

EXPLANATORY MEMORANDUM TO
THE CRC ENERGY EFFICIENCY SCHEME (REVOCATION AND SAVINGS)
ORDER 2018

2018 No. 841

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy 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 early closure of the CRC Energy Efficiency Scheme (“the CRC Scheme”), which is an emissions trading scheme. The current phase, which applies to emissions from relevant energy supplies from 1st April 2014 to 31st March 2019, will be the final phase of the CRC Scheme. The CRC Energy Efficiency Scheme Order 2013 (“the 2013 Order”), which provides for phases of the CRC scheme up to 2043, is revoked, with savings, and the 2013 Order is amended to the extent it continues to operate for the purpose of the current phase and the 2010 Order is amended to the extent it continues to operate for the purpose of the previous phase (which applied to emissions from relevant energy supplies from 1st April 2010 to 31st March 2014).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.
- 4.3 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.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The CRC Scheme was introduced by the CRC Energy Efficiency Scheme Order 2010 (“the 2010 Order”) under powers conferred by sections 44, 46(3) and 48 of and Schedule 2 and paragraphs 9, 10, 11 of Schedule 3 to the Climate Change Act 2008. The 2013 Order which simplified the CRC scheme for phases from 2014 onwards and revoked the 2010 Order with savings and amendments for the purpose of the first phase of the scheme. The CRC Energy Efficiency Scheme (Amendment) Order 2014 made amendments to the 2013 Order in order to finalise simplification of the CRC scheme.
- 6.2 To bring about early closure, this instrument revokes the 2013 Order, subject to savings for the purpose of the initial phase established under the 2013 Order with amendments, and makes amendments to the 2010 Order to the extent it has been saved for the purpose of the first phase established under the 2010 Order.

7. Policy background

What is being done and why?

- 7.1 The CRC Scheme is a mandatory UK-wide trading and reporting scheme. It was introduced in April 2010, although the qualification period for the scheme started in 2008. 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. The first phase of the CRC Scheme ran from April 2010 to March 2014 and the second phase commenced in April 2014 and is due to end in March 2019. Each phase is divided into compliance years which run from 1st April to 31st March. The Environment Agency, the Scottish Environment Protection Agency, the Natural Resources Body for Wales and the Northern Ireland Chief Inspector administer the scheme. The existing legislation provides for the scheme to operate until 2043.
- 7.2 For organisations that meet the qualification criteria for a phase of the CRC scheme, they are required to among other things:
- record and report to the Administrator their energy use in scope of the CRC Scheme for a given compliance year, which runs from 1 April to 31 March, by the last working day of the following July.
 - purchase (in sales that take place twice annually) and surrender sufficient allowances to cover emissions from that reported energy use by the last working day of the following October.
 - keep records for a specified period.
- 7.3 Since the introduction of the CRC Scheme in April 2010, stakeholders have argued that it is overly complex and administratively burdensome. They have also stated that the organisational focus of the CRC Scheme is misaligned with their operational management structures and business processes. Government accordingly consulted on simplification proposals and enacted those through the 2013 Order.
- 7.4 At the 2015 Summer Budget the government announced that it would review the business energy efficiency tax landscape and consider approaches to further simplify and improve the effectiveness of the regime. A public consultation, “Reforming the business energy efficiency tax landscape” was launched on 28 September 2015 and closed on 9 November 2015. The purpose of the consultation was to obtain views on

the business energy efficiency tax and reporting landscape, including the CRC Scheme, in order to review and consider the interactions between business energy efficiency policies and regulations. The consultation document set out proposals to reform the landscape in order to deliver a simpler and more stable environment for business.

- 7.5 In March 2016, Government published the response to the consultation. The Government stated that: "...The government has therefore decided to close the CRC energy efficiency scheme (CRC) following the 2018-19 compliance year, with no purchase of allowances required to cover emissions for energy supplied from April 2019. Organisations will report under the CRC for the last time by the end of July 2019, with a surrender of allowances for emissions from energy supplied in the 2018-19 compliance year by the end of October 2019. The government will work with the devolved administrations on scheme closure arrangements".
- 7.6 This decision to close the CRC scheme forms part of a package of reforms to the energy efficiency taxation landscape. These include:
- recovering the revenue from early closure of the CRC scheme by increasing the main rates of the Climate Change Levy ("CCL") from April 2019.
 - rebalancing CCL rates for different fuel types.
 - introducing a streamlined energy and carbon reporting framework for business by April 2019.
- 7.7 As a result of the early closure of the CRC scheme, the CRC compliance year 2018-2019 will be the last compliance year for which participants are obliged to report their energy use to the Administrator and to purchase and surrender CRC allowances to cover their CRC supplies and emissions. In this context this instrument makes the following provision:
- 7.7.1 There will be no phases of the CRC scheme after the end of the current phase. In effect, the CRC is closed early at the end of the current phase (2014 - 2019). Participants who qualified for the current phase or for the previous phase will still be required to comply with their obligations as usual, including, for participants in the current phase, their obligations to report their emissions to the Administrator by the last working day of July 2019 and to purchase and surrender sufficient allowances by the last working day of October 2019.
- 7.7.2 The Administrator is required to maintain the Registry until the end of March 2022. The Registry is the place where participants submit annual reports, order, buy, surrender and transfer allowances and also provide contact and organisational structure details. After the end of March 2022, the Administrator must close the accounts opened for the purposes of the CRC scheme. After the end of March 2022, trading of allowances will not be permitted.
- 7.7.3 The Administrator will continue to have powers to monitor and enforce compliance by participants who qualified for the current phase or for the previous phase (2010 – 2014). After the end of February 2022, the Administrator will not be able to impose a penalty to require the purchase and surrender of additional allowances. After the end of March 2022, after the closure of the Registry, the Administrator will not be able to impose the

penalty of blocking access to the Registry or of publication of a participant's details on the Registry.

- 7.7.4 Participants who qualified for the current phase continue to be required to inform the Administrator about a change of address until 1st April 2025. The Administrator will maintain an up to date list of participants for the current phase and previous phase until the end of March 2025.
- 7.7.5 After the end of March 2022, the Administrator must also maintain a record of the information that had been held on the Registry until the end of March 2025.
- 7.7.6 Provision is made for how those who previously held an account for the purpose of the CRC scheme will be able to communicate with the Administrator once the Registry is closed, and how they can access the information concerning their accounts held in the Registry as at the end of March 2022.
- 7.7.7 Participants who qualified for the current phase will continue to be required to maintain their records until the end of March 2025. Participants who qualified for the previous phase will continue to be required to maintain their records until the end of March 2021.
- 7.8 Participants who have surrendered surplus allowances into the cancellation account continue to be able to apply for a refund until the end of March 2025. Participants who held allowances in a compliance account as at the end of March 2022 may also apply for a refund until the end of March 2025. A decision whether to refund continues to be at the discretion of the Secretary of State and guidance for participants is available at:
<https://www.gov.uk/government/publications/crc-guidance-for-participants-in-phase-2>

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument revokes the 2013 Order with savings and amendments for the purpose of the current phase and the previous phase of the CRC scheme. The department does not intend to consolidate this legislation.

10. Consultation outcome

- 10.1 The Government held a public consultation on reforming the business energy efficiency landscape from 28 September 2015 to 9 November 2015. The consultation sought evidence from stakeholders and set out policy proposals to simplify and improve the effectiveness of the landscape in supporting the government's objectives around simplicity, productivity, security of energy supplies and decarbonisation. The review was welcomed by industry, with particular support for simplification of the business energy landscape, particularly the abolition of the CRC Scheme and the move to a single tax, the CCL. Respondents cited several benefits including simplicity, reduction in collection errors and a reduction in administrative burdens.

The Government consultation response was published on 16 March 2016 and is available at: <https://www.gov.uk/government/consultations/consultation-reforming-the-business-energy-efficiency-tax-landscape> .

- 10.2 The Committee on Climate Change (“the CCC”) has also been consulted, on the proposed early closure of the CRC Scheme UK-wide and in the individual nations of UK. The CCC, in letters in March 2016 and February 2018, agreed that abolition of the CRC scheme could contribute to a worthwhile rationalisation of the complex policy landscape with overlapping carbon price instruments and information requirements. The CCC also recommended that if the CRC Scheme is abolished then an alternative annual energy and emission reporting mechanism be introduced UK-wide with board sign off, that public sector action was also required and that the CCL rates should be increased to reflect the CRC Scheme closure.
- 10.3 The Devolved Administrations’ views have been sought on early closure of the CRC Scheme. The Devolved Administrations have all consented to UK-wide closure.

11. Guidance

- 11.1 Guidance on how to comply with the CRC scheme continues to be available and the Environment Agency will also continue operate a helpdesk for participants. Guidance for the purpose of the current phase of the CRC scheme is available at <https://www.gov.uk/government/publications/crc-guidance-for-participants-in-phase-2>

12. Impact

- 12.1 The impact on the estimated 4,200 business, charities or voluntary bodies which are participants in the CRC Scheme will benefit from the simplification, in particular, the need to no longer deal with what is viewed by stakeholders as a complex trading and reporting scheme.
- 12.2 The impact on the public sector is the removal of a complex trading and reporting scheme for some 500 public sector participants.
- 12.3 A full Impact Assessment covering a package of reforms including the closure of the CRC scheme and introduction of the streamlined energy and carbon framework is submitted with this memorandum and published alongside the Explanatory Memorandum on the UK Government website at www.gov.uk and on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The CRC Scheme generally does not apply to small businesses, given the eligibility requirement that organisations use over 6GWh of qualifying electricity in a specified year. Any small businesses in scope of the CRC scheme will benefit from the removal of the requirement to comply with the complex CRC scheme, including to report their emissions annually and to buy and surrender allowances for those emissions.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for the Department for Business, Energy and Industrial Strategy, and the Administrator, to continue to monitor the CRC scheme, including the ongoing activities after the end of the current phase, which is the final phase of the CRC Scheme.

- 14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 and in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Rt. Hon Claire Perry MP, Minister of State for Energy and Clean Growth, has made the following statement:

In my view a statutory review clause is not appropriate. This legislation takes forward the outcome of a significant review of the CRC Energy Efficiency Scheme and wider business energy efficiency landscape. This legislation means that, rather than continuing to 2043, the 2018-19 compliance year is the last year for which participants will need to monitor, report and surrender allowances for their relevant emissions and the scheme is being closed early. Given the significant reduction of costs for participants I do not consider a further statutory review is appropriate on proportionality grounds.

15. Contact

- 15.1 Gary Shanahan at the Department for Business, Energy and Industrial Strategy, Telephone: 0300 068 6172 or email: gary.shanahan@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Michael Rutter, Deputy Director – Business Energy Use, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt. Hon. Claire Perry, Minister of State for Energy and Clean Growth, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.