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Carbon Reduction Commitment (CRC)
National Carbon Markets
Department of Energy and Climate Change
3 Whitehall Place
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Thursday 04 June, 2009

To Whom It May Concern,

BCSC (British Council of Shopping Centres) is grateful for the opportunity to provide comment on the 'Consultation on the Draft Order to Implement the Carbon Reduction Commitment.' BCSC's mission is to promote best practice in the development and management of the retail environment and to foster a professional, socially responsible and progressive retail property industry.

We support the broad goals of the CRC but have significant reservations about its implementation. In particular, we believe that the relationship between landlord and tenant and the costs associated with this relationship deserve more scrutiny before proceeding to scheme implementation. BCSC is also concerned about some of the economic hardships placed on CRC participants at a time when cash flow and working capital are reduced.

The financial obligations that landlords must assume under the current version of the regulations are, to us, unduly burdensome. We endorse a 'pay as you pollute' philosophy and believe that those responsible for energy usage ought to be the entity responsible under the CRC. BCSC would encourage Government to develop more thorough proposals regarding the transfer of responsibilities from landlord to tenant under the premise that those responsible for generating emissions ought to assume the financial liabilities they incur.

Many landlords pay tenants' energy bills and will be - under the present design of the scheme - responsible for behaviours (i.e. emissions) they cannot control. Tenants often have little incentive to improve their emissions; landlords with existing leases cannot recoup savings; and even with new leases, tenants can contest paying a service charge for emissions that are rightfully their responsibility. We respectfully ask Government to reconsider this issue before proceeding with the scheme.

BCSC would caution that some of the financial implications of the scheme require review. The CRC requires companies to expend a large amount of capital when budgets are tight and cash flow restricted. Two aspects of the CRC as it is presently designed cause us concern: 1. the financial outlay required for two years in April 2011, and 2. the lag time between when allowances must be purchased and when revenue is returned to organisations. The revenue mechanisms of the CRC will make it difficult for organisations to allocate additional money for building improvements.



We endorse the Government's objectives and believe that the CRC represents an important step in making industry accountable for their actions and emissions. To better facilitate responsibility and encourage the most propitious scheme, we would ask that Government ensure that those responsible for emissions (i.e. energy users) are those that must pay for their conduct. Arrangements that do not allow for the full transfer of responsibility threaten the fundamental fairness of an initiative that is designed to reward responsibility and performance. Secondly, a scheme that does not leave businesses the financial wherewithal to make improvements may ensure compliance but will not maximise improvement.

Please contact me Edward Cooke on tel. 020 227 4481, email Edward.cooke@bcsc.org.uk to discuss this further. Should you require any additional information, please do not hesitate to contact us.

We look forward to Government's further work in reducing carbon from non-domestic buildings and pledge our commitment to reducing emissions from our sector.

Yours sincerely,

Edward Cooke
Executive Director, BCSC



DECC CONSULTATION ON THE DRAFT ORDER TO IMPLEMENT THE CARBON REDUCTION COMMITMENT (CRC)

BCSC (British Council of Shopping Centres) Response

Chapter 2: Determining the CRC Participant

Q1a - Should organisations have to report total energy use emissions from their Principal Subsidiaries?

Yes. BCSC agrees that reporting total energy use and identifying the source of emissions is a critical factor in ensuring the success of the CRC programme and the Government's overall carbon agenda. BCSC believes that a comprehensive and transparent approach best guarantees industry's commitment to carbon reduction.

Q1b - Does the wording of the Draft Order (Article 2 and Schedule 16) around Principal Subsidiaries lead to any unforeseen consequences?

No. For clarity and consistency, BCSC supports the Government's intention to use the definitions enshrined within Section 1162 of the Companies Act 2006.

Q2 - Should Government transfer the responsibility for participating in the scheme with the purchase of participants and Principal Subsidiaries?

Yes. BCSC agrees that not to do so may lead to significant emissions being lost from the scheme.

Q3 - Should designated business change be deemed to have taken place at the start of the emission year?

Yes. Using the start of the emissions year reduces complexity and eases the administrative burden of the programme.

Q4 - Does the wording in the Draft Order (Article 7 and Schedule 2) around the treatment of business groups lead to any unforeseen consequences?

No.

No.Q5a - Does the proposed definition of franchising (Paragraph 6 of Schedule 3) achieve the stated CRC policy goal of including large franchise based on similar organisations?

Yes.

Q5b - Does the proposed definition of franchises lead to unforeseen consequences?

Q6 - Do you agree with the proposed policy approach as regards determining ownership of Joint Ventures and PFI?

Q7 - Are there any collegiate universities where it would be beneficial for independent colleges to be grouped as part of the university?



Q8a - Should schools be required to report annual energy use data as part of the wider Associated Person “reasonable assistance duty”?

Q8b - Does the Draft Order for this lead to any unintended consequences?

Q9 - Do you agree with the proposed approach for NHS organisations participating in the CRC?

Q10 -Do you agree with Government’s proposal not to proceed with the option of allowing limited transfers of emissions responsibility from landlord to the tenant?

No. BCSC is very concerned with the financial obligations that landlords must assume under the current version of the regulations. While BCSC understands the need for administrative simplicity, we also endorse a ‘pay as you pollute’ philosophy and believe that those responsible for energy usage ought to be the entity responsible under the CRC. Many landlords pay tenants’ energy bills and will be - under the present design of the scheme - responsible for behaviours (i.e. emissions) they cannot control. Tenants often have little incentive to improve their emissions; landlords with existing leases cannot recoup savings; and even with new leases, tenants can contest paying a service charge for emissions that are rightfully their responsibility. BCSC would encourage Government to develop more thorough proposals regarding the transfer of responsibilities from landlord to tenant under the premise that those responsible for generating emissions ought to assume the financial liabilities they incur.

Q11a - Do you agree with the proposed approach to domestic households?

Q11b - Are there aspects which Government needs to consider in taking forward this approach?

Chapter 3: Qualification

Q12 - Does the wording in the Draft Order (Articles 6-27) around qualification lead to any unforeseen consequences?

No. BCSC believes that the definition provided is satisfactory. All qualification language will lead to some unforeseen consequences. The wording in the Draft Order is as it has been all along and organisations have already proceeded with CRC obligations assuming this wording.

Q13 - Do you think that organisations with half hourly settled electricity of at least 6,000 MWh should have to disclose their total hourly electricity (and, if not, that the Order should be amended accordingly)?

No. Assuming that both disclosure options lead to the same qualification determination, BCSC supports the option that was proposed in the July 2008 CRC policy statement. Many of our organisations have already determined their exposure from calculations using this method and believe that for clarity and consistency, that standard should remain as it was previously announced.

Q14 - Does the wording in the Draft Order (Article 36 and Schedule 10) with regards to registration lead to any unforeseen consequences?

No.



Chapter 4: Emissions Coverage

Q15 - Does the wording in the Draft Order (Schedule 7, Paragraph 1) around the exclusion of EU ETS emissions lead to any unforeseen consequences?

No. BCSC believes that the wording is sufficient in allowing for the identification of emissions for CRC purposes but not requiring a 'double payment' for emissions that are covered in the EU ETS scheme.

Q16 - Does the wording in the Draft Order (Schedule 7, Paragraph 2) around the exclusion of CCA emissions lead to any unforeseen consequences?

No. BCSC believes that the wording is sufficient in allowing for the identification of emissions for CRC purposes but not requiring a 'double payment' for emissions that are covered in the CCA scheme.

Q17 - Does the wording in Draft Order (Schedule 6, Paragraph 4 and 5) around the exclusion of fuels purchased for trading purposes lead to any unforeseen consequences?

BCSC believes that this issue impinges on the landlord/tenant issue and how costs may be attributed. Hence, as in our response to Question 10, we would like more guidance from Government on the issue of distributing costs where electricity/fuels are purchased by one entity but not used by that entity (who still bears the administrative and direct financial costs of the purchase.)

Q18 - Does the wording in the Draft Order (Schedule 12, Paragraphs 1 and 2) around the calculation of a participant's footprint lead to any unforeseen consequences?

No. BCSC is satisfied with the present wording.

Q19 - Does the wording the Draft Order (Article 38 and Schedule 12) around the calculation of the "Applicable percentage" and the compilation of a residual measurement list lead to any unforeseen consequences?

No. BCSC is satisfied with the present wording.

Q20 - Please indicate your preferred option to the treatment of school's energy use in CRC and justify your response.

Q21a - Does the definition in the Draft Order correctly identify electricity from half hourly meters settled on the half hourly market?

Yes.

Q21b - Does the definition of the Draft Order correctly identify electricity from pseudo half hourly metering?

Yes.

Q21c - Does the definition of the Draft Order correctly identify electricity from half hourly Automatic Meter Reading (AMR) meters?

Yes.



Q21d - Does the definition in the Draft Order correctly identify electricity from profile class 5-8 meters?

Yes.

Q22a - Does the definition in the Draft Order correctly identify gas from daily read gas meters?

Yes.

Q22b - Does the definition in the Draft Order correctly identify gas from Automatic Meter Reading (AMR) gas meters?

Yes.

Q22c - Does the definition in the Draft Order correctly identify gas from large gas supply points?

Yes.

Chapter 5: Participant Exemptions

Q23 - Do you agree with the proposed Transport Exemption for large qualifying organisations with very limited CRC energy use?

Yes. For the purposes of the CRC scheme, BCSC would agree with this exemption.

Q24 - Do you agree with the proposed Transport exemption based on an exemption threshold of 1,000 MWh total half hourly electricity use (over the qualification year/footprint year)?

Yes.

Q25 - Should the transport exemption apply for the duration of a phase?

Yes. BCSC believes that this exemption and exemptions in general should follow the duration of a phase cycle.

Q26 - Should the CCA Group member exemption and Residual Group Exemption be based on half hourly electricity usage over the “footprint year”?

Yes.

Q27 - In the case of Residual Group organisations covered by Climate Change Agreements (CCAs) where the Residual Group organisation subsequently ceases to be covered by any CCA, do you agree that the Residual Group organisation should fall back into CRC from the start of the next compliance year?

Yes.



Chapter 6: Obtaining Allowances

Q28 - Do you agree that the proposed minimum Safety Value price of £12/tCO2 is appropriate?

Yes. This price is appropriate and any future Government set price ought to reflect the EU ETS price or similar scheme prices.

Q29 - Do you agree with Government's proposal to issue safety allowances once a month to reduce administrative costs?

Yes. This is particularly appropriate during the first phase of the scheme when organisations are learning about the CRC.

Chapter 8: The Performance League Table

Q30 - Does the wording in the Draft Order (Paragraphs 1 to 5 of Schedule 20) around the calculation of an early action metric lead to any unforeseen consequences?

BCSC is concerned that the early action metric unduly penalises those organisations whose CRC liabilities are not initially known and whose CRC determinations may take longer to determine, but who nevertheless will take aggressive remedial action. A score that is based on performance after inclusion is determined would be more equitable for many organisations within BCSC.

Q31 - Does the wording in the Draft Order (Paragraph 11 of Schedule 20) around the calculation of the Performance League Table lead to any unforeseen consequences?

Yes. BCSC believes that the weighting for Absolute Reduction is too heavy and effectively penalises business growth, even after emissions due to growth have been adjusted.

Q32 - Do you agree that the Performance League Table should be published twice, to take into account the outcome of appeals and adjustments necessary to correct any errors?

BCSC believes that the League Table should be published only after any appeals and adjustments are made.

Q33 - Does the wording in the Draft Order (paragraph 14 to 16 of Schedule 20) around the methodology for updating baselines to account for CCA emissions transfers lead to any unforeseen consequences?

No. BCSC is satisfied with the present wording and believe that the instructions are clear.

Q34 - Should Government update historic baselines to reflect the sale or purchase of Principal Subsidiaries and participants ('designated changes')?

Yes.



Q35 - Does the wording in the Draft Order (paragraphs 17 and 18 of Schedule 20) around the methodology for updating baselines to account for “designated changes” lead to any unforeseen consequences?

Yes. BCSC would like to see more guidance regarding what ‘appropriate adjustments’ mean and how they apply.

Q36 - Does the wording in the Draft Order (paragraphs 23 to 25 of Schedule 20) around the disclosure of information on energy management lead to any unforeseen consequences?

Yes. BCSC would like more direction from Government, particularly in the meaning of ‘public documentation.’

Chapter 9: Compliance, Reporting and Record Keeping

Q37 - Does the wording in the Draft Order (Part 3, Chapter 2) around participant obligations lead to any unforeseen consequences.

No. BCSC is satisfied with the present wording and believe that the instructions are clear.

Q38 - Does the wording in the Draft Order (Schedule 11) around the Footprint Report lead to any unforeseen consequences?

No.

Q39 - Does the wording in the Draft Order (Schedule 13) around the Annual Report lead to any unforeseen consequences?

No.

Q40 - Do you agree with the Government’s proposals for the Footprint and Annual Reports?

Yes. BCSC is satisfied with the present wording and believes that the instructions are clear.

Q41 - Do you agree that the fuel conversion factors should be in KgCO₂/per measurement unit rather than KgCo₂/kWh or any other measure?

BCSC agrees that measurement units developed in the consultation best reflect the different types of fuel sources and measurement criteria. Converting CO₂ from the original measurement metrics appears to be more direct and understandable for those responsible for determining allowance requirements.

Q42 - Do the fuels listed in this section (and as set out in the table) cover all the fuels used by your organisation, other than those which are from 100% renewable resources?

Yes. We believe the fuels listed capture all relevant fuel sources used by our membership.

Q43 - If you do not agree with the fuel conversion factors states in the table above, please explain why you think the conversion factors should be different to those stated above/



Q44 - Are there any unintended consequences from the energy factors proposed?

No. BCSC is satisfied with the present wording.

Q45 - Do you agree with the Government's proposal to require the disclosure of the type and quantity of fuels not listed in the conversion table?

Yes. BCSC believes that the conversion table is complete for our membership and therefore we do not foresee any fuels that have not been captured. We also believe that organisations should be complete in their reporting. However, we maintain that if the CRC is to be effective and clear, Government ought to specifically state what is included and what is not - the onus for thoroughness must rest with Government.

Q46 - Do you agree with the proposed treatment of estimates regarding mixed fuels?

Yes.

Q47 - Do you agree with the proposed approach to establishing when an energy bill counts as an estimate for the purposes of applying a 10% emissions uplift?

No. We believe that automatic 10% uplift is too high a figure to apply across the board for those whose organisations that are acting in good faith but must still rely upon estimated energy consumption.

Q48 - Does the Government's proposal around the treatment of energy generation lead to any unforeseen consequences?

Yes. BCSC would like to see clearer treatment of energy generation. In particular, guidance should cover generation from off-site, near-site and on-site renewables, with appropriate verification arrangements.

Q49 - Does the wording in the Draft Order (Schedule 14) around the records to be maintained in the evidence pack lead to any unforeseen consequences?

Yes. BCSC is concerned that the level of detail to be kept may be particularly onerous and potentially confusing for large multi-faceted operations. We would expect that organisations would provide this level of information if questioned or subject to an audit but are concerned with the maintenance of such an evidence pack as part of the normal course of business compliance.

Question 50 - Does the wording in the Draft Order (Part 8) around the creation of the registry system lead to any unforeseen consequences?

No. BCSC agrees with the provision of a registry, bearing in mind the need for security for participants.

Chapter 10: Audit

Question 51 - Does the wording in the Draft Order (Parts 6-9) around the respective roles of the Administrators lead to any unforeseen consequences?

No. BCSC is mindful, however, that Administrators have a high degree of judgement over important matters and that it would be better to rely on established procedures and precedent than individual interpretation. For consistency and simplicity, BCSC



would urge Government to specifically rely upon policies rather than Administrators wherever feasible.

Question 52 - Does the wording the Draft Order (Article 63) around the audit process lead to any unforeseen consequences?

No. However, BCSC would reiterate that Government must be mindful about the large degree of discretion accorded to Administrators.

Chapter 11: Enforcement

Question 53 - Do you agree with the level and type of penalties imposed for failure to register?

Yes.

Question 54 - Do you agree with the level and type of penalty imposed for failure to disclose information?

Yes.

Q 55 - Do you agree with the level and type of penalties imposed for failure to provide a footprint report?

Yes.

Q56 - Do you agree with the level and type of penalties imposed for failure to provide an annual report?

Yes.

Q57 - Do you agree with the consequence of depriving participants of the revenue recycling payment for that year?

Yes.

Q58 - Do you agree with the level and type of penalties imposed for incorrect reporting?

Yes.

Q59 - Do you agree with the level and type of penalties imposed for failures to comply with the performance commitment?

Yes.

Q60 - Do you agree with the level and type of penalties imposed for failure to keep adequate records?

Yes.

Q61 - Do you agree with the procedures for dealing with failure to comply with civil penalties?

Yes.



Q62 - Do you agree with the proposed enforcement process for this obligation?

Yes.

Q63 - Is the appeals process clear and reasonable?

Yes.

Q64 - Do you agree with the level and type of punishment proposed for criminal offences?

Yes.

Q65 - Do you agree with the overall approach the Government has taken to enforce the Carbon Reduction Commitment?

No. BCSC believes that the user of energy should be the one responsible for purchasing CRC allowances. The way regulation is currently structured - where consumers of energy may not be responsible simply because they are not counterparty to the energy contract - is the wrong approach. We think that Government needs to reconsider and provide a structure for fairness around this vital issue.

BCSC is also concerned by some of the financial implications of the scheme. These impact working capital at a time when our organisations are facing very tight budgets and reduced cash flow. Two aspects of the CRC as it is presently designed cause us concern: 1. the financial outlay required for two years in April 2011. 2. the lag time between when allowances must be purchased and when revenue is returned to organisations. The revenue mechanisms of the CRC require industry to surrender large amounts of capital when it is least capable of doing so and when additional money for carbon improvements will be very difficult to secure.

The first year of the scheme will require organisations to make a double allowance payment. This is not an insignificant financial outlay for companies in good times but it is only magnified by present economic situations. We are concerned that companies may become so squeezed by the costs of administering the CRC and the requirements of a double payment for allowances that they may not be able to undertake the building improvements that are necessary for carbon reduction.

Secondly, there is a sixth month gap between when allowances are purchased and when revenue is recycled to participants (from the previous year). This withdrawal of working capital from businesses hampers their ability to carry out the kinds of improvements that will make the CRC work. We recommend that the CRC be modified to require payment for allowances only after performance has been assessed. This will free up working capital and enable organisations to improve their cash flow. It is an approach that will have benefits not only during difficult times but also when the economy has improved.

Chapter 12 - Fees and Charges

Q66a - Do you have any comments on the approach set out in charging proposals?

Q66b - Do you have any comments on the approach set out in the draft of Schedule 23 of the CRC order?

Q66c - Do you have any comments on the approach to audit charges?