

**EXPLANATORY MEMORANDUM TO
THE CRC ENERGY EFFICIENCY SCHEME ORDER 2013**

2013 No. 1119

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order makes provision for the implementation of a simplified energy efficiency scheme called the CRC Energy Efficiency Scheme (the CRC Scheme). Since the CRC Scheme began in 2010, a number of aspects of the policy have been criticised by stakeholders as too complex, difficult to understand and costly to administer. In response, the Government committed to simplify the CRC Scheme to ensure that the policy was fit for purpose, and that any regulations retained were less burdensome and administratively costly for business, and more practicable.

2.2 The CRC Scheme has been designed to improve energy efficiency in public and private sector organisations that are consumers of large amounts of electricity, and by improving energy efficiency to also reduce carbon emissions. The CRC Scheme is necessary for the UK to meet its domestic and international greenhouse emission reduction targets (and any future such targets).

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 The CRC Scheme was introduced by the CRC Energy Efficiency Scheme Order 2010 (SI 2010/768) (the 2010 Order) under powers conferred by section 44, 46(3), 49 and 90(3) of and Schedule 2 and paragraph 9 of Schedule 3 to the Climate Change Act 2008. The CRC Energy Efficiency Scheme (Amendment) Order 2011 (SI 2011/234) (the 2011 Order) postponed the second phase of the CRC Scheme by extending the introductory stage to March 2014 and introduced initial simplification measures.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 The definition of the extent of the United Kingdom in regard to this instrument is set out in section 89 of the Climate Change Act 2008

6. European Convention on Human Rights

6.1 The Secretary of State of Energy and Climate Change has made the following statement regarding Human Rights:

In my view the provisions of the CRC Energy Efficiency Scheme Order 2013 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The CRC Scheme is a mandatory UK-wide trading reporting scheme introduced in April 2010. It was designed to improve energy efficiency and drive emission reductions in public and private sector organisations through the application of financial and reputational drivers. It is divided into phases. Phase 1 runs from April 2010 to March 2014 and each phase is divided into compliance years which run from 1st April to 31st March. The Environment Agency (in England Wales), the Scottish Environment Protection Agency and the Northern Ireland Chief Inspector administer the scheme. From 1st April 2013, the Natural Resources Body for Wales will be taking over of the role of the administrator in Wales.

7.2 Since the introduction of the CRC Scheme in April 2010, stakeholders have argued that it is overly complex and administratively burdensome, especially in relation to emissions regulated under the EU Emissions Trading Scheme or Climate Change Agreements (CCAs). They have also stated that the organisational focus of the CRC Scheme is misaligned with their operational management structures and business processes. Government announced its intention to simplify the scheme in the Annual Energy Statement in August 2010.

7.3 In November 2010, following up on the Annual Energy Statement, Government published initial simplification proposals to amend the legislation underpinning the CRC Scheme. This focused on extending the introductory phase (to March 2014), which provides participants with an additional year's experience managing compliance and performance within the introductory phase and delayed the requirement for phase two participants to register by two years until April 2013. It also provided a window to conduct a thorough and comprehensive simplification review. Other amendments included clarifying the participation of Northern Ireland Departments, updating references in the original 2010 Order, and removing any 'information disclosure' requirements on organisations for future phases of the scheme (thereby removing all future CRC obligations on at least 12,000 organisations). These proposals came into force in April 2011 by the 2011 Order.

7.4 Since the Annual Energy Statement and the consultation in November 2011, Government has engaged extensively with CRC Scheme participants and stakeholders on changes and simplifications to the scheme from phase two onwards.

7.5 In January 2011 Government published a set of discussion papers on a number of specific areas of possible simplification and invited views from stakeholders (on energy supply rules, organisational rules, qualification criteria and allowance sales, and reducing scheme overlap with other climate change/energy efficiency policies e.g. for example the EU ETS and CCAs). Subsequently, in June 2011 the Government published its vision for the way forward for a simplified scheme. This outlined a simplified organisation-based CRC Energy Efficiency Scheme from phase two onwards, which optimised the projected energy and carbon savings delivered by the scheme whilst at the same time reduced the complexity, so the energy efficiency and carbon savings were delivered at the minimum administrative cost.

7.6 In order to inform the simplification proposals, Government commissioned an administrative burden survey by KPMG. The purpose of this survey was to allow Government to capture and quantify the administrative time and costs which have been incurred by CRC Scheme participants.

Consolidation

7.7 The main climate change policy instruments affecting large private and public sector organisations are the Climate Change Levy (CCL), CCAs and the EU ETS. The CCL is a tax on energy use. CCAs are voluntary instruments allowing certain sectors a reduction on their CCL where agreed emission reduction targets are met. The EU ETS is a site-based trading scheme designed to drive emission reductions from upstream energy intensive facilities. The CRC Scheme has been designed to avoid overlap with these instruments and the simplified scheme clarifies this further by simplifying the process to avoid double regulation.

8. Consultation outcome

8.1 In March 2012, the UK Government and Devolved Administrations consulted on proposals to simplify the CRC Scheme. The consultation sought views on a suite of 46 different simplification measures that were grouped into three packages according to whether they influence qualification to the scheme, fuel supply rules or administrative costs only.

8.2 The majority of consultation respondents agreed with the measures proposed and welcomed the complete package of simplification proposals. In particular, the proposals focussed on simplifying the qualification criteria and threshold; simplifying the supply rules in defining energy supply in the scheme; a more coherent policy framework reducing policy overlaps with other climate change/energy efficiency policies (e.g. EU ETS installations, CCA facilities); flexible organisational rules to accommodate the

natural business/energy management structures and processes of organisations and the allowance sale process in the introductory phase and from phase 2 onwards.

8.3 Taking all responses into consideration, the Government believes that overall, the simplifications will deliver significant improvements to the CRC scheme and they reflect changes that the majority of stakeholders wished to see. However, changes have been made in response to concerns raised. The principal ones are:

- a) a reduction in fuels from 29 to 2. The scheme will now only cover emissions generated from the consumption of electricity and gas. In the consultation, it was proposed to reduce to four fuels (including gas oil and kerosene);
- b) that for gas, only when this fuel is used “for heating purposes” will this need to be reported and allowances purchased for. Participants will be able to assume that all gas consumed is for heating purposes;
- c) an organisation-wide 2% de minimis threshold for gas (for heating). So if a participant’s gas consumption is below 2% then that participant will not have to report on that fuel or purchase allowances; and
- d) to withdraw all state funded schools (i.e. maintained schools and Academies) in England from CRC Scheme participation and to implement alternative robust measures that will incentivise and support schools to obtain both energy cost and emission savings.

8.4 The combination of measures will reduce the CRC Scheme’s complexity and administrative burden.

8.5 Concerns were raised about the level of administrative costs savings that will be achieved through simplification as set out in the Impact Assessment. The Government acknowledges these concerns and has updated the evidence base on the current CRC Scheme in a number of areas where robust evidence has been provided. However, it has not been possible to reconsider the remodelling of administrative cost predictions in areas where the raised concerns have not been supported by any type of evidence.

8.6 A number of respondents have called for the CRC Scheme to be replaced with a more conventional environmental tax but such options were out of scope of the consultation as the purpose was to establish if proposals for simplification would result in a significant reduction in administrative burden for participants. Government has concluded that the simplified proposals will deliver significant savings (a 55% reduction in overall administrative costs for CRC Scheme participants – saving £275m by 2030) and has therefore decided to retain the CRC Energy Efficiency Scheme in a simplified form.

9. Guidance

9.1 The Environment Agency has published detailed guidance on their website describing the obligations that organisations need to undertake to register and will be publishing further guidance and case studies over the coming year. They also operate a helpdesk for participants. Current guidance is available at <http://publications.environment-agency.gov.uk/PDF/GEHO0312BWGE-E-E.pdf>

10. Impact

10.1 An Impact Assessment (IA) is attached to this memorandum and will be published alongside the Explanatory Memorandum on the Department of Energy and Climate Change website at <https://www.gov.uk/government/consultations/simplifying-our-energy-efficiency-scheme-crc> and on www.legislation.gov.uk

10.2 When the IA was originally published in December 2012 a decision by the Devolved Administrations to retain their schools CRC Scheme participation was still pending

10.3 In February 2013 all Devolved Administrations confirmed their schools would continue to participate in the CRC Scheme. Only English schools would withdraw from the Scheme.

10.4 Consequently, a revised set of cover sheets including an explanatory note have been added to the IA to reflect these decisions.

10.5 The overall net benefit of the simplified CRC Scheme is estimated at £4096m (present value, based on 3.5% social discount rate) over the next 20 years.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 The simplified CRC Scheme will start in May 2013. The scheme will be fully reviewed in 2016

13. Contact

13.1 Donald Sproson at the Department of Energy and Climate Change Tel: 0300 068 6301 or email: Donald.sproson@decc.gsi.gov.uk) can answer any queries regarding the instrument.