

The CRC Energy Efficiency Scheme (CRC)

September 2010



The CRC is a mandatory carbon emissions trading scheme which applies throughout the UK. The CRC came into effect on 1 April 2010 by virtue of the CRC Energy Efficiency Scheme Order 2010 (the 2010 Order). The deadline for registration with the Environment Agency in England is 30 September 2010. Failure to register will lead to an immediate fine of £5,000 plus a subsequent fine of £500 per working day for each working day.

Who does CRC apply to?

The Scheme applies to; (i) all businesses and organisations which meet the “qualification criteria” for the scheme; and to (ii) all government departments and public bodies in respect of which a local authority decision is made, irrespective of their energy consumption. In relation to organisations in the first category, it is likely that CRC will apply to large offices, large retailers; banks; supermarkets and hotel chains etc.

The qualification criteria in relation to the first category of undertakings are:-

1. An applicant is supplied with electricity by a settled half hourly meter;
2. qualifying electricity is supplied to the applicant for the purposes of a scheme activity; and
3. The amount of that electricity satisfies the qualifying amount.

In relation to the “qualifying amount”, this is half-hourly metered electricity use of 6,000MWh/yr or more during 2008. At current energy levels this amounts to approximately £500,000.00 per annum. Complex rules apply to the calculation of energy supply for the purposes of CRC registration and not all energy use is included within CRC.

How does CRC work?

CRC has been described as a “cap and trade” scheme. In the initial phase of the scheme unlimited allowances will be available and sold at £12.00 per tonne of carbon dioxide. From 2013, each organisation will be subject to an emissions cap and can only buy additional “spare” allowances from other organisations. A total cap on the amount of emissions available to all CRC participants is set by way of allowances issued by the government and these allowances will be auctioned, rather than sold at a fixed price. CRC is a “revenue neutral” scheme, therefore any the revenue obtained from the auctioning of allowances will be recycled back to the participants, with some of the revenue being allocated to organisations according to their performance in the CRC league tables.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.

How should organisations prepare for CRC?

In order to prepare for CRC, public and private organisations should consider a range of areas where their business practices might be affected by CRC, such as:-

- Register; Consider whether the organisation is a CRC participant and if so, register online by 30 September 2010;
- Company structure; Is the organisation a subsidiary undertaking, parent undertaking, is there a possibility of disaggregation of significant group undertakings (SGUs), and consider the liability of a group of undertakings;
- Landlord and Tenant; Generally, tenants of whole buildings or units tend to have their own separate energy supply contract, but for many multi-let buildings with smaller units, the landlord is the contracting party and it recoups costs through sub-metering or under the service charge. If the landlord is the contracting party to the supply contract, the energy associated with that bill will count towards the landlord's energy consumption under CRC, even though it was the tenant's consumption. Consequently, it will also be the landlord who will be eligible for any fines and/or financial bonuses depending on how they rank in the year end league table;
- Drafting issues; For existing leases, whether costs can be recouped through the service charge, outgoing clauses or a separate direct charge will depend on the lease drafting. When drafting new leases, bespoke clauses will be needed to cover the various issues affecting landlords and tenants raised by the CRC;
- Think about the use of "green leases";
- Reputation; Consumers and investors are increasingly considering the environmental impact and an organisation's performance in the league table may influence decisions when doing business;
- Procurement; It remains to be seen how public authorities will approach the issue of CRC in relation to tendering in the procurement field; and
- Generally familiarise themselves with the scheme as soon as details are available to avoid cash flow problems associated with having to purchase allowances.

Non compliance

The 2010 Order contains a number of different offences which attract different sanctions. For example, as well as the offence of failure to register by 30 September 2010, failure to make an information disclosure is punishable with a fine of £500 per half hourly meter. There are also various criminal offences which are punishable summarily by up to three months imprisonment or a fine of up to £50,000.

It is envisaged that CRC will be applicable in full to approximately 5,000 non energy intensive business and public sector organisations, an estimated 100 of which have their headquarters in Northern Ireland. It is also anticipated that about 20,000 businesses will be obliged to participate in CRC in a more limited way, mainly by providing an information disclosure, which is effectively providing information on their energy consumption.

Businesses should act fast and seek legal advice in relation to the application of CRC to their organisation in order to avoid potentially substantial fines and adverse publicity.

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