

ENERGY ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 4: Further Provisions about Regulation

Section 187: Payments of sums raised by fossil fuel levy

459. [Section 187](#) provides a power for Scottish Ministers to direct GEMA to pay into the Scottish Consolidated Fund monies from funds paid to GEMA and arising from the auctioning of electricity generated under Scottish Renewables Obligation (“SRO”) contracts. There is also a corresponding duty on Scottish Ministers to include provision in budget proposals to the Scottish Parliament that monies thus raised shall be used to promote the use of energy from renewable sources. This will enable the Scottish Executive to provide the additional support necessary to meet its commitment to increasing the amount of renewable energy produced in Scotland. Similar powers as regards monies arising from the auctioning of electricity generated under NFFO (Non Fossil Fuel Obligation) contracts in England and Wales are contained in section 7 of the [Sustainable Energy Act 2003 \(c.30\)](#).
460. The SRO was the support scheme for electricity generated from renewable sources that was introduced under the original sections 32 and 33 of the Electricity Act 1989, which were executively devolved to Scottish Ministers. Under the SRO scheme, Orders were made which required Scottish public electricity suppliers (the successors to the old nationalised electricity boards) to buy electricity generated from renewable sources under “SRO 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 SRO Orders.
461. Sections 62 to 65 of the Utilities Act inserted into the Electricity Act new sections 32 to 32C, which contain provisions allowing the introduction of the GB Renewables Obligations, the successor to the SRO scheme and its English / Welsh equivalent. This scheme has been implemented in Scotland by the [Renewables Obligation \(Scotland\) Order 2002 \(S.S.I. 2002/163\)](#). 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 (“ROCs”) issued by GEMA. If the supplier does not produce the necessary number of Certificates, it has to make a payment (the buy-out price) to GEMA. It is this that gives the Certificates a value.
462. The SRO contracts are long-term, and the last of them will not expire until 2018. The price paid by the suppliers for the electricity under those contracts is above the market price, and they are compensated by payments out of the Fossil Fuel Levy. SRO output is also eligible for ROCs under the Renewables Obligation (Scotland) Order, and the proceeds of the sale by auction of such ROCs is now used to reduce Fossil Fuel Levy

costs. As a result, there is no need at present to raise Levy funds via electricity bills, and the Levy rate (set by GEMA) is currently set at zero.

463. The income currently being realised through the auction of SRO ROCs exceeds its expenditure, owing to the value of the Renewable Obligation Certificates associated with the NFFO electricity. The Scottish supply successor companies are required, under subsection (5A) of section 33 of the Electricity Act (as that section is now amended and preserved in Scotland by Orders under section 67 of the Utilities Act), to pay to GEMA (the person prescribed under section 33(1)(b) of the Electricity Act) the surplus that arises from the auctioning of ROCs for electricity generated under SRO contracts, thereby avoiding a double subsidy to electricity generators with SRO contracts. Section 33 does not, however, make provision for the disposal of this surplus by GEMA, but this is now addressed by this section.
464. In order to give Scottish Ministers the required power over the surpluses in the Scottish Levy fund, a separate section, covering section 33 of the Electricity Act as it applies in Scotland, required to be inserted in the Act at Westminster. Although the existing powers under section 33 were executively devolved to Scottish Ministers, and have subsequently been amended, the legislation on using the surplus in Scotland had to be obtained through the Westminster procedures because it amends the Electricity Act in a way that is not consistent with the Executive's limited devolved power to amend section 33 of that Act.