

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

SUSTAINABLE ENERGY ACT

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Sustainable Energy Act which received Royal Assent on 30 October 2003. They have been provided by the Department of Trade and Industry in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Government published an Energy White Paper, “*Our energy future – creating a low carbon economy*” (Cm 5761, TSO 0-10-157612-9), in February 2003. This Act contains a number of sections, all of which are linked to the promotion and achievement of a sustainable energy policy.
4. The Act contains the following main provisions:
 - section 1: a duty on the Secretary of State to report annually on progress towards four specified energy policy goals;
 - sections 2 and 3: a duty on the Secretary of State (and separately on the National Assembly for Wales) to designate and take reasonable steps to achieve at least one energy efficiency aim for residential accommodation;
 - section 4: a power for the Secretary of State (and, separately, the National Assembly for Wales), following consultation with bodies representing local authorities, to direct one or more local authorities to take measures to improve the energy efficiency of residential accommodation. There is also a duty on local authorities when so directed to give preference to measures that would also contribute to tackling fuel poverty;
 - section 5: a duty on the Secretary of State to set targets for the use by the Government of electricity generated using Combined Heat and Power (CHP);
 - section 6: a duty on the Gas and Electricity Markets Authority to undertake and publish impact assessments, including environmental assessments, before implementing significant proposals;
 - section 7: a power for the Secretary of State to direct the Gas and Electricity Markets Authority to pay up to £60 million into the Consolidated Fund from surplus funds arising from the Non Fossil Fuel Obligation (NFFO). There is also a corresponding duty on the Secretary of State to use the same amount to

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promote renewable energy.

COMMENTARY ON SECTIONS

Section 1: Annual reports on progress towards sustainable energy aims

5. This section puts the Government's commitment to publish an annual report on progress towards the goals set out in the Energy White Paper on a statutory basis. A report must be published each calendar year, beginning in 2004, and each must cover the year leading up to the 24th February (the anniversary of publication of the White Paper on 24th February).

6. *Subsection (4)* provides flexibility in the form of the report, which may be published as a single document or in parts and as part of a wider document. As information and statistics on a wide range of topics may be included, not all of which may be available to match exactly the reporting period, *subsection (5)* allows for the report to be based on the information available at the time a report is written. The definition of fuel poverty in *subsection (6)* is the same as that presently contained in section 1(1) of the Warm Homes and Energy Conservation Act 2000 (c.31).

Sections 2 & 3: Energy efficiency of residential accommodation: Secretary of State and National Assembly for Wales

7. These sections place a duty on the Secretary of State in respect of England, and the National Assembly for Wales in respect of Wales, each to designate, and take reasonable steps to achieve, at least one published energy efficiency aim for residential accommodation.

8. *Section 9* of the Act provides for these sections to be brought into effect (separately) on a day specified by order. This is to enable the Secretary of State and the Assembly each to develop plans following discussion with stakeholders before publishing a document containing one or more appropriate aims to be designated in accordance with these sections. The effect of *subsections (6) and (7)* in clauses 2 and 3 is that at least one aim must always be kept in place once an aim has been designated under the relevant section.

Section 4: Energy efficiency of residential accommodation: energy conservation authorities

9. The Home Energy Conservation Act 1995 (c.10) ("HECA") requires energy conservation authorities (local authorities with housing responsibility) to report on residential energy efficiency improvements and applies to all residential accommodation within an authority's boundaries. Under that Act authorities must prepare a strategy for improving energy efficiency within residential accommodation and then produce annual progress reports. Authorities set targets for themselves in their strategies. The average target is a 30% improvement (from the 1996 baseline) over 12 years. But there is no legal requirement on authorities to implement measures to achieve their targets. As announced in the 22 July 2003 ODPM circular to Local Authorities, the Government will shortly be bringing forward an Order under section 6 of the Local Government Act 2000 to remove the requirements in statute for production of HECA and other plans. Removal applies to all excellent authorities. As regards the main section 6 Order, if the process is successfully completed, the

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Order will come into force before the end of 2003/4.

10. This section:

- provides a power for the Secretary of State (in respect of England) and the National Assembly for Wales (in respect of Wales) to issue (and subsequently modify) a direction to one or more energy conservation authorities to make improvements in the energy efficiency of residential accommodation; and
- requires energy conservation authorities to which directions are given to take such measures as they consider to be practicable, cost effective and likely to result in achieving the improvement specified in such a direction;

11. *Subsection (2)* provides for the meaning of “energy efficiency” of residential accommodation to be defined for the purposes of this clause by the Secretary of State. There is at present no suitable definition of energy efficiency in any other legislation and this provision also enables the definition to be amended as necessary in future, for example in response to changes in policy or technology.

12. Representatives of local government, named in *subsections (3) and (4)* as the Local Government Association in England and the Welsh Local Government Association, must be consulted before a direction is issued. *Subsections (12) and (13)* provide for these bodies to be changed to reflect any changes in local authority representation that may occur in future.

13. *Subsection (5)(b)* removes the duty for energy conservation authorities to comply with the HECA after receiving a direction. This is because the provisions contained within this Act go beyond those contained within the HECA. This Act requires authorities issued with a direction to take action.

14. The effect of *subsection (6)* is to require an energy conservation authority, when carrying out its duties under this section, to give preference to measures that it considers would contribute to achieving the fuel poverty objectives contained in the Warm Homes and Energy Conservation Act 2000 (c.31).

15. *Subsections (10) and (11)* provide a power for the Secretary of State and the National Assembly for Wales to issue guidance to energy conservation authorities in relation to their duties under this section and require energy conservation authorities to have regard to such guidance.

16. *Section 9* of the Act provides for this clause to be brought into effect (separately in England and Wales) on a day specified by order. This is to enable the Secretary of State and the National Assembly for Wales each to develop, assess and cost proposals, to consult energy conservation authority representatives and other stakeholders and to put the necessary funding in place before issuing directions under this section.

Section 5: CHP targets

17. In the Energy White Paper, the Government committed itself to setting a target for the use of CHP generated electricity in the central Government estate. This section puts in place a statutory duty to do so by the end of 2003 by means of a statement that must be laid before Parliament. A further statement modifying and or

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revoking that statement may also be made at any time. The effect of *subsection (6)* is that a target must be specified for 2010. This echoes the Government's existing CHP commitment for the UK as a whole. *Subsection (9)* prevents proceedings being brought to enforce the target or to review any act, or failure to act, in relation to the target.

18. In *subsection (4)*, paragraph (b) provides a power for the Secretary of State to specify "any other requirements" for the purposes of the definition of CHP electricity in that subsection. This allows for stricter definitions of CHP to be specified in regard to the target (for example, by imposing requirements relating to the use of "Good Quality" CHP).

19. *Subsection (5)* provides powers to define the departments and other bodies and electricity use to which any target applies.

Section 6: Duty of Gas and Electricity Markets Authority to carry out impact assessments

20. The Gas and Electricity Markets Authority is the independent economic regulator for the electricity and downstream gas markets in England, Wales and Scotland, generally known as the Office of Gas and Electricity Markets or "Ofgem".

21. In the Energy White Paper (paragraph 9.15) the Government noted that Ofgem was committed to producing regulatory impact assessments, including environmental impact assessments, for all significant new policies and indicated that it would provide statutory backing for these assessments through primary legislation. Section 6 imposes a statutory duty on Ofgem to provide these assessments.

22. Section 6 inserts a new section 5A into the Utilities Act 2000 (c.27). The drafting follows the precedent of a near-identical provision in the Communications Act (c.21), which received Royal Assent on 17 July 2003. Section references in the following paragraphs are references to new section 5A of the Utilities Act.

23. Ofgem is required by the new section 5A to undertake and publish an assessment in respect of any of its proposals that appear to it to be important. There is provision within *section 5A(1)* for Ofgem to avoid the requirement to undertake an assessment if it needs to take action urgently (e.g. to address a fast-moving situation arising from the failure of a company). *Section 5A(2)* provides detail on what should be regarded as an important proposal. *Section 5A(3)* requires publication of the assessment, or a statement setting out reasons why Ofgem thinks an assessment is not necessary. *Section 5A(9)* also requires details of assessments and related decisions in any year to be included in Ofgem's Annual Report, copies of which are required to be laid before Parliament.

24. Paragraphs (a) and (b) of *section 5A(4)* provide that an assessment carried out under section 5A must assess the likely effects on the environment of implementing the proposal, and must also relate to such other matters as Ofgem considers appropriate. Under *section 5A(5)* Ofgem must have regard to general guidance on the carrying out of impact assessments when determining what these matters are. The Cabinet Office produces extensive guidance on regulatory impact assessments and Defra has issued guidance on how to conduct environmental impact assessments.

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Section 5A(6) allows Ofgem to determine the form of assessments.

25. *Section 5A(7)* provides a power for representations to be made to Ofgem on the proposals. Ofgem must not implement a proposal unless the period for representations has ended, and the representations have been considered. *Section 5A(8)* provides that any consultation which Ofgem is required to undertake under any other provisions is additional to the requirements of section 5A. However, the consultations may be performed at the same time.

26. *Sections 5A(11) and 5A(12)* apply Ofgem's principal objective and general duties, as set out in the Gas Act 1986 (c.44) and the Electricity Act 1989 (c.29), to the carrying out of impact assessments by Ofgem.

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

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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.

COMMENCEMENT

32. Provision is made for sections 2,3,4 and 5 to come into force on a day appointed by order. The remaining sections come into effect two months after Royal Assent.

