These notes refer to the Sustainable Energy Act 2003 (c.30) which received Royal Assent on 30 October 2003

SUSTAINABLE ENERGY ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 7: Use of certain money held by Gas and Electricity Markets Authority

27. This section provides a power for the Secretary of State to direct Ofgem to pay into the Consolidated Fund up to £60 million from funds paid to Ofgem and arising from the auctioning of electricity generated under Non Fossil Fuel Obligation (NFFO) contracts. There is also a corresponding duty on the Secretary of State to spend a matching sum to promote the use of energy from renewable sources. This enables the Government to meet its White Paper commitment (paragraph 4.13) to increase funding for renewables capital grants by £60 million in the years to 2005/06.

28. The NFFO was the support scheme for electricity generated from renewable sources that was introduced under the original sections 32 and 33 Electricity Act 1989 (c.29). Under the NFFO scheme, Orders were made which required public electricity suppliers (the successors to the old nationalized electricity boards) to buy electricity generated from renewable sources under "NFFO contracts". The price paid for the electricity under those contracts was above the market price for electricity and the public electricity suppliers were compensated for this by payments out of the money collected through the Fossil Fuel Levy that was provided for in section 33 of the Electricity Act. The levy was charged on the electricity supplies of all licensed electricity suppliers and was paid out to the smaller number of electricity suppliers which were subject to the NFFO Orders.

29. Sections 62 to 65 of the Utilities Act 2000 (c.27) inserted into the Electricity Act 1989 new sections 32 to 32C, which contain provisions allowing the introduction of the Renewables Obligation, the successor to the NFFO scheme. This scheme has been implemented in England and Wales by the Renewables Obligation Order 2002 (S.I. 2002/914). The scheme requires each licensed electricity supplier to produce evidence that it has supplied a specified proportion of its electricity from renewable sources or that other electricity suppliers have done so. The evidence that it has to produce is Renewable Obligation Certificates issued by Ofgem. If the supplier does not produce the necessary number of Certificates, it has to make a payment (the buy-out price) to Ofgem. It is this that gives the Certificates a value.

30. The NFFO contracts are long-term contracts and the last of them will not expire until 2018. When introducing the Renewables Obligation it was necessary to preserve these contracts until the end of their terms, and section 67 of the Utilities Act provided for the making of Orders to do so. The NFFO contracts have been amended so that the electricity suppliers are no longer parties to the contracts and they have been replaced by the Non-Fossil Purchasing Agency Limited ("NFPA"), which is a single-purpose company, owned by the electricity suppliers that were the original parties to the NFFO contracts. The NFPA auctions the NFFO electricity, together with the associated Renewable Obligation Certificates, to electricity suppliers.

31. The NFPA's income currently exceeds its expenditure, owing to the value of the Renewable Obligation Certificates associated with the NFFO electricity. The NFPA is required, under subsection (5A) of section 33 of the Electricity Act 1989 (as that section

is now amended and preserved in England and Wales by Orders under section 67 of the Utilities Act), to pay to Ofgem (the person prescribed under section 33(1)(b) of the Electricity Act) the surplus that arises from the auctioning of Renewables Obligation Certificates for electricity generated under NFFO contracts, thereby avoiding a double subsidy to electricity generators with NFFO contracts. Section 33 does not, however, make provision for the disposal of this surplus by Ofgem, but this is now addressed by this section.