

A whiter shade of green



Proposed changes to two Government environmental initiatives that affect the commercial property sector should make the schemes simpler to operate - but not much.
Neil Sago reports

The Government recently proposed changes to various environmental initiatives. Two of the most significant for the commercial real estate sector relate to Feed-in Tariffs (Fits) and the Carbon Reduction Commitment Energy Efficiency Scheme (CRC).

At the end of 2010, at the Government's request, an impressive alliance of the major property industry bodies made some key recommendations to simplify the CRC. These were to create a simple retrospective carbon tax and encourage energy-efficient behaviour, with clearer reputational incentives such as revision of the CRC league table, extending the use of Display Energy Certificates and making carbon reporting mandatory by directors in accounts.

The recommendations would have ensured a simplification of the CRC, while also retaining the scheme's original objective of reducing the carbon footprint of large non-energy-intensive organisations and meeting the Coalition's objectives of raising annual tax revenue from allowance sales of £1bn by 2014-15, and reducing the regulatory burden on businesses.

Admittedly, the recommendations were politically ambitious, but they did recognise the way the commercial real estate market operates.

One of the property industry's greatest frustrations with the CRC rules is that they fail adequately to encourage energy-efficiency in the context of landlord-tenant relationships. No major changes are proposed to the existing rule that landlords remain responsible for supplies of energy to their tenants. The Government remains of the view that landlords are better placed to implement the most cost-effective energy-efficiency measures than tenants.

Lacking commitment

Regardless of whether that is correct in the general sense, the Government's view is flawed. The lack of connection between the level of CRC costs imposed on the landlord and the efficiency of a tenant's premises means that tenants are reluctant to accept many CRC costs. If tenants will not accept liability for CRC costs they will have little incentive to adopt energy-efficiency proposals made by landlords.

The Government has opted to pursue less radical changes than those recommended by the sector. Will they make the scheme easier to operate? Yes, but not dramatically.

In addition to reducing the administrative burden of the scheme, the proposals include the simplification of rules on CRC organisational structures.

At the beginning of each phase of the CRC the top parent organisation must still notify the Environment Agency of the overall structure of its group. However, the parent will now have the option, known as disaggregation, to split the group into separate CRC participants in a way that better reflects its 'natural business units'.

Each disaggregated unit is then treated independently of others in the organisation's group. Presently, disaggregation is only possible if each unit would still qualify as a CRC participant in its own right. The Government believes this change could enable greater alignment of the CRC with standard organisational boundaries.

It will no longer be necessary to consider electricity supplied to sites covered by a Climate Change Agreement or the EU Emissions Trading Scheme. This should reduce duplication. The types of electricity meter involved in the qualification process will be changed to make this simpler. These changes may mean fewer organisations qualify for the CRC. If so, the electricity consumption threshold levels for qualification may need to be lowered to maintain the level of participation in the scheme.

The rules on how the CRC applies to trusts will be amended so that responsibility for compliance is allocated to the entity with the genuine commercial interest in the property and its use.

The plan to recycle revenue from the sale of allowances back to participants has been abandoned. It is proposed that the auctioning of a capped number of allowances should be replaced with two fixed-price sales each year - a cheaper forecast sale and a more expensive retrospective sale. This will provide more budgetary certainty.

Participants will only need to report on electricity and gas, and - only where they are used for heating - kerosene and diesel, rather than the 29 fuels previously covered.

Fits and starts

Some landlords and tenants have been thinking about how to take advantage of Fits. The tariffs provide an incentive for owners to install renewable energy technology. But recent proposals mean that many larger projects are being shelved.

Fits enable large electricity suppliers with government subsidies to pay smaller generators for renewable energy. There are two tariffs: a generation tariff, where the electricity company pays the Fit installer for all power generated; and an export tariff, where the electricity company pays the Fit installer a smaller extra amount for the power the landowner does not use.

Initially, the scheme took off quickly in the residential sector. The highest Fits - and therefore most existing small Fit installations - are for solar panels. Commercial property owners had been gearing up to use Fits in relation to solar, but on a larger scale than seen in the residential context.

In recent months, however, the Government has brought forward a review of the scheme and is threatening to cut back on larger solar Fits, presumably because they were becoming too costly to subsidise. The proposal has caused many Fit projects for commercial sites to be abandoned.

Neil Sagoo is a partner at Maples Teesdale