
DECC ISSUES DISCUSSION PAPERS ON CRC SIMPLIFICATION

On 25 January 2011 the Department for Energy and Climate Change (“**DECC**”) published five discussion papers on how the CRC Energy Efficiency Scheme (“**CRC**”) could be simplified.

The government has specifically expressed that these papers do not set out government policy. Rather, they indicate the areas of the CRC that the government considers a priority for simplification and have been issued to generate informal discussion between the government and participants. The papers set out a variety of options but make it clear that these are not exhaustive, and that feedback on other options and ideas is also welcomed.

Ideas for simplification that arise from these discussions papers will help inform further amendments to the CRC. However, any formal legislative proposals will be the subject of public consultation, with the intention that any changes will come into force before registration for phase 2 begins in April 2013.

The five discussion papers cover the following areas:

1.1 Private Sector Organisation Rules

The rules which define a participating organisation are complex and difficult to apply to many business structures, particularly private equity trusts and overseas parents. The current rules also do not properly address some business changes such as significant asset transfers. This discussion paper accepts that there have been unanticipated levels of administrative burden for some participants, and sets out six possible options for reform including:

- assessing qualification for the CRC at an individual undertaking level with the option to group undertakings together (although the qualification threshold would be lowered to maintain emissions coverage);
- introducing new provisions on the treatment of assets held in trust to respect the ‘separateness’ of individual trusts; and
- changes to the rules on ‘designated changes’ to accommodate a wider variety of business changes and structures.

1.2 Supply Rules

Stakeholder feedback has apparently indicated that the rules on responsibility for supplies of energy have been one of the main complexities. The government is concerned that this confusion may also contribute to emissions coverage being lost from the CRC as participants struggle to identify the supplies for which they are responsible. The discussion paper proposes eight possible options for reform including:

- determining responsibility solely by reference to the counterparty to an energy supply contract (without requirements for payment and metering);
- applying the CRC to electricity and gas only and excluding other fuels; and
- allowing organisations to decide on CRC responsibility between themselves, as long as the relevant supplies were still included within the CRC.

Landlords and Tenants

One of the options in the supply rules discussion paper is potentially the most significant of the potential reforms. This option would assign responsibility for energy on the basis of consumption rather than supply. Therefore, landlords would no longer be responsible for energy supplied to them but consumed by their tenants.

The apparent willingness of ECC to consider this option is somewhat surprising. Previous calls from the real estate sector to assign responsibility on the basis of consumption were consistently resisted. DECC now says that it “welcomes ideas on how such an approach could work across the CRC sectors” but does make specific mention of the potential difficulty where a tenant’s exact consumption is not accurately measured.

1.3 Qualification Criteria

According to DECC, some organisations are delaying the installation of ‘smart meters’ because supplies through them would contribute to their CRC qualifying supplies. DECC therefore proposes amending the qualification criteria to apply to electricity supplied through settled half hourly meters only. This would exclude for qualification purposes any supplies through other half hourly meters (such as smart meters). If this option is taken forward, the current 6,000 MWh qualification threshold would be reduced in order to maintain existing levels of participation and emissions covered by the CRC.

1.4 Overlap with other regulation

The CRC places a number of requirements on organisations which are also subject to the EU Emissions Trading Scheme (“**EU ETS**”) and Climate Change Levy Agreements (“**CCA**”). The options contained in the discussion paper to reduce the administrative burden caused by these overlapping schemes include:

- a blanket exclusion from the CRC for organisations which are in the EU ETS or have a CCA;
- excluding CCA supplies at qualification, and (where an organisation still qualifies for CRC) removing the requirement to report on EU ETS and/or CCA emissions; or
- more fundamentally, merging the CRC with other measures such as the Climate Change Levy, Display Energy Certificates, or any new mandatory carbon reporting obligation.

1.5 Timing and frequency of allowance sales from 2012 onwards

This paper looks at allowance sale issues both in the introductory phase and in later phases.

Regarding the introductory phase, the main issue is the need to transition from the planned end of year ‘compliance’ sales in the introductory phase, to advance ‘forecast’ sales in phase 2 and beyond; whilst avoiding a compulsory double sale in any year.

Regarding phase 2 onwards, concerns have been raised by participants and the UK Climate Change Committee that the auctioning of allowances from the commencement of phase 2 of the CRC in 2013 would add further complexity. This paper indicates that DECC is open minded about the methods for sale in phase 2 and subsequent phases, but sets out a number of options including various auctioning methods (such as auctions with a minimum price), sales of unlimited allowances at a fixed price, use of a carbon exchange, and “more fundamental reform” of the CRC (presumably meaning the removal of allowance trading altogether).

COMMENT

The discussion papers contain many proposals for reform, some of them radical, and they do not rule out further proposals being considered as part of the simplification review. However, for the time being all participants need to continue to comply with the existing CRC as set out in the current legislation.

Although uncertainty over the eventual form and operation of the CRC continues, and may only serve to impede measures to address energy efficiency and emissions, DECC does now appear willing properly to consider the concerns and potential reforms that have been raised by organisations for some time. DECC has requested feedback by 11 March 2011.

CRC AMENDMENT ORDER

On a connected note, the CRC Energy Efficiency Scheme (Amendment) Order 2011 has been published and will come into effect on 1 April 2011.

This implements the interim changes proposed in the CRC consultation of 17 November 2010:

- **Changes to the timing of the CRC** – extending the introductory phase by one year so that it will end on 31 March 2014, rather than 31 March 2013. Phase 2 (and subsequent phases) will be realigned so that the qualification year for phase 2 will be 2012/13 rather than 2010/11; registration for phase 2 will be postponed for 2 years to take place in April-September 2013; and the first surrender of allowances in phase 2 will be for compliance year 2014/5.
- **Removal of the requirement to make Information Disclosures** - the CRC originally required organisations that had at least one settled half hourly meter but had qualifying electricity supplies of less than 6,000 MWh in the relevant qualification year to make an information disclosure. The government has removed this requirement for phase 2 onwards.
- **Technical Corrections** – there are a number of minor technical corrections, including allowing participants claiming a CCA exemption at registration to choose how they report on their CCA emissions and amending the provision regarding landlords for a specific issue relevant to Northern Ireland Civil Service Buildings.
- **Amending the division of responsibility between the three administrators** – moving some of the CRC responsibilities between the Environment Agency, Scottish Environmental Protection Agency and the Chief Inspector Northern Ireland, depending on a participant's location.

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