

Comments to OFGEM Consultation Paper :
“Consultation on MCS equivalence for the Domestic Renewable Heat Incentive Scheme”

Submitted by : Dr. Patrick Davis, Technical Director, CoolSky Ltd

Consultation Questions	
Q3.1.	Do you have any comments relating to the consultation process we have selected? Please provide an explanation, including any supporting information, with your response.

The consultation process selected by OFGEM is appropriate. However, I consider that the consultation is fundamentally flawed in its focus.

The consultation appears focussed entirely on how an alternative certification scheme can show that it is equivalent (or effectively the same) as the MCS Certification Scheme. There is neither desire nor appetite within the industry or the certification sector to reproduce an equivalent scheme to the MCS. The MCS is widely considered to be overly bureaucratic, costly and not fit for purpose.

The proposed eligibility criteria for alternative certification schemes to be recognised under the dRHI do not exhibit any impartiality and appear to be entirely constructed around how the MCS functions and will effectively discourage other entrants or certification schemes from entering the UK market.

Concerns that the definition Eligibility Criteria are not impartial :

I am of the opinion that the focus of the consultation should be to clearly define the minimum eligibility criteria required for an installation to be considered eligible under the dRHI without specific reference to any one particular 3rd Party Certification Scheme.

Such eligibility criteria should be impartial, sit above the processes, procedures and standards of any (and all) certification schemes and should be based upon recognised higher standards and obligations (such as EN/ISO Standards, EC Directives, UK Building Regulations, CIBSE Guides, etc.) and not the processes, procedures and standards of one individual specific 3rd party certification scheme (namely the MCS).

As an independent 3rd Party Certification Scheme the MCS is operating in a commercially competitive marketplace. The proposed eligibility criteria laid out in the consultation that make reference to the processes, procedures and standards of the MCS in order to define dRHI eligibility criteria that other competitors in the market must match appears to be anti-competitive in nature. Such eligibility requirements will discourage other entrants to the UK Certification market and effectively protects the market and monopoly that the MCS currently holds in this sector from competition.

Anti-Competitive Proposals within the Consultation :

On page 5 of the consultation it states that :

"A scheme seeking recognition of MCS equivalence by the Domestic RHI would need to provide ***both product and installer certification*** for a minimum of one renewable heat technology (when we discuss the "products" covered by MCS in this consultation we are referring to both material technologies and installation services). Although we expect a recognised scheme to be equivalent to MCS, this does not mean we expect it to be exactly the same."

This proposal for an equivalent certification scheme to provide "both product and installer" certification effectively :

1. Creates a closed market in the UK for certification schemes – the only scheme within the EU (of which I am aware) that certifies both products and installers is the MCS.
2. Creates a deliberate barrier to other entrants to the market and protects the monopoly and market that MCS currently enjoys on the certification of renewable technologies within the UK.

In essence I consider that the focus of the consultation should be to provide clear, independent and impartial eligibility criteria that an installation must meet in order to be eligible under the dRHI. I am of the opinion that there are 4 main (and separate) requirements needed to show eligibility under the dRHI, and I consider eligibility and similar outcomes can be achieved by using unrelated but complimentary schemes that are focussed individually on :

1. Quality of the Products – Product Certification / Accreditation
2. Quality of the Installer – Installer Certification / Accreditation
3. Consumer Protection
4. Other dRHI Specific Requirements (e.g. methodology to deem heating contributions, Green Deal Assessment, EPC, etc)

Concerns that the consultation displays an anti-competitive bias :

The consultation focus on showing equivalency to one specific Independent 3rd Party Certification scheme would appear to be anti-competitive in nature.

There is no other commercial sector of which I am aware that competing commercial entities are expected to match the activities, processes and standards of one of their competitors. Requirements are usually defined at a higher level than those of a certification scheme, for example, by reference to BS/EN/ISO Standards, Building Regulations and Independent Industry Guides (e.g. CIBSE Guides), etc...

Summary Comments to this Section :

The consultation should focus on clarifying and defining impartial and independent criteria that are required to show eligibility of an installation under the dRHI.

These criteria should sit above and be independent from the particular processes, procedures and standards of any one individual certification scheme.

All certification schemes (including the MCS) would need to show how they meet these criteria.

By way of example, such dRHI eligibility criteria could be termed as follows :

1. Product Certified under the appropriate EN/ISO Standard by an accreditation body or certification scheme accredited to EN45011 or ISO / IEC 17065.
2. Installer Certified under a scheme that is compliant with the requirements laid down in Annex IV of Directive 2009/28/EC.
3. Installer or Installation Company is a member of a consumer protection scheme (such as RECC).
4. Other RHI Specific and Administrative Requirements: for example, a methodology to calculate the deemed Renewable Heating, Metering Requirements, Green Deal / EPC. These requirements are RHI Specific Requirements should be defined and owned by OFGEM / DECC (these should be independent from any particular 3rd Party Certification Schemes processes / procedures / standards) and should not be a pre-condition of either the Product Certification Scheme or the Installer Certification Scheme requirements for them to be considered eligible schemes under the dRHI.

In addition, the focus of the consultation raises significant concerns in relation to obligations that OFGEM are under to comply with European Directives. A significant number of the proposals appear to be in conflict with UK obligations under EU Directives and could be in breach of these Directives if adopted, as elaborated below.

Q3.2.	Do you have any comments on the timescales outlined?
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The timescales for the consultation are appropriate.

Consultation Questions

Q4.1. Do you agree with these principles?
Please provide an explanation including any supporting information with your response.

No – Whilst the proposals outlined in Section 4 – Guiding Principles are very noble, they are entirely subjective, particularly with reference to Consultation Section 4.4. b) Scheme Values, c) Scheme Objectives, and d) Scheme Features. Ofgem should limit eligibility criteria to existing and objective Community Standards.

Furthermore, with reference to Section 4.4. e) :

- e) **Scheme specific requirements and outcomes:** An equivalent scheme must be able to produce similar outcomes, but we do not intend to suggest requirements that MCS does not have.

Ofgem should define the desired outcomes in terms of dRHI requirements only without reference to the MCS. These should be defined separately, as highlighted above, and an eligible installation considered to be one that can achieve similar outcomes by producing evidence of Certification of Product, Certification of Installer, Installer a Member of Consumer Protection Scheme, RHI Specific Administration Requirements.

It should be highlighted how these can be met by either using a singular, unified scheme such as the MCS or by using a combination of separate unrelated certifications.

Q4.2 Do you have any comments on the principles outlined in this section, such as suggestions to make them more appropriate?

Yes - Ofgem should limit eligibility criteria for certification schemes under the Domestic RHI to existing Community Product Standards, Certification Scheme / Certification Body Standards (e.g. EN45011 or ISO / IEC 17065) and 2009/28/EC Annex IV Directive requirements.

Any additional eligibility criteria for Certification of Products or Certification of Installers could be considered a deviation from existing community standards and hence create a barrier to trade or impede the operation of the internal market.

Obligations under the Renewables Directive 2008/28/EC Paragraph (45) for support schemes highlight that support schemes should not prescribe any national technical specifications that deviate from community standards, as shown below :

Renewables Directive 2009/28/EC : L140/22 Paragraph (45) [underlining added]:

(45) National technical specifications and other requirements falling within the scope of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and rules on Information Society services relating for example to levels of quality, testing methods or conditions of use, should not create barriers for trade in renewable energy equipment and systems. Therefore, support schemes for energy from renewable sources should not prescribe national technical specifications which deviate from existing Community standards or require the supported equipment or systems to be certified or tested in a specified location or by a specified entity.

Any specific RHI eligibility requirements or administrative requirements should be kept separate from the above Product and Installer Certifications such that barriers to trade in the internal market are avoided.

Q4.3	Are there any areas not mentioned that you feel should be covered? Please provide an explanation including any supporting information with your response.
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Q 4.3 – Yes : Eligibility criteria and principles should be referenced in terms of existing community standards only, as follows :

I would propose for consideration as eligibility criteria only :

Proposed Product Certification Scheme Eligibility Requirements under Domestic RHI :

Any Product that is Certified under a Certification Scheme or by an accredited body holding EN45011 or ISO / IEC 17065 and which certifies the Renewable Energy Product or System to be in compliance with the current community standards (i.e. EN or ISO Standard) applicable to that particular product.

OFGEM retain the administrative right to determine if any product or system certified under any such scheme falls under an 'eligible product' definition for support under the dRHI. OFGEM already undertake this process through the hosting of their PEL database.

There should be no requirement for Product Certification Schemes to also certify installers. The same outcome can be achieved by using separate Product and Installer Certification Schemes. This requirement effectively restricts competitor access to the UK market whilst protecting and enhancing the market position and monopoly of the MCS in this sector.

Proposed Installer Certification Scheme Eligibility Requirements under Domestic RHI :

The criteria for determining the equivalency of Installer Certification Schemes is already defined within the European Renewables Directive 2009/28/EC in Annex IV^[1].

¹ Directive 2009/28/EC – [\[LINK\]](#)

OFGEM have an obligation under Directive 2009/28/EC Article 4(3) to mutually recognise equivalent Installer Certification Schemes / Installer Qualification Schemes of other EU Member States that are in compliance with the criteria laid down in Annex IV, as follows :

Directive 2009/28/EC – Article 14(3) : [Underlining added]

3. Member States shall ensure that certification schemes or equivalent qualification schemes become or are available by 31 December 2012 for installers of small-scale biomass boilers and stoves, solar photovoltaic and solar thermal systems, shallow geothermal systems and heat pumps. Those schemes may take into account existing schemes and structures as appropriate, and shall be based on the criteria laid down in Annex IV. Each Member State shall recognise certification awarded by other Member States in accordance with those criteria.

Article 14(3) requires Member States to have in place certification schemes or qualification schemes by 31 December 2012. The UK meets this obligation through the MCS Installer Certification Scheme. Article 14(3) then places further obligations upon member states to recognise the certifications awarded by other Member States that have been introduced to meet this obligation and which are in accordance with the criteria laid down in Annex IV.

Hence, the criteria laid down in Annex IV of Directive 2009/28/EC should be adopted as the equivalency criteria for Installer Certification Schemes and made applicable for installer certification schemes of other Member States and UK based Installer Certification Schemes.

In particular, see attached response from DECC² to a complaint raised with the EC in relation to the UK obligations to recognise Certification Schemes of other EU Member States that are in compliance with Annex IV of Directive 2009/28/EC. The obligations to recognise such schemes is acknowledged in the DECC response.

However, I am not in agreement with the interpretation that such Certification Schemes only show the competency of the installers thereby allowing them to apply to the MCS. I consider that the obligations in Article 14(3) of Directive 2009/28/EC are not only limited to the recognition of the professional qualifications of individual installers for the following reasons.

Directive 2009/28/EC paragraph (50) clearly identifies existing preconditions on Member States to mutually recognise the professional qualifications of installers, as below :

Directive 2009/28/EC – Paragraph (50)

(50) In so far as the access or pursuit of the profession of installer is a regulated profession, the preconditions for the recognition of professional qualifications are laid down in Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. This Directive therefore applies without prejudice to Directive 2005/36/EC.

² Document Submitted with Response : Doc_01 - Pilot Case 4968-13-ENER

In addition to the existing preconditions to recognise the professional qualifications of an installer the Renewables Directive 2009/28/EC further elaborates in Article 14(3) the obligation to recognise the specific Installer Certification Schemes / Installer Qualification Schemes of other EU Member States.

Any additional dRHI specific requirements (such that an installer should be part of a consumer protection scheme) should be kept separate from the eligibility requirements for the Installer Certification Schemes. An installer seeking eligibility under the dRHI could still show compliance by being certified under another EU Member State Certification Scheme in compliance with Annex IV of Directive 2009/28/EC and signing up to the RECC Scheme. This would effectively achieve the same outcome as an Installer Certification Scheme that incorporates a Consumer Protection Scheme.

It is foreseeable that some Installer Certification Schemes would also include Consumer Protection within their Installer Certification Schemes to give them a competitive market advantage, however, this should not be a mandatory eligibility requirement for the Installer Certification Schemes as the same outcomes can be achieved using a separate and independent means.

There should be no requirement for Installer Certification Schemes to also certify products. The same outcome can be achieved by using separate Product and Installer Certification Schemes. This requirement effectively restricts competitor access to the UK market whilst protecting and enhancing the market position and monopoly of the MCS in this sector.

In particular, OFGEM should consider the following obligations under EU Directives and ensure that any consultation proposals do not deviate from these obligations nor breach the Directives requirements :

1. Renewables Directive 2009/28/EC Article 14(3) and Annex IV on the Certification of Installers. Ensure that the proposals outlined in the consultation are not in breach of these obligations.
2. Renewables Directive 2009/28/EC Paragraph (45) – requires that *“support schemes for energy from renewable sources should not prescribe national technical specifications which deviate from existing community standards”*. OFGEM should ensure that Product Certification Schemes or Products Certified by bodies that are accredited under Community Standards (such as EN45011 or ISO / IEC 17065) are recognised as equivalent without meeting additional UK specific requirements which deviate (by extension) from the existing Community Standards.
3. OFGEM should consider why it is necessary for Certification Schemes to certify both Installers and Products in order to be considered as eligible schemes under the RHI.
 - a. In particular, it should be considered how this requirement does not create a barrier to trade, considering, to my knowledge, there are no other certification schemes in existence within the EU that meets this criteria, except for the UK based MCS. In addition, there are no requirements under Community Standards

for Certification Schemes to certify both Products and their Installers under a unified Scheme – hence I am of the opinion that this requirement is a deviation from Community Standards.

- b. Consider how this requirement is not discriminatory against other potential certification schemes seeking recognition. In particular, considering that an installation undertaken by an MCS Certified Installer using a SolarThermal Product Certified under the CEN SolarKeymark is currently recognised as an eligible installation under the dRHI. This proposal would be an unnecessary duplication of testing to require manufacturers to have their products re-tested should they wish to use Installers certified under an alternative scheme to the MCS.
- c. By way of example, consider a manufacturer based elsewhere in the EU who has had a Product Certified under an EN45011 or ISO / IEC 17065 accredited scheme (other than the SolarKeymark Scheme). Assume that such a scheme only certifies *products* against the relevant Community Standards for that product. The consultation proposals effectively mean that this product will not be recognised as an eligible product to access the RHI as it has not been certified by a Scheme that also certifies installers. For such products to be regarded as eligible under the RHI scheme then this alternative certification scheme, based elsewhere in the EU, would need to incorporate an Installer Certification Component within its scheme that is based upon Equivalency to the UK MCS Certification Scheme – this proposal is a clear barrier to trade and I suspect would not be in line with EU Law and the UK's obligations under the Treaty of Rome.
- d. In effect, the requirement for a certification scheme to certify both products and installers represents and represents an operational denial of mutual recognition obligations to recognise products certified under EN / ISO standards.

Furthermore, I would also highlight the undertakings that the UK have given to the EC through the UK National Renewable Energy Action Plan (NREAP)³:

National Renewable Energy Action Plan for the United Kingdom - Article 4 of the Renewable Energy Directive 2009/28/EC

Page 81 - 4.2.5. Certification of installers (Article 14(3) of Directive 2009/28/EC)

(d) Is information on these schemes publicly available? Are lists of certified or qualified installers published? If so, where? Are other schemes accepted as equivalent to the national/ regional scheme?

Information on the Microgeneration Certification Scheme, including the list of installers and products certified under the MCS are publicly available on the scheme's website ¹¹⁴.

Other equivalent schemes are accepted, for example, Solar keymark products ¹¹⁵ are treated as equivalent.

Information on competent person schemes is available on CLG's website with links to each individual scheme's website.

³ UK National Renewable Energy Action Plan (NREAP) : [[LINK](#)]

Article 14(3) of Directive 2009/28/EC specifically relates to the certification of installers and the mutual recognition obligations of member states to recognise the certification schemes of other EU Member states that are in compliance with Annex IV of Directive 2009/28/EC.

The UK NREAP clearly highlights the national / regional scheme is the MCS in the UK. In response to the question ***“Are other schemes accepted as equivalent to the national / regional scheme?”*** the UK has responded:

“Other equivalent schemes are accepted, for example, Solar keymark products are treated as equivalent.”

In comment to this undertaking given by the UK within the NREAP :

1. Specific reference is made to the Solar keymark, by way of an example. It should be highlighted that the Solar Keymark scheme does ‘not’ certify **both** Installers **and** Products.

By highlighting a scheme that does ‘not’ certify both installers and products as an ‘example’ of schemes that will be treated as equivalent to the UK national scheme I consider that the proposals contained within the OFGEM consultation to now only recognise schemes that certify **both** Products **and** Installers to be in conflict with the UK NREAP and the undertakings that the UK authorities have given to the EC within the UK NREAP.

2. The responses sought under section 4.2.5 of the NREAP are specifically related to the Certification of Installers and the obligations laid out in the Directive under Article 14(3) and the references to Annex IV.

Directive 2009/28/EC – Article 14(3) :

3. Member States shall ensure that certification schemes or equivalent qualification schemes become or are available by 31 December 2012 for installers of small-scale biomass boilers and stoves, solar photovoltaic and solar thermal systems, shallow geothermal systems and heat pumps. Those schemes may take into account existing schemes and structures as appropriate, and shall be based on the criteria laid down in Annex IV. Each Member State shall recognise certification awarded by other Member States in accordance with those criteria.

The Directive requires “Each Member State shall recognise certification awarded by other Member States in accordance with those criteria.” (i.e. the Criteria Laid down in Annex IV).

The UK has an obligation to recognise and accept certification awarded by other Member States that are in accordance with Annex IV as being equivalent to the national / regional scheme (i.e. namely the MCS)...

3. The UK NREAP in response to the acceptance of other schemes as equivalent to the national / regional scheme also comments that :

“Information on competent person schemes is available on CLG’s website with links to each individual scheme’s website”

This response within the UK NREAP would indicate that an undertaking has been given to the EC that UK Competent Person Schemes are also recognised as being equivalent to the national / regional scheme (i.e. MCS Installer Certification Scheme) for the Certification of Qualified Installers. There are several UK based Competent Person Scheme accredited under EN45011 for the Installation of Renewable Technologies. I am of the opinion that the UK NREAP submitted to the EC places an obligation on OFGEM to recognise these Installer Schemes as meeting the requirements for an Installer to show compliance with eligibility requirements under the RHI.

Summary Comments :

The eligibility / equivalency of Product Certification Scheme should be limited to only requiring certification of the products to the relevant community product standard by a Certification Scheme or a Certification Body accredited under EN45011 or ISO / IEC 17065. OFGEM has the final responsibility to determine if a product certified to these standards falls within the scope of products that will receive support under RHI.

In order to comply with obligations under Directive 2009/28/EC OFGEM should base their equivalency criteria for Installer Certification Schemes on Annex IV of the Directive without deviation, elaboration or the application of UK specific conditions that could create a barrier to trade in provision of services within the single market.

The consultation should consider mandatory obligations to comply with EU Directives and in particular the Renewables Directive 2009/28/EC and the obligations contained therein. The consultation should ensure that any apparent deviations from obligations under this directive do not breach the requirements of the directive.

Consultation Questions

- Q5.1. Do you agree with our proposals on MCS equivalence criteria?
Please provide an explanation including any supporting information with your response.

No – I consider the consultation document itself is in potential breach of Directive 98/34/EC and Directive 2009/28/EC by making explicit reference to MCS standards instead of the appropriate Community Standards.

Consultation Potentially Breaches obligations under Directive 98/34/EC :

Under section 5.1 c) of the Consultation document it highlights that certification schemes must meet requirements such that :

- c) *It should comply with its legal responsibilities under relevant European Union (EU) and UK single market and competition legislation such as notification requirements to the EU Technical Standards and Regulations Directive 98/34/EC.*

It is only recently that DECC / MCS have recognised the obligation to notify MCS technical standards to the EC and to date only three MCS Standards have not been notified to the European Commission under 98/34/EC, as follows :

MCS 007	TRIS 2015/224/UK replacing TRIS 2014/566/UK
MIS 3005	TRIS 2015/245/UK
MCS 017	TRIS 2015/114/UK

The consultation specifically references a number of MCS Standards (page 18, section 5.9a), in particular those highlighted include MCS 004, MCS 008, MCS 022, MIS 3001 and MIS 3004 that have been adopted and applied in the UK.

I would highlight that the text of these particular MCS Standards have not been notified to the European Commission under the European Technical Standards Directive 98/34/EC. In this case, due to non-notification of these MCS Standards, I would be of the opinion that the MCS Standards identified above have been adopted and applied in breach of the UK's obligations to notify such standards under Directive 98/34/EC.

In cases where such national standards have been adopted in breach of Directive 98/34/EC then Directive 98/34/EC Article 4(2) places an obligation upon Member States 'not' to recognise, approve or reference such standards, as follows :

Directive 98/34/EC Article 4 (2)

Member States shall refrain in particular from any act of recognition, approval or use by reference to a national standard adopted in breach of Articles 2 and 3 and of paragraph 1 of this Article.

Hence, I am of the opinion that the aforementioned MCS Standards that have not been notified to the European Commission are in Breach of Articles 2 and 3 and of paragraph 1 of European Directive 98/34/EC Article 4. Therefore, in order to comply with obligations under Article 4(2) Directive 98/34/EC reference should not be made to any standard that is in breach of the directive.

However, it should be noted that most certification schemes limit their certification activities to certification against exact transpositions of existing community standards without mandatory compliance requirements. In such cases, where there is an exact transposition of existing community standards there is no requirement to notify under 98/34/EC.

If it is the case that the Non-Notified MCS Standards are exact transpositions of Community Standards then notification is not required, however, in this case the OFGEM should reference the appropriate Community Standards to remain in compliance with obligations under Directive 2009/28/EC Article 13(2) as discussed in the section below.

Summary Comment :

I am drawn to the conclusion that the consultation document is potentially in breach of the technical standards directive 98/34/EC by making reference to MCS standards that have not been notified to the EC under the Directive obligations.

OFGEM should limit references to existing Community Standards for Products in order to avoid any conflicts with obligations under EC Directives.

Consultation Potentially Breaches obligations under Directive 2009/28/EC :

I would draw attention to obligations under Directive 2009/28/EC Article 13(2) whereby technical specifications in relation to products should only be referenced in terms of the appropriate European Standards where these exist.

Hence, any references to MCS product certification standards should be replaced with the appropriate EN / ISO standard to ensure compliance with obligations under Directive 2009/28/EC Article 13(2) below [underlining added].

Directive 2009/28/EC - Article 13(2)

Member States shall clearly define any technical specifications which must be met by renewable energy equipment and systems in order to benefit from support schemes. Where European standards exist, including eco-labels, energy labels and other technical reference systems established by the European standardisation bodies, such technical specifications shall be expressed in terms of those standards. Such technical specifications shall not prescribe where the equipment and systems are to be certified and should not impede the operation of the internal market

I would be of the opinion that the proposed equivalency criteria by only referencing MCS Standards instead of the appropriate European Standards are a breach of Paragraph (45) of the renewables directive and represents an impediment to the operation of the internal market.

In addition, I am of the opinion that the consultation proposals also potentially breach Directive 2009/28/EC requirements, whereby :

“requirements....relating for example to levels of quality, testing methods or conditions of use, should not create barriers for trade in renewable energy equipment and systems”.

By requiring product certification schemes / installer certification schemes to match the specific Rules, Processes, Procedures and Standards of a Specific 3rd Party Certification Scheme that is located only in the UK as opposed to recognised higher Community Standards, EC Directives, Building Regulations, Industry Guides that the proposals are potentially in breach of Paragraph (45) of Directive 2009/28/EC as highlighted below :

Renewables Directive 2009/28/EC : L140/22 Paragraph (45) [underlining added]:

(45) National technical specifications and other requirements falling within the scope of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and rules on Information Society services relating for example to levels of quality, testing methods or conditions of use, should not create barriers for trade in renewable energy equipment and systems. Therefore, support schemes for energy from renewable sources should not prescribe national technical specifications which deviate from existing Community standards or require the supported equipment or systems to be certified or tested in a specified location or by a specified entity.

Summary Comments :

Ofgem should limit dRHI eligibility requirements to existing community standards and Directives for Products and Installer Certification. These should be applied without deviation or deviation by extension / addition.

Any specific dRHI eligibility / administrative requirements should be kept separate from any eligibility criteria applied to the recognition of Product or Installer Certifications.

Referencing the appropriate Community Standards will ensure that there is complete clarity, impartiality and consistency on the standards that must be met in order for Ofgem to recognise Product or Installer Certification Schemes as eligible under the dRHI. This will also ensure that obligations under EU Directives are met and any undue barriers to trade within the Single Market are avoided.

Q5.2	<p>What additional criteria, if any, do you suggest should be considered? Please provide an explanation including any supporting information with your response.</p>
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I have concerns that the already present additional criteria that are additional requirements to existing Community Standards may not be compliant with obligations under the Renewables Directive 2009/28/EC and the Technical Standards Directive 98/34/EC and thereby create unnecessary barriers to trade. The suggestion that more additional criteria should be considered would exacerbate these concerns further.

Consultation Questions	
Q6.1.	<p>Do you agree with our approach on assessment of criteria from a scheme claiming to be MCS equivalent? If not, can you suggest an alternative assessment process? Please provide an explanation including any supporting information with your response.</p>

No – Any scheme or certification body that is certified under EN45011 or ISO / IEC 17065 that certifies Products to the existing relevant EN/ISO Standards for that product or any Certification Scheme which certifies Installers in compliance with Annex IV of Directive 2009/28/EC should be considered as eligible under the Domestic RHI and hence equivalent to MCS.

These schemes would be fully compliant with existing Community Standards and EU Directives. The RHI eligibility criteria should be limited to referencing existing Community Standards & Directives and any references to a Specific 3rd Party Certification Scheme and its processes, procedures and standards should be removed from the eligibility criteria and replaced with clear and independent eligibility criteria.

Q6.2	Do you agree with our proposals on the audit and verification of MCS equivalence by a scheme claiming equivalence? Please provide an explanation including any supporting information with your response.
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No – Equivalent outcomes and eligibility under the dRHI could be evidenced and achieved by :

Product :

1. Certified to the relevant Community Product Standard (i.e. EN / ISO) under an EN45011 or ISO / IEC 17065 Certification Scheme or Certified Body.
2. Product appears on the OFGEM Product Eligibility List (PEL)

Installer :

1. Certified under an Installer Certification Scheme that is in compliance with Directive 2009/28/EC Article 14(3) and Annex IV.
2. Installer appears on an OFGEM Installer Eligibility List

RHI Specific Requirements :

a. Consumer Protection :

- i. Installer or installation company is a member of a Consumer Protection Scheme (e.g. RECC)

b. RHI Specific or Administrative Requirements :

- i. Installer undertakes Deemed Energy Calculation (if required) to OFGEM requirements
- ii. Installer generates dRHI Installation Certificate / Report to OFGEM requirements
- iii. Green Deal Advice Report
- iv. Energy Performance Certificate
- v. Any other requirements not detailed above that are RHI specific

Furthermore, section **6.8 Maintaining recognition of equivalence** raises more anti-competitive concerns that run throughout this consultation.

The consultation proposes that the MCS is given authority to set the agenda, rules, processes, procedures and standards for the market. OFGEM should consider that the MCS is a Commercially Active 3rd Party Certification Scheme that operates in a competitive sector and would have potential competitors in this sector (if the current barriers are removed). This proposal is discriminatory against new potential entrants to this market.

Proposing that MCS (or any other) 3rd Party Certification Scheme should be permitted to redefine the eligibility criteria for the dRHI based upon the specific Scheme Rules of their own Certification Scheme is highly questionable. Eligibility criteria for the dRHI should be clearly defined and independent from any one particular certification scheme. All

Certification Schemes (including MCS) should show how they comply with these independent requirements. Any changes to the independent dRHI Eligibility Criteria would then apply fairly and impartially to all Certification Schemes and these criteria should be in line with Community Standards and EC Directives that are applicable at that time.

Recognition of equivalence can therefore be maintained by :

1. Any Product that maintains an up to date certification under the relevant EN/ISO Product standard that is certified under by an EN45011 or ISO / IEC 17065 accredited Certification Scheme or Certification Body should be considered equivalent.
2. Any installer who has a current and valid certification under an Installer Certification Scheme that is compliant with Annex IV of Directive 2009/28/EC should be considered equivalent.
3. Continuous assessment of compliance with the appropriate community standards (EN45011 or ISO / IEC 17065) are routinely undertaken as part of this accreditation – hence there is no requirement for OFGEM to duplicate audits or assessments on the eligibility of such schemes. A current and valid certification should suffice and this can be regularly assessed – for example every 3 years.
4. Installer Certification Schemes operating to Directive 2009/28/EC Annex IV can re-affirm their compliance with the directive on a regular basis – for example every 3 years.

Q6.3	Are there any other aspects relating to the assessment of an alternative scheme's claim to MCS equivalence that you feel we should consider? Please provide an explanation including any supporting information with your response.
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The requirement and focus of this consultation that Certification Schemes should show equivalency to MCS is a matter of concern.

The MCS is one 3rd Party Certification scheme that meets the requirements of the Domestic RHI Scheme as a certification scheme. Certification schemes are active in a commercially competitive market where they compete for business – the proposals outlined in the consultation document give preferential treatment and primacy to one particular commercially active entity (i.e. the MCS). I consider that the proposals potentially represent unfair and discriminatory treatment towards other 3rd Party Certification Schemes who may wish to seek recognition as eligible under the RHI and are anti-competitive in nature.

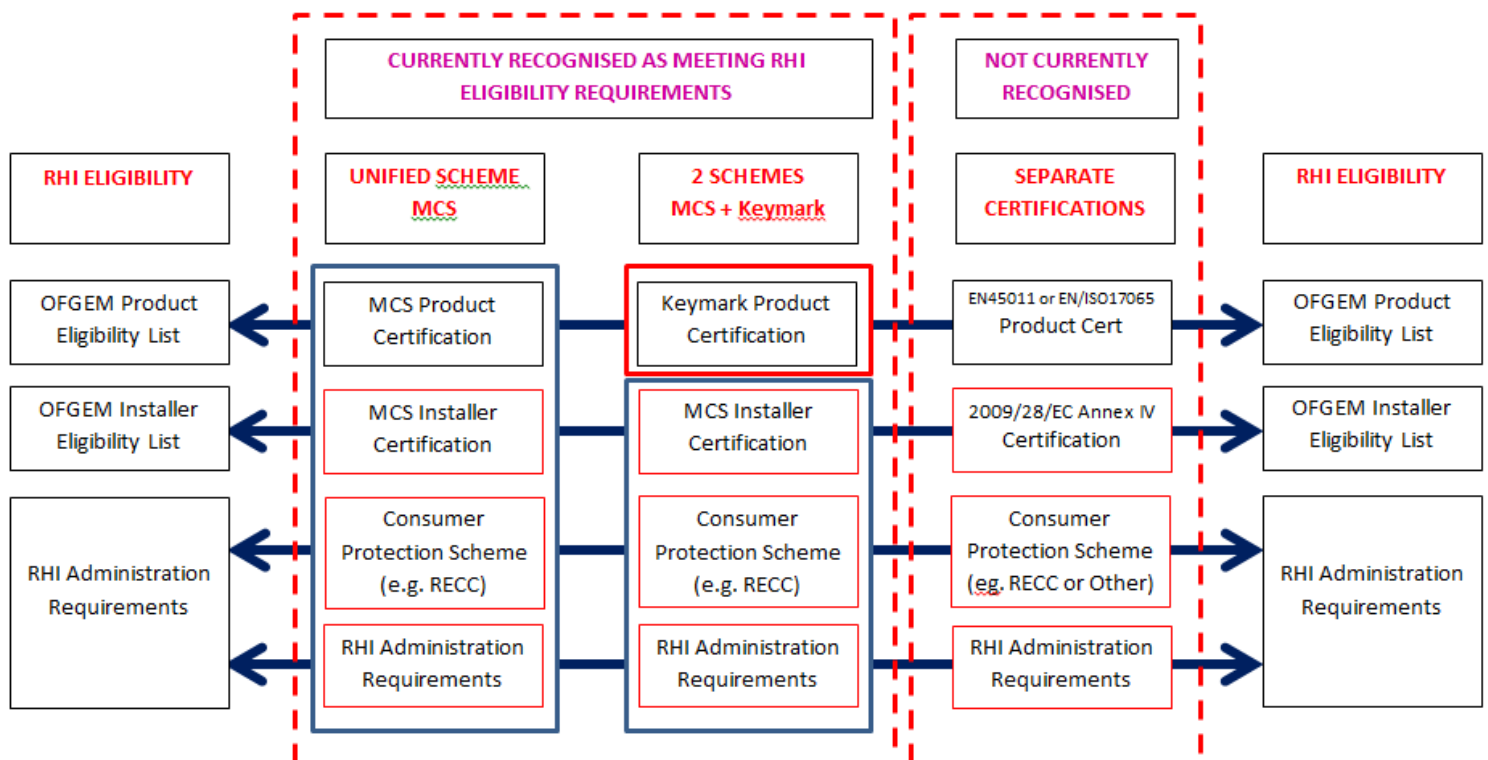
The consultation should be re-focused to clearly define the high level requirements that are required to show eligibility under the RHI without any reference to the specific scheme rules of any one particular commercially active 3rd Party Certification Scheme.

Q6.4	Do you think that there are or should be alternative methods that equivalence to MCS could be demonstrated to Ofgem?
	Please provide an explanation including any supporting information with your response.

Yes –

My alternative suggestions have been highlighted in my submission above (see Q3.1, Q4.3 and Q6.2) – also see schematic below highlighting graphically how alternative methods achieve the same outcomes whilst showing eligibility under dRHI requirements and hence equivalency to the MCS.

ELIGIBILITY FOR AN INSTALLATION TO BE RECOGNISED UNDER THE RHI



There are clearly a number of organisations seeking to enter the UK Market for the Certification of Products or the Certification of Installers. However, it is clear that these organisations will only become actively involved in the UK markets if the eligibility criteria under dRHI are clear, transparent, impartial and allow for a free and open competitive

market. I would encourage OFGEM to clarify the eligibility criteria under dRHI such that the apparent barriers to their entry are removed and that a vibrant and competitive certification sector is allowed to develop within the UK.

There is a demand from within the industry for alternatives to the MCS to emerge and for less bureaucratic and more streamlined certification schemes to exist. The extract below from information published by the EU2020 KeepOnTrack Project⁴ whereby submissions by the UK Renewable Energy Association (REA) highlight the barriers that the cost and complexity of MCS are causing in the UK Renewables Sector.

In addition, the REA also highlight that the UK is infringing the Renewables Directive 2009/28/EC by failing to recognise Installer Certifications issued by other EU Member States and creating a barrier to trade in the single market.

Cost and Complexity of the Microgeneration Certification Scheme

The Microgeneration Certification Scheme⁹³ (MCS) is perceived by many as a barrier to the widespread implementation of small-scale renewable technologies within the UK. The MCS Installer Certification Scheme is currently the only recognised scheme for the certification of renewable energy installers wishing to access governmental fiscal and financial incentives. The scheme therefore has an extremely important role to play in protecting those who wish to invest in the industry. The high costs and complexity of the MCS however are perceived as significant barriers acting as a dis-incentive for many small installation companies or sole traders willing to enter the UK renewables market and ultimately preventing the scheme from working effectively and achieving its aim (REA 2012).

According to REA (2012), the barrier affects all renewable technologies within the UK aiming to access governmental incentive schemes. Moreover, it restricts access to the UK market to installers who already have installer certifications awarded by other EU Member States and thus infringes the RED on the mutual recognition of installer certifications issued by other EU Member States. It also affects installations going into public buildings since the compliance with MCS is usually a minimum requirement.

OFGEM are encouraged to ensure that any equivalency criteria do not create (or reinforce existing) unnecessary barriers that are discouraging new entrants into the Certification Sector of the UK Renewables Industry.

Equivalency criteria should be defined on the basis of existing community standards only and in compliance with obligations contained within European Directives. I would be of the opinion that equivalency can be demonstrated by :

- a. Eligible Products – Certified under Product Certification Schemes Certified or by Certification Bodies holding EN45011 or ISO / IEC 17065 that certify products to the appropriate EN / ISO standards should be recognised as eligible products under the Domestic RHI (subject to OFGEM confirming they are within the scope of eligible products under RHI).
- b. Eligible Installers - Installer Certification Schemes that are compliant with Annex IV of the European Renewables Directive 2009/28/EC should be recognised as equivalent in line with obligations under Article 14(3) of the Directive.

⁴ EU 2020 Keep On Track Country Factsheet [\[LINK\]](#)

Any RHI specific requirements or RHI administrative requirements should not be included as eligibility criteria to determine if a Product Certification Scheme or an Installer Certification Scheme is considered equivalent to the MCS. Such requirements should be stand-alone (for example, the installer must be part of a consumer protection scheme such as RECC in order to be eligible under the RHI – such a consumer protection scheme may be part of the installer certification scheme, or it can be a stand-alone separate scheme).

The requirement for certification schemes to certify both Products and Installers should 'not' be a requirement. This is a clear barrier to trade within the Single Market. It is an unnecessary requirement without any technical nor reasonable justification and potentially leads to an unnecessary duplication of testing and certification with associated increased costs. This requirement effectively closes the UK market to competition and protects the interests of one specific 3rd Party Certification Scheme. The same outcomes can be achieved by using an Installer and Product certified under separate, independent and complimentary Certification Schemes.

Furthermore, should another product certification scheme emerge within the Single Market that is compliant with EN45011 or ISO / IEC 17065 then OFGEM would be obliged under EU Law to recognise such products as eligible under the Domestic RHI in keeping with obligations to 'not create barriers to trade' and the free movement of Products and Services within the single market. Hence, the proposal that Certification Schemes must certify **both** Installers and Products is an unnecessary requirement that I consider is not in line with EU Law and should be removed as an eligibility criteria.

Q6.5	What ongoing evaluation of an equivalent scheme do you think is needed and how often?
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OFGEM have made this requirement more complex than necessary – See my answer to Q6.2. above indicating how Recognition of equivalence can therefore be maintained.

If OFGEM recognise EN / ISO Accredited Certification Schemes or Schemes meeting their obligations under Directive 2009/28EC Annex IV for the certification of installers then it will only be necessary to confirm the ongoing validity of accreditation of the Certification Schemes or compliance to the Directive Requirements on a regular basis. OFGEM should only need to verify that a certification presented to them is current and valid – thereby simplifying the process, reducing time and costs.

The validity of existing certifications can be confirmed on a regular basis (for example every 3 years) to ensure that they are up-to-date and still valid.

Q6.6

Are there any additional points that you want to make?

It is a matter of concern that this consultation has focused entirely on requirements to show equivalency to the MCS - a commercially active entity operating in a competitive market.

The consultation should have focussed on clarifying and defining eligibility criteria for the RHI at a higher level that are fair, clear, transparent and impartial. These criteria should be aligned with UK obligations under the relevant EC Directives and based upon existing Community Standards and not related to the UK specific requirements, processes, procedures and standards of an independent 3rd party certification scheme such as the MCS.

The proposals outlined in this consultation if adopted raise concerns in relation to the impartiality that will be applied to alternative applicant certification schemes seeking recognition under the dRHI and the possibility of the introduction or the reinforcement of unnecessary barriers to trade in relation to the free movement of goods and services within the Single Market.

In final comment – the eligibility criteria proposals outlined in the consultation would effectively close the UK Market to competition in the Certification of Installers and Products within the Renewables Sector. The proposals are significantly biased towards one particular Commercially Active 3rd Party Certification Scheme to the detriment of other potential entrants to this market. In my opinion, if these proposals are adopted, they would act as a significant (if not a complete) barrier to other entrants to this market and effectively protects the business interests, market and monopoly of one specific commercially active Certification Scheme by shielding it from free, open and fair competition. Hence, my opening comments that this consultation document is fundamentally flawed in its focus.