

Regulations Team Standards Report

June 2013

Introduction

The Regulations Team Standards (RTS) were agreed with HMRC in May 2009, as a way to assess the regulations team's performance against the principles of Better Regulation and the requirements of the Terms of Approval (TOA).

The RTS consist of 69 separate standards split into the following key areas:

- Policy review and development of change proposals;
- Advice and guidance;
- Forms; and
- Training.

This document presents an assessment of performance against those standards in 2012/2013.

1. Policy review and development of change proposals

1.1 Review, scoping and planning

RTS	Overview	Summary of assessment/examples of performance against standard
1.1.1	Priorities will be agreed by the Board, normally on an annual basis.	The consultation schedule was agreed by the Board.
1.1.2	Regulations staff will ensure they have a clear understanding of the Regulations and seek clarification from management or solicitors as appropriate.	To ensure that the Regulations Team have a clear understanding of the Regulations, legal advice has been sought in the following areas: <ul style="list-style-type: none">• The reporting and record keeping of income derived; and• The definition of public.

		The Senior Management Team (SMT) have been consulted when giving advice regarding Environmental Bodies (EBs) acting as intermediaries for Contributory Third Party (CTP) payments.
1.1.3	The section will review and monitor policy and the Regulations to ensure that they are effective, proportionate and not unnecessarily burdensome.	<p>Policy development has taken place on the organisations which can act as CTPs, income derived and transfers of qualifying contributions. Policies have been reviewed in these areas to ensure that they are effective and, where possible, not overly burdensome.</p> <p>During the year we identified that a number of EBs were not recording income derived correctly. As a result we sought legal advice on the requirements and discussed this with HMRC. We also submitted a paper for HMRC to be able to consider the issues that some EBs have when calculating income derived and have identified that this should be taken forward as a consultation so that guidance can be issued.</p> <p>We have also found that the guidance surrounding asset retention is considered to be overly burdensome by EBs and have submitted a paper to HMRC recommending a way forward.</p> <p>A policy position has been issued during the year regarding making transfers of LCF funds to another EB which resulted in a significant change in the way that some EBs operate. As a result, we have worked closely with EBs to identify a workable solution and this work will be continued in 2013/2014.</p>
1.1.4	Preliminary evidence will be obtained and used to inform plans. An initial assessment will be made of any problem: scale (numbers affected, value etc); implications (risk, who affected etc); options (including “do nothing” option). It will be established whether the issue is a priority and whether consultation is required.	<p>Preliminary evidence was obtained in an earlier general consultation (in 2008/2009) with respect to the definition of public.</p> <p>The paper in relation to LCF interest in assets used evidence gathered from the asset consultation in 2010/2011.</p> <p>The Regulations Team has been involved in revisions to the compliance workbook to ensure that evidence of the correct standard to be used to form policy and consultation is included. The key areas reviewed during the period include:</p> <ul style="list-style-type: none"> • Income derived;

		<ul style="list-style-type: none"> • Running costs; • EBs acting as intermediaries for CTP payments; and • EBs making payments on receipt of paid invoices. <p>Options for the consultation surrounding the definition of public have been developed and the regulations team has considered the impact of any changes in an impact assessment.</p>
1.3.3	<p>Consider whether any other Regulators or organisations have a policy or standards on similar issues. Is it appropriate to use this policy/standard in forming the proposal?</p>	<p>The draft consultation on the definition of public considers the Upper Tribunal Hearing of the Charity Commission on a case relating to schools with charitable statuses charging excessive fees which did not meet the charitable requirement to demonstrate 'public benefit'.</p> <p>We also considered Financial Reporting Standards (FRS) 15 when developing the proposed policy for asset lifetimes.</p>

1.2 Consultation

As there have been no formal consultations during the year, a review of the Team's performance against this element of the RTS is not applicable. We are planning consultations on income derived, definition of public and project value for money in 2013/3014.

1.3 Development of change proposals

In September 2012, we made a partial assessment against this area and concentrated on the proposals which had been put to HMRC relating to asset lifetimes. It summarised that:

The Regulations Team have been progressing the case for setting lifetimes in relation to the LCF interest remaining in assets. In delivering this work the team has considered the responses to the 2010/2011, consultation exercise on asset management, reviewed general accounting practices and investigated the processes other organisations have in place (such as the Charity Commission and Big Lottery Fund).

We had not made any proposals for change since this submission. Instead our work focussed on the transfer of LCF funds between EBs, which has changed the way some EBs work. We published this guidance to reflect the policy direction, we received from HMRC. However, a number of EBs raised issues with the guidance surrounding project approval which had not been identified by the Regulations Team before the guidance was published. In this respect we do not consider that the RTS relating to the following areas were fully met:

- Considering the possible unintended consequences of the proposal; and
- Consider any disproportionate impact of the proposal.

1.4 Reports

The RTS set out that reports should be issued to HMRC in a timely fashion and be fully evidence based.

During the financial year, we issued HMRC with one formal report recommending changes to the Regulations/guidance relating to the management of assets. The RTS require that reports should be issued in a timely fashion. However, due to the complexity of the report, and the volume of evidence that was collated to support the document, there was a delay in sending this to HRMC.

2. Advice and guidance

RTS Category	Summary of assessment
Day-to-day advice and guidance	<p>Advice and guidance is freely given as a matter of routine, most commonly over the phone by all sections, at training events and during compliance inspections. A lot of guidance has been provided on CTPs to EBs who know new guidance will shortly be introduced, and who want to make sure they will be operating in line with that guidance.</p> <p>The guidance manual is being updated to make it easier to distinguish between statutory requirements and best practice.</p> <p>The Regulations Manager attended monthly compliance meeting to provide updates on new guidance that</p>

	<p>will be issued and leads discussions on complex regulatory issues in order to improve the Compliance Inspector's understanding of the Regulations.</p> <p>The customer satisfaction survey showed that 96% of those EBs who responded found the advice and guidance given was satisfactory or above and 98% found the staff to be helpful and professional in support of the achievement of this standard.</p>
Additional requirements for new guidance	<p>Guidance has been produced for EBs on income derived and transfers and is being developed for CTPs. The process for gaining sign off for these documents has been lengthy as HMRC have had to wait for legal advice on some of the matters which has delayed the publication of some of the guidance notes. However, a protocol has been developed for communicating changes which will ensure that there are clear lines of communication before any announcements are made to EBs. This will ensure a right first time approach and will avoid representational risk through misinformed or changing announcements.</p>
Monitoring the effectiveness of advice and guidance and planning	<p>The customer satisfaction survey found that 93% of those who responded found the guidance manual comprehensive and easy to understand.</p> <p>In practice, developing an annual plan for dealing with guidance reviews/development cannot be undertaken as it is necessary to deal immediately with issues where legal advice or HMRC's policy position has indicated that guidance needs to be reviewed promptly so that it accurately reflects the Regulations.</p>

3. Forms

This area of RTS aims to ensure that forms and requests for information are not overly burdensome and are a requirement of the Regulations.

An assessment has been carried out against the main categories of the standards as follows:

RTS Category	Summary of assessment
The purpose of forms/data/information	The Statutory Annual Return (Form 4) for 2011/2012 was updated to provide more guidance based on comments from EBs.

requests	<p>Two data requests have been made to the top 10 EBs (by unspent funds). Firstly to gain evidence to complete the analysis concerning how a contribution is spent and secondly to provide further information when requested by HMRC on the unspent funds and commitments of the top 10 EBs.</p> <p>We have also received a request for information from Her Majesty's Treasury (HMT) which required the top 10 EBs to disclose a lot of information which we would not usually require. We do not consider that these requests for information should be reviewed against the RTS as they were a direct requirement of HMRC/HMT and not initiated by ENTRUST.</p>
Design of new forms and revising existing forms	<p>Work is commencing to review the questions which are asked at project registration on income derived to ensure that EBs are aware of how much income derived they expect to receive from a project once it has completed. The questions will encourage EBs to consider how they will calculate income derived in later years so that they are able to report on and record it.</p> <p>There have been some amendments made to the Form 4 during the year. This work was led by the compliance team. The forms were amended to prompt EBs to inform us of any changes to their governing documents (to ensure that the requirements of Regulation 33 continued to be met), and to gain better information in relation to how EBs were deriving income where they reported that some income was generated from LCF funds. We considered this change to be necessary to assist EBs understanding of income derived and to ensure that we capture accurate information which we can use as evidence when required. As this is not a specific requirement of the Regulations, we contacted HMRC to give them the opportunity to comment if they did not think that the additional questions were appropriate.</p> <p>We have also updated the guidance surrounding completion of the Form 4 for the 2012/2013 returns, issued frequently asked questions and continued to give contact details for any stakeholder who is having difficulty completing the form.</p>
Review and planning	<p>92% of EBs who responded to the relevant question in the customer satisfaction survey said the Form 4 was easy to understand. This is a good result given it has to be done on a cash basis compared to the accruals used in an EBs accounts.</p>

	In 2011/2012, it was made easier for EBs who had no funds or transactions to complete a nil return.
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Consequently, we consider that the RTS relating to forms have been met during 2012/2013.

4. Training

The main aims of the RTS in this area are to ensure that training needs of EBs are identified, met and reviewed. An assessment has been carried out against the main categories of the standards as follows:

RTS Category	Summary of assessment
Identifying training needs	<p>Training needs are assessed by:</p> <ul style="list-style-type: none"> • Reviewing what EBs who attend training find useful and what they would like more information on; and • Asking attendees at advanced seminars what topics they would like to see covered. <p>The comments made by EBs at training events are reviewed at the operations team meetings to consider what, if anything, needs to be changed in future training.</p> <p>The Training Strategy and Annual EBs Training Plan were agreed at the March 2012 Board meeting.</p> <p>A benchmark for the training to deliver value for money and monitor the effectiveness of the training days was reported to the December 2012, Board meeting.</p>
Implementing training events	<p>We provide EBs with adequate notice of all training events through an annual programme covering the UK, together with dates agreed. This is advertised for the whole year with regular reminders of the training sent to EBs in the quarterly e-bulletin. All delegates are sent joining details at least two weeks before the training.</p>

	<p>A distinction is made between basic training days and advanced seminars.</p> <p>The training events to date have had an average overall score for the day of 4.6 out of 5 and almost 100% of attendees have said they would attend a similar training event in the future. This demonstrates the positive assessment by the attendees of the knowledge and experience of the staff presenting the training.</p>
Review and improvement of training programmes	The comments made by EBs at training events are reviewed at the operations team meetings to consider if anything needs to be changed to improve the delivery of future training events.

Consequently, we consider that the RTS relating to training have been met during 2012/2013.

Summary Assessment

We consider that we have met the RTS in respect of policy review and development of change proposals. However, the unintended consequences and disproportionate impact of the transfers guidance were not fully considered. Lessons can be learnt from this to enable us to consider the actions which EBs may take, further to any guidance on the Regulations or policy positions being issued.

We consider that the day-to-day advice and guidance that we issue to EBs is of a high standard and this is reflected in the responses that we received to the 2012, EB satisfaction survey. Consequently we consider the RTS in this area have been met during 2012/2013. However, we have identified that further work in relation to the guidance manual is required to ensure that regulatory responsibilities and best practice are better defined and this will be progressed during 2013/2014.

We have made data requests of EBs during the past 12 months as a direct result of requests made of us by HMRC and HMT. These requests required a selection of EBs to disclose a large volume of information which would not usually be requested from them. We do not consider that these requests should be reviewed against the forms area of the RTS as they were a direct requirement of HMRC/HMT. We also consider that the amendments made to the Form 4 during the year had a clear purpose and will be clearly communicated to EBs as part of the 2012/2013 Form 4 Strategy. As a result we consider that the RTS in this area have been met.

The feedback received from EBs in relation to the training events provides independent evidence that we have met the training requirements of the RTS. However, our training days are kept under constant review and we will be focussing our work to enable us to measure the value for money and additional benefits that the events offer to delegates.

In conclusion, we consider that all applicable areas of the RTS have been met during 2012/2013.