

## **Taking a look at the New CRC Energy Efficiency Scheme What does it mean for organisations involved in PFI & PPP?**

---

The department of Energy & Climate Change recently issued updated guidance on the new CRC Energy Efficiency Scheme ("CRC Scheme"), formerly known as the Carbon Reduction Commitment - a new UK mandatory emissions trading scheme which is expected to be phased in from April 2010 and aims to reduce carbon dioxide emissions through energy efficiency.

The guidance is based on policy in the draft CRC Energy Efficiency Scheme Order which was laid before Parliament on 19 January 2010 and can be accessed here: [http://www.decc.gov.uk/en/content/cms/what\\_we\\_do/lc\\_uk/crc/user\\_guidance/user\\_guidance.aspx?dm\\_i=AYH,34G2,1BWETQ,A8BX,1](http://www.decc.gov.uk/en/content/cms/what_we_do/lc_uk/crc/user_guidance/user_guidance.aspx?dm_i=AYH,34G2,1BWETQ,A8BX,1)

The CRC Scheme will be one of a few mechanisms already operating in the UK for the purpose of meeting domestic targets on climate change. The scheme is a proposed mandatory cap and trade scheme that will apply to emissions (not covered by climate change agreements or the EU Emissions Trading Scheme) from large public and private sector organisations whose metered electricity use is above 6,000MWh per half hour. Failure to comply with the scheme may result in a fine.

The CRC Scheme features an annual performance league table that ranks participants on energy efficiency performance. Together with the financial and reputational considerations, the scheme encourages organisations to develop energy management strategies that promote a better understanding of energy usage.

So, what does this legislation mean for those organisations involved in PFI/PPP projects? It will depend very much on the terms of the contracts they have in place for projects they are involved in. Broadly speaking, where the public authority is responsible for entering into contracts with the utility provider, the public authority is responsible under the CRC Scheme. Where the private sector enters into contracts with the utility provider, the impact of the CRC Scheme will depend on whether responsibility for procuring utilities has been stepped-down to Facilities Management (FM) sub-contractors or retained at Special Purpose Vehicle (SPV) level.

Where it is stepped down, parent organisations of FM companies will need to consider their position. Where it is retained at SPV level, guidance states that where a shareholder has more than 50% stake in an SPV, it is that shareholder's ultimate parent that must report anything supplied to the SPV as part of its qualifying total. Where an SPV does not have a parent with a greater than 50% controlling stake, the SPV will itself be required to participate as an individual CRC organisation where the inclusion threshold is exceeded.

However, Environment Agency guidance also states that the CRC Scheme will not apply to a person who receives a supply of electricity that is then wholly consumed by others and uses the example than an FM company who is providing a service to its client is not using energy for its own company.

Based on this rationale, both SPVs and FM companies could qualify for an exemption under the CRC Scheme, but we assume the PFI provisions are intended to take precedence. Despite the release of guidance, the potential impact of the CRC Scheme on PFI/PPP projects is still not at all clear.

The CRC Scheme has raised concerns among private contractor stakeholders to the extent that we understand PartnershipsUK has been commissioned to examine 15-20 PFI contracts to determine responsibility in a random sample. In the meantime, we await legislation coming into force and hopefully – some further guidance in the context of PFIs.

**Andrew Orr is a partner in the Projects Group at MacRoberts LLP. For further information, please contact [andrew.orr@macroberts.com](mailto:andrew.orr@macroberts.com)**

**This article appeared in Cable Talk, March 2010.**

[See our website for full Copyright notice and Disclaimer.](#)

© MacRoberts LLP 2010