

# Climate change and the CRC Energy Efficiency Scheme

## A commercial reality

The CRC Energy Efficiency Scheme (CRC), which entered into force in April 2010, introduces a new emissions trading scheme for a wide range of non energy-intensive private and public sector organisations based upon the amount of energy they use. A key element of the Government's strategy for controlling carbon dioxide (CO<sub>2</sub>) emissions and dealing with climate change, the CRC is a vital tool in the Government's armoury as it attempts to achieve an 80% reduction in greenhouse gas emissions by 2050 as well as meeting other legally binding targets set by the Climate Change Act 2008.

The CRC applies to emissions from organisations with a large total energy demand and from Government bodies apart from those that fall within the scope of the EU Emissions Trading Scheme. Emissions covered by Climate Change Agreements and transport emissions are also exempt. The CRC requires obligated organisations to purchase CO<sub>2</sub> allowances to cover their anticipated energy requirements and, in turn, to surrender allowances based upon actual energy use and emissions, purchasing additional allowances in the event that there is a shortfall – effectively a “cap and trade” based scheme. Unlike the EU Emissions Trading Scheme and Climate Change Agreements, however, the CRC applies to organisations, not installations and processes.

### Must I participate?

The CRC is a mandatory scheme, placing legal obligations on qualifying organisations to disclose information and – for larger energy users – to report on and purchase allowances for emissions made. Organisations that consume 6000MWh of electricity or more from half-hourly metered sources during qualification years must participate fully. Government departments, on the other hand, will be obliged regardless of their energy consumption.

### How do I comply?

Essentially, the CRC establishes a new emissions trading scheme in respect of direct and indirect carbon dioxide emissions from non-domestic energy consumption, encompassing all organisations that consume 6000MWh of electricity or more in a qualification year (in

layman's terms, an annual electricity bill of approximately £500,000 or more at today's (2010) prices), known as “qualifying undertakings”. Organisations affected by CRC will be subject to a number of “upfront” obligations ranging from meter and energy use disclosure to registration and ongoing energy monitoring. A User Guide has been published aimed at helping affected organisations understand what will be required of them in terms of preparation and compliance. Qualifying undertakings have to register between April and September 2010 and must provide a “footprint report” in line with criteria set out in the CRC Order. Continuing obligations such as annual reporting of energy consumption, verification of statements, record keeping and compliance with performance commitments will also be imposed.

### Can I get out of this?

Half-hourly metered electricity consumption in 2008 has already determined qualification in respect of the introductory phase of the CRC and organisations that consumed more than 6000MWh during that calendar year will be required to participate fully. The introductory phase of the scheme runs from 1 April 2010 for a period of three years, with subsequent overlapping seven yearly phases from then on. During the introductory phase, allowances are to be sold at a fixed price of £12 per tonne of CO<sub>2</sub>. Organisations that consumed less than 6000MWh in 2008 are only required to make an “information disclosure” during the registration period.

The basic qualification rule under the CRC is that electricity consumption must be taken into account by an organisation if it holds a contract with an electricity supplier for the electricity supplied – generally speaking, this will be the organisation responsible for paying the bill. This is likely to raise issues for landlords and tenants, however, as the energy used in a leased building is the responsibility of the customer who has the contract with the energy supplier, which will often be the landlord even where it is the tenant who has used the energy.

## How will the CRC affect me?

In order to simplify reporting and administration requirements and to maximise participation, the CRC provides that group members within large organisational structures must act together as a single entity. This will be the case even if the group has large subsidiaries which qualify for the CRC in their own right, although it may be possible for such large subsidiaries to elect to participate independently. In the case of “grouped” organisations, one member of the group will have to act as a primary member under the CRC, generally speaking the highest parent body.

## What if I fail to comply?

The CRC is regulated by the Environment Agency and the Scottish Environmental Protection Agency. The regulators enjoy various powers, including the power to require information, audit and verify information, conduct inspections and serve enforcement notices. Potential penalties for failure to comply with the CRC obligations include a civil penalty notice of up to £5,000 together with variable financial penalties which will reflect the extent of any transgression. Initially, if an “eligible” organisation fails to register, then it will have to pay a fixed fine of £5,000 and may be fined an additional £500 for each subsequent working day that registration fails to take place. Organisations that fail to make an information disclosure when required will be subject to a fine starting at £500 and determined by the total number of half-hourly meters supplying electricity.

## What will it cost me?

In addition to acquiring allowances, participants will be required to pay registration fees and annual fees which will be levied in respect of administering an organisation’s account.

The better an organisation performs in terms of reducing emissions, the higher it will appear on the annual performance ranked league table, which is to be published by the Government. All revenue generated through the Government sale of emissions allowances under the scheme will be “recycled” back to participants on the basis of the annual league table and their contribution to total emissions.

Preparation of accurate and comprehensive records relating to an organisation’s energy consumption will, therefore, be key.

For further information on this topic, please contact Noel Doran, Environment group at Taylor Wessing LLP.

## Contacts



**Noel Doran**  
Senior Associate  
+44 (0)20 7300 4236  
n.doran@taylorwessing.com