



Carbon Reduction Commitment – Update

June 2010

The new UK mandatory emission scheme, the CRC Energy Efficiency Scheme (the "Scheme"), came into effect on 1 April 2010. Further amendments to the Scheme have left some businesses unsure of how to comply correctly with the new rules. So what lies ahead for those affected?

This note focuses on the early stages of the Scheme and the key steps those affected need to take to comply with the new rules. It also identifies and summarises recent changes to the Scheme.

The Scheme – the Basics

The Scheme is a carbon emissions trading programme focussing on large businesses and public sector organisations.

The aim of the Scheme is to reduce the CO₂ emissions of qualifying businesses by requiring them to acquire allowances relating to the energy they use and the introduction of a cap and trade scheme. The government estimates that those likely to be affected account for an estimated 10% of the UK's total CO₂ emissions.

The Scheme is divided into a series of phases, lasting 7 years each. The introductory phase will last 3 years and began on 1 April 2010, expiring on 31 March 2013.

Qualification

The Scheme applies to all businesses whose electricity consumption is monitored via half hourly meters, who have at least one settled half hourly meter and whose 2008 annual electricity supply was at least 6,000 MWh. This equates to an annual electricity bill of approximately £500,000.

Operation

The Scheme introduces a requirement for all participating businesses to purchase allowances from the government to cover their CO₂ emissions. Allowances may be purchased in advance and are surrendered at the end of a Scheme year.

It is a key feature of the Scheme that a secondary market will exist, allowing participating businesses to divest themselves of excess allowances or to acquire additional ones to match their CO₂ output as necessary.

Reporting

There are considerable reporting and accounting obligations. "Footprint Reports" are required every 7 years to benchmark participating businesses' progress between each phase of the Scheme, in addition to annual reports to assess short-term performance. "Evidence Packs" documenting compliance must be prepared for audit purposes.

Publishing

The information collated during each Scheme year will be used to publish annual performance league tables. These tables will rank participating businesses in terms of their CRC achievements via pre-determined formulae.

Recycling Payments

The Scheme aims to 'recycle' revenue raised from the sale or auction of allowances back to participating businesses. The annual recycling payment (or rebate) received is largely determined by a business' position in the CRC performance league table – a higher position may lead to a 'bonus' payment resulting in a profit; a low position to a 'penalty' payment (i.e. a payment less than the original cost of allowances).

Failure to comply correctly with the Scheme will incur potentially significant financial penalties

The Scheme has been widely publicised by the government as essential to meet the 80% cut in CO₂ emissions from the 1990 baseline required by the Climate Change Act 2008

Recent Changes

Changes to the Scheme were introduced shortly before it started.

Renewable Energy

The Scheme will take account of the origins from which participating businesses source their energy to provide recognition for renewable energy generation.

Data relating to carbon savings achieved from onsite renewable energy generation will now be published annually in tabular form. However, this table will be separate from the CRC performance league table and will not affect the annual recycling payments.

Sale of Allowances

The first year of the introductory scheme has been deemed a reporting-only year and the first sale of allowances will be in April 2011.

No allowances will need to be surrendered to cover CO₂ emissions for the year 2010/2011.

"Significant Group Undertakings"

"Significant group undertakings" (defined as entities within a business group which qualify in their own right under the Scheme due to their individual electricity consumption) may now elect to be registered separately from their organisational group, provided that the original organisational group still qualifies independently for the regime.

This may simplify internal compliance with the Scheme for participating businesses with complex group structures.

The Introductory Phase

1. Registration

All businesses which qualify for full participation under the Scheme need to register during the registration period. This runs from **1 April 2010 until 30 September 2010**. Registration is completed via the online CRC registry. Where an organisation wishes to register a significant group undertaking separately, the original organisation will need to do this by **30 June 2010** and the significant group undertaking (which will need to consent to this) will then have to undertake a separate registration process.

A fee of £950 will be incurred at the time of first registration and a subsequent annual fee of £1,290 will be due in respect of administrative fees for each Scheme year.

2. Annual & Footprint Reports

For the introductory phase a Footprint Report is required by **29 July 2011**.

Whilst this may seem a long way away, participating businesses must ensure that the task of compiling the necessary data for the report has begun well in advance of this date. The report must include details of the undertaking's total 'footprint' emissions, CRC emissions, exemption information and any changes to organisational structure.

Participating businesses are also required to submit annual reports during each phase year. The first annual report is required to be submitted at the same time as the first Footprint Report on **29 July 2011**.

Annual reporting is done via the online CRC registry and requires participating businesses to detail information such as their energy supply sources which contribute to relevant emissions. This information is used in calculating participating businesses' total CO₂ emissions.

3. Evidence Packs

An Evidence Pack is an ongoing record of participating businesses' compliance with the Scheme. It is essential that each business ensures that it has an up to date and comprehensive Evidence

Travers Smith has "a partner-led approach and uncompromising focus on quality control"

Chambers Guide to the UK Legal Profession 2009

Pack in the event of an audit by the Environment Agency.

The pack should include records of the structure of the business entity and associated organisations, data records documenting energy supply and consumption as well as other relevant ancillary information.

Records of any special events (e.g. meter malfunctions, changes in company structure) should also be kept.

4. Allowances

The first sale of allowances will commence in **April 2011** and will be at the fixed price of £12 per tonne of CO₂. Participating businesses will be able to purchase an unlimited number of allowances in this first year. For subsequent years limited numbers of allowances will be purchased from the government via closed auction.

Participating businesses should ensure they are prepared for the purchase of the allowances by being fully aware of their energy consumption and resulting CO₂ emissions.

5. Compliance Officer

Participating businesses must appoint a designated officer who is responsible for ensuring compliance with the Scheme. They will be responsible for co-ordinating businesses' response to the Scheme and liaising with the Environment Agency.

Checklist

To comply fully with the Scheme participating businesses should ensure they have:

- registered in the prescribed manner (including paying the necessary registration fee) before 30 September 2010;
- begun to compile the required data for providing an annual report and a Footprint Report by 29 July 2011;
- prepared an Evidence Pack documenting compliance with the Scheme Rules;
- prepared for the first round of purchasing allowances which begins in April 2011; and
- appointed a compliance officer to co-ordinate participating businesses' responses to the Scheme.

Travers Smith has "...a growing stand-alone practice including climate change, renewable energy and major projects...."

Practical Law Company – Cross-Border Environment Handbook 2009

Participating businesses may have received information directly from the Environment Agency.

Further information is available at www.environment-agency.gov.uk.

Should you have any questions about the information in this update, or we can assist you in any way, please contact us.

TRIVERS SMITH

We are dedicated to finding practical solutions to the challenges our clients experience. Our awareness and understanding of the commercial pressures affecting our clients allows us to deliver solutions tailored to the unique aspects of each of our clients' businesses.

Travers Smith LLP has a multi-disciplinary team which advises on the challenges facing organisations from climate change and the effects of emissions trading, both voluntary and mandatory.

Our team brings together specialist lawyers from the firm's corporate, commercial, property, banking and tax practices.

For further information please contact us on the details below.



Anthony Judge

E: anthony.judge@traverssmith.com

T: +44 (0)20 7295 3237

Travers Smith LLP

10 Snow Hill

London EC1A 2AL

T: +44 (0)20 7295 3000

F: +44 (0)20 7295 3500

www.traverssmith.com