

# Review

## Climate Change and Cleantech Group



## The CRC Energy Efficiency Scheme: update on progress and latest changes

The redrafted CRC Energy Efficiency Scheme Order 2010 was laid before Parliament on 22 January 2010. The Order is an affirmative instrument, which means that both Houses of Parliament must expressly approve it. Each House simply expresses its wish for the SI to be annulled or passed into law. The timeframe for scrutiny is not entirely clear; the Order could be passed in as little as a few weeks, but could take longer.<sup>1</sup> When it is debated, this will be for a maximum of an hour and a half in the Commons and possibly slightly longer in the Lords, depending on how many people want to comment.

Although the layout of the draft Order is considerably altered, the substantive provisions remain largely unchanged. The Addendum to the 2009 DECC decision document, which was published at the same time as the draft Order, outlines the principal changes, including:

- **Sole traders** – are excluded from participation in the CRC and are therefore no longer required to assess themselves for qualification or make an information disclosure, even if they are supplied by a settled half hourly meter. This revision was made on the basis that to include such business would place them under an administrative burden which was disproportionate to their emissions.
- **Exclusion of passive and non-half hourly electricity supplies** – Electricity measured on a passive or non-half hourly basis is not classified as a CRC supply and therefore will not need to be measured for purposes of qualification or footprint or annual reporting. A ‘passive’ supply exists where un-metered electrical consumption is allocated across half hourly periods by means of a mathematical calculation. However, where a device (not being a metering device) records, on a daily basis, when electricity is supplied or not to one item of a set of equipment on premises and that record is used to determine the half hourly supply of electricity to the whole set of equipment (a ‘dynamic supply’), such supply will qualify for the scheme.
- **Indirect supply** – the principle of indirect supply<sup>2</sup> has been removed. This provision was considered to add an unnecessary layer of complexity for participants, and is no longer required given that eligibility for Electricity Generating Credits (“EGCs”) has been streamlined and simplified (see below). Generators will now be responsible under the CRC for reporting the emissions attributable to the supply of input fuel, irrespective of whether they subsequently export electricity to single or multiple customers.
- **Treatment of electricity generation** – CRC participants will now be required to report all non-exempt electricity supplies at the grid average emissions factor, including where such supplies are self-supplies and irrespective of how such supplies were generated (see also changes to eligibility for EGCs below).

<sup>1</sup> The last time an affirmative SI was not approved by the Commons was 1969 and by the Lords in 2000. If the Order is rejected by the Lords, it cannot have effect, even if the Commons have approved it; the Order will have to be slightly amended and re-laid. If the Lords reject it again (which has never happened), the Government could in the last resort embody the Order in a Bill.

<sup>2</sup> Where a customer had an exclusive supply arrangement with an on-site or private wire-connected generator, this would have rendered the customer responsible for the emissions attributable to the input fuel used by the generator rather than the emissions attributable to the electricity supplied.



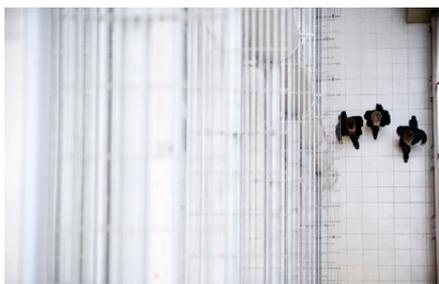
- **Eligibility for Electricity Generation Credits** – The Government has revised its general position on a generator's eligibility to claim EGCs where electricity is self-supplied. Initially, EGCs could only be claimed where electricity was exported to a third party. EGCs may now be available regardless of whether the generator self-supplies or supplies a third party. However, EU ETS generators and generators who claim ROCs or FiTs remain ineligible to claim EGCs.
- **CCA exemptions** – Because CCA target periods do not align exactly with qualification years (or phase years) under the CRC, concerns were raised regarding the ability of CCA holders to obtain data for the target period ending in a qualification year. Government has decided to permit organisations that do not have data for the CCA target period ending in a qualification year of each phase (not just the Introductory Phase, as first stated) to obtain a CCA exemption as part of their footprint report, using data from the target period ending in the footprint year. In respect of the Introductory Phase, data from the CCA target period finishing by the end of the 2010 calendar year may be submitted in relation to the qualification year (1st January – 31st December 2008).
- **Revised maximum fines** – The cap on certain fines, broadly relating to obstructing inspection, have been lowered. The new limits are £10,000 in Scotland and £5000 in England, Wales and N.Ireland.

The revised guidance document, issued by the EA, suggests the following additional minor modification:

- **Fixed safety valve transaction costs** – The cost of purchasing allowances via the 'safety valve' mechanism is now fixed at £300 per transaction. In earlier consultation, the cost of purchasing a safety valve allowance was said to comprise the cost of purchasing the EUA, the broker's fee, administrative fees and VAT. It is not entirely clear whether the new £300 safety valve charge represents any one or more of these elements.

In addition to the draft Order, the Government has also released a revised draft of the allocation regulations for the scheme. Having at first supported a minimum safety valve price of £12/ allowance, Government has concluded that the minimum price needs to be at least £14 in order to help avoid the safety valve offering better value for money should the EUA price remain relatively low. This revised floor price will help to counter the cash benefits that participants could realise by postponing buying all their allowances until the last possible moment, should the EUA price remain around the £12 level.

Information disclosure/registration is the next significant milestone for those who are affected by the CRC. Those with at least one half-hourly settled meter in their organisation, but less than 6000MWh total electricity supply for 2008 (through all half-hourly meters), will need to make an information disclosure by 30th September 2010. Those whose 2008 supply exceeded this figure will need to register as full participants by this date. However, organisations that want to disaggregate significant group undertakings must apply to do so by 30th June.



## **FURTHER INFORMATION**

If you require any further information please contact:

### **Paul Bratt**

Partner, Safety Health & Environment- Hammonds, Climate Change and Cleantech Group

T: +44 (0)161 830 5000

E: paul.bratt@hammonds.com

### **Adam Langridge**

Partner, Energy and Utilities - Hammonds, Climate Change and Cleantech Group

T: +44 (0)20 7655 1516

E: adam.langridge@hammonds.com

### **Chris Brigstocke**

Partner, Built Environment Group-Hammonds, Climate Change and Cleantech Group

T: +44 (0)20 7655 1178

E: chris.brigstocke@hammonds.com

### **Sally Vivian**

URS, Associate Director, Corporate Social Responsibility

T: +44 (0)117 317 8500

E: sally.vivian@URScorp.com

The information contained in these Q&A summaries is only intended for general guidance and should not be relied upon as if it were legal advice or other professional advice. Detailed professional advice should be obtained before taking or refraining from taking action in relation to any information contained in this Review.

Copyright in these materials is owned and retained by either Hammonds LLP or URS Corporation Limited or their licensors and the materials should not be copied or disclosed to any other person without the authorisation of either Hammonds LLP or URS Corporation Limited.

## Berlin

Hammonds LLP  
Unter den Linden 14  
10117 Berlin Germany  
Telephone +49 30 7261 68 000  
Fax +49 30 7261 68 001

## Leeds

Hammonds LLP  
2 Park Lane  
Leeds LS3 1ES  
Telephone +44 (0)113 284 7000  
Fax +44 (0)113 284 7001

## Manchester

Hammonds LLP  
Trinity Court  
16 John Dalton Street  
Manchester M60 8HS  
Telephone +44 (0)161 830 5000  
Fax +44 (0)161 830 5001

## Birmingham

Hammonds LLP  
Rutland House  
148 Edmund Street  
Birmingham B3 2JR  
Telephone +44 (0)121 222 3000  
Fax +44 (0)121 222 3001

## London

Hammonds LLP  
7 Devonshire Square  
London EC2M 4YH  
Telephone +44 (0)20 7655 1000  
Fax +44 (0)20 7655 1001

## Munich

Hammonds LLP  
Karl-Scharnagl-Ring 7  
80539 Munich Germany  
Telephone +49 89 207 02 8300  
Fax +49 89 207 02 8301

## Brussels

Hammonds LLP  
Avenue Louise 250  
Box 65  
1050 Brussels Belgium  
Telephone +32 2 627 7676  
Fax +32 2 627 7686

## Madrid

Hammonds LLP  
Plaza Marques de Salamanca 3-4  
28006 Madrid Spain  
Telephone +34 91 426 4840  
Fax +34 91 435 9815

## Paris\*

Hammonds Hausmann  
4 Avenue Velasquez  
75008 Paris France  
Telephone +33 1 53 83 74 00  
Fax +33 1 53 83 74 01

## Hong Kong\*

Hammonds  
Suites 3201-05, 3217-20  
32nd Floor Jardine House  
1 Connaught Place  
Central Hong Kong  
Telephone +852 2523 1819  
Fax +852 2868 0069

## Beijing+

Hammonds Beijing  
Representative Office Hong Kong  
Suite 1419 - 20  
South Tower Beijing Kerry Centre  
1 Guang Hua Road  
Chao Yang District  
Beijing 100020 China  
Telephone +86 108529 6330  
Fax +86 10 85296116

\* Affiliated undertakings of Hammonds LLP \* Representative Office

---

Hammonds LLP and its affiliated undertakings comprise Hammonds LLP, Hammonds Hausmann SELARL and Hammonds, a Hong Kong general partnership, each of which are separate and distinct entities.

Hammonds LLP is a limited liability partnership registered in England and Wales with registered number OC 335584 and is regulated by the Solicitors Regulation Authority of England and Wales. A list of the members of Hammonds LLP and their professional qualifications is open to inspection at the registered office of Hammonds LLP, 7 Devonshire Square, London EC2M 4YH. Use of the word "Partner" by Hammonds LLP refers to a member of Hammonds LLP or an employee or consultant with equivalent standing and qualification.