



Government response to the consultation on amendments to the CRC Energy Efficiency Scheme Order 2010

February 2011

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[http://www.decc.gov.uk/en/content/cms/consultations/crc_amendment/
crc_amendment.aspx](http://www.decc.gov.uk/en/content/cms/consultations/crc_amendment/crc_amendment.aspx)

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Executive Summary

1. The CRC Energy Efficiency Scheme (CRC) is a new mandatory UK-wide scheme that was brought into law via the CRC Energy Efficiency Scheme Order 2010 (SI 2010/768) (the 'CRC Order'). The scheme is designed to incentivise large public and private sector organisations to take up cost-effective energy efficiency opportunities through the application of reputational and financial drivers.
2. This Government Response relates to the consultation published in November 2010, which was undertaken as a result of stakeholder feedback and Government's stated intention to simplify the operation and design of the scheme. The consultation document detailed five proposed amendments, listed below, which were primarily focused on initial simplification measures and providing a window in which to undertake the aforementioned simplification review of the scheme. An Impact Assessment and draft Amendment Order accompanied the publication of the consultation document.
3. Proposed amendments:
 - i. Extend the introductory phase, postpone the start of phase two, and subsequent phases, and align the treatment of footprint years.
 - ii. Remove the requirement for organisations who are not required to register as participants to make information disclosures.
 - iii. Amend the CRC's landlord provision to recognise the way in which Northern Ireland departments are accommodated in Northern Ireland Civil Service buildings.
 - iv. Update the division of responsibilities between the scheme's three administrators.
 - v. Correction of reference errors and technical fixes.
4. As a result of the broadly positive feedback on the proposed amendments, Government intends to implement the proposals as discussed in the consultation document.

Introduction

5. The CRC Energy Efficiency Scheme (CRC) is a mandatory UK-wide scheme introduced in April 2010 which targets unregulated emissions from large public and private sector organisations. It is designed to incentivise the uptake of cost-effective energy efficiency opportunities through the application of additional financial and reputational drivers. Further information on the development of the scheme is available at:
http://www.decc.gov.uk/en/content/cms/what_we_do/lc_uk/crc/policy/policy.aspx
6. In response to stakeholder feedback about the complexity of the CRC, Government published a consultation document in November 2011¹. The consultation was primarily focused on initial CRC simplification measures and on postponing the start of phase two in order to provide a window in which to undertake a more strategic review of the scheme.
7. Just under three hundred (286) responses to the consultation were received from a wide range of stakeholders – business and industry, public sector organisations, environmental organisations, energy suppliers, advisory organisations and other interested parties. Government welcomes these responses and would like to thank the respondents for their time preparing their submissions.
8. Government would also like to thank those respondents which included their thoughts on broader simplification measures outside the scope of this initial consultation. These responses are being considered as part of the wider simplification review and will contribute to the development of further options for amending the legislation underpinning the CRC later in 2011.
9. The consultation responses were broadly supportive of Government's proposed amendments, as shown in figures 1 and 2 below. 'Yes' responses indicate support for the proposals.

¹ http://www.decc.gov.uk/en/content/cms/consultations/crc_amendment/crc_amendment.aspx

Figure 1 – proportion of responses for each question

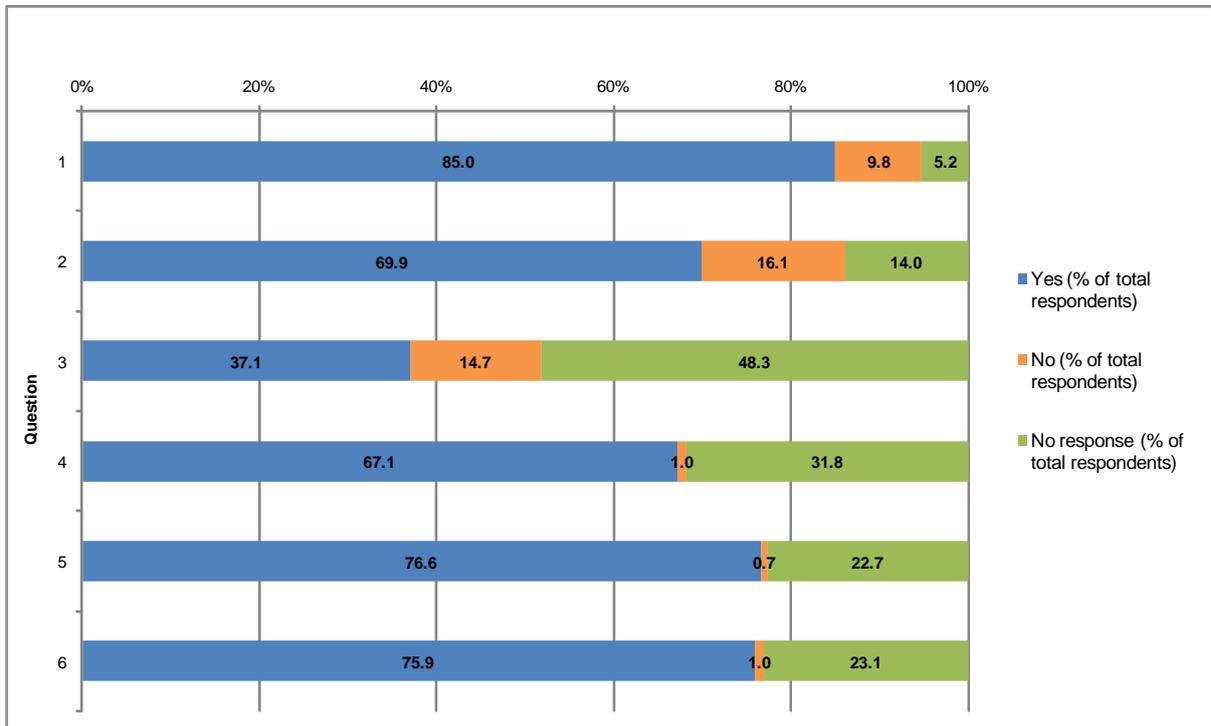
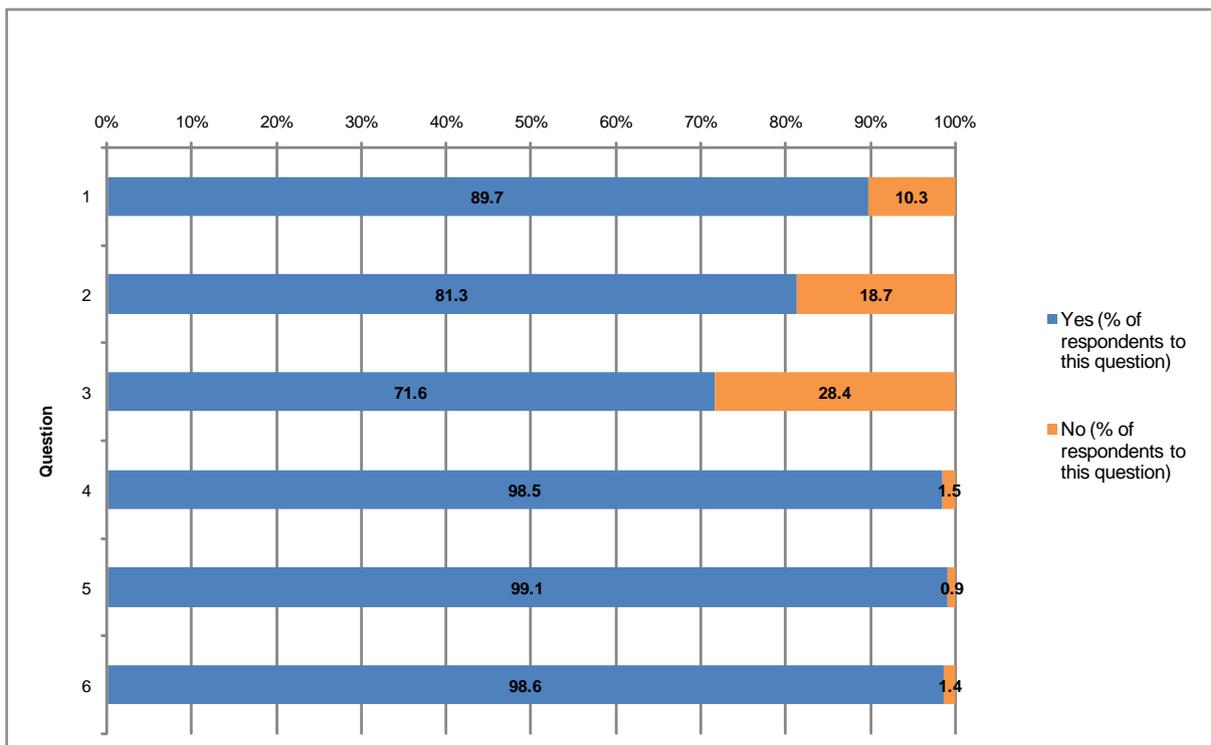


Figure 2 – proportion of yes/no responses for each question



10. This document forms Government's response to the consultation. A summary of the responses and key issues is shown for each of the five proposed amendments, followed by Government's response and decision on whether to proceed with the proposal as stated in the consultation document.
11. Whilst all the points raised as part of the consultation have been considered, this document discusses those significant issues raised, rather than responding to individual comments.

Next steps

12. In light of stakeholders' broad support for the proposed amendments, Government, via the Privy Council, will make and lay an Amendment Order before Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly via the negative resolution process, with the Amendment Order coming into force on 1st April 2011.
13. Government will also commence a programme of additional stakeholder dialogue over the upcoming months to discuss the broader options for simplifying the scheme. Government would welcome the continued support and input of stakeholders into this process.

Consultation proposals

Proposal 1

Extend the introductory phase, postpone the start of phase two, and subsequent phases, and align the treatment of footprint years.

Consultation responses

94.8% of consultation respondents provided a response to this question, of which 89.7% agreed with Government's proposal to extend the introductory phase and its associated amendments.

14. There was a high level of support for the proposal to extend the introductory phase and postpone the second phase. Respondents were in agreement with the need for an extension to enable further consultation on broader simplification proposals and the desirability to implement resultant changes before the start of phase two rather than mid-phase. One respondent proposed the introductory phase should be further extended to allow for a more comprehensive and strategic review of the scheme. Government however believes the review and any resultant amendments can be accommodated in the proposed timescales.
15. Government's assertion that the extension would provide additional experience for participants was broadly supported, with respondents welcoming the opportunity to develop more experience reporting their emissions before the introduction of the capped phase. However a small number of respondents disagreed, stating that participants had already had ample opportunity to develop their carbon reporting processes and that they saw no benefit to the additional years extension.
16. Several respondents questioned the impact the extension of the introductory phase would have on the scheme's delivery of carbon savings, stating that any delay to the cap and trade aspects of the scheme would also send out the wrong message to participants. Government acknowledges this point but proposes it is more important, on balance, to get a workable scheme which ensures delivery of the desired carbon savings in the longer term.
17. Respondents were generally supportive of making the first year of a phase both a footprint report and annual report year – effectively aligning the design with that

of the introductory phase. Respondents also cited a better alignment between the footprint report and the subsequent phase to which it relates, rather than having an annual reporting year in between. However a small number of respondents felt this change would introduce further confusion and preferred the current design of separate footprint and reporting years in future phases.

18. A few respondents challenged the proposed weightings of the metrics for the fourth year of the introductory phase. Government's consultation proposal was that the performance assessment should be on the same basis as the current policy for the second to seventh phases (i.e. absolute change 75% and relative change 25%). Those challenging this proposal suggested the weightings should either mirror those for the third year of the introductory phase (early action 20%, absolute change 60% and relative change 20%) or as per the third year but with a reduced early action weighting. Government has considered these representations but remains of the view that performance in the fourth year of the introductory phase should be assessed on the absolute and relative metrics only. By this stage participants would have had three years worth of credit for their early action performance, as per the original policy intent. Government therefore believes the fourth year is an appropriate time to switch the focus to absolute and relative performance, irrespective of which phase this relates.
19. One respondent commented that postponing the qualification year for phase two would result in more organisations qualifying for the second phase as a direct result of the rollout of the Smart meters programme for class 5 to 8 meters. Government acknowledges this point but believes energy efficiency opportunities exist for all organisations which qualify for CRC participation on the basis of their electricity consumption, irrespective of whether they qualify as a result of meter upgrades, organisational restructuring or increased electricity supply.
20. Several respondents highlighted the potential impact of postponing the second phase on the interaction with phase III of the EU Emissions Trading System (EU ETS). Some respondents cited a preference for 2013/14 to be the footprint year for phase two of the CRC, as proposed in the consultation, on the grounds of the close alignment with phase III of the EU ETS, which commences on 1st January 2013. However other participants questioned whether the gap between January and April 2013, start of EU ETS phase III and CRC footprint year respectively, would have implications for EU ETS 'small emitters' being able to opt out of the EU ETS into an equivalent system. Government will consider further how to address the CRC implications of changes between phases II and III of the EU ETS as part of the wider simplification review.

21. In light of the responses to this proposal Government therefore intends to implement proposal one as detailed in the consultation document.

Proposal 2

Remove the requirement for organisations who are not required to register as participants to make information disclosures.

Consultation responses

86% of consultation respondents provided a response to this question, of which 81.3% agreed with Government's proposal to remove the information disclosure requirement.

22. There was broad support for this proposal amongst respondents, who cited the reduced administrative burden for organisations previously making an information disclosure as a welcome amendment. However there was also a body of respondents who questioned how Government and the scheme's administrators would monitor compliance amongst organisations near the qualification threshold, especially where new properties with half-hourly meters are concerned. Concern was also raised by several organisations about Government ensuring compliance by placing additional future administrative requirements on the energy supply companies. Government believes that compliance levels can be maintained without the reliance on an information disclosure requirement and that any risk is outweighed by the benefits of reducing the administrative burden on information disclosers – especially considering the data gathered as a result of phase one registration.

23. A sizeable body of respondents cited that the information disclosure provision was a positive mechanism to engage organisations in the discipline of monitoring and reporting energy usage and carbon emissions. Removal of the information disclosure requirement would, they argue, dilute the incentive to monitor energy use, resulting in such organisations missing out on the cost savings and environmental benefits associated with a proper reporting regime. Incentivising energy and carbon monitoring amongst information disclosers is not a policy objective of the CRC, nor does Government believe this is the appropriate mechanism to deliver this. In addition the information disclosure requirement did not require a full energy monitoring regime, being restricted to half hourly metered electricity once per phase.

24. A few respondents also challenged whether the removal of the information disclosure provision would increase the discrimination between those organisations which qualify for the scheme and those previously required to make an information disclosure. Government acknowledges the issue but maintains participation in the scheme will deliver benefits to participants through improved energy efficiency.
25. A small number of respondents cited concerns that the removal of the information disclosure was pre-empting a reduction in the scheme's qualification criteria. This is not the case. The removal of the information disclosure provision was proposed to take advantage of the opportunity to reduce the administrative burden on such organisations, given the experience of the first phase.
26. In light of the responses to this proposal Government therefore intends to implement proposal two as detailed in the consultation document.

Proposal 3

Amend the CRC's landlord provision to recognise the way in which Northern Ireland departments are accommodated in Northern Ireland Civil Service buildings.

Consultation responses

51.7% of consultation respondents provided a response to this question, of which 71.6% agreed with Government's proposal to amend the landlord provision in respect of Northern Ireland departments.

27. There was broad support for this proposal amongst those respondents who responded to this question. Respondents in favour of the proposal welcomed the additional transparency of Government emissions provided by such an amendment, and resultant accountability of Northern Ireland departments. In addition most respondents recognised the specific circumstances and context to which the proposal was being applied.
28. Some respondents agreed with Government's proposal but requested that the approach be extended, either across a specific industry or situation, or simply to the scheme-wide treatment of landlord and tenants. This position was supported by a sizeable body of respondents who challenged the 'special treatment' being applied to Northern Ireland departments and challenged Government's assertion

that landlords generally have the greatest influence on a building's energy consumption.

29. Government restates that this amendment was proposed in response to a specific commitment by Government for Northern Ireland departments to take responsibility for their CRC emissions. This proposal aligns the legislative drafting with the original policy intent. Government maintains this amendment does not undermine the scheme's treatment of landlord and tenants on account of the emission responsibility being transferred between mandated participants (i.e. Government departments). Application of such a proposal to circumstances involving non mandated participants would potentially result in emissions loss from the scheme as landlords transfer CRC responsibility to organisations with supply arrangements below the qualifying threshold.

30. One respondent questioned whether the amendment fully delivered on the commitment for all Northern Ireland departments to be responsible for their CRC emissions, especially where a department is the tenant of a private sector landlord. Government maintains that whilst the transfer of responsibility within Government bodies does not undermine the landlord/tenant position, further amendments involving private sector landlords would challenge this position. Private sector landlords of Northern Ireland departments will therefore be unable to claim unconsumed supply under such circumstances.

31. In light of the responses to this proposal Government therefore intends to implement proposal three as detailed in the consultation document.

Proposal 4

Update the division of responsibilities between the scheme's three administrators.

Consultation responses

68.2% of consultation respondents provided a response to this question, of which 98.5% agreed with Government's proposal to update the division of administrators' responsibilities.

32. This proposal received a high level of support from respondents. Responses supporting the amendment cited the importance of efficiently distributing the administrators' responsibilities whilst ensuring a consistent enforcement regime across the regions. Several responses also stressed the importance of avoiding

placing an unnecessary burden on participants by avoiding any double reporting to the administrators.

33. One respondent questioned whether the Environment Agency would be provided with sufficient resources to cover their increased responsibilities, whilst another challenged whether it would be more appropriate to have a single UK-wide administrator for the scheme rather than the current approach. A third respondent challenged the amendment, citing that the proposal would introduce additional complexity and confusion into the scheme.
34. This amendment was proposed in order to align the roles of the administrators with those originally intended during the earlier stages of policy development. Government proposes there will be no additional resource implications for the administrators as a result of the amendment.
35. In light of the responses to this proposal Government therefore intends to implement proposal four as detailed in the consultation document with one minor amendment. One respondent highlighted that Article 10 of the draft Amendment Order contained reference to article 62 (information disclosure provision) of the original CRC Order; superfluous if the information disclosure provision is removed as proposed. This reference will therefore be removed in the final drafting of the Amendment Order in light of Government's decision to remove the information disclosure requirement.

Proposal 5

Correction of reference errors (question five) and technical fixes (question six).

Consultation responses

77.3% of consultation respondents provided a response to question five, of which 99.1% agreed with Government's proposal to update reference errors in the original CRC Order.

36. The proposal to update reference errors received a very high level of support from respondents. There was a general consensus that reference errors in the original CRC Order should be corrected and that the opportunity presented by the proposed Amendment Order should be utilised for this.

37. A few responses were caveated that the updated references should not introduce additional costs or requirements on participants. The proposed updates do not amend any policy positions and so do not impose additional costs or requirements on participants.

Consultation responses

76.9% of consultation responses provided a response to question six, of which 98.6% agreed with Government's proposal to update interpretation definitions.

38. The proposal to update the interpretation definitions of footprint supplies and footprint emissions was broadly welcomed by respondents to this question. A couple of responses however, did question whether there were other definitions, such as those involving transport, baseline year and annual payments, which should have been updated as part of this proposal. Government acknowledges the comments pertaining to this question and whilst it does not believe appropriate to revisit additional definitions as part of this Amendment Order, will keep the comments under review as part of the scheme's broader simplification process.

39. In addition there was widespread support for the proposal to enable participants claiming a Climate Change Agreement (CCA) exemption at registration, to choose between reporting their CCA emissions as reported under their CCA regime or recalculating using the CRC's emission factors. One respondent challenged the proposal on the grounds that it would build additional confusion and unfairness into the scheme. This proposal was included to align the legislative drafting with Government's original stated policy intent over the flexibility available to participants with a CCA. Government does not concur about the additional confusion and unfairness, on account of the limited applicability of such an amendment, and proposes the simplification outweighs any risk of unfairness.

40. Several responses highlighted the technical and administrative nature of the amendments under proposal five, and questioned the merit in including them in the consultation process. Government welcomes such challenges but restates their inclusion was to ensure appropriate transparency of the proposals amongst stakeholders.

41. In light of the responses to this proposal Government therefore intends to implement proposal five as detailed in the consultation document.

Comments outside the scope of the consultation

42. The scope of this consultation was deliberately focused on those legislative amendments required to extend the introductory phase and to make initial simplifications. However many respondents took the opportunity to provide comments to be considered as part of a broader simplification review, which Government welcomes. These comments included the following points and Government will assess these views as part of its simplification review over the upcoming months.

- The ending of revenue recycling was an unwelcome change and dilutes the scheme's financial drivers.
- Flexibility should be provided to enable the disaggregation of any undertaking, and not just significant group undertakings.
- The grouping of Academies and maintained schools with a local authority should be revisited in light of the decision to end revenue recycling.
- The CRC/CCA/Climate Change Levy (CCL) policy landscape has become overly complex and should be reviewed and simplified in order to drive the low carbon economy.
- The treatment of landlord and tenants should be reviewed to ensure the CRC responsibility lies with the party most able to influence energy consumption.
- Separate league tables should be established for the public and private sectors to reflect their different levels of cost-effective abatement.
- The guidance from the scheme administrators should be reviewed and consolidated into a more user-friendly format – especially the evidence pack guidance document.
- Avoid burdening participants with a double allowance sale resulting from the switch from a retrospective annual allowance purchase to a forward purchase for forecast allowances.
- The treatment of renewables should be revisited to avoid the perceived disincentive for investment in renewables.
- Government should produce a timeline detailing CRC review activity and decision points over the upcoming months. Government should also clarify the CRC allowance price for the introductory phase as soon as possible.

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