

Construction and Development

The CRC Energy Efficiency Scheme - Are you ready for the change?

What is the CRC Energy Efficiency Scheme?

The CRC Energy Efficiency Scheme (CRC) is the UK's new **mandatory** carbon emissions trading scheme starting in **April 2010**. It will apply to a wide range of non-energy intensive private and public sector organisations and will place **legal obligations** on qualifying organisations to disclose information and (for larger energy users) to report on energy use and buy allowances for emissions.

Ways in which you might be affected

The CRC focuses on generic energy use rather than particular business activities or specific properties / sites and therefore CRC issues potentially apply to any organisation who themselves use energy and are responsible for emissions in both their business premises and their operational activities. Your own organisation may well qualify under the scheme

How to find out if your organisation is affected

Organisations that consumed 6000MWh of electricity or more from half-hourly metered sources during 2008 (the first qualification year) must **participate fully** and will have to:

- > **monitor** energy use (electricity, gas and fuels) from **1 April 2010**;
- > **register** with the scheme administrators (the Environment Agency in England and Wales) by **30 September 2010**;
- > **purchase** allowances in **April 2011** to cover emissions from estimated energy use for **April 2011 to March 2012**;
- > **report** on energy use for April 2010 to March 2011 by **29 July 2011**; and
- > continue to **monitor, purchase** allowances, **report** and **register** for ongoing compliance years and phases.

If your organisation or an organisation in whose performance you are interested occupies more than 55,000 m² / 580,000 ft² or paid over £500,000 for electricity in 2008, then typically you or the organisation in which you are interested will be a full participant.

What does this mean to you?

Cost Planning

The need for comprehensive monitoring, measurement and data collection to record and forecast energy consumption is likely to be costly. It may require additional internal administrative support or even outsourcing to external consultants in order to facilitate and collate these tasks across group companies and projects. Also the six month period before payments are recycled and the uncertainty of whether a penalty or bonus will be applied will necessitate very careful cost planning to avoid cash flow difficulties.

Sub-contracts

Contractors need to consider how they will control their supply chains in relation to the CRC. Sub-contractor selection may be influenced by CRC credentials, in particular for public sector contracts. Whilst initially CRC associated costs may be treated as an element of overhead, as the cost of carbon allowances becomes more and more significant, contractors may seek to identify energy used by sub-contractors and seek to pass an element of CRC cost on to them by including provisions for contra-charges for excess use and/or commercial incentives for limiting use within the sub-contracts.

Existing Projects and PFI

For longer term projects already underway consideration needs to be given as to whether (if at all) steps can be taken to recoup any CRC related costs under existing contracts. Fluctuation provisions (if in use) are unlikely to catch the cost of CRC allowances. With longer-term joint venture or PFI projects, participant organisations will need to consider where responsibility for energy use during the concession period lies.

New Building Contracts

In new developments, qualifying employers may look to incentivise or penalise contractors in relation to energy efficiency. Initially this may be through the inclusion of aspirational targets during construction as well as later operation but could lead to more extreme contractual minimum targets being set in the future. Mechanisms in new building contracts as well as the detail of enquiries in tender documents and pricing need to be considered.

Warranties and Guarantees

Occupiers may begin to look for warranties or guarantees in respect of energy efficiency in building performance and use as they look to manage their own carbon emissions and associated costs. The form such warranties and guarantees may take will need to be carefully considered including provisions for limitations, specific maintenance / management, duration etc.

Site power

Contractors and Developers need to decide who will bear the responsibility for supply of temporary site power. For large scale/ new build projects the contractor commonly connects to utilities during the construction phase and will therefore be likely to be responsible for that energy consumption. However, this is not as clear for refurbishment / fit-out projects where the employer is paying the energy bill and permits the contractor to use existing utilities. Qualifying employers may therefore seek to predict and manage "Free issue" energy use to contractors as well as impose incentives/penalties in relation to energy efficiency.

Corporate Social Responsibility and Reputation

Performance in the CRC will be annually published in a league table which will allow organisations to be compared against their competitors. This could have an impact on contract bids for future projects and business opportunities. Penalties for non-compliance will also be published and may give rise to adverse publicity and reputational impact.

How to stay ahead of the game

Take advice

Taylor Wessing can advise on all legal aspects of the CRC including in relation to compliance, identification of which organisations the CRC will affect and implementing strategies to deal with its impact. For further information on any of the issues raised above and other relevant factors such as the costs involved and the consequences of breach, please contact **Helen Garthwaite**, Head of Taylor Wessing's Construction & Engineering Group, **Noel Doran**, in Taylor Wessing's Environment group, or your usual contact in the Construction and Engineering group.

Act now

CRC implementation presents new challenges for the construction industry. For those who are prepared, there may be reputational and competitive advantage to gain. For the unprepared, CRC may mean managing the cost of more than just carbon allowances.

For further detail on the CRC Energy Efficiency Scheme, please click to view our briefing: **Climate change and the Carbon Reduction Commitment Energy Efficient Scheme – a commercial reality.**

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