

Regulatory position statement

CRC Energy Efficiency Scheme Order 2013

Phase 2 – Registration

The CRC Energy Efficiency Scheme Order 2013¹ (the Order) requires qualifying organisations to register by 31 January 2014 for Phase 2 of the scheme (2014/15 to 2018/19).

This regulatory position statement reflects a proposed change to the rules in the Order concerning landlords and tenants in the scheme. This is in relation to how CRC participation interacts with Climate Change Agreements (CCAs) and the EU Emissions Trading System (EU ETS). The regulatory position statement applies to landlords who presently qualify for Phase 2 but would not qualify if the law is amended as intended so that their supplies of electricity or gas to tenants' CCA facilities or EU ETS installations are excluded.

It explains how these landlord organisations can avoid being at risk of enforcement action in respect of the current registration obligation.

The regulatory position statement does not apply to landlords who qualify for Phase 2 regardless of any supplies to tenants for the purposes of operating a CCA facility or an EU ETS installation, since these landlords will have to register in any case.

Background

Government confirmed in its response to the CRC simplification consultation its intention to exclude supplies to CCA facilities and EU ETS installations. The Order delivers this intent with the exception that it does not provide for landlords to exclude electricity or gas supplies to tenants who consume some or all of those supplies in operating such a facility or installation.

For example, if a landlord provides electricity or gas to a tenant's chemical plant, those supplies are currently included in the landlord's qualification assessment and annual reporting obligations. If the chemical plant is covered by a CCA or an EU ETS permit, the policy intent is that the supplies should be excluded, but the Order does not reflect this. The Department for Energy and Climate Change and the Devolved Administrations have confirmed their intention to resolve this anomaly.

What is being done to clarify the position for landlords in this situation?

The proposed amendment of the Order was presented in the Government consultation document ['Finalising CRC Simplification: treatment of renewable energy and the metallurgical and mineralogical sectors'](#). The consultation proposed that:

'Where a landlord tenant situation exists and the tenant has a CCA facility or EU ETS installation the landlord who is a CRC participant should be able to exclude the supplies under a CCA certificate or EU ETS permit to avoid double counting of supplies regulated by more than one scheme.'

¹ CRC Energy Efficiency Scheme Order 2013 (S.I. 2013/1119).



The consultation has now closed and Government is reviewing the responses received. It is anticipated that the amendment will come into effect in April 2014. **This is after the Phase 2 registration deadline.**

Our regulatory position

If a landlord organisation presently qualifies for Phase 2, but would not qualify under the proposed amendment to the Order, we will not take action to enforce the registration requirement before 30 June 2014.

Once the anticipated amendment to the Order has been finalised, if such a landlord organisation still qualifies for Phase 2, we will treat them as compliant with their registration obligation provided we receive a valid application for registration by 30 June 2014. An application is considered valid once the online registration has been completed and registration payment received.

Any landlord who believes this approach applies to them should contact the CRC Scheme administrator: CRCHelp@environment-agency.gov.uk.

Information for affected organisations

Please note that if you decide to apply for registration after 31 January 2014, depending on your date of registration it may not be possible for your organisation to participate in the Phase 2 forecast sale of CRC allowances. This is expected to begin on 1 April and end on 30 April 2014, and will allow organisations to purchase allowances in advance to cover their projected energy use in 2014/15. On 4 December 2013 the Government announced in its 2013 Autumn Statement that allowances bought in the forecast sale will cost £15.60 per tonne of carbon dioxide, while those bought in the “buy-to-comply” sale after the end of 2014/15 will cost £16.40. Therefore, a landlord who does not register in time for the forecast allowance sale, but still needs to take part in Phase 2, will need to acquire allowances either at a higher price in the buy-to-comply sale, or on the third party market. Please contact us if you want to take part in the forecast sale as there are some further steps you’ll need to take after you have registered to be able to order allowances.

Conversely, should a landlord register in time for the forecast allowance sale, and the law is amended as proposed, they may no longer qualify or need any allowances. In this case they will be able to apply to DECC for a refund in relation to any allowances purchased following the process set out in DECC’s [‘Guidance on using the CRC repayment mechanism for surplus allowances’](#).

Enforcement

If you are subject to the above approach, and you qualify for Phase 2 of the scheme and have still not registered by the later date of 30 June 2014, you may be at risk of enforcement action including civil penalties.

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