

The Mark Regulations

REGULATIONS

(Made under section 50 and Schedule 2 paragraph 6 of the Trade Marks Act 1994)

**GOVERNING USE OF CERTIFICATION MARK NUMBER 2508934
REGISTERED IN THE NAME OF
MCS CHARITABLE FOUNDATION
FOR CLASSES 7, 9, 11 AND 37**

1. DEFINITIONS

1.1 For the purposes of these Regulations:

“Applicant” means a potential Producer of Installer applying to a Certification Body to use the Certification Mark under an Authorised User Licence;

“Authorised User Licence” means an agreement between a Certification Body and a Producer or Installer authorising that Producer or Installer to use the Certification Mark;

“Brand Guidelines” means the document entitled “MCS Brand Guidelines” set out on the MCS Website (as the same may be amended by the Secretary of State from time to time);

“Certification Body” means an organisation accredited by UKAS (or equivalent) and licensed by Gemserv to certificate Producers and/or Installers in accordance with the Scheme Criteria;

“Certification Mark” means the mark registered as number 2508934 consisting of two integrated elements: a word mark “MCS” and a heart-shaped device;

“Fee Schedule” means the schedule of fees Payable by Producers and Installers to certification Bodies for the use of the Certification Mark as set out in Annex 6 as amended from time to time;

“Gemserv” means Gemserv Limited (company registration number 04419878) whose registered office is at 8 Fenchurch Place, London, EC3M 4AJ it having been appointed by the Secretary of State to administer the Scheme;

“MCS Website” means www.microgenerationcertification.org

“Producer and/or Installer” means a natural or legal person who either manufactures, distributes or installs equipment used in the scheme and who has been certificated by a Certification Body or (where the context so requires) has applied to be so certificated;

“Products” means any or all of the products in Part I of Annex 1;

“Regulations” means these regulations, including the Annexes;

“Scheme” means the Secretary of State’s scheme to provide certification for Products and Services for use in the microgeneration industry in the Territory.

“Scheme Criteria” means the characteristics of the Scheme certified by the Secretary of State and set out in Regulation 10 and Annex 3;

“Service” means any or all of the services in Part II of Annex 1;

“Territory” means Great Britain, Northern Ireland and the Isle of Man.

“UKAS” means the United Kingdom Accreditation Service of 2 Pine Trees, Chertsey Lane, Staines-upon-Thames TW18 9HR;

- 1.2 Reference to any statute or statutory provision includes a reference to the statute or statutory provision as from time to time amended, extended or re-enacted.
- 1.3 Where the context allows, references to the singular include the plural and vice versa.
- 1.4 References to the masculine gender include the feminine and neuter and vice versa.
- 1.5 References to Annexes are to the annexes to these Regulations and reference to numbered Regulations are to Regulations so numbered in these Regulations
- 1.6 In the annexes references to numbered paragraphs and subparagraphs are to paragraphs and subparagraphs so numbered in that part of the annex

2. SCOPE OF SCHEME

- 2.1 The purpose of the Scheme is to authorise and control the use of the Certification Mark thereby signifying the approval of MCS Charitable Foundation of certain Products and Installation services for use in the microgeneration industry in the Territory
- 2.2 The Scheme is voluntary and is open, without discrimination, to any natural or legal person who manufactures or distributes Products to be used in the Territory or who installs Products or otherwise provides Services in the Territory.
- 2.3 Any Applicant:
 - 2.3.1 whose Products or Services meet or exceed the Scheme Criteria, and
 - 2.3.2 who undertakes to comply with these Regulations, and
 - 2.3.3 meets the requirements of the Certification Body’ certification process shall be entitled to an Authorised User Licence

3 PROPRIETORSHIP

- 3.1 MCS Charitable Foundation owns the Certification Mark
- 3.2 MCS Charitable Foundation has licensed Gemserv to use the Certification Mark and to operate the Scheme.
- 3.3 MCS Charitable Foundation has granted Gemserv the right to sub-licence the use of the Certification Mark to the Certification Bodies.
- 3.4 Under the terms of the sub-licenses between Gemserv and the Certification Bodies the Certification Bodies are permitted by the MCS Charitable Foundation to enter into Authorised User Licences with Producers and Installers allowing Producers and Installers to use the Certification Mark on the terms set out in the Authorised User Licences.
- 3.5 Neither Gemserv, a Certification Body nor a Producer or Installer may use the Certification Mark unless authorisation is dependent upon the person within to use the Certification Mark agreeing to adhere to the terms of the applicable license, the Brand Guideline and these Regulations.
- 3.6 In the respective licence agreements, it will be made clear to Gemserv, the Certification Bodies and the Producers and Installers that it is a condition of use that the mark shall not be used in any printer advertisements or printed publicity matter directed primarily to the market in the Territory and/or in retail point-of-sale display cards for use within the Territory without indicating that it is a certification mark.

4. REGISTER

- 4.1 A register containing the names and addresses of Certification Bodies and details of Producers and Installers (including their certification numbers) shall be kept by Gemserv and shall be available for public inspection on the MCS Website.

5. PRODUCTS AND SERVICES IN RELATION TO WHICH THE CERTIFICATION MARK MAY BE USED

- 5.1 A Producer or Installer may use the Certification Mark in relation to the respective Products and Services in accordance with these Regulations and the relevant Authorised Used Licence.

6. APPLICATION FOR AND GRANT OF AUTHORISED USER LICENCES.

- 6.1 An Applicant for an Authorised User Licence shall apply to a Certification Body for it in accordance with the procedure set out on the MCS Website.
- 6.2 Provided a Certification Body is satisfied that an Applicant meets or exceeds the relevant Scheme Criteria and the Certification Body's own certification process the Certification Body shall issue an Authorised User Licence to that Applicant

7. DURATION AND RENEWAL OF LICENCES

- 7.1 An Authorised User Licence shall continue in force unless terminated earlier in accordance with the provisions of that Authorised User Licence or these Regulations.

7.2 A Certification Body may refuse to renew an Authorised User Licence if the Producer or installer is in breach of these Regulations or that Authorised User Licence and, having been required to do so by the Certification Body has not remedied such a breach.

8. FEES

8.1 An Applicant or a Producer or Installer (as the case may be) shall pay the Certification Body a fee for the use of the Certification Mark determined in accordance with the Fee Schedule in Annex 5 as amended from time to time.

8.2 The Certification Body shall collect such fees as the agent of Gemserv and shall remit any sums received from Applicants or Producers or Installers to Gemserv within 14 days of receipt.

8.3 Nothing in this agreement shall prevent the Certification Body from levying its own charges on Applicants or Producer and installer (as the case may be).

9. DISPUTE RESOLUTION

9.1 If a Certification Body refuses to approve an application for an Authorised User Licence or withdraws an Authorised User Licence, any dispute between the Certification Body and the Applicant or the Producer or the Installer (as the case may be) shall be resolved in accordance with the Certification Body's complaint procedure, a copy of which will be made available by the Certification Body on request. Having exhausted the complaints procedure (including any appeals mechanism it may contain) if the Producer or Installer or Applicant is still dissatisfied it may refer the matter to Gemserv who will consider it afresh in accordance with Gemserv's dispute resolution procedure. If after that procedure has been exhausted the Producer or Installer or Applicant (as the case may be) remains aggrieved the matter shall be dealt with by the MCS Charitable Foundation using the procedure set out in Annex 2.

10 CHARACTERISTICS CERTIFIED BY THE CERTIFICATION MARK

10.1 The characteristics certified by the Certification Mark regarding compliance for Products are those set out in Part I of Annex 3.

10.2 The characteristics certified by the Certification Mark regarding compliance for the provision of Services are set out in Part II of Annex 3.

11. CONDITIONS FOR USE OF THE CERTIFICATION MARK

11.1 The producer or Installer shall:

11.1.1 use the Certification Mark only for Products and Services to which their Authorised User Licence relates and which comply with the Scheme Criteria;

11.1.2 comply with the Brand Guidelines;

11.1.3 not omit part of, or make any additions or alterations to, the Certification Mark;

11.1.4 not use the Certification Mark in a manner which is deceptive, or which would bring the Certification Mark into disrepute or which is likely to prejudice the legal protection or validity of the Certification Mark;

- 11.1.5 not sub-licence, adding or in any other way transfer its rights or obligations under the Authorised User Licence;
- 11.1.6 recognise that the Certification Mark is only registered in the Territory;
- 11.1.7 not use the Certification Mark in any printed materials directed primarily to the market in the Territory without indicating that the mark is a Certification Mark in the manner specified in the Brand Guidelines; and
- 11.1.8 market and advertise the Products and Services and manufacture, distribute and sell the Products and supply the Services in strict compliance with the rights of any third party and all applicable laws, codes of practice, standards and regulations in effect in the Territory.

12. SUPERVISION AND CONTROL

12.1 Gemserv shall:

- 12.1.1 investigate complaints by members of the public and shall conduct regular monitoring activities, so far as reasonably practicable, in accordance with the provisions of Part III of Annex 4, to ensure compliance by Producer and Installers with the Scheme Criteria, the Brand Guidelines, the Authorised User Licence and these Regulations.
- 12.1.2 notify the Producer or Installer in writing of any instances of non-compliance with the Scheme Criteria, the Authorised User Licence, the Brand Guideline or these Regulations revealed as a result of such compliance monitoring activities or other investigations and may make written recommendations for compliance.
- 12.1.3 investigate and deal with any instances of non-compliance in accordance with the compliance monitoring procedures set out in Part I of Annex 4.
- 12.2 To enable Gemserv to ensure compliance by the Producer or Installer with the Scheme Criteria, the Authorised User Licence, the Brand Guidelines or these Regulations the Producer or Installer shall comply with such reasonable requests as Gemserv may make in exercise of its powers of control and inspection set out in Annex 4.

13 TERMINATION OF AUTHORISED USER LICENCES

- 13.1 The Certification Body may terminate an Authorised User Licence by written notice with immediate effect at any time if a Producer or Installer commits a breach of the Scheme Criteria, the Authorised User Licence, the Brand Guidelines or these Regulations and does not remedy such a breach (if capable of remedy) within thirty (30) days after receiving written notice from the Certification Body requiring the Producer or Installer to do so.
- 13.2 The Producer or Installer shall notify the Certification Body in writing immediately upon the occurrence of any of the following events:
 - 13.2.1 where the Producer or Installer is an individual, if a petition is presented for the Producers or Installer's bankruptcy, or the Producer or Installer makes any composition or arrangement for the benefit of creditors, or is an administrator is appointed to manage the Producer or Installer's affairs; or

- 13.2.2 where the Producer or Installer is a firm or a number of natural or legal persons acting together, if any event in Regulation 13.2.1 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Producer or Installer to be wound up as an unregistered company; or
- 13.2.3 where the Producer or Installer is a company or a limited liability partnership, if the Producer or Installer enters administration or passes a resolution to wind up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditor or by the court, or possession is taken of any of the Producer or Installer's property under the terms of a floating charge; or
- 13.2.4 the Producer or Installer undergoes a change of control, where "control" has the meaning given in section 840 of the Income and Corporation Taxes Act 1988.
- 13.3 On receipt of a notice under the Regulation 13.2 or earlier discovery by the Certification Body of the occurrence of any of the events described in that regulation:
 - 13.3.1 the Certification Body shall notify Gemserv; and
 - 13.3.2 the Certification body may, by notice to the Producer or Installer terminate the Authorised User Licence with immediate effect without prejudice to any right of action or remedy which may accrue to the Certification Body, Gemserv or the MCS Charitable Foundation subsequently.
- 13.4 The Certification Body's right under the Regulation 13.3 to terminate the Authorised User Licence, on Receipt of a notice under regulation 13.2 subsists for a period of six months from and including the date of receipt of the notice.
- 13.5 If at any time the Certification Body shall cease to have the right to grant an Authorised User Licence the Certification Body may terminate any existing Authorised User Licence with immediate effect by giving notice to the Producer or Installer. The Producer or Installer shall have no claim against the Certification Body, Gemserv or the MCS Charitable Foundation in respect of such Termination.

14. CONSEQUENCES OF TERMINATION

- 14.1 On termination of an Authorised User Licence the Producer or Installer shall cease using the Certification Mark in any form (including electronic) and shall (at the option of the Certification Body either destroy or return to the Certification Body all material, in the Producer or Installers possession or control bearing the Certification Mark.
- 14.2 Termination of the Authorised User Licence for whatever reason shall not affect the accrued rights of the Certification Body, Gemserv or the MCS Charitable Foundation arising in any way out of the Authorised User Licence as at the date of termination and in particular but without limitation the right to recover damages.
- 14.3 All provisions of the Authorised User Licence which in order to give effect to their meaning need to survive its termination shall remain in full force and effect after termination.

15. PROCEDURES FOR RESOLVING DISPUTES WITH THIRD PARTIES

- 15.1 The Producer or Installer must promptly bring to the attention of the Certification Body any use of any part of the Certification Mark by any third party or any activity of any third party which might in the Producer or Installers opinion amount to infringement or passing off of the Certification Mark.
- 15.2 The Producer or Installer must not bring proceedings relating to any infringement or passing off of the Certification Mark as any decision to bring or defend any proceedings (whether for infringement or otherwise) in relation to the Certification Mark is at the discretion of MCS Charitable Foundation.
- 15.3 If required to do so by the Certification Body, Gemserv or MCS Charitable Foundation the Producer or Installer shall cooperate fully in the conduct of any infringement proceedings.

16 POWER TO AMEND

- 16.1 Subject to the consent of the Register of Trade Marks, MCA Charitable Foundation may alter these Regulations or make new Regulations, upon giving written notice of one calendar month to Gemserv, the Certification Bodies and any Producers or Installers of such alterations or new regulation.
- 16.2 An amendment of these Regulations is not effective unless and until the amended regulations are filed and accepted by the Register of Trade Marks.

17 GIVING OF NOTICE

- 17.1 Any notice given under an Authorised User Licence or these Regulations shall be in writing and if sent to –
 - 17.1.1 Gemserv shall be delivered by hand or sent by first class mail to 8 Fenchurch Place, London EC3M 4AJ for the attention of MR Mike Gibson or such other person as Gemserv may nominate in writing from time to time;
 - 17.1.2 a Certification Body shall be delivered by hand or sent by first class mail to the address of that Certification Body shown on the MCS website;
 - 17.1.3 a Producer or Installer shall be hand delivered or sent by first class recorded postal delivery, facsimile or email transmission to the email or postal address or facsimile number provided by the Producer or Installer to the relevant Certification Body from time to time.

Or in any case to such other address (including email addresses and facsimile number) as a party may advise the other (s) in writing from time to time.

- 17.2 If sent to the correct address or facsimile number notice given by –
 - 17.2.1 hand shall be effective immediately,
 - 17.2.2 recorded postal delivery shall be effective two (2) working days after the date of posting,

17.2.3 facsimile transmission shall be effective the working day after receipt by the notification party of a transmission slip showing that the transmission has succeeded, and

17.2.4 email shall be deemed to have been made on the day in which the communication is first stored in the receiving party's electronic mailbox,

provided that if deemed receipt occurs on a weekend or public holiday, the notice shall be deemed to have been received on the next working day.

**ANNEX 1
(Regulation 1)
Part I**

PRODUCTS

“Products” means those specified in Application Number 2508934 and appearing in:

Class 7

Namely hydro-turbines, wave turbines and wind turbines, all for power generation; dynamos; fuel conversion apparatus for the use of alternative fuels and/or biomass; biomass generators; parts and fittings for all the aforesaid goods.

and

Class 9

Namely apparatus and instruments for the generation of electricity and parts and fittings therefore; solar cells; solar panels; electrical apparatus for the use in energy supply, electrical control apparatus for the use with heating installations; combined heat and power fuel cells; part and fittings for all the foresaid goods.

and

Class 11

Namely apparatus and instruments for heating and the production of heat, biomass boilers; thermal storage apparatus for heating; heat pumps, heat exchangers; parts and fittings for all the aforesaid goods.

Part II

SERVICES

“Services” means those specified in Application Number 2508934 and appearing in:

Class 37

Namely installation, set-to-work, commissioning, maintenance and repair of apparatus and instruments for the production of heat and or electricity.

ANNEX 2

(Regulation 9)

FINAL DISPUTE RESOLUTION PROCEDURE

- 1 Gemserv shall notify the Applicant or the Producer or Installer (as the case may be) of its right (once the dispute resolution procedures operated by the Certification Body and by Gemserv have been exhausted) to refer a dispute to MCS Charitable Foundation for determination by an appropriate expert.
- 2 The expert shall be appointed at the request of MCS Charitable Foundation by the centre for Effective Dispute Resolution, act as an expert and not an arbitrator in reaching his decision, give his decision in writing and state the reasons for it, and be entitled to decide only on the issues referred to him and not on any other matters.
- 3 The expert's decision shall be binding upon the parties to the dispute save in the event of manifest error or fraud.
- 4 The cost of any reference to the expert (including his fees) shall be borne by the parties to the dispute in such proportion as the expert shall determine to be fair and reasonable in all circumstances.

ANNEX 3

(Regulation 10)

CHARACTERISTICS CERTIFIED BY THE CERTIFICATION MARK

Characteristics applicable to small scale, on site, low carbon and renewable energy technologies.

PART I

Products

Producers are allowed to apply the Certification Mark to their Products provided such Products are certified by a Certification Body as compliant with certain prescribed minimum standards set out on the MCS website from time to time.

PART II

Services

Installers are allowed to use the Certification Mark provided they are certified by a Certification Body as compliant with certain prescribed minimum standards set out on the MCS website from time to time.

ANNEX 4

(Regulation 12)

PART 1

Compliance Monitoring Procedure

In addition to any compliance monitoring procedure utilised by the Certification Body the following procedure shall apply.

1. Where Gemserv notifies a Producer or Installer in Writing of allegations or instances of non-compliance with the Scheme Criteria, the Authorised User Licence or these Regulations, with or without recommendations for compliance, the Producer or Installer shall report to Gemserv in writing within 14 days of the date of the notice on the measures taken to ensure compliance.
2. If after a reasonable period the Producer or Installer fails to comply with the Scheme Criteria, the Authorised User Licence or these Regulations (as the case may be) the Certification Body, Gemserv or MCS Charitable Foundation may (without prejudice to any other rights they may have) exercise any or all of the following powers:
 - 2.1 require the Producer to remove the Certification Mark from the non-compliant Products or require the Installer not to use the Certification Mark in relation to non-compliant Services, as the case may be;
 - 2.2 require the Producer to withdraw non-compliant Products from the market and either repurchase them, exchange them for compliant Products or refund the price paid for them as the case may be;
 - 2.3 to require the Installer to make good, at his own cost, any defective Services provided; and
 - 2.4 to exclude non-compliant Products and Services or sales outlets or websites, as the case may be, from the relevant Authorised User Licence.
3. Where the Certification Body, Gemserv or MCS Charitable Foundation exercises any of the powers in subparagraphs 2.1 to 2.4, the Producer or Installer (as the case may be) shall comply as required within such timescales as may be imposed.
4. In addition to or as alternative to exercising the powers in subparagraphs 2.1 to 2.4, the Certification Body, Gemserv or MCS Charitable Foundation may terminate the Authorised User Licence.
5. To satisfy itself that a Producer is complying with the Scheme Criteria Gemserv may inspect the marketing of Products with the Certification Mark. Gemserv may also examine the means and mode of display of Products and Services by a Producer or Installer to prospective consumers, the quality of communications materials and all other matters relevant to the use of the Certification Mark in the presentation of Products and Services and their sale or supply to consumers.
6. Where Gemserv decides to exercise its right to under Paragraph 5, the Producer or Installer (as the case may be) shall:

- 6.1 permit Gemserv at all reasonable times to enter the Producer or Installers premises where the Certification Mark are being used and to meet with staff and customers;
- 6.2 make available to Gemserv all documents and records (including electronic) in the Producers or Installers possession, custody or control relevant to the use of the Certification Mark;
- 6.3 permit Gemserv to take copies of any or all of such documents or records; and
- 6.4 provide Gemserv with all such explanations, information, samples and evidence as Gemserv may require to be satisfied that the Producer or Installer is complying with Scheme Criteria, the Authorise User Licence and the Regulations.
7. In using its powers of control and inspection Gemserv shall use its reasonable endeavours to cause the Producer or Installer no more inconvenience than is necessary to assure itself that all conditions are met for preserving the reputation of the Certification Mark and the validity of the registration of MCS Charitable Foundation.

PART II

Conduct Of Compliance Monitoring Activities

- 1 A Producer or Installer shall cooperate with Gemserv in the conduct of any of the compliance monitoring activities mentioned in Part III below.
2. Without prejudice to the generality of paragraph 1, the Producer or Installer agrees to permit Gemserv to carry out audits at the Producer or Installer's premises to ensure that the Producer or Installer has the required documentation to prove compliance with the Scheme Criteria, the Authorised User Licence and these Regulations.
3. Where Gemserv seeks to carry out such audit by correspondence, the Producer or Installer agrees to send all necessary documentation to Gemserv.
4. Without prejudice to the generality of Part II paragraph 1, a Producer or Installer agrees to permit Gemserv to enter its premises, during usual business hours, to carry out mystery shopper checks, i.e. checks which will involve periodic, anonymous and unannounced visits to premises and informal meetings and conversations with staff and customers to assess display of the Products and provision of Services and to report the results to Gemserv and MCS Charitable Foundation.

PART III

Compliance Monitoring Activity Plan

1. Gemserv may conduct compliance monitoring activity, in accordance with such plan as it may from time to time establish, in respect of Producers and Installers in such a way as to ensure an even spread of such activity over the year.
2. For each compliance monitoring exercise, Gemserv intends to compile a summary report for MCS Charitable Foundation.

ANNEX 5

(Regulation 8)

FEES SCHEDULE

On behalf of Gemserv (and in addition to any charges which the Certification Body may levy on its own account) the Certification Body will charge a Producer or Installer as follows. All figures are exclusive of value added tax which will be added at the prevailing rate.

Producers

For authorised user agreements for Products the charges are an annual fee of:

- £425pa for the first technology certificated
- 325pa for the second technology certificated;
- £225pa for the third technology certificated; and
- £125pa for any technology certificated thereafter.

The annual fee will become payable once the Producer issued with their MCS Certificate and on the anniversary of that date.

Installers

For authorised user agreements for installations the charges are:

- An annual fee of £55; and
- A fee of £30 per installation. This will be a charge per technology installed at a premise.

The annual fee will become payable once an installer is issued with their MCS Certificate and the anniversary of that date.