



CRC Energy Efficiency Scheme Order 2013

An Effort in Simplification

The Carbon Reduction Commitment Energy Efficiency Scheme (CRC) has rarely been out of the spotlight since its inception. Prior to the recent simplification efforts by Government, research has shown that nearly half of stakeholders in the private and public sector said they did not fully understand what was involved in buying allowances for CO₂ emissions and 44 per cent were also unclear about forecasting their CO₂ emissions.

In December 2012, following consultation, the Government confirmed the changes that would be made to simplify the CRC scheme. The CRC Energy Efficiency Scheme Order 2013 (CRC Order 2013), which implements these changes, was laid before Parliament on 4 March 2013 and came into force 20 May 2013. The CRC Order 2013 revokes and replaces the existing CRC legislation, save for certain provisions that will continue to have effect (as amended) for the remainder of Phase 1.

With this most recent round of amendments, the Government aimed to reduce the complexity of the CRC scheme and address the key criticisms levelled by stakeholders since the scheme's introduction. The Government estimates that the amendments will result in a 55% reduction in administrative costs for scheme participants, equating to £272m up to 2030.

When will the changes come into force?

The large majority of the proposals will be introduced for the next phase of the CRC (referred to as the "initial phase" in the CRC Order 2013 but as Phase 2 below) which will commence on 1 April 2014. However, it should be noted that the CRC Order 2013 does provide for certain changes to apply from the moment it came into force for the remainder of the current CRC phase, which commenced on 1 April 2010 and ends 31 March 2014, as well as the next phase and going forwards.

In May 2013 the Environment Agency published updated guidance for Phase 1 participants to take account of the new simplified measures that have been introduced for the remainder of the current phase as well as guidance on qualification for the next phase of the CRC.

Key changes

The following is an overview of the key changes made pursuant to the CRC Order 2013 and when they come into effect. The Government consulted on 46 proposals in total to amend the existing CRC scheme. This briefing focuses on some of the key areas of change.

Registration deadline - The deadline for registration moves to two months before the beginning of a phase. In Phase 2 the deadline is therefore 31 January 2014. Mandatory registration for Phase 2 is open from 4 November 2013 and has a deadline of 31 January 2014. **This change applies to registration for Phase 2 onwards.**

Qualification requirements - The current 6000MWh threshold will be retained; however, only supplies received through Settled Half-Hourly Meters will count towards the qualification threshold. Previously other types of Half-Hourly Meters and Dynamic Supply had counted towards qualification but from Phase 2 this will no longer be the case. **This change applies to qualification for Phase 2 onwards.**

Supply rules - The supply rules will be changed to give CRC responsibility to the organisation with direct control for fuel it receives, or supplies made at its direction. Further, the payment criterion will be removed from the supply criteria so that responsibility rests with the contract holder rather than the party which makes the payment. **This change takes effect for Phase 2 onward.**

Fuels covered by the CRC - Going forward, the scheme will only cover two fuels, electricity and gas, with gas included only where used for heating purposes. The scheme had previously covered 29 fuels and so this represents a significant change. **This change applies immediately for the remainder of Phase 1 and to subsequent phases.**

De Minimis Threshold for Gas Reporting - There will be a de minimis threshold for reporting on gas where gas consumption is less than 2% of the overall electricity consumption in the first reporting year of the relevant phase. **This change applies immediately for the remainder of Phase 1 and to subsequent phases.**

Removal of 90% rule - This rule required participants to demonstrate that at least 90% of their emissions were regulated under the EU ETS, CCAs or the CRC. Participants will now need to report on 100% of their supplies of electricity and gas used for heating, subject to the de minimis threshold for reporting on gas (see above). **This change applies immediately for the remainder of Phase 1 and the subsequent phases.**

CCAs and EU ETS installations - In the first phase electricity supplies to an EU ETS installation or a CCA facility were taken into account when assessing qualification, with affected organisations then needing to consider whether they qualified for an exemption. This will change so that such electricity will no longer amount to supply under the CRC for qualification or compliance purposes. Organisations will only need to register as participants if their other eligible energy supplies amount to more than 6000MWh. As a result of this the three CCA exemptions will also be removed from the scheme. This should simplify CRC administration for organisations with EU ETS installations or CCA facilities. **This change takes effect for Phase 2 onwards.**

Electricity Generating Credits (EGCs) - Under the CRC EGCs have been awarded for the generation of energy from renewables that do not receive either ROCs or FITs. This offsets the obligation to report any eligible input fuels. Given that the fuels covered by the CRC are to be reduced to two (see above) there is less of a need for this measure and EGC will be removed for subsequent phases, with limits placed on the circumstances in which they can be used for the remainder of Phase 1. The Government has acknowledged that this may have an effect on renewables generators but justify this on the grounds that the CRC is primarily an energy efficiency scheme and that renewable and non-renewable generation should be on a level field. **This change takes effect from Phase 2. EGCs are retained for remainder of Phase 1, but with restrictions to prevent abuse.**

Disaggregation - Participants will now be free to disaggregate in line with their organisational structures, rather than being limited by minimum thresholds on the disaggregating entity and remaining group as was previously the case. Changes have also been made to the timeframes for applying for disaggregation. At present any request for disaggregation must be made by the last working day of April following the deadline for registration for a particular phase. However, it is intended that disaggregation will eventually be allowed during a phase. **This change takes effect from registration for Phase 2 onwards – requests for disaggregation for Phase 2 must be made by Wednesday 30 April 2014.**

Allowance sales - Allowances will be sold by way of two fixed price allowance sales. One forecast sale at the beginning of the year and one buy-to-comply sale after the end of the reporting year in which allowances will be sold

for an increased price. From 2013 onwards, the deadline for surrendering CRC allowances will be pushed back from the end of July in the relevant year to the end of October. The safety valve concept (by which CRC participants could buy extra allowances from the Environment Agency through the EU ETS market) will be scrapped. **The two sale system will take effect from Phase 2 (at which point the safety valve will be scrapped). The deadline for surrender of CRC allowances will be moved to October for the remainder of Phase 1 and subsequent phases.**

Reporting - A key change is that Footprint Reports will not be required for CRC phases going forwards, with the aim of reducing administrative burden. These had been required of participants in order to confirm compliance with the 90% rule and are no longer required following removal of this rule (see above). Additionally, records will need to be kept for much shorter time frames, 6 years from the end of the relevant compliance year rather than 7 years from the end of the relevant phase. Wording in the CRC Order 2010 suggests that two annual reports will be required in July 2014 (owing to overlap of the first two phases). Changes to the commencement dates in the CRC Order 2013 appear to have resolved this duplication, but DECC have yet to confirm this. Records for Phase 1 are to be kept for 7 years after the end of that phase, but records for Phase 2 onwards are to be kept for 6 years after the end of the year to which they relate. **The requirement for footprint reports has been removed for the remainder of Phase 1.**

Performance league table - The performance league table will be scrapped going forward. The Environment Agency will instead publish details of participants' aggregated energy use and emissions data. **The league table has been removed for 2013 and subsequent years in the scheme.**

Banking Allowances - Banking of allowances is permitted in a very limited sense: an allowance is valid in the year it is issued and for any subsequent year of the phase in which it is issued. However, an allowance is not valid in respect of any CRC emissions in a subsequent phase. This means that allowances can be banked between years within a phase but not between phases. The CRC Order 2013 clarifies ambiguity surrounding this issue.

Conclusion

Opponents to the CRC have repeatedly argued that the CRC scheme should be replaced with a more conventional tax. For the time being, the Government has rejected this and opted to persevere with the CRC, albeit in a simplified form. Whether these simplifications deliver a sufficient reduction to the administrative burden of the CRC will only become clear as the scheme moves into its second phase over the course of the next two years. The Government has announced that it will review the effectiveness of the CRC in 2016 and has commented that the tax element of the scheme introduced in the 2010 Spending Review (prior to this the scheme provided

for revenue received from the sale of allowances to be recycled to participants) is a high priority for removal when public finances allow.

In spite of key simplifications, a challenge that remains for many stakeholders is identifying and tracking the various changes in deadlines and requirements resulting from the amendments in the CRC Order 2013, and ensuring they adjust their internal compliance policies to avoid potential fines and losses. Burges Salmon's team of specialists is well placed and can assist your organisation with establishing the appropriate response to the new challenges resulting from the amended CRC regime.

Contact

If you would like more information please contact Rachel Blackburn or any other member of the Burges Salmon Energy & Environment team on 0117 939 2000.



Rachel Blackburn
Associate

+44(0)117 307 6085

rachel.blackburn@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

www.burges-salmon.com

Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is authorised and regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.

© Burges Salmon LLP 2013. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.