



Energy Efficiency in Commercial Buildings

June 2013

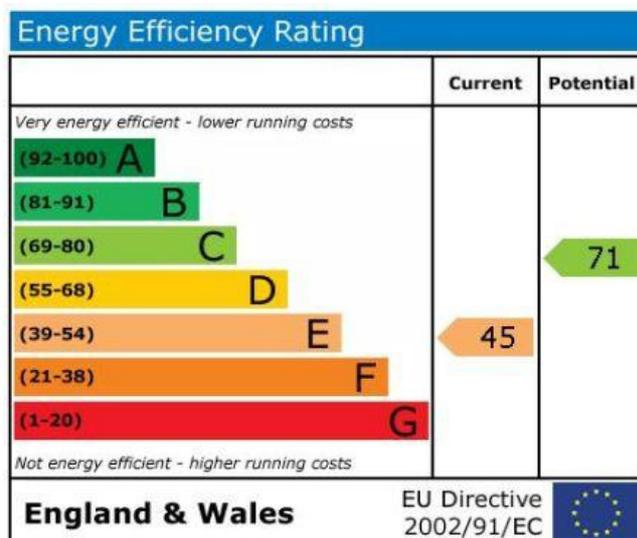
The Green Deal, the CRC Energy Efficiency Scheme, Energy Performance Certificates, Minimum Building Energy Performance Standards - never before has the property industry been impacted by such a raft of new environmental legislation. Not only are a number of these regimes complex, they have also been the subject of considerable debate and change.

This guide identifies and highlights recent changes to the main regimes relating to commercial buildings.

Energy Performance Certificates (EPCs)

From 9 January 2013, a number of important changes to the EPC regime have been introduced:

- ▶ **Exempt buildings** - All listed buildings are now exempt from the requirement to display an EPC or provide one when marketed, advertised and/or sold or let. Certain temporary, religious, agricultural or small standalone buildings (less than 50sqm) will continue to be exempt; however, the definitions have been broadened so that more buildings will fall within these categories.
- ▶ **Adverts** - The "Energy Performance Indicator" rather than the whole of the front page of the EPC must now be displayed in for sale or let adverts (this includes sales particulars, auction catalogues, brochures, press adverts and websites). There is no definition or conclusive guidance as to what constitutes an "Energy Performance Indicator". Current thinking is that the full coloured graph (as shown below) should be displayed unless space does not permit this, in which case just the grade and score is permitted (e.g. EPC Grade E – 45).
- ▶ **Buildings regularly visited by the public** - Any building over 500sqm for which an EPC already exists and which is frequently visited by the public must have an EPC displayed in a prominent place. This includes any building to which the public has an express or implied licence to enter and which is visited by the public on a near daily basis. Current guidance states that the building occupier is responsible for compliance.



"Large buildings regularly visited by the public may have to display an EPC in a prominent place"

The Green Deal

The Green Deal is one of the Government's initiatives supporting property owners in carrying out energy efficiency improvement measures.

- ▶ Under the Green Deal the initial cost of certain types of energy efficiency improvements can be funded by a Green Deal Provider (i.e. at no upfront cost to the owner or occupier of the property). The Green Deal Provider will then recover its costs through a charge payable in instalments and added to the energy bills for the property. The cost of the works and the details of the repayment are known as the Green Deal Plan.
- ▶ The initiative is based around the "Golden Rule", a phrase adopted by the Government. The rule is that to qualify for the Green Deal the cost of the works must be equal to or less than the estimated savings on energy costs.

There are a number of issues with the Green Deal of which commercial property owners and occupiers should be aware:

- ▶ The additional charge on the energy bill attaches to the property and not the person who carried out the works. This additional cost may deter potential purchasers or tenants of the property.
- ▶ If a tenant requests consent to carry out works under the Green Deal, whether a landlord can withhold such consent will be governed by the terms of the lease. However, a landlord may not be able to refuse consent to a tenant's request to carry out Green Deal works if these amount to improvements for the purpose of the Landlord and Tenant Act 1927. A landlord's property may therefore become subject to a Green Deal Plan through the action of a tenant.
- ▶ On any sale, letting or licence as a result of which a new person will be responsible for the energy bills, an EPC containing details of the Green Deal Plan must be disclosed to the new bill payer who must provide a written acknowledgement that they are bound by the Green Deal Plan. Failure to do so can lead to the Green Deal Plan being cancelled and the relevant seller or landlord being required to pay compensation to the Green Deal Provider.

With current Green Deal charges based on interest rates of around 7% it is unclear how much demand there will be for Green Deal financed works to commercial property.

Minimum Building Energy Performance Standards

After 1 April 2018, buildings must achieve a minimum energy efficiency standard before they can be let. Many of the material details are yet to be finalised. For instance, we are still waiting for clarification on the following points:

- ▶ What the required standard will be (although the Government has informally indicated that it will be illegal to let premises that have an EPC rating of F or G).
- ▶ Whether the rule will apply to existing lettings, new lettings when there is no change in occupier (e.g. upon a sale and leaseback or where premises are re-let to the same tenant), lease assignments or leases of buildings that are not required to have an EPC.

Despite the lack of clarity on the rules, property owners should consider taking action now.

- ▶ It may be worth having new EPCs drawn up for your portfolio as research shows that many old EPCs incorrectly assigned a lower grade to a property than they should have. In addition, as time passes and building regulations become more stringent, it may become harder to achieve the requisite grade. However, it may be prudent to wait until it is clarified whether or not the required energy efficiency standard will be based on EPC grades before embarking on this course of action.
- ▶ Drafting of rent review clauses should perhaps address the possibility that it may be illegal to let the premises on the next rent review date; and dilapidations clauses may have to reflect the fact that the landlord may have to carry out improvements before it can relet the premises.



The CRC Energy Efficiency Scheme

As a reminder, the CRC Energy Efficiency Scheme is a mandatory emissions trading scheme which applies to organisations (on a group-wide basis) using at least 6,000 MWh of electricity per year (which equates to an annual electricity bill of approximately £500,000). Qualifying organisations are required to buy allowances to cover their fuel use.

Although the scheme has been simplified by the CRC Energy Efficiency Scheme Order 2013, it remains complex and continues to give rise to significant challenges for landlords, tenants and their wider corporate structures.

Changes and points to note in respect of the current and second phase of the Scheme include:

- ▶ Public and private organisations can fall in and out of the scheme.
- ▶ The number of fuels covered will be reduced from 29 to 2 (electricity and gas used for heating).
- ▶ There has been no clarification as to the allocation of the costs of the Scheme between landlords and tenants.

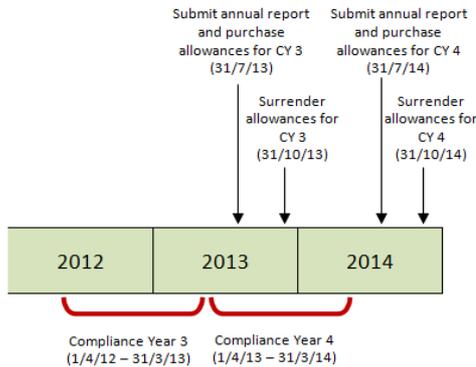
The second phase of the Scheme runs from 1 April 2014 to 31 March 2019. Recent changes and things to be aware of in respect of the second phase of the Scheme include:

- ▶ Qualification for the second phase is based on energy consumption between 1 April 2012 and 31 March 2013. If your organisational group meets the qualifying criteria for this period then you must register by 31 January 2014. There are potentially material penalties for failure to do so.
- ▶ There will be two fixed price sales of allowances in each year: one sale for forecast emissions and a second "buy-to-comply" sale, which will be at a higher price. The Government has previously announced that the price of allowances in the forecast emissions sale will increase from £12 per tonne of CO₂ in 2013-14 to £16 per tonne of CO₂ in 2015-16, and will then increase annually in line with the Retail Prices Index. The date for surrendering allowances in each compliance year will be extended from the end of July to the end of October.
- ▶ Participants will be required to retain data for 6 years from the end of the relevant scheme year, reducing the burden of data retention.
- ▶ There will be greater flexibility for disaggregation, to allow organisations to separate out into natural business units for compliance and reporting purposes.
- ▶ The rules relating to large acquisitions and disposals will be simplified.
- ▶ The rules relating to the treatment of trusts have been amended to more closely link CRC obligations to the parties most able to influence energy usage. A hierarchical approach will be applied to determine which entity is responsible for the supplies to properties held directly under a trust:
 - where a beneficiary is entitled to more than a half share of the assets in the trust, that entity takes responsibility for CRC purposes; and
 - for all other trusts: (i) if the trust is regulated under the Financial Services and Market Act 2000, responsibility would pass to the operator of the trust; and (ii) in all other cases, the trustee will be responsible.

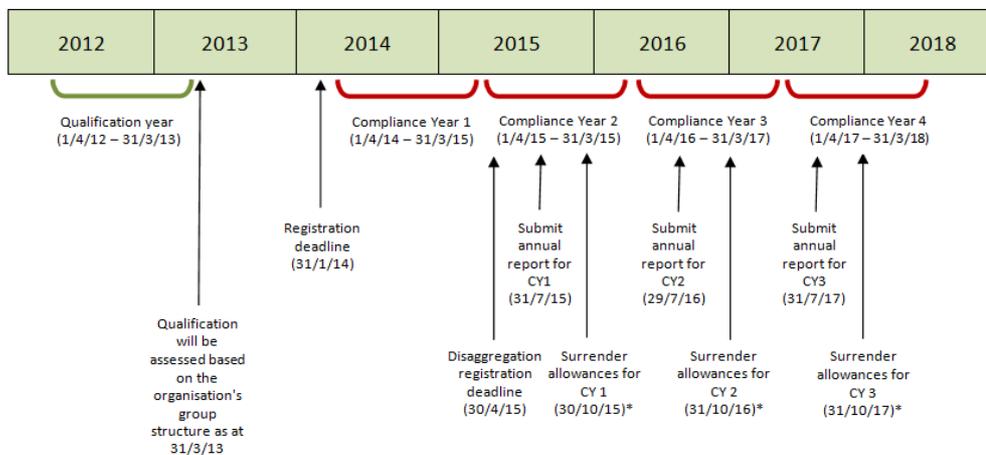
Please read our previous [flyer](#) for further information on the CRC and the UK's new mandatory carbon reporting requirements for listed companies.

CRC TIMELINE – PHASES 1 AND 2

PHASE 1



PHASE 2



* It is not yet known when the allowance sales in Phase 2 will take place. The government has indicated that there will be two fixed price sales in each year: an advance lower price sale and a second higher price sale.

Owners and occupiers of commercial buildings should be taking steps now to ensure that they are able to comply with these challenges as well as taking advantage of the various incentives.

Travers Smith has considerable experience in advising landowners and occupiers on the impact of environmental and energy efficiency legislation. Please feel free to contact us if you have any questions on these incentives or other carbon related concerns or opportunities.



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