
  - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (b) the value of the assets of the non-domestic electricity supplier is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium has been declared in respect of any indebtedness of the non-domestic electricity supplier; or
- (d) any action, legal proceedings or other procedure or step has been taken in relation to the non-domestic electricity supplier with respect to—
  - (i) the suspension of payment of debts, a moratorium of any indebtedness, winding-up (whether voluntary or compulsory), dissolution, receivership, an energy supply company administration, an administration, reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of, or a restructuring plan relating to, the non-domestic electricity supplier;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of the non-domestic electricity supplier;
  - (iii) the appointment of a supplier of last resort in relation to the non-domestic electricity supplier;
  - (iv) the appointment of a liquidator, receiver, administrative receiver, administrator, energy supply company special administrator, compulsory manager or other similar officer in respect of the non-domestic electricity supplier or any of its assets; or
  - (v) enforcement of any security over any assets of the non-domestic electricity supplier,

or any analogous procedure or step is taken in any jurisdiction;

"internal audit report" means the report mentioned in paragraph 10(a)(ii);

"list of MPANs" means the list of customer accounts and the related MPAN which the Secretary of State expects to be entitled to receive an ND AFP and to be provided in writing by the Secretary of State to the non-domestic electricity suppliers;

"MPAN" means a meter point administration number;

“non-domestic electricity supplier” means a person who holds a licence granted under section 6(1)(d) of the Act and who supplies or intends to supply electricity to Non-Domestic Customers;

"outstanding customer" is to be construed in accordance with paragraph 8(a);

"prepayment customer" means an Eligible Customer to whom electricity is supplied pursuant to a Non-Domestic Supply Contract or a Deemed Contract through a Prepayment Meter;

“qualifying bank account” means a bank account in the name of the non-domestic electricity supplier with a bank in Great Britain;

“qualifying date” means 00:00 hours on 8th January 2023;

"scheme period" means the period commencing at 00:00 on 8th February 2023 and ending at 23:59 on 10th March 2023 (both dates inclusive);

"the Secretary of State" means the Secretary of State for Business, Energy and Industrial Strategy;

"the standard licence conditions" means the standard conditions of electricity supply licences incorporated by virtue of section 8A(1) of the Act in electricity supply licences granted or treated as granted under section 6(1)(d) of that Act;

"variable direct debit customer" means a Non-Domestic Customer who pays the charges which are payable under their Non-Domestic Supply Contract or Deemed Contract by way of regular direct debit payments of a variable amount, paying outstanding charges to the customer's energy account in full;

"working day" means any day other than a Saturday or Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971; and

### **3 Notifications and submissions**

A notification or submission under this direction—

- (a) must be in writing;
- (b) may be transmitted by electronic means; and
- (c) must be made in the form prescribed by the Secretary of State (or the Authority where requested by the Secretary of State).

### **4 Scope and Purpose of the Direction**

- (a) This direction applies to any non-domestic electricity supplier.
- (b) The purpose of this direction is to—
  - (i) establish terms on which the Secretary of State will pay to a non-domestic electricity supplier the total sum of ND AFP that such a non-domestic electricity supplier is required to provide and deliver to its eligible customers;
  - (ii) require that a non-domestic electricity supplier—

- (A) provides and delivers a ND AFP to each of its eligible customers by the cut-off date in accordance with this direction;
- (B) submits to reporting and auditing requirements demonstrating compliance with this direction; and
- (C) refunds any overpayments to the Secretary of State in accordance with paragraph 13,

for the purpose of supporting such eligible customers' payments for alternative fuel.

- (c) Any data shared under this direction is shared subject to the Direction made by the Secretary of State for Business, Energy and Industrial Strategy on 4th January 2023 under sections 7(3)(a) and 107 of the Electricity Act 1989 and pursuant to condition 59 of the standard conditions of electricity supply licence.

## 5 Obligations of non-domestic electricity suppliers

- (a) A non-domestic electricity supplier must comply with the obligations under this direction.
- (b) For the purpose of this direction a non-domestic electricity supplier—
  - (i) has provided a ND AFP to an eligible customer (including an outstanding customer) on the date on which the supplier has complied with paragraph 7(b) in relation to that customer;
  - (ii) has delivered a ND AFP to each category of eligible customer specified in the first column of the table below (including an outstanding customer) on the date specified in the corresponding row of the second column of the table below—

Category of eligible customer	Date of delivery of ND AFP
direct debit customer	the date confirmed by the external audit as the date on which the non-domestic electricity supplier has complied with paragraph 7(b)(i) or 7(b)(ii) in relation to the eligible customer
credit customer	the date confirmed by the external audit as the date on which the non-domestic electricity supplier has complied with paragraph 7(b)(ii) in relation to the customer
prepayment customer	the date confirmed by the external audit as the date on which the customer has received a payment under paragraph 7(b)(iii)

customer to whom a non-domestic electricity supplier has tendered payment under paragraph 7(b)(iii)	The date confirmed by the external audit as the date on which the customer has received a payment under paragraph 7(b)(iii)
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- (c) For the purposes of the third and fourth rows of the table above and of paragraphs 10(a)(i)(C) and 10(a)(i)(D) a customer has received a payment under paragraph 7(b)(iii) when the record of the transaction in the non-domestic electricity supplier's bank account indicates that the payment is available in the customer's bank account or when the customer has cashed a cheque tendered in payment, as the case may be.
- (d) A non-domestic electricity supplier must maintain a qualifying bank account separately from the non-domestic electricity supplier's other bank accounts and into which will be paid only the payments referred to in paragraph 12(b).

## 6 Notifications to the Secretary of State and the Authority

- (a) A non-domestic electricity supplier must notify to the Secretary of State the following information by 8th February 2023—
  - (i) confirmation that it has opened a qualifying bank account which remains open and active;
  - (ii) the details of the qualifying bank account;
  - (iii) the name, position and contact details of a responsible person;
  - (iv) based on the list of MPANs, and having identified those customer accounts on the list of MPANs to whom the non-domestic electricity supplier provides electricity, a statement of the number of such customers who on the qualifying date are—
    - (A) eligible customers; and
    - (B) ineligible customers.
- (b) A non-domestic electricity supplier must notify to the Secretary of State the following information by the cut-off date—
  - (i) a description (including a payment schedule) of how the non-domestic electricity supplier has provided a ND AFP to its eligible customers who are prepayment customers, direct debit customers and credit customers;
  - (ii) a description of how the non-domestic electricity supplier has identified and recorded the number of its eligible customers to whom it has not provided a ND AFP before or on the cut-off date;
  - (iii) a description of how the non-domestic electricity supplier has complied with its obligation to notify its eligible customers who are prepayment customers, direct debit customers and credit customers in relation to the provision of ND AFP;
  - (iv) a description of how the non-domestic electricity supplier has identified its ineligible customers from the list of MPANs;

- (v) a description of any systems or other testing the non-domestic electricity supplier has used or carried out before the qualifying date in relation to its performance of its obligations under this direction;
  - (vi) a description of any management processes put in place by the non-domestic electricity supplier to oversee compliance by the non-domestic electricity supplier with its obligations under this direction;
  - (vii) a description of the measures taken by the non-domestic electricity supplier to prevent fraud, misuse or abuse in relation to its provision of a ND AFP to its eligible customers; and
  - (viii) a description of how the non-domestic electricity supplier intends to carry out the internal audit for the purpose of compiling the internal audit report including a description of the form of evidence it intends to provide under the internal audit report to demonstrate compliance with paragraph 7.
- (c) The notifications under paragraphs 6(a) and 6(b) must be signed by the responsible person.
  - (d) Where any notifications required by paragraph—
    - (i) 6(a) have been made prior to the date on which this direction came into effect, the notifications must be confirmed by the non-domestic electricity supplier on 8th February 2023; and
    - (ii) 6(b) have been made prior to the date on which this direction came into effect, the notifications must be confirmed by the non-domestic electricity supplier on the cut-off date.
  - (e) The domestic electricity supplier must notify the Secretary of State of any changes to the information notified under paragraph 6(a) and 6(b) immediately upon becoming aware.

## **7 Providing ND AFP**

- (a) During the scheme period, a non-domestic electricity supplier must provide a ND AFP to each of its eligible customers by—
  - (i) applying a credit to the customer's energy account of an amount equal to the amount of the ND AFP, or reducing the amount charged to the customer's energy account by an amount equal to the amount of the ND AFP, in accordance with sub-paragraph (b)(i)(A) or (b)(ii); or
  - (ii) refunding the customer the amount charged to the customer's energy account by an amount equal to the ND AFP or paying to the customer an amount equal to the ND AFP, in accordance with sub-paragraph (b)(i)(B) or (b)(ii)(C).
- (b) By or on the cut-off date, a non-domestic electricity supplier must, in respect of a ND AFP—
  - (i) in relation to a fixed direct debit customer, either—
    - (A) reduce (to not less than zero) the amount (including Value Added Tax) charged to the customer's energy account by an amount

- equal to the ND AFP, and where the ND AFP is greater than the amount (including Value Added Tax) charged to the customer's energy account, credit to the customer's energy account an amount equal to the balance between the ND AFP and the amount charged to the customer's energy account (including Value Added Tax); or
- (B) after taking payment from the customer immediately refund to the customer an amount equal to the ND AFP, or, where the ND AFP is greater than the amount (including Value Added Tax) charged to the customer's energy account and a refund of an amount equal to the ND AFP is not possible, refund to the customer the amount (including Value Added Tax) charged to the customer's energy account and credit to the customer's energy account an amount equal to the balance between the ND AFP and the amount charged to the customer's energy account (including Value Added Tax);
- (ii) in relation to a variable direct debit customer or credit customer, either—
- (A) credit the customer's energy account by an amount equal to the ND AFP;
- (B) reduce the amount (including Value Added Tax) charged to the customer's energy account by an amount equal to the ND AFP; or
- (C) after taking payment from the customer immediately refund to the customer an amount equal to the ND AFP, or, where the ND AFP is greater than the amount (including Value Added Tax) charged to the customer's energy account and a refund of an amount equal to the ND AFP is not possible, refund to the customer the amount (including Value Added Tax) charged to the customer's energy account and credit to the customer's energy account an amount equal to the balance between the ND AFP and the amount charged to the customer's energy account (including Value Added Tax);
- (iii) in relation to a prepayment customer or any other eligible customer (subject to sub-paragraph (c) below) tender payment to the customer of an amount equal to the ND AFP.
- (c) Other than in the case of a prepayment customer, a non-domestic electricity supplier may provide a ND AFP to an eligible customer under sub-paragraph b(iii) only if, having exercised reasonable endeavours to comply with its obligations under paragraph 7, the supplier has determined that it would not be practical to provide a ND AFP to that customer under sub-paragraph (b)(i) or (b)(ii).
- (d) For the purposes of sub-paragraph (b)(iii) “tender payment” means making payment by means of non-transferable cheque.
- (e) Where the customer is a bundled customer and has not elected otherwise to its non-domestic electricity supplier, the non-domestic electricity supplier may instead of applying a credit to the customer's energy account under sub-



paragraph (b)(ii) apply a credit equal to the relevant amount to the customer's bundled account.

- (f) A non-domestic electricity supplier must take all reasonable steps to comply with the obligations under this paragraph 7 by or on the relevant cut-off date.

## **8 Outstanding customers**

- (a) If a non-domestic electricity supplier does not provide a ND AFP before the end of the cut-off date to one or more eligible customers ("the outstanding customers"), the non-domestic electricity supplier must before the end of a period of five (5) working days after the end of that cut-off date notify to the Secretary of State (and to the Authority where requested by the Secretary of State)—
  - (i) the number of outstanding customers;
  - (ii) the reason why the non-domestic electricity supplier has not provided a ND AFP to the outstanding customers, including the number of exception cases of each category; and
  - (iii) steps for providing a ND AFP to the outstanding customers by no later than the final date.
- (b) In relation to any outstanding customer notified under sub-paragraph (a) a non-domestic electricity supplier must comply with the obligations in paragraph 7 by no later than the final date, and no ND AFP shall be provided by a non-domestic electricity supplier after this time.
- (c) A non-domestic electricity supplier shall not be required to provide a ND AFP in respect of an eligible customer notified pursuant to paragraph 6 which is an exception case.

## **9 Information on Bills etc.**

A non-domestic electricity supplier which provides a ND AFP to an eligible customer must specify on the customer's next Bill or statement of account (or otherwise notify the customer in writing) that the customer has been provided with the ND AFP and that the ND AFP is a payment by His Majesty's Government that has been applied to reduce the customer's charges in respect of alternative fuels by an amount equal to the ND AFP.

## **10 Reporting on compliance**

- (a) A non-domestic electricity supplier must submit initial versions by 24th March 2023 and final versions after the final date but on or before 31st July 2023 of the following information to the Secretary of State (and to the Authority where requested by the Secretary of State)—
  - (i) a report signed by the responsible person which includes the following information—
    - (A) the number of direct debit customers to whom the non-domestic electricity supplier has provided a ND AFP;
    - (B) the number of credit customers to whom the non-domestic electricity supplier has provided a ND AFP;

- (C) the number of prepayment customers who have received a payment under paragraph 7(b)(iii);
  - (D) the number of eligible customers (other than prepayment customers) who have received a payment under paragraph 7(b)(iii);
  - (E) the number of outstanding customers notified under paragraph 8(a); and
  - (F) the number and category of exception cases arising ("end of scheme report"); and
- (ii) a report compiled for or on behalf of the non-domestic electricity supplier by a senior compliance officer not under the direction of the responsible person certifying the accuracy of any information notified under this direction ("the internal audit report").
- (b) A non-domestic electricity supplier must provide the entity conducting the external audit with access to the non-domestic electricity supplier's payment records, information and documents required for the purposes of the external audit conducted following the final date.
  - (c) A non-domestic electricity supplier must submit to the Secretary of State payment records, information and documents in relation to the relevant eligible customer's meter number to satisfy the sample-based assurance process described in the ND AFP guidance.

## **11 Conditions of payment**

- (a) A non-domestic electricity supplier must comply with the conditions in this paragraph 11 to the Secretary of State's satisfaction no later than 8th February 2023.
- (b) The non-domestic electricity supplier must have satisfied the notification requirements under paragraph 6(a) and must have submitted to the Secretary of State a declaration signed by the responsible person that, to the best of non-domestic electricity supplier's knowledge and belief, the information notified pursuant to paragraph 6 is a true and accurate reflection of the number of eligible customers to whom the non-domestic electricity supplier will provide a ND AFP during the scheme period.
- (c) By no later than 12:00 hours on 8th February 2023, the non-domestic electricity supplier must have submitted to the Secretary of State a declaration signed by the finance director of the supplier, on behalf of the supplier confirming that an insolvency event has not occurred in respect of the supplier and that, having made reasonable enquiries, the finance director is not aware of any circumstances that could reasonably be expected to give rise to such an insolvency event during the calendar month in which the declaration is given or in the immediately following calendar month, such declaration to be dated as of 8th February 2023. Where an energy supply company administration order pursuant to section 94(1) of the Energy Act 2011 is in force in respect of the non-domestic electricity supplier, the non-domestic electricity supplier shall not be required to submit a declaration pursuant to this paragraph.

- (d) The non-domestic electricity supplier must agree to the following terms of payment—
  - (i) the non-domestic electricity supplier is responsible for ensuring that all payments received in connection with the ND AFP Scheme are used for the sole purpose of providing a ND AFP to eligible customers;
  - (ii) prior to a non-domestic electricity supplier having provided a ND AFP to an eligible customer, such supplier must not use any monies relating to such ND AFP which it has received from the Secretary of State under paragraph 12 for any purpose, or release or transfer such monies out of the designated account, and in any case must not use such monies: (A) to fund dividends or salary payments; (B) for illegal purposes or fraudulently; or (C) to fund any and all administration costs of providing the ND AFP to eligible customers and complying with this direction;
  - (iii) the non-domestic electricity supplier will refund to the Secretary of State any overpayments in accordance with paragraph 13;
  - (iv) the Secretary of State (and the Authority where confirmed by the Secretary of State) is entitled to audit compliance by the non-domestic electricity supplier with this direction;
  - (v) any use of subcontractors by the non-domestic electricity supplier for the purpose of providing and delivering the ND AFP Scheme does not relieve the non-domestic electricity supplier of any of its obligations under this direction, including the obligation to refund overpayments;
  - (vi) that, in accordance with this direction—
    - (A) the Authority is entitled to audit compliance by the supplier; and
    - (B) the Secretary of State may provide information received from the supplier under this Direction to the Authority for this purpose;
  - (vii) the Secretary of State may offset any overpayment made by the Secretary of State to a non-domestic electricity supplier that has not been refunded by the non-domestic electricity supplier against future payments by the Secretary of State to that non-domestic electricity supplier under any other scheme; and
  - (viii) the terms for receiving a payment which are listed in paragraph 12.
- (e) The agreement of the non-domestic electricity supplier to the terms in paragraph 11(d) must be executed as a deed.

## **12 Payment**

- (a) Within a period of five (5) working days beginning with receipt of the information notified under paragraph 11, the Secretary of State will determine whether the non-domestic electricity supplier has satisfied the conditions for receiving payment.
- (b) If the Secretary of State determines the conditions are met, the Secretary of State will pay to the non-domestic electricity supplier the amount determined on the basis of the information notified pursuant to paragraph 6(a).

- (c) If, after considering the information notified by the non-domestic electricity supplier, the Secretary of State determines that the non-domestic electricity supplier has not met any condition, the Secretary of State will notify to the non-domestic electricity supplier—
  - (i) the reasons for the Secretary of State's determination; and
  - (ii) a description of the further information which the non-domestic electricity supplier must notify to the Secretary of State to ensure that the non-domestic electricity supplier has satisfied all conditions for receiving payment.
- (d) The Secretary of State will make any payments due to a non-domestic electricity supplier under this paragraph—
  - (i) as soon as reasonably practicable, provided that the Secretary of State has determined that the non-domestic electricity supplier has satisfied the conditions for receiving payment; and
  - (ii) in accordance with the process specified in the ND AFP guidance.

### **13 Overpayments**

- (a) A non-domestic electricity supplier which has received a payment from the Secretary of State under paragraph 12(d) and becomes aware of an overpayment (as defined in sub-paragraph (b)) must—
  - (i) notify to the Secretary of State any overpayment within five (5) working days of the non-domestic electricity supplier becoming aware of the overpayment;
  - (ii) refund to the Secretary of State any overpayment within five (5) working days of receipt of a request in writing from the Secretary of State; and
  - (iii) account to the Secretary of State for any monies received within five (5) working days of a request in writing from the Secretary of State;
- (b) An overpayment exists in the following circumstances—
  - (i) where any monies paid to a non-domestic electricity supplier exceed the total sum of the ND AFP's the non-domestic electricity supplier has provided or delivered to its eligible customers during the scheme period;
  - (ii) where any monies paid to a non-domestic electricity supplier are in respect of an exception case; or
  - (iii) where any monies paid to a non-domestic electricity supplier in relation to eligible customers to whom the non-domestic electricity supplier has tendered payment under paragraph 7(b)(ii)(C) exceed the total sum of all the payments received by eligible customers under that paragraph.



Minister of State for Energy and Climate  
6 February 2022

