



CONSULTATION RESPONSE FORM

Consultation on proposed changes to MCS

Thank you for taking the time to provide feedback on this consultation. MCS values input from all interested parties for the development of the Scheme.

We would be grateful if you could use this form for your response, as this will help us with collating all of the responses aligned to the proposals included in the consultation.

Responses are welcome to all, or a selection of, the consultation questions included in the consultation document at: <https://mcscertified.com/mcs-scheme-redevelopment>. General feedback on the reforms described in this document is also welcome.

Please submit your response by 9.00am on 17 July 2023 to mcsmeetings@mcscertified.com or The MCS Service Company Ltd, Violet 3, First Floor, Sci-Tech Daresbury, Keckwick Lane, Daresbury, Cheshire, WA4 4AB.

Please state below whether you are responding as an individual or representing the views of an organisation and if you want the information that you provide to be treated as confidential.

Respondent Name	Individual or organisation	Organisation name (if applicable)	Organisation type
Mark Sommerfeld	Organisation	Association For Renewable Energy And Clean Technology (REA)	Trade Association

Date
17/07/2023

Consultation Questions

Proposal 1: New scheme structure

1.1 Do you agree with a proposed new scheme structure to incorporate MISs containing the technical requirements for an installation, new Scheme Rules and Customer Duty? Please explain why, providing evidence to support your answer.

No.

The REA believes that the MCS's proposed new scheme structure could potentially compromise consumer protection within the regulated sector. Whilst the proposals are presented as enhancing consumer protection and simplifying the current scheme, we raise concern that they expedite certification for contractors by removing the need for consumer code membership and replacing it with a significantly less rigorous Consumer Duty commitment. We raise concern that this could potentially enable poorly performing installers to attain MCS certification more easily. Requirements for consumer code membership should be maintained.

The recent CMA report on the green heat sector underscores the need for robust consumer protection. We do not think that MCS's proposals are aligned with these recommendations, potentially risking a reduction in consumer protection levels.

Given the level of expected deployment of both onsite generation and low carbon heating systems required to meet the governments net zero ambitions, ensuring high quality standards and appropriate dispute resolution services is essential and should not be being watered down at this time.

The REA also believe the expertise of RECC, a subsidiary of the REA, should be far better represented in this consultation process, given 15 years of experience in helping to regulate the sector to ensure appropriate consumer protections.

1.2 In light of the proposed introduction of the MCS Customer Duty, are there any risks that need to be considered with the removal of mandatory Consumer Code membership? Please explain, providing evidence to support your answer.

Yes.

The REA does not support the removal of mandatory Consumer Code membership. We do not believe the consultation does enough to demonstrate that a move to a MCS Customer Duty will ensure installer compliance, given no third-party oversight, or provision of a suitable route to dispute resolution. Furthermore, the proposed Duty seems vague, and written in a way that will be challenging for contractors and consumers to understand and comply with due to the complexity of the legislation. As such, we do not think MCS have demonstrated how this proposal strengthens consumer protection.

By comparison, a consumer code like RECC is accredited by multiple bodies, providing confidence and assurance that the code genuinely delivers consumer protection. In the case of RECC, this includes:

- Approved by Chartered Trading Standards Institute (CTSI) as compliant with the Consumer Codes Approval Scheme core criteria,
- Two approved ADR schemes within its dispute resolution process,
- Is a TrustMark Scheme Operator

- Is a Primary Authority partnership with Buckinghamshire and Surrey Trading Standards.

Such accreditation recognises that a consumer code embodies all relevant consumer protection legislation, incorporating over eighteen codes and legal Acts, well beyond the three items of legislation identified as covered by the MCS Customer Duty. The proposals represent a significant watering down of requirements and protections for consumers.

The REA supports the counter proposal suggested by RECC, through the implementation of a 'white label' scheme sub-contracted to RECC to carry out its duties within the MCS. This would maintain the high level of consumer protection already provided by the consumer code, while also making the most of the existing knowledge, expertise, and resources of the existing code. We believe this to be most appropriate way of both simplifying the scheme and ensure consumer protection standards are maintained.

Proposal 2: Certificates for replacement, extended and adopted systems

2.1 What risks, associated with MCS allowing for the certification of replacement or extended systems, should be considered? Please highlight any differences or limitations for the various technologies certified.

We support these proposals but emphasise that its implementation must be very carefully considered and designed. It is essential that such a move does not provide an opportunity for bad installers to sell unnecessary extension or modifications to systems that ultimately leave consumers worse off or undermine their accreditation to government support. Such a scam has been seen in the market in the past, resulting in participants losing their DRHI payments. This must be avoided

2.2 Should MCS allow for the adoption of incomplete installations and if so, what additional checks or consumer protections might be necessary? Please explain why, providing evidence to support your answer.

Proposal 3: Risk-based compliance assessments

3.1 Do you agree with our plans to refocus the scheme's CB-delivered compliance assessments on "delivered quality", with a reduced focus on a contractor's back-office systems and paperwork? Please explain why, providing evidence to support your answer.

While potentially welcome, this must be done extremely carefully. It is not explained in the consultation how consumer protection standards will be monitored or enforced without the audit trail and evidence provided by the back-office systems and paperwork. A focus on 'delivered quality' is welcome but is closely dependent on having good back-office systems and records in place.

3.2 Do you agree with the deployment of a scheme-wide compliance risk model that determines the volume and nature of contractor assessments, with the aim of ensuring more compliance effort is spent on higher risk contractors, with low-risk contractors rewarded with less site assessments? Please explain why, providing evidence to support your answer.

While the intent to focus more on high-risk contractors is fair, the consultation fails to provide sufficient detail on how this will be achieved given MCS's lack of historic data on installer performance to date.

Additionally, the proposed approach doesn't address how consumer protection assessments will be conducted or linked to the monitoring and enforcement of The Consumer Duty, particularly since we believe that Certification Bodies are unlikely to assess it due to its current lack of concrete details.

Moreover, we raise concern that imposing additional assessments on high-risk contractors could invite legal challenges and could lack a clear, fair appeal process. Those contractors assigned to 'high-risk' category are therefore more likely to leave the MCS scheme, potentially leading to a drop in industry standards and negatively impacting vulnerable consumers.

3.3 Do you agree with the level of assessment burden described and that this can only decrease after 2 years on the scheme? Please explain why, providing evidence to support your answer. If you disagree, please propose alternative assessment levels and reasoning behind your recommendations.

3.4 Do you agree with our proposed list of factors that should influence a contractor's risk of non-compliance (increasing or decreasing)? Please provide any further recommendations in addition to the factors already described, along with their relative importance.

Although the proposed list of factors influencing non-compliance risk is a step in the right direction, there is not enough detail to demonstrate how this will be objectively measured, or detail provided to reassure contractors that they will be fairly treated. This must be closely considered and lessons taken from the work of existing consumer codes, like RECC, who have extensive experience in developing a comprehensive and risk-based monitoring strategy.

3.5 Do you agree with the proposal to record a contractor's risk rating on the MID and make this visible to them? Please explain why, providing evidence to support your answer.

While making a contractor's risk rating visible on the MID could promote transparency, they could present a significant risk to MCS if not perceived as suitably rigorous or fair by contractors. This could raise the risk of legal challenge for MCS, potentially undermining the scheme.

Proposal 4: Technical responsibility for each installation

4.1 Do you agree with a move away from Nominated Technical Person (NTP) to a Technical Supervisor recorded on the MID for each installation? Please explain why, providing evidence to support your answer.

4.2 What checks should be made when assessing an installation as to the technical supervision that was put in place, and the involvement and competency of the Technical Supervisor? Please explain, providing evidence to support your answer.

Evaluating an installation requires careful review of the technical supervision and the Technical Supervisor's competency. Given the difficulty in tracking such individuals due to career changes, long-term reliance on registration is limited. Questions arise about who is accountable for consumer protection within the contractor's business and the recourse in case of non-compliance. Thus, a thorough system for recording this information, with clear responsibilities, is critical for maintaining high supervision standards.

4.3 We do not plan to include the Technical Supervisor's details on an MCS certificate but retain this information in the MID for compliance reasons only. Do you agree with this approach? Please explain why, providing evidence to support your answer.

The potential changes in the Technical Supervisor's status, such as their departure from the Contractor's business, creates ambiguity around their continued responsibility for the installation. In light of this uncertainty, it is unclear what benefits including the Supervisor's name in the MID would provide.

Proposal 5: Pending (conditional) certification

5.1 Do you agree that a “pending certification” option is of benefit to contractors struggling to secure a first installation without having to complete an installation at their own cost? Will this resolve the issue of contractors needing to complete a first installation to support their initial assessment, but unable to find a customer willing to contract with a contractor who isn’t already MCS certified? Please explain why, providing evidence to support your answer.

5.2 Will taking a bond to offset the cost of completing a customer’s installation if a contractor fails to achieve MCS certification, provide adequate protection for customers? Do you have any other suggestions that could provide adequate customer protection during a contractor’s “pending certification”? Please explain, providing evidence to support your answer.

5.3 Is a bond of £5,000 enough of a deterrent to prevent unscrupulous contractors taking advantage of an option for “pending certification”? Please explain why, providing evidence to support your answer.

Proposal 6: MCS Contractor Agreement

6.1 Do you agree that MCS should further strengthen its ability to hold contractors to account for poor quality installations via a new Contractor Agreement? Please explain why, providing evidence to support your answer.

The REA believes there's a clear need for MCS to further enhance its ability to hold contractors accountable for subpar installations through a new Contractor Agreement. However, this should be complemented with more robust company checks and standardized assessment criteria to ensure efficacy. This should build on, rather than replace, the exiting experience and records of the consumer codes like RECC.

There's a reference to checking contractor compliance with the Consumer Duty, yet the means and standards for these checks remain unclear. It seems judgements might be largely subjective, relying heavily on immediate consumer feedback post-installation. Anticipated pushback against these proposals is likely.

The limited company checks outlined are likely to lead to failed companies just entering the market with new names and being easily admitted to the MCS. Without the historical records it is unlikely these proposals will adequately strengthen MCS's ability to hold bad contractors to account.

6.2 Do you agree that MCS should adopt powers so that a contractor who is no longer on the scheme is not absolved from the liabilities and responsibilities accrued during their operation as an MCS certified Contractor? Please explain why, providing evidence to support your answer.

Proposal 7: Centralised complaint management

7.1 What are the most important aspects of complaint management that we should consider? Please explain why, providing evidence to support your answer.

The REA believes an effective complaint management system should consider a robust dispute resolution process, proactive compliance monitoring, enforcement, and strategies to handle situations with contractors no longer trading.

The REA believe that the MCS's suggested complaint handling would benefit from considering RECC's existing dispute resolution system. RECC's extensive experience since 2006, includes handling over 15,000 complaints and recovering £2.8 million for consumers through a two-step, CTSI-approved mediation and adjudication process. RECC's independent adjudication service also assesses compliance with MCS standards and is open to MCS and Certification Bodies.

RECC routinely investigates complaint sources and enforces Code and Bye-Law compliance, underscoring the difference between complaint handling and compliance monitoring.

As RECC represents 85% of MCS-certified Contractors, it actively seeks consumer feedback, enforces consumer protection standards, and manages disputes.

Furthermore, MCS's proposals focus on contractors currently in business, leaving a gap in managing cases where contractors have stopped trading, which has historically been problematic.

7.2 How should we judge the success of our complaint management and dispute resolution, including through the partnerships we form for the provision of dispute resolution services and ADR? Please explain, providing evidence to support your answer.

REA would recommend consideration of RECCs exiting key performance indicators

Proposal 8: Implementation of new financial protections

8.1 Do you agree with the premise of the “MCS Guarantee” as a new financial protection to be associated with MCS certified installations? Please explain why, providing evidence to support your answer.

While MCS's proposals heavily rely on the 'MCS Guarantee,' the consultation lacks comprehensive detail, particularly regarding FCA authorisation, insurance underwriter relationships, and how consumers can claim, especially if their contractor has ceased trading. These uncertainties remain, despite the criticism MCS levied at the current system's inability to handle such situations, without outlining solutions in their proposed system.

Additionally, the 'Fund of Last Resort' lacks detailed information – important questions regarding the structure, financing, scale and nature of the fund need to be answered before going ahead with any of the proposed schemes.

8.2 What should we consider in designing the “MCS Guarantee” and in our choice of a financial protection partner(s)? Please explain, providing evidence to support your answer.

The proposed enhancements for consumer protection seem unclear. Consumers already possess a 6-year legal protection that cannot be supplanted by any 'guarantee' or 'warranty'. Hence, these proposals don't seem to provide any additional benefits for consumers, except a promise of reimbursement from the Fund of Last Resort, should anything go awry. But with sparse details about the Fund's structure, operation, regulation, and management, we raise concern as to whether this will be achieved.

Furthermore, explicit mechanisms need to be established for handling situations when contractors cease trading. The operations, regulation, and management of the Fund of Last Resort should also be transparent and well-articulated to inspire consumer confidence.

8.3 Do you agree that there is little or no consumer detriment from removing the current mandatory requirement for IBGs? Please explain why, providing evidence to support your answer.

The MCS's proposals seem based on just one insurance provider's analysis of IBGs. The REA do not believe this sufficient evidence to conclude that there will be little or consumer detriment from removing the requirement. Further evidence is needed.

MCS's suggestion of extended warranties as an alternative seems lacking in adequate research on their suitability and availability. Also, it's important to remember that both contractors and MCS must be FCA authorised to recommend extended warranties. Given these points, the removal of mandatory IBGs could significantly affect consumer protection

8.4 Are alternatives to credit card protection of deposits necessary in today's market and if so, what form of protection would you suggest? Please explain, providing evidence to support your answer.

The REA believes that alternatives to credit card protection are necessary in today's market. Especially given that many consumers, especially those in vulnerable situations, do not have or use credit cards. The proposal lacks details on compliance checks and penalties for non-compliance, making it insubstantial and potentially leaving consumers exposed, particularly with unlimited deposit amounts.

Moreover, the Consumer Credit Act may not cover lost deposit payments if alternative coverage, like the proposed Fund of Last Resort, is in place. Alternative protection could be an insurance policy, an escrow account, or a credit card payment. These requirements should be enforced and checked, with non-compliant installations deemed ineligible for an MCS Certificate

8.5 Should MCS prescribe the maximum deposit a contractor can take from their customer, as a percentage of the overall cost of an installation? Are there any other considerations in relation to a contractor taking deposits that we should review? Please explain, providing evidence to support your answer.

Proposal 9: Retirement of existing scheme documents

9.1 Do you agree that we can retire MCS 001-1, MCS 001-2, MCS 025 and MGD 001 as result of proposed changes to MCS? Please explain, providing evidence to support your answer.

The REA does not agree that the MCS 001 can be retired, as it does not appear that its provisions have been included in the new MCS scheme. It is currently an essential element of consumer protection.

General Comments

Should you wish to make comments on the draft documents themselves (Scheme Rules and Customer Duty) please use the following table.

Document	Page No.	Line No.	Comments	Suggestion for alternative (if relevant)

Note: You may add as many additional rows as required to table above.