

The CRC Energy Efficiency Scheme is a ticking time bomb for Landlords



Does the scheme affect you?

Commercial Landlords face annual costs of upwards of £38,000 (8% -10% of their annual energy bill) under the Government's latest "weapon" in its fight to lower CO2 emissions - the CRC Energy Efficiency Scheme (CRC) (formerly known as the Carbon Reduction Commitment).

Ruth McCarthy, commercial property partner at law firm Slater Heelis Collier Littler outlines who the scheme will affect and what Landlords can do to put themselves back in control.

5000 organisations will be "caught"

All organisations using 6000-megawatt hours (MWh) or more of electricity on half-hourly meters (circa £500,000 p.a. spend) in 2008 must participate in the scheme.

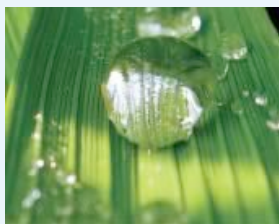
An estimated 5000 organisations will be "caught" and will have to monitor and report on their energy consumption and purchase and surrender allowances for each tonne of CO2 they emit- all on an annual basis. A further 20,000 will be obliged to supply information in order to determine whether or not they fall within the scheme. Whilst the price of allowances will initially be fixed at £12 per tonne, over time this will increase significantly as caps on emissions are applied.



How will it lower CO2 emissions?

The CRC reduces emissions in two main ways:

- charging organisations for the CO2 they emit; and
- putting the performance of participating organisations in the public eye by publishing a table of the best and worst performers.



April 2010 is fast approaching...

...and research shows that we're unprepared.

Only 25% of businesses in the North West have measured their carbon emissions and 32% of bosses say they need advice and support to meet CRC requirements. Many in fact don't know about the scheme at all.

Find out how much the CRC Scheme could cost you and how to protect your business by calling Ruth McCarthy on 0161 975 3827.

What does the CRC mean for Landlords?

Tenants' allowances - Landlord pays

Landlords must purchase allowances to cover their own CO2 emissions and their Tenants' unless the Tenant has a direct energy supply.

Cashflow

Poorly managed, the scheme will cost an organisation a large proportion of its energy budget.

Standard leases DON'T allow recovery of CRC costs

Landlords are expecting to bill their Tenants for any CRC costs through the service charge. NO! Existing service charge provisions will not be drafted widely enough to allow recovery. New provisions are required and this point is highlighted in the British Property Federation's CRC guide.

Standard leases DON'T encourage Tenants to use less energy

Standard leases DON'T deal with monitoring and data recovery

Without clear mechanisms to deal with effective monitoring, calculation and recovery of data, Landlords will be left reliant on Tenants' voluntary co-operation. If they don't, the Landlord is penalised.

"Naming and shaming" league table - Tenants will determine position

The scheme is designed to be revenue neutral and payments made are recycled back to participants with a penalty or bonus depending on their position in a league table of the best and worst performers (in terms of reduction in CO2 emissions). Eventually, poor performers could end up with a 50% penalty. Organisations lower down the league table are also expected to face negative impact on their brand and reputation. There will be significant pressure to improve environmental performance.

Penalties

Fines of up to £50,000 or imprisonment of up to 3 years face non-compliant organisations.

Leases and the CRC

Landlords "caught" by the CRC scheme will need to include specific "CRC clauses" in their standard lease to deal with the following:-

Transfer of responsibility

In multi-let, sub-metered buildings, the Landlord normally pays the utilities bill on behalf of the Tenants. Under the CRC, they will *also* pay for Tenants' allowances. This is not fair and the Landlord will want to transfer responsibility to the individual Tenants according to their own energy use.

Extension of existing rights and obligations

There need to be new or extended rights and obligations to allow the recovery, monitoring and sharing of accurate, meaningful, usable data on energy consumption and maintenance. If not, how can the Landlord meet its monitoring and reporting obligations and avoid fines and penalties for non-compliance?

Administration costs

Significant costs will arise for the Landlord (eg. installation of software to manage the scheme, forecasting emissions etc). Provisions are required allowing recovery from the Tenant proportionate to their energy use.

Distribution of recycling payments

Although there is no obligation to do so, most Landlords must look to ways of recycling payments back to Tenants. If they don't, Tenants will be less motivated to reduce their CO2 emissions and as a result the Landlord will have to purchase more allowances and suffer a lower position in the league table.

What should Landlords do?

Step 1: Seek an urgent review of your existing lease documentation.

Step 2: Assess your existing energy use to determine if you will be one of the 5,000 organisations to be affected.

Step 3: Determine which CRC provisions must be implemented to protect your business.

Slater Heelis are offering a free initial consultation to take you through these steps. For more information, or to book an appointment, contact Ruth McCarthy on 0161 975 3827

At Slater Heelis, we understand that Landlords' circumstances won't be the same and they won't wish to approach the issues in the same way. We have drafted a number of alternative approaches tailored to the needs of Landlords whether owners of a single unit or a portfolio of properties.

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