

Clinging to Confidence: Carbon Reduction, Tax Stability and Regulatory Domain

Amy Lawton, Lecturer in Law, Lancaster University

Abstract

It is perhaps common sense to argue that stable regulation (and indeed taxation) is, generally, more efficient regulation. What is less clear are the wider impacts of instability on taxpayer/ regulatee engagement. This paper aims to shed light on the CRC Energy Efficiency Scheme, a UK green tax and energy efficiency scheme that targets high-energy consumers in a bid to reduce carbon dioxide emissions. By drawing on an original, empirical study on the CRC Energy Efficiency Scheme, this paper explores some of the practical and political implications of an unstable, environmental regulatory regime.

Introduction

Climate change linked to anthropocentric impacts is widely (if not universally) acknowledged as having the potential to catastrophically damage the planet. The range of regulatory responses to climate change has been varied, operating on multiple governance levels, and taking various forms. One of these responses is green taxation. From an environmentalist standpoint, a green tax should be as engaging and accessible as possible to allow taxpayers to reap the environmental benefits, whether that be increased awareness and information, or an engagement with a financial driver created by the environmental tax. From a revenue standpoint, a greater environmental engagement naturally leads to a drop-in tax revenue as the environmentally harmful base being taxed grows smaller (for example waste,¹ or energy²). There is therefore a delicate balance at play between the environmental and revenue functions of environmental taxation. This paper tells the story of the CRC Energy Efficiency Scheme (the CRC);³ a green tax introduced to target energy and help contribute to climate change targets. The revenue element of the CRC is also not to be dismissed, as the tax brings in almost £1bn to the Treasury each year.

The central premise of this paper draws on the idea that constantly changing regulation is inefficient regulation.⁴ It might seem like common sense to say that unstable regulation is inefficient regulation, but what is less clear, is the wide-ranging impacts that an unstable environmental tax regime have on regulatees. Drawing upon an original study on the CRC, we will work through some of the practical impacts that stem from instability, as well as exploring the emotive responses of regulatees to consider how its instability has negatively affected levels of regulatee engagement. As such, this paper has wide-ranging interest for policy-makers and scholars alike. By exploring the story of the CRC, as told by the regulatee, lessons can be learnt for future regulatory regimes, environmental or otherwise.

¹ As in the Landfill Tax.

² See for example the Carbon Reduction Commitment, or the Climate Change Levy.

³ The CRC was not introduced in primary legislation. There may be some questions as to whether the CRC is actually a tax. For the purposes of this paper, it will be assumed that the CRC is a tax or in the very least, a de facto tax. Indeed, in the recent Spring Budget, the CRC was dealt with under “energy and environment taxes”; HM Treasury, Spring Budget (2016), at 7.32. See also a previous discussion of this in: A. Lawton, “Green Taxation Theory in Practice: the 2012 Reforms of the Carbon Reduction Commitment” (2016) 18(2) ELR 126.

⁴ For a general discussion of “good regulation” see R Baldwin, M Cave and M Lodge, *Understanding regulation: Theory, strategy and practice* (2nd Edition) (OUP, 2012); R Baldwin, M Cave and M Lodge, *The Oxford Handbook of Regulation* (OUP, 2010) and, M. Lodge and K. Wegrich, *Managing Regulation: Regulatory Analysis, Politics and Policy* (Palgrave MacMillan, 2012).

By way of summary, CRC participants are required to purchase and surrender one allowance per tonne of carbon dioxide that they emit;⁵ and the revenue from the surrendering of these allowances goes to the Treasury.⁶ What makes the CRC such an interesting example of regulatory efficiency is that the regime has been altered by successive governments on an almost annual basis since its inception in 2010. These reforms include: the first CRC order in 2010;⁷ a 2012 consultation;⁸ a series of reforms in 2013;⁹ a further consultation in 2015;¹⁰ as well as two additional amendment orders.¹¹ In March 2016, the abolition of the CRC was announced in the Spring Budget.¹² As such, the CRC will end following the 2018-2019 compliance year,¹³ and will be replaced by the Climate Change Levy to recoup the lost revenue.¹⁴

Academic literature tells us that tax stability is important on three key levels: stability of the rule of law;¹⁵ stability of property rights;¹⁶ and institutional stability.¹⁷ This paper will draw on all three areas to highlight the consequences caused by the CRC's instability. Further, a theory with particular resonance with the lessons learnt from the CRC is put forward by Hayek, which states that:

“But the important point is that all coercive action of government must be unambiguously determined by a permanent legal framework which enables the individual to plan with a degree of confidence and which reduces human uncertainty as much as possible.”¹⁸

Deriving from legal literature on the rule of law, Hayek focuses on the need to achieve a permanent legal framework, in which there is an unchanging body of rules to provide certainty for those subject to them. This paper will further argue that the instability of the CRC has led to several common sense practical impacts including, but not limited to, lower levels of engagement and understanding. What is even more interesting is the fact that taxpayers are aware, take note and follow tax instability. An unstable tax regime contributed to the perception and opinion formed about them. Stokes looks at how a regulatory regime is packaged and why this is important. Her work considers the role of the regulatory domain and the regulatory dexterity.¹⁹ When considering her ideas in light of stability, the regulatory domain is the stable and the dexterity is the changing. The presence of a regulatory domain can communicate the adequacy of a regulatory regime (such as the case with fracking, where the government has chosen to rely on existing laws to regulate the area)²⁰ or inadequacies (such as stagnation). Through a combination of economic theory and regulatory packaging, this paper posits a novel method to analyse environmental taxation and environmental regulation more generally.

⁵ The CRC is very complex and this is a simplification of the scheme for understanding purposes. Full details of the scheme available at: The CRC Energy Efficiency Scheme Order 2013 (2013/1119).

⁶ HM Treasury, ‘Spending Review 2010’, 62.

⁷ The CRC Energy Efficiency Scheme Order 2010 (2010/768).

⁸ DECC, ‘Consultation on simplifying the CRC Energy Efficiency Scheme’ (March 2012).

⁹ DECC, ‘Government Response to the Consultation on simplifying the CRC Energy Efficiency Scheme’ (December 2012); implemented in The CRC Energy Efficiency Scheme Order 2013 (2013/1119).

¹⁰ HM Treasury, ‘Reforming the Business Energy Efficiency Tax Landscape’ (September 2015).

¹¹ CRC Energy Efficiency (Amendment) Order 2011 (SI 2011/234); CRC Energy Efficiency (Amendment) Order 2014 (SI 2014/502).

¹² HM Treasury, ‘Policy Paper: Spring Budget’ (2016) at para. 4.14.

¹³ HM Treasury, ‘Reforming the business energy efficiency tax landscape: response to the consultation’ (March 2016) at para. 3.4.

¹⁴ HM Treasury, above fn.12, para. 3.5.

¹⁵ FA. Hayek (edited by R. Hamowy), *The Constitution of Liberty* (University of Chicago Press, 2011)

¹⁶ W. Lippmann, *The Good Society* (Transaction 1938)

¹⁷ D. North, *Institutions, Institutional Change and Economic Performance* (CUP 1990)

¹⁸ Hayek, above fn.15 at 331-332

¹⁹ E. Stokes, ‘Regulatory Domain and Regulatory Dexterity: Critiquing the UK Governance of ‘Fracking’’ (2016) 79(6) MLR 961

²⁰ Stokes, above fn.19

Overall, the story that this paper tells starts with a practical impact of instability: a burden on resources. Higher rates of instability produce increased costs in time and money for regulatees as they struggle to keep up with changes to the scheme. Increased instability produces a drop-in regulatee engagement. The tax has a dual motive in reducing carbon emissions but also seeks to alter the behaviour of the taxpayer. A drop in engagement caused by instability arguably produces a smaller behaviour shift. In addition, the instability of the CRC has broader impacts on how the government is perceived. When regulatees perceive what are, in their eyes, unnecessary changes to the CRC, they attribute a level of blame on the government. This negative emotion undermines the motives of the government and undermines the wider green policy that overarches the CRC scheme. To combat this, policymakers should consider how the CRC has been packaged to regulatees. Instability forms part of this package. By introducing a level of stability, much in the same way as the regulatory domain put forward by Stokes, policymakers could communicate a legitimate green policy to regulatees that can be engaged with.

This paper will first introduce the CRC scheme and its changes to readers. Next, I will turn to the methodology behind the study on the CRC on which this paper is based. In the third part of this paper, the story of the CRC and its instability will be told in two parts. First, this paper will consider the practical impacts of instability on the scheme: that regulatees are unable or less willing to engage with the scheme. Second, that the perceived instability is linked back to policymakers in the regulatees' eyes; and that this has wider repercussions for the whole of green policy. Finally, this paper will draw together the story of the CRC, arguing that policymakers must promote a stable, regulatory domain for green policy. Individual regime stability contributes to this image of stable green policy.

The Carbon Reduction Commitment

The CRC targets high consumers of energy (not already covered by other climate change linked regulatory schemes, such as Climate Change Agreements,²¹ or the European Emissions Trading Scheme),²² to reduce their carbon emissions. Once a participant meets the qualification criteria for the scheme (consumption over 6000MWh of energy, and a special type of meter fitted to read energy consumption),²³ the scheme is mandatory, and the participant must register for the CRC and comply.

The CRC operates by effectively taxing participants on their carbon emissions,²⁴ through the purchase and surrender of allowances. The participant is required to purchase and surrender one allowance for every tonne of carbon dioxide emitted.²⁵ A difficulty with the CRC lies in the fact that it bases its initial measurements on energy consumption (i.e. qualification is based on energy consumption), yet the tax is based on carbon emissions. This requires participants to convert their energy consumption into emissions data using government issued emissions factors.²⁶ In England, the CRC is enforced and regulated by the Environment Agency.²⁷

²¹ "Climate change agreements are voluntary agreements made by UK industry and the Environment Agency to reduce energy use and carbon dioxide (CO₂) emissions. In return, operators receive a discount on the Climate Change Levy (CCL), a tax added to electricity and fuel bills." Definition source: <https://www.gov.uk/climate-change-agreements--2> accessed 13/07/2015

²² The CRC Energy Efficiency Scheme Order (2013/1119), schedule 1, paragraphs 28 and 29

²³ CRC Order 2013, article 3

²⁴ I say effectively because a) there are debates as to whether the CRC is a tax; and b) the 'tax' is raised through the purchase of allowances, rather than through a tax bill.

²⁵ The CRC Energy Efficiency Scheme Order (2013/1119), article 36(1).

²⁶ The CRC Energy Efficiency Scheme Order (2013/1119), article 33(1) and schedule 1, paragraph 33.

²⁷ Above n.12, Article 9; for Wales, this is the Natural Resources Body; for Scotland, this is the Scottish Environment Protection Agency; and for Northern Ireland, this is the chief inspector.

The regular changes to the CRC form the contextual foundation to this paper. Initially, the CRC was criticised by the Coalition Government for its “administrative burdens” and complexity.²⁸ The scheme as originally conceived covered almost 30 fuels, required reporting on 90% of emissions (as opposed to 100% reporting), and ranked participants in an annual League Table based upon their performance. Following a public consultation, the CRC was reformed significantly in 2013, “to streamline and simplify the scheme to create a leaner, simplified and refocused CRC.”²⁹ Reforms of note include a drop in the scope of the CRC from 19 fuels to two (electricity and gas) and the abolition of the Performance League Table. For the large part, these changes came into effect at the start of the second phase in 2014. Since then, the CRC Energy Efficiency (Amendment) Order 2014 has come into force, making smaller changes to the scheme.³⁰ Finally, in 2016, the scheme was abolished, as part of a larger energy tax reform, and the CRC will end following the 2018-2019 compliance year.³¹ It is following the announcement of the CRC’s abolition that the main part of the CRC study took place.

Although the CRC will now end in 2019, it nevertheless provides an interesting case study of green taxes. In addition, the Climate Change Levy will be expanding to cover the scope of the CRC from 2019 onwards meaning questions of regulatee engagement and regulatee behaviour in this field will continue to resonate beyond the time of the CRC. These insights into regulatees and how they react to regulation will have a wider application to other green taxes, and is especially important given the lack of empirical socio-legal work in environmental law.³²

Methodology

Two phases of interviews were undertaken for this study: a pilot study; and a main study.³³ The initial pilot study of 8 interviews was undertaken between October and December 2015. The interviewees for the pilot study were all university participants of the CRC and were selected at random to be contacted. This was done by collating each university participant, identified through the CRC 2013-2014 Annual Report Publication,³⁴ onto a spreadsheet and using a random number generator to generate the corresponding university to be contacted.³⁵ Out of 50 universities contacted by email, 8 positive responses were received, and the interviews took place both over the phone and face-to-face. The interviews were semi-structured, using an interview schedule as a basis.³⁶

Following this pilot, a further 23 interviews were completed between January and April 2016. Initially, recruitment for these interviews was done at random by letter (again using the ARP and a random number generator). Despite 90 letters being sent to participants of the CRC, no positive responses, and only one negative response was received. This was disappointing.³⁷ I then contacted the regulator for

²⁸ DECC, ‘Consultation on simplifying the CRC Energy Efficiency Scheme’ (March 2012) 6.

²⁹ DECC, above fn.28, at 6 and 11.

³⁰ CRC Energy Efficiency Scheme (Amendment) Order 2014 (SI 2014/502).

³¹ HM Treasury, ‘Budget 2016’, para 4.14.

³² On which, see: E. Fisher et al., ‘Maturity and Methodology: Starting a Debate about Environmental Law Scholarship’ (2009) 21 JEL 213.

³³ H. Sampson, ‘Navigating the waves: the usefulness of a pilot in qualitative research.’ (2004) 4(3) *Qualitative Research* 383-402.

³⁴ Available via: <https://www.gov.uk/government/publications/crc-annual-report-publication-2013-to-2014> accessed December 15, 2016.

³⁵ J. Ritchie et al., ‘Designing and Selecting Samples’ in C. McNaughton Nicholls, and R. Ormston, (eds) *Qualitative research practice: A guide for social science students and researchers* (Sage, 2013).

³⁶ S. Kvale, *Doing interviews* (Sage, 2008); K. Roulston, *Reflective interviewing: A guide to theory and practice* (Sage, 2010).

³⁷ Y. Baruch and BC. Holtom, ‘Survey response rate levels and trends in organizational research’ (2008) 61(8) *Human relations* 1139-1160.

the scheme and asked for an advert to be placed in the regulatee newsletter.³⁸ This approach was more fruitful. The interviewees for the main part of the study were therefore self-selecting, and were a mix of regulatees, advisers (i.e. consultants), and solicitors. The regulator was also interviewed, with questions focussing on the regulatee perception of the CRC. The demographic of the taxpayers varied. Interviewees came from a range of sectors including: higher education; construction; utilities; retail; transport and logistics; hospitality; the NHS; and local authorities. The study therefore consists of data from both the public and private sector. The data pool also includes organisations that only just fall under the scheme, as well as emitters at the top of the spectrum. The organisations emanate from across the UK and are not geographically limited.

Overall, 31 interviews were undertaken by phone and face-to-face. The interviews were between 40 and 75 minutes in length, with an average of 50 minutes. The mechanical approach to analysing these interviews involved transcribing and coding the data, to discover the pertinent themes of the data.³⁹ Importantly for this paper, the interviewees were not asked directly for their opinion on the reforms to the CRC other than: "What can you tell me about the 2012 reforms of the CRC?" Initially, this was a question that was introduced to gauge understanding of the CRC. However, it soon emerged that the reforms to the CRC played a fundamental role in the level of regulatee engagement with the scheme. 28 out of 31 of the participants discussed the changing nature of the scheme without being directly questioned.

Data Analysis

I had not set out to explicitly discuss the number of reforms to the CRC with my interviewees. The multiple reforms did not form one of the questions asked of the interviewees. This aspect of the CRC was, however, raised by 27 out of 31 interviewees without stimulus.⁴⁰ Four overarching themes that are relevant to notions of stability and domain/dexterity emerged from the data: a) the changing landscape of the CRC is attributable (by the interviewees) to political interference; b) the multiple changes to the CRC inhibit participant/advisor understanding of the scheme; c) the changes reduce the levels of engagement with the scheme by participants; and, d) there is an emotive disconnect with the CRC, and indeed wider policy, due to its instability. These four themes will now be explored in turn before using the relevant literature as a basis for analysis.

As I set out in the introduction, this paper draws upon the ideas of stability and regulatory domain and dexterity; building upon the work of Stokes and wider economic literature. These ideas resonate with the changes to the CRC, and specifically, regulatee reactions to the numerous changes that have taken place during the scheme's life. Economics literature argues that a stable framework is necessary for the formation of regulatee expectations and economic growth; Whilst Stokes using regulatory literature looks at how the regulatory landscape in a field is packaged by government. The two ideas are drawn from two different fields: economic literature and regulatory literature. It should be noted, that whilst Hayek and wider economic literature can be traced back to traditional theorists such as Hume and

³⁸ Following an interview with the regulator, a short advert of the study was placed into a participant email update in March 2016. This advert contained contact details which allowed participants to come forward if they wanted to be interviewed.

³⁹ A. Coffee and P. Atkinson, *Making Sense of Qualitative Data: Complimentary Research Strategies* (Thousand Oaks, CA: Sage Publications, 1996); and T. Basit, 'Manual or electronic? The role of coding in qualitative data analysis.' (2003) 45(2) *Educational research* 143-154.

⁴⁰ Interviewees will be identified by an identifier code which has been attributed to each interview. An example of this is CRC M1. The letters prior to the number denote which pool of interview the interview is from. 'P' is an interview from the pilot study; 'M' an interview from the main study; and, 'S' an interview with a solicitor.

Smith;⁴¹ Stokes relies heavily on policy documents (rather than other academic literature) as a basis for her argument. By bringing the two ideas together, this paper builds upon the debate set out by Stokes and Hayek and analyses the two ideas in light of an existing taxation scheme. This literature, along with other, relevant literature, will be woven through the study data to illustrate the effects of instability on the CRC.

i. Taxpayers are perceptive

The concept of regulatory domain is coupled with regulatory dexterity.⁴² Stokes discusses how the use of domain and dexterity is important in terms of how regulation is packaged by government, using fracking (the process – hydraulic fracturing - of injecting water at high pressure into underground rocks to extract oil and gas) as a case study. Stokes relies upon policy documents relating to fracking to situate her discussion. Domain and dexterity are antithetical in their meaning; in terms of time, domain represents continuity, whilst dexterity is change.⁴³ In terms of focus, domain is broad, whilst dexterity is specific. Regarding regulatory response, domain is resisting reform, whilst dexterity introduces new, specific legislation.⁴⁴ The two concepts are therefore contradictory.

The high level of change seen under the CRC is more reflective of regulatory dexterity than domain. My participants suggested that political interference with the scheme was responsible for the high number of changes:

“So, I actually felt sorry for the people that were trying to do it because they didn’t know what they were doing – you’ve got the political masters changing the rules.”
(CRC P8)

Economic literature has traditionally advocated against government interference with the economy.⁴⁵ Smith’s concept of justice also limited the role of government intervention to the protection against foreign foes and the maintenance of justice (which included property stability).⁴⁶ Government intervention should be limited to those interventions that protected this stability, to the point that government intervention is seen as a positive when it protects these interests.⁴⁷ Lippmann provides an alternative viewpoint through a proprietary rights lens:

“Only by recognizing that legal rights are declared and enforced by the state is it possible to make a rational examination of the value of any particular right. The latter-day liberals did not see this. They fell into a deep and confusing error when they failed to see that property, contracts, corporations, as well as governments, electorates, and courts, are creatures of law, and have no existence except as bundles of enforceable rights and duties.”⁴⁸

Lippmann is arguing that these fundamental property rights (as well as other rights such as those under contracts) are, in fact, created by laws; and, as such, can be modified by law.⁴⁹ This would indicate that there are circumstances which would justify the modification of laws and the introduction of instability (regulatory dexterity). Hayek agrees with this viewpoint in the sense that the economic freedom

⁴¹ This chapter will also draw on D. Hume, *A Treatise of Human Nature* (Oxford: OUP, 2000); and A. Smith, *Wealth of Nations Books IV-V* (London: Penguin, 1999).

⁴² Stokes, above fn.19.

⁴³ Stokes, above fn.19, at 962.

⁴⁴ Stokes, above fn.19, at 962.

⁴⁵ Hume, above fn.41, chapter 2

⁴⁶ Smith, above fn.41, Book V

⁴⁷ Adam Viner, ‘Adam Smith and Laissez Faire’ (1927) 35(2) *Journal of Political Economy* 198, 220.

⁴⁸ Lippmann, above fn.16, 244.

⁴⁹ Lippmann, above fn.16, 245.

advocated by Hume and Smith means economic freedom *under the law*, rather than an “absence of all government action”.⁵⁰ Some political and legislative interference is therefore to be expected in taxation.

However, since this “political interference” was “constantly changing” (CRC P8), participants considered there to be a higher than normal amount of reforms occurring to the CRC. This in turn meant that the changes were perceived as a criticism of the CRC:

“A lot of the problems with CRC is the fact that they’ve changed the rules. When it came in in 2010 and there was a 2010 order, a 2011 order, a 2013 order and a 2014 order so it’s a lot of changes.” (CRC R1)

Since the frequency of changes was so high, this was considered political “tinkering” with the scheme (CRC S3, CRC S5). One interviewee linked this tinkering to the wider green taxation landscape; where they stated that the government has “a habit of changing taxation” (CRC M6). The language surrounding the changes was not impersonal. Participants thought the changes were intimately linked with government interference

This is not to say that there is not a role for regulatory dexterity in a regulatory field. Amongst the backdrop that some government intervention is to be expected in the economic field,⁵¹ regulatory domain and dexterity can work well together. They can provide justification for one another in the sense that “[o]ne reason for invoking 'dexterity', for example, is that it is underpinned by an ostensibly sound and solid 'domain'.”⁵² Dexterity and domain can also protect each other from criticisms: an example provided by Stokes is that any concerns that the law is too broad or slow can be alleviated by the swiftness of regulatory dexterity.⁵³ In essence, the two concepts are complementary to one another, despite their differences.⁵⁴ Stokes argues that, with fracking, both approaches are taken as part of a policy agenda: a resistance to reform the existing legislative framework under which fracking arguably falls (regulatory domain); whilst introducing specific pieces of legislation to plug any gaps left by that overarching regulatory framework (regulatory dexterity).⁵⁵

The CRC has a single piece of parent legislation – the Climate Change Act 2008⁵⁶ – but sits within, on the national level, a wider energy consumption and carbon emissions regulatory framework and, at the international level, a further host of climate change linked emissions agreements. Further afield still are energy efficiency regulations such as other taxes on energy consumption/ carbon emissions include the European Emissions Trading Scheme; and the CCL (including the regulation of Climate Change Agreements).⁵⁷ Moving away from taxes, the CRC sits alongside other regulatory schemes such as the Energy Savings Opportunity Scheme (ESOS). Using this wider definition of the ‘energy efficiency domain’, I would suggest that the regulatory domain, whilst forming part of a policy agenda, is also a physical projection of that policy, and in this case green policy. A broad, overarching, stable framework allows those who are regulated (including taxpayers) to understand the position of the government and engage with it.

Interviewees have explicitly attributed the changes to the CRC to the government meaning that they make the link between the changes and policy. This sort of connection may be somewhat unsurprising and what I would otherwise expect even in the absence of my data. What this means, however, is that a strong and stable regulatory domain is therefore a reflection of stable policy underlying the regulatory

⁵⁰ Hayek, above fn.15, 329.

⁵¹ Hayek, above fn.15, 329.

⁵² Stokes, above fn.19, 983.

⁵³ Stokes, above fn.19, 984.

⁵⁴ Stokes, above fn.19, 984.

⁵⁵ Stokes, above fn.19.

⁵⁶ Climate Change Act 2008

⁵⁷ Introduced in the Finance Act 2000.

field. As will be discussed below, this has impacts on the emotional response of the CRC participant towards the government and policy. First, two practical impacts of the changes will be considered: the impact on understanding, and the impact on engagement with the scheme.

ii. *Regulatees are not as willing/ able to engage with the CRC*

The instability of the CRC has influenced regulatee engagement in two key, practical ways: Regulatees have a lower level of understanding of the scheme; and, regulatees emotionally disconnect from the scheme and are less willing to engage. It is unsurprising that the constant changes to the CRC have affected the understanding participants have of the scheme. Two main themes emerged from the data regarding such knowledge. The first was that the frequency of the changes made it hard to ‘catch up’, and the second was that participants had been able to settle into a routine because there had been no substantive changes to the scheme for the last 2-3 years (apart from the abolition of the scheme). This lack of understanding or currency under the CRC makes it difficult for participants to know how to behave or comply with the scheme.

In the institutional literature, institutions “are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction.”⁵⁸ As such, institutions “reduce uncertainty” by providing a structure that shapes everyday life so that people know how to behave – for example, North talks of how we know how to drive a car, how to conduct a sales transaction, and how to start a business.⁵⁹ The same could be said of taxes – institutional certainty tells us how we pay our taxes. If, as is the case with the CRC, that institutional stability is lacking, then this could affect the participants’ ability to know how to conduct themselves under the scheme. Once again, this institutional stability should not come at the expense of stagnation. North argues that change is necessary:

“The major role of institutions in a society is to reduce uncertainty by establishing a stable (but not necessarily efficient) structure to human interaction. But the stability of institutions in no way gainsays the fact that they are changing. From conventions, codes of conduct, and norms of behaviour to statute law, and common law, and contracts between individuals, institutions are evolving and, therefore, are continually altering the choices available to us [...] institutions typically change incrementally rather than in discontinuous fashion.”⁶⁰

The difficulty here lies in the character rather than the volume of changes.⁶¹ As with the rule of law approach adopted by Hayek, it is not the fact that the law is changing creates the problems. Following institutional stability, changes come incrementally. In the case of the CRC, therefore, it is important to avoid regular overhauls of the scheme that would then alter how much tax participants would be paying under the scheme. Smith has also considered this concept, as he draws on the idea of institutions in his own work.⁶² He argues that if taxation is to be imposed, then it should be in accordance with the “generally accepted” canons of taxation.⁶³ The key canon of interest here is the canon of certainty. Smith argues that “the time of payment, the amount to be paid ought all to be clear and plain to the contributor and to every other person”.⁶⁴

⁵⁸ North, above fn.17, 3

⁵⁹ North, above fn.17, 3-4

⁶⁰ North, above fn.17, 6.

⁶¹ Hayek, above fn.15, 331.

⁶² A. Skinner, *A System of Social Science: Papers Relating to Adam Smith* (Clarendon Press 1979), 209.

⁶³ Skinner, above fn.62, 216.

⁶⁴ Smith, above fn.41.

With annual changes to the scheme in the first half of its life, some of this certainty is lost as participants struggled to keep track of the CRC rules to ensure compliance (CRC P8). Effort and resources were required to follow the changes and understand them (CRC M15).

“Because the person working in their business, who’s not from an energy background, and hasn’t been kept in the loop with the changes in the legislation - I really don’t think would have any chance of truly understanding how CRC works.” (CRC M3)

This interviewee discusses the need to closely follow the changes in the CRC, to have a chance of understanding the scheme. The changes were viewed as a burden that acted as a drain on expertise, time and physical resources.⁶⁵ Participants have struggled to keep up with the significant changes (CRC R1), and so struggled to understand the scheme (CRC P3). The frequent changes also placed a burden on participants, as resources (for example time and expertise) were needed to understand the CRC. Solicitors and consultants also raised the problem of coming to grips with the scheme:

“Because there’s been so many changes and there’s been so many changes of terminology, it is very difficult sometimes to provide clients with very clear advice without boring them and going into lots of detail.” (CRC S2)

The changes make it difficult for advisors to give concise, and accurate, advice on the CRC whilst engaging their clients. Advisors also had a “tough three or four years” coming to grips with the scheme relearning the rules as they changed (CRC M7). Whilst another participant believed that the scheme was too complex for consultants to understand:

“You’ve got a compliance scheme, you set yourself up, then suddenly they change the rules. Then you’ve got to change again. There’s a lot of time and effort and you can’t afford to get it wrong. And I’m also aware that some of the consultants out there did not understand it. I know some people took advice from consultants which was misleading.” (CRC P8)

The regularity with which the CRC has changed over the years has led to difficulties in understanding the scheme, both by participants and by their advisors. This level of regular reform and regulatory complexity (even for specialist advisors) may be of concern, and it has potential impacts throughout the scheme in terms of compliance and engagement. Any incorrect understanding would filter down from the advisors to the participants. The regularity of the changes is also resource heavy and requires both participants and advisors to actively engage with each issue of new CRC legislation enacted to ensure a current understanding of the scheme.

The CRC scheme had settled down following the reforms which were implemented at the start of phase 2 (April 2014), and no further changes were applied to the scheme prior to the announcement of its abolition in March 2016. The CRC therefore experienced its first taste of stability between April 2014 and March 2016. This period of stability had been picked up by participants, in what they referred to as “business as usual” (CRC M7) phase:

“Only now really, especially post-ESOS do we feel like we’re finally in a position where CRC has settled down. It’s become a routine. It’s been more incentivised. There’s more focus on energy efficiency improvement, etc.” (CRC M10)

Several interviewees expressed negative emotion towards the abolition of the CRC purely because they did not want to see another change.⁶⁶ Specifically because the CRC will be replaced by something else

⁶⁵ One participant claimed that the CRC took around one month of staff time to comply with – which largely included “reading and understanding the regulations, which were constantly changing” (CRC P8)

⁶⁶ CRC M7, M10, M12, M13.

(CRC M12). From the data, there seemed to be a level of fear of the unknown. These responses show two things. First, that regulatees can perceive and respond positively to stability. Second, that instability coupled with the unknown has created positive emotion towards what is currently in place (i.e. the CRC), and negative emotion towards what is to come. This may prove problematic in enacting the CRC's replacement and driving regulatees to engage with it.

This negative emotion towards the abolition of the CRC has also spread to the wider scheme itself and has resulted in lower levels of engagement with the scheme. Historically, the argument put forward by Hayek for the need of "a permanent legal framework which enables the individual to plan with a degree of confidence",⁶⁷ also draws roots from property rights arguments. As a tax regime changes, the levying process also changes and can include changes in how much tax is levied and/ or the way in which the tax is levied. Stability therefore has "large consequences" for property,⁶⁸ as it will indirectly enhance any property rights.⁶⁹ It provides a "robust private sphere" for taxpayers.⁷⁰ Hume argues that one of the three fundamental laws of nature is stability of possession.⁷¹ This stability is key, he argues, to the growth of society:

"There are three different species of goods, which we are possess'd of; the internal satisfaction of our mind, the external advantages of our body, and the enjoyment of such possessions as we have acquir'd by our industry and good fortune. We are perfectly secure in our enjoyment of the first. The second may be ravish'd from us, but can be of no advantage to him who deprives us of them. The last only are both expos'd to the violence of others, and may be transferr'd without suffering any loss or alteration; while at the same time, there is not a sufficient quantity of them to supply every one's desires and necessities. **As the improvement, therefore, of these goods is the chief advantage of society, so the *instability* of their possession, along with their *scarcity*, is the chief impediment.**" (Emphasis added)⁷²

The stability of possession of property is therefore key for societal security; and, according to Hume, this stability must be inflexibly applied to the whole of society.⁷³ More specifically to business engagement and stability, Smith argues:

"Commerce and manufactures can seldom flourish long in any state which does not enjoy a regular administration of justice; in which people feel themselves secure in the possession of their property..."⁷⁴

Smith is arguing here that without some level of stability in possession, business cannot flourish. More recent literature also considers the role of tax stability on property. An unstable regulatory regime, and particularly a tax regime (which requires money to be paid to the Treasury), does not provide this property stability. The Mirrlees Review reiterated the importance of stability, stating that, alongside simplicity and neutrality, stability was a factor to be considered when assessing a tax system.⁷⁵ As they put it:

"Tax systems that continually change impose greater compliance costs on those who are taxed. They lead to difficulties in making long-term plans. Lack of stability can impact

⁶⁷ Hayek, above fn.15, 331-332.

⁶⁸ J. Snape, 'Stability and its significance in UK tax policy and legislation' [2015] BTR 561, 577.

⁶⁹ Snape, above fn.68, 574.

⁷⁰ Snape, above fn.68, 574.

⁷¹ Alongside transfer of property by consent and the performance of promises: Hume, above fn.41, 337.

⁷² Hume, above fn.41, 313.

⁷³ Hume, above fn.41, 322.

⁷⁴ Smith, above fn.41, Book V.

⁷⁵ S. Adam et al, *Tax by Design: The Mirrlees Review* (Oxford: OUP 2011), 22.

negatively on investment decisions by firms and on saving and investment decisions by individuals.”⁷⁶

Regulatory stability “is widely considered to be important to promote investment in general”.⁷⁷ Black argues that businesses should be able to operate in “a stable regulatory environment”.⁷⁸ It is the negative impacts of instability in this long-term engagement that is particularly interesting. Importantly, I am not advocating the permanent stagnation of legislation,⁷⁹ rather, a level of stability that allows for taxpayer investment into the particular regulatory scheme. Whilst the abolition of the CRC, and the unknown that follows, has created some positive feelings towards the CRC; there has largely been a lack of engagement with the changing scheme. This disengagement can be categorised into two camps: a general disengagement with the scheme; and an unwillingness to invest financially into the scheme.

Stability of policy can create co-operation and engagement under a regulatory scheme.⁸⁰ The converse, with the CRC, saw my participants “fed up” (CRC R1), “discouraged” (CRC P3), an acceptance that the CRC is just a cost that needs to be paid (CRC M6), and loss of confidence in the scheme (CRC S3). One interviewee stated:

“It just bores people. When you do a seminar explaining the rules and what has changed year on year, people actually fall asleep.” (CRC M8)

Thus, I saw a general disengagement with a scheme that constantly changes. The emotions of being bored and fed up would also indicate that this the changes are not a new thing for participants, and the fact regulatees have become bored with constant change indicates the presence of too much change.

This disengagement extends to investing into the scheme and measures which promote energy efficiency. The nature of taxation is that it deprives the taxpayer (the regulatee) of their own property, which is justified through the consent of their elected representatives.⁸¹ Without this certainty under the CRC, investment simply will not happen. One interviewee explains:

“I think a key concern you hear over and over again is certainty and confidence. And I think all of these schemes work best if businesses have the confidence to invest in equipment and management tools and structures and so on. And I think it is difficult to do that when they’re lacking certainty and confidence.” (CRC S3)

As business cases for investment are based on returns, an uncertain scheme means that incentives could be removed, or the scheme changed in such a way that the returns are never realised. As such, regulatees are reluctant to invest into energy reducing measures for the CRC, because “there’s no certainty about their returns” (CRC S4). This was particularly pertinent due to the uncertainty of the future of the scheme, and the fact that there was the risk that the CRC would simply “go away anyway”, rendering any significant investment into the scheme pointless (CRC M5). In addition, one interviewee suggested that the link between paying the tax and reducing emissions had been lost during the changes of the scheme – meaning that they were less inclined to engage and invest in energy reducing measures (CRC M6).

⁷⁶ Adam, above fn.75, 44.

⁷⁷ L. Cotula, ‘Reconciling Regulatory Stability and Evolution of Environmental Standards in Investment Contracts: Towards a Rethink of Stabilization Clauses’ (2008) 1(2) *Journal of World Energy Law and Business* 158, 158.

⁷⁸ J. Black, ‘Forms and paradoxes of principles-based regulation’ (2008) 3(4) *Capital Markets Law Journal* 425, 430.

⁷⁹ Adam, above fn.75, 44.

⁸⁰ P. John, *Making Policy Work* (Taylor and Francis, 2011), 89.

⁸¹ Snape, above fn.68, 566; See also Hume, above fn.41, 337.

The changing landscape of the CRC therefore invokes negative emotions in the regulatee and a disengagement from the scheme. This disengagement is not only emotional but is demonstrated in an unwillingness to invest financially into the scheme. This in turn reduces the ability of the CRC to lower carbon emissions – as it is through the investment into energy efficiency projects that reductions in energy consumption (and thus emissions) can be realised. The CRC is, to some, simply a cost that is to be swallowed rather than engaged with.

Since the changes in the CRC are seen to be attributable to political interference, the disengagement not only has implications for the scheme itself, but also links back to the creators of the scheme. There is therefore a potential drop in wider regulatee confidence in the government.

iii. *How regulation is packaged is important*

Tax stability was one limb of coalition government policy. Here, one of the principles for corporate tax reform was stated to be “maintaining stability” in the Corporate Tax Road Map of 2010.⁸² Smith also made a link between stability and confidence:

“Commerce and manufactures, in short, can seldom flourish in any state in which there is not a certain degree of confidence in the justice of government.”⁸³

Hayek also argues that there needs to be a stability, which “enables the individual to plan with a degree of confidence”.⁸⁴ In the area of taxation, this is particularly pertinent as Skinner highlights:

“Government, while bound by the laws of political economy, is by the same token faced with the necessity of understanding them and being capable of implementing policies which are appropriate to particular cases [...] a point which is especially important in the discussion of taxation and debt – areas where the government is peculiarly liable to offend the people and to be constrained by the necessity of preserving some ‘degree of confidence in the justice of government’”.⁸⁵

In order to preserve a level of confidence, Snape argues that it is important to winnow out the unnecessary changes from the necessary; and it is the government’s skill at doing this that represents the strength of the tax and how the tax will be accepted.⁸⁶ It is important in this context, therefore, to consider whether the taxpayer considers the changes to the CRC to have been “necessary”.⁸⁷ Any unnecessary changes are “in the language of my times, a matter of credibility”.⁸⁸

An interesting example to illustrate this point can be seen in the changes to the CRC revenues. Although the revenues now go to the Treasury, this was not always the plan. The revenues were originally ring-fenced to go back to taxpayers/ regulatees, depending on their performance under the scheme. The government changed this in 2010, where it was decided that the revenues “will be used to support the public finances, including spending on the environment, rather than recycled to participants”.⁸⁹ In the interviewees’ minds, this has led to a drop in credibility for the scheme:

⁸² HM Treasury, ‘Corporate Tax Reform: Delivering a more competitive system’ (November 2010), 11.

⁸³ Smith, above fn.41.

⁸⁴ Hayek, above fn.15, 331-332

⁸⁵ Skinner, above fn.62, 230.

⁸⁶ Snape, above fn.68, 564.

⁸⁷ As the question is considered from the point of view of the taxpayer, there is the potential for bias. However, in order to answer this question, the study triangulates opinions from taxpayers, solicitors and advisors. This is an attempt to mitigate bias from one direction.

⁸⁸ Snape, above fn.68, 563-564.

⁸⁹ HM Treasury, ‘Spending Review 2010’, 62.

“And then as soon as the new coalition government came in, they scrapped that within about four months I think, and just said, “No, we’re going to keep the money. Whatever you pay for allowances, we’re going to keep it, because there won’t be any revenue recycling going on.” And at that point, everybody just said, “That’s a tax then.”” (CRC M16)

And;

“Yeah so the simplification. But the simplification didn’t come across as simplification so much as a tax grab.” (CRC M6)

"That's a tax then" and "tax grab" are two phrases that label the CRC in quite a negative way. The idea is that the CRC is just a government revenue raising tax. The constant changes illustrated, therefore, a shift from an energy efficiency scheme to an energy tax. This shift undermined the environmental aims behind the CRC,⁹⁰ and this was perceived by interviewees as a positive policy decision by the government to place revenue raising above environmental aims.

Once the revenue recycling element of the CRC was removed, and the revenues went to the Treasury, one interviewee questioned the motives of the government:

“But I think if it goes into general taxation and just gets lost, I think you are at risk of saying, “You’re just taxing us because you can and you’re not taxing us to actually drive change.” So, I think one needs to be very careful how one frames the taxation.” (CRC M16)

This incremental move away from the environmental aims of the CRC through various changes forms the basis of the loss of confidence. These changes have then been linked back by interviewees to the underlying policy of the government. I argue that this change has created a new standpoint regarding stability. The regulatees, in their minds, have already hypothecated the revenues of the CRC for environmental gain (i.e. those that reduced their energy consumption the most, would receive more money out of the revenues) and this change has clearly been labelled as a policy move by government; leading reduced levels of confidence.

Beyond the revenue changes of the CRC, the other reforms that the CRC has undergone are, therefore, also a reflection of government policy in the eyes of the regulatees.⁹¹ They interpret the changes and identify a shift in policy towards a policy that they are less engaged with:

“I think within the industry we’ve become very disillusioned with *what the government are doing* at the moment and it needs to be what you’re joining up to, and if the government has got the policies in place and the right reasons for doing it, and then that falls down on the institutions to play their part, then they will do. But at the moment, it’s a pure tax and *we see the government going in a certain direction*, it makes it very difficult to get people to engage really.” (CRC P5, own emphasis added)

This means that, in Stokesian terms, the packaging of regulation, in terms of how changes to the CRC have been portrayed, is important.⁹² Participants are able to interpret these changes and perceive them to be manifestations of larger policy. As such, the frequent and unnecessary changes have led participants of the CRC to question the motives and policy of the government:

⁹⁰ CRC M2; M6; M13; M16; P1; P3; P4; P5; P6; S1; S4; S5; S6.

⁹¹ In the interviews, several interviewees believed that the government was not interested in climate change regardless of their public commitment to the problem. This would indicate that the taxpayers place more weight on actions rather than words – i.e. the changing landscape of the CRC.

⁹² Stokes, above fn.19.

"From a university's point of view, certainly from some people, I think they see it as just a way of generating income and maybe more of a taxation, particularly this government, and maybe it's more about just getting the money in, rather than necessarily the commitment to improve the carbon performance of organisations, because we don't necessarily see other drivers from government on this." (CRC P6)

And;

"[T]he very strange position of a government who's making commitments about energy or carbon reduction, but at the same time effectively dismantling an otherwise successful renewables sector without thinking it through" (CRC S5)

The interviewees have identified a disparity in what the government was claiming to do, and what the reforms to the CRC and other environmental schemes have reflected in practice. There was the view that the government was "reneging" on its environmental promises, in favour of generating revenues from taxes (CRC P1). The instability of the CRC also has, in participants' eyes, roots throughout the energy efficiency landscape. CRC S4 summarised as follows: "for God's sake let's have a proper coherent energy policy that ties in together." In 2015, the Conservative government held a public consultation on "reforming the business energy efficiency landscape" with a view "to simplify and improve the effectiveness of the landscape".⁹³ This move to potentially further change the CRC (and which did result in the abolition of the CRC), was viewed with some scepticism by interviewees. When asked whether they would respond to the consultation, one interviewee opined:

"I think all the clients I work for, everybody thought it (the CRC) was going to be cancelled. So, they all thought, "Oh there's no point responding because it's going to be cancelled", do you know what I mean?" (CRC M7)

M7 insinuates here that the government already had a policy agenda before the consultation began; and as such, there was little point in trying to change that agenda through a consultation response. This was reiterated by CRC P4, who was "cynical" that the consultations would ever change the position of the government. As such, not only has there been a disengagement with the CRC, but also a disengagement with policy. The result of this is, is that the CRC no longer has any credibility as an environmental scheme (CRC S5) and participants see the government as disingenuous due, in part, to the multiple and many CRC changes.

Discussion and Conclusion

Without prompting, participants wanted to talk about the numerous changes to the CRC and, and more importantly, they attributed the changes to political interference with the scheme (i.e. change without any 'good' cause). There have been two practical responses to these changes: 1) there is now a general lack of understanding of the CRC; and 2) these changes mean that participants are less engaged with the scheme. The CRC is too unstable to invest in energy reducing programmes and guarantee their payback. However, this link back to political interference runs deeper, and has manifested into an emotive response: a lack of confidence in wider government 'green' policy. This connection with the underlying policy means that, in the participants' eyes, the CRC scheme as a whole lacks credibility. It is this emotional consequence of the changes that are particularly interesting, and resonates with aspects of tax and regulatory literature, which have been raised.

⁹³ HM Treasury, 'Reforming the business energy efficiency landscape' (September 2015), Preface.

In his speech to the Department of Energy and Climate Change in 2010, David Cameron stated that he wanted “to be the greenest government ever”.⁹⁴ These words were repeated verbatim by interviewees during the study (CRC P3, M6, M13, S4), but with incredulity. The CRC has undergone much reform during its lifetime, but so has the energy efficiency landscape more generally.⁹⁵ The instability has therefore spread throughout the regulatory domain. As a result, what is left is an overarching framework which comprises of piecemeal, regularly changing legislation and secondary schemes, lacking the constant regulatory domain that Stokes discusses. This lack of stability (or domain) has led interviewees to doubt the policy commitments which have been communicated publicly by the government. The individual scheme, in this case the CRC, loses credibility, and as a result, suffers a drop in engagement from participants of the scheme. They are far less willing to invest time and resources into a tax regime that lacks credibility and is prone to change.

This paper has explored how regulatees have perceived the series of regular reforms to the CRC. Regulatees have made the link between the regular changes to the CRC and a political motivation. This, in turn, has allowed the regulatee to “map” what they think the underlying policy behind energy efficiency is. This perceived policy diverges from the “green government” image that the government is keen to portray; and regulatees have started to disengage, not only from the CRC, but from energy efficiency policy in general. The data shows a reduction in regulatee confidence, and a correlating reduction in government credibility is demonstrated.

There has already been empirical work conducted on how regulatees respond to regulation.⁹⁶ Stability has also been discussed in other fields. Gracia discusses the role of stability being defined through relational interactions between the regulator and regulatee to build stability from the ground up:

From a Bourdieusian perspective, relative stability and certainty in the tax compliance game emerges from the relational interactions, or collusion, of the dominant player (tax professionals and the tax authority), which maintains HMRC’s illusion of legitimacy to control, act and regulation the field.⁹⁷

The ability to improve and maintain legitimacy would be useful for the CRC, which, as I have discussed has lost some credibility in the eyes of the interviewees. However, as the problem here stems not from the regulator, but the government, it would be difficult for the Environment Agency to build up stability and therefore improve legitimacy themselves.

The concept of legitimacy also figures in the work of Gunningham and Sinclair. They specifically raise the legitimacy of regulation as a motivational factor for regulatees.⁹⁸ However, this motivation for compliance runs much deeper: to the legitimacy of policy. They argue:

It may also be that a prosecution policy that is perceived to be fundamentally unfair is undermining the general belief in the legitimacy of regulatory requirements. Certainly, there is evidence from other studies that if regulated enterprises mistrust the regulator and believe that regulations are being used

⁹⁴ David Cameron, Speech to the Department of Energy and Climate Change on 14 May 2010, available at: <https://www.gov.uk/government/speeches/pms-speech-at-decc> accessed December 15, 2016.

⁹⁵ For instance, new schemes have been introduced (such as Energy Savings Opportunity Scheme, and the CRC itself) and older schemes have been altered (for example, there have been changes to Climate Change Agreements).

⁹⁶ See, in particular: N. Gunningham, D. Thornton and R. Kagan, ‘Motivating Management: Corporate Compliance in Environmental Protection’ (2005) 27(2) *Law and Policy* 289; and, N. Gunningham and D. Sinclair, ‘Regulation and the role of trust: reflections from the mining industry’ (2009) 36(2) *Law and Society* 167.

⁹⁷ L. Gracia, ‘Boundary work and tax regulation: A Bourdieusian view’ (2012) 37(5) *Accounting, Organizations and Society* 304, 317.

⁹⁸ Gunningham (2009), above fn.96, 184.

strategically, with regard to purposes and values with which they fundamentally disagree, then they are far less motivated to comply with these requirements.⁹⁹

As such, where the regulatory scheme or policy underlying it is perceived to be unfair and/or unreasonable, the law loses legitimacy and the regulatees lose the commitment to comply.¹⁰⁰ The prosecution policy that is perceived to be unfair can be widened to governmental policy. The legitimacy of this policy that underpins the CRC can have wide-ranging impacts on compliance. Whilst Gunningham and Sinclair discuss legitimacy in terms of unfairness, I believe this stretches to arbitrary and unnecessarily changing policy. Here, unnecessary (or, to merge vocabulary, unreasonable) changes result in a drop in credibility.¹⁰¹ For Gunningham and Sinclair, unreasonable policy leads to a drop in legitimacy. The connection between the two: they both result in less engagement from regulatees.

How the regulatory field is packaged is then important as a means of potentially overcoming this loss of credibility and engagement. Interviewees demonstrated a disengagement with governmental 'green' policy due to its lack of consistency, and this in turn has led to a disengagement with the specific CRC scheme itself. Drawing together the concepts of regulatory domain and dexterity, interviewees demonstrated that the stable (domain) and the changing (dexterity) also reflect policy decisions. Stable policy is reflected in stable regulation, whilst unstable policy is reflected in a constantly changing regulation.

In the interviewees' minds, the changes to the CRC were unnecessarily frequent. When this was expanded to consider the bigger picture, the government's green policy is also seen by interviewees as unstable, due to the prevalence of regulatory dexterity. Snape's comments on credibility and instability, and Hayek's comments on confidence resonate in a regulatory landscape that lacks constancy, or domain. If an individual tax's instability can call in to question its credibility, so can the instability of the policy that underpins it as interviewees made the link between the unstable CRC, and unstable green policy. As such, any loss of credibility in terms of the CRC also resonates throughout the government's green policy. A lack of stable policy in this context has made regulatees question the motivations of the government in introducing and reforming the CRC. This, in turn, has resulted in a disengagement with the CRC, or a drop-in motivation to go beyond compliance. This loss of motivation to go beyond compliance is demonstrated through a reluctance to invest in energy efficiency schemes. The instability of the regulatory landscape in this area has a direct impact on businesses being able to guarantee a payback on their investments.

Therefore, the nature of how regulation is packaged is critical. The CRC shows that the action or inaction of the government in terms of changing regulation forms the basis of how the regulatory landscape in an area is perceived. For those subject to regulation, a resistance to reform, or a regulatory domain, portrays an image of stability; whilst regulatory dexterity portrays instability. That is not to say that regulatory dexterity is an inherently bad thing. However, the data suggests that regulatees will not be able to identify a coherent policy without an underlying regulatory domain to link this policy to. Take this underlying regulatory domain away, and regulatees can lose confidence in policy – for this regulatory domain is the clearest physical representation of policy. Regulation should be packaged as stable and unchanging in its early phases and once this has been established, individual taxes can be reformed to iron out any specific inadequacies, and dexterity can be introduced.

With stability comes regulatee engagement and understanding. Regulatees are much happier to go beyond compliance, and invest in energy efficiency projects, when the stability is there to ensure such projects will provide a guaranteed payback. An individual scheme that changes too regularly will also be hard to follow for regulatees, and can lead to regulatees losing interest in the environmental

⁹⁹ Gunningham (2009), above fn.96, 184.

¹⁰⁰ Gunningham (2009), above fn.96, 185.

¹⁰¹ Snape, above fn.68.

objectives of the scheme. Having a stable, overarching energy efficiency policy may offset some of these effects in individual schemes, like the CRC, that are later considered to be inadequate by policymakers. As such, dexterity can combine with domain to produce regulatee perceptions of stability.

Acknowledgements

I would like to thank the anonymous reviewers, Steven Vaughan, David Campbell, Ben Mayfield and David Sheldon for their invaluable input into this paper. All errors and omissions remain my own.