



Contributing Third Parties



**REGULATING THE LANDFILL COMMUNITIES FUND
BENEFITING PEOPLE AND THE ENVIRONMENT**

Consultation Paper

September 2009

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Project: The Minerva Arts Centre, Llanidloes

Description: To improve energy efficiency at the centre and to upgrade the gallery to allow its use all year round, enabling groups to meet.

Supported through: *The Quilt Association.*



Subject of this Consultation:	Contributing Third Parties
Scope of this Consultation:	<p>The first consultation exercise will focus on Contributing Third Parties (CTP) and the requirement that they should receive no unique benefit from any project undertaken by the Environmental Body (EB). Particular attention will be paid to:</p> <ul style="list-style-type: none"> • Keeping records and reporting of the CTP in the initial payments of LCF monies from Landfill Operators (LO's) to EBs; • Keeping records and reporting of the CTP during transfers of LCF monies between EBs; and • Monitoring ongoing compliance of CTP unique benefits.
Who should read this:	Environmental Bodies and Landfill Operators
Duration:	The consultation will run for 12 weeks. The closing date for responses is 04 December 2009.
Enquiries:	For general enquiries relating to this consultation, please contact Hannah Williams, Regulations Manager on 01926 488 324.
How to respond:	<p>Responses to this consultation should be sent online to:</p> <p>Online Survey (http://www.surveymalaxy.com/surPublishes.asp?k=GB-NTDIOA2CLC)</p> <p>or email: regulations@entrust.org.uk with 'CTP' in the email subject.</p> <p>or by post to:</p> <p>Pardeep Bansi ENTRUST 60 Holly Walk Royal Leamington Spa Warwickshire CV32 4JE</p>
Additional ways to become involved:	A focus group will be held to discuss this topic further. The location and date will depend on those expressing an interest in attending. If you wish to attend the Contributing Third Parties Focus Group, please express your interest to Pardeep Bansi by 16 October 2009.
After the consultation:	After reviewing the responses to this consultation, ENTRUST will issue a report of the findings to the Board and then make recommendations to HMRC. These recommendations will be published on the ENTRUST website.
Previous engagement:	The Regulations relating to Contributing Third Parties came into force on 01 January 2000 and were updated 01 April 2007.

1 Executive Summary

- 1.1** ENTRUST is fully committed to engaging stakeholders wherever possible to ensure that the regulation of the Landfill Communities Fund (LCF) complies with best regulatory practice. As part of this process, ENTRUST will be running a number of stakeholder consultation exercises during 2009/2010, relating to the regulation of the Fund.
- 1.2** The first consultation exercise will focus on Contributing Third Parties (CTP) and the requirement that they should receive no unique benefit from any project undertaken by the Environmental Body (EB).
- 1.3** Stakeholder feedback will be used to understand the current position in order to gauge the possible impact of proposals and provide input into the development of more effective regulations surrounding contributing third parties.
- 1.4** This paper puts forward a background and asks for confirmation on the arrangements operating with respect to contributing third parties. Questions are asked about potential changes in recording CTPs. The key areas of focus are:
- Keeping records of the CTP in the initial payments of LCF monies from Landfill Operators (LO's) to EBs;
 - Keeping records of the CTP during transfers of LCF monies between EBs; and
 - Monitoring ongoing compliance of CTP unique benefits.
- 1.5** ENTRUST is committed to listening to all feedback from all of our stakeholders.

Project: Enhanced Biodiversity at Portmore Lough.

Description: Restore and enhance the wetland habitat at Portmore Lough Nature Reserve, Northern Ireland.

Supported through: Biffaward.



2 Gathering Evidence

2.1 ENTRUST will be seeking stakeholder feedback through the following methods:

- Written responses to this consultation document, which outlines the issues themselves;
- Responses submitted through a dedicated internet survey; and
- A focus group that will be held to discuss the questions posed and the topic generally.

3 Reasons for the Consultation

3.1 The Regulator needs to ensure that records are kept of CTPs to ensure it is able to monitor continued compliance with the Landfill Tax Regulations 1996 (Regulations). If expenditure becomes non-compliant ENTRUST can apply sanctions, which may result in revocation. Alternatively, HMRC can claw back LCF funds from LO's. The key areas where EB's need to demonstrate compliance are as follows:

- Keeping records and reporting of the CTP in the initial payments of LCF monies from LO to EBs;
- Keeping records and reporting of the CTP during transfers of LCF monies between EBs; and
- Monitoring ongoing compliance of CTP unique benefits.

3.2 In the event that an EBs expenditure is found to be non-compliant, Customs have the power to recover the tax credit claimed by the LO against their qualifying contribution. Repayment of credit is known as clawback.

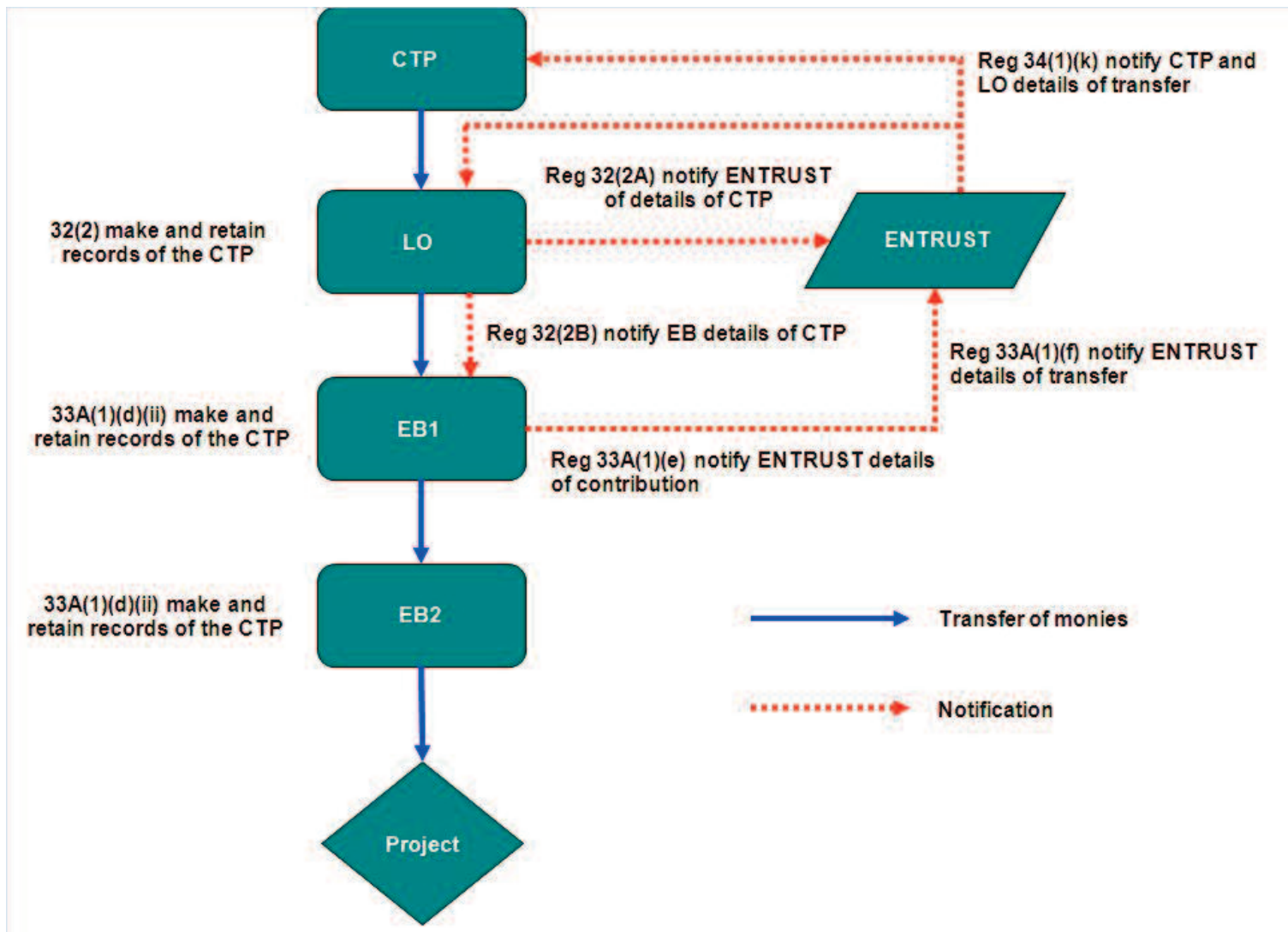
3.3 When HMRC administers claw back, they only claw back the 90% of monies for which tax credit has been claimed. This means that the LO could still retain the CTP monies.

3.4 If HMRC administers claw back against a LO, the LO could seek to reclaim the monies from the EB who the LCF monies were passed to.

4 Background

- 4.1** When a LO contributes to the LCF, they receive 90% tax relief. This means that the LO is left with a 10% cost for each contribution they make. In some cases the LO will absorb all or some of this cost themselves, in other instances a CTP will provide the 10% to make the LO contribution 'cost neutral'. Some LO contributions will have more than one CTP.
- 4.2** The CTP is the organisation, group of organisations or individual(s) that make a payment to the LO to enable a cost neutral 'qualifying contribution' to be made. This reimburses the LO who is out of pocket for making the contribution to the EB. Below is a flow diagram outlining the CTP process that was envisaged when the Regulations were introduced.

Figure One: Envisaged Contributing Third Party Process



- 4.3** We are aware that in practice there may be variations to this process. ENTRUST welcomes any additional information from EBs with respect to other processes which may be followed in identifying a CTP; and questions one to four cover this.
- 4.4** The intention of the Regulations is that the CTP monies are passed directly to the LO and do not go through the EB's accounts.
- 4.5** At present there is no written guidance produced by ENTRUST for EBs on the processes to capture information relating to CTP. It is a Regulatory requirement that ENTRUST is informed of CTP. Some of the larger LOs provide this information on a standard form which is submitted to ENTRUST, although the information was frequently left incomplete. The sections of these forms requesting CTP details were removed in April 2008.
- 4.6** Whilst forms 2, 4 and 7 make reference to 'Connected/Related Parties' it is worth noting here that these are different to a CTP. A connected party is defined in the EB Guidance Manual 2) Spending Landfill Communities Fund (LCF) Monies and Registering Projects as:

9.2.3 *any individual or organisation, related or linked to the EB. This may include (but not be limited to) any director, partner, shareholder, manager or other employee or employer, company, trustee, advisory panel or committee that has direct or indirect influence on LCF spending. Relations and links can be both through personal or business connections, for example spouse/civil partner/cohabitee (or relative of spouse/civil partner/cohabitee), relative or persons connected to by virtue of their being a trustee.*

4.7 Keeping records and reporting of the CTP in the initial payments of LCF monies from LO to EBs

- 4.7.1** ENTRUST needs to ensure that it is aware when a CTP is involved in a payment from a LO. ENTRUST must also be informed of how much the CTP has contributed and the date of such contribution.
- 4.7.2** The following Regulations directly relate to the responsibility of the LO to inform ENTRUST of any CTP's at the initial stages of the LCF payments:

32 (2A)

A person claiming credit under this part for a contribution in relation to which there is a contributing third party shall have provided to the regulatory body..... the following information-

(a) the name and address of the contributing third party

(b) the amount of the payment made or to be made by the contributing third party and the date, or as the case may require, dates on which payment of the whole or any part of that amount –

(i) was received

(ii) Is expected to be received

(c) the enrolment number of the approved body to whom the contribution was made.

32 (2B)

A person claiming credit under this part for a contribution in relation to which there is a contributing third party shall have informed the approved body to which the contribution is made of the name and address of the contributing third party.

4.7.3 The Regulations state that LOs and EBs must inform ENTRUST of any CTP, we have asked question five to understand what happens in your organisation and question seven to see what the impact of collecting this information on Form 4 would be.

4.8 Keeping records and reporting of CTP during transfers of LCF monies between EBs

4.8.1 The Regulations state that ENTRUST and the LO should be informed by an EB of any CTP when monies are transferred between EBs. In addition, there is also a requirement for ENTRUST to notify the CTP of any transfer between EBs of the monies that they contributed towards:

Project: Restoring Ancient Woodland at Tresswell SSSI.

Description Project to restore a piece of ancient woodland at the Tresswell Wood Site of Special Scientific Interest, near Retford, Nottinghamshire.

Supported through: Veolia Environmental Trust.



4.8.2 The Regulations relating to CTP outlines that EBs keep a record of all CTP's to the monies which it both receives and transfers. Furthermore, ENTRUST should be notified of the CTP within seven days of the transfer of the monies to or from the EB.

33A (1) *An approved body shall –*

(c) not apply any of its funds for the benefit of any of the persons who have made qualifying contributions to it or who were contributing third parties in relation to such contributions (except to the extent that they benefit by virtue of belonging to a class of persons that benefits generally)

(d) make and retain records of the following-

(ii) the name and address of any contributing third party in relation to a qualifying contribution received by the body

(iv) in the case of a transfer of the whole or part of any qualifying contribution or income derived therefrom to or from the body..... the name and address of any contributing third party in relation to the qualifying contribution.

(e) provide the following information to the regulatory body..... within 7 days of the receipt by it of any qualifying contribution -

(iv) the name and address of any contributing third party in relation to the contribution notified to it in virtue of regulation 32(2B) above.

(f) notify the regulatory body within seven days of any transfer by that approved body of qualifying contributions or income derived therefrom of –

(v) the name and address of any contributing third party in relation to the contribution.

4.8.3 The Regulations outline ENTRUST's obligation to inform the LO and CTP of any transfers of related monies:

34 (1) *The regulatory body –*

(k) shall, when notified by an approved body of the transfer to or by it of the whole or part of a qualifying contribution or income derived therefrom, notify the registered person who made the qualifying contribution, and any contributing third party in relation to it, of –

- (i) the date of the transfer,*
- (ii) the name and enrolment number of the body by or, as the case may require, to whom the transfer was made;*
- (iii) the amount transferred; and*
- (iv) the approved objects to which the transferred funds are to be applied.*

4.9 Monitoring the ongoing compliance of CTP unique benefit

4.9.1 The Regulations require that the CTP can not derive a unique benefit from the project going ahead, or any other project of the EB (known as the ‘once a contributor, always a contributor’ rule). Benefit can be determined as any material or financial advantage, asset, gain or benefit in kind.

4.9.2 The Regulations also provide that the EB must ensure that there is no unique benefit to any CTP and is where the once a contributor, always a contributor rule is derived from:

33 (1) *A body is eligible to be approved if –*

(e) it is precluded from applying any of its funds for the benefit of any of the persons –

- (i) who have made qualifying contributions to it, or*
- (ii) or who were a contributing third party in relation to such contributions,*

except that such persons may benefit where they belong to a class of persons that benefits generally.

4.9.3 Current ENTRUST Guidance states in section (7) The Benefit Rules at paragraph 3.1.2 that:

*Once an LO or Contributing Third Party has been a contributor to an EB, it will always be regarded as a contributor. An EB must consider whether any of its projects, **AT ANY TIME**, benefit these individuals or organisations, however long ago their donation was made.*

4.9.4 A CTP may be able to provide goods or services to an EB but these goods or services must be at prime cost (i.e. not for profit), therefore ensuring that there is no unique benefit to the CTP by undertaking these works or providing the goods.

Prime costs = Direct material + Direct labour + Direct expenses

4.9.5 The CTP payment helps to determine that the LCF is a private sector scheme, as this is a fundamental element of the fund. The underlying principle of CTPs is not considered for review in this consultation.

4.9.6 There may be some instances where a CTP may not be viewed as receiving any unique benefit and that the benefit would be amongst a general class of people. An example of this would be:



Project: Windmill Park Youth Space.

Description: Creating a safe community place for teenagers.

Supported by: Biffaward.

Example: A village hall is run by a management committee, which is not an enrolled EB. The Hall has a number of user groups from the local community. The management committee approach an EB to fund work to repair the hall roof. In this case the village hall committee could provide the CTP payment, as there are many users of the village hall and therefore the benefit is widely and generally shared. However if the management committee had use of the Hall on preferential terms (such as access outside normal hours) there could be a benefit contrary to the Regulations.

4.10 Protection of LO's and CTP's

4.10.1 LOs might have funding agreements with EB's that there is to be no unique benefit to any CTP to provide them with protection.

4.10.2 CTP's might place conditions on the LO to ensure that the contribution that that enabled are protected and used compliantly and that they can reclaim their contribution should claw back occur.

5. Consultation Questions

5.1 Questions for EBs

Understanding the CTP process:

Question One: Can you please confirm the process for CTP funding which is currently undertaken within your EB? Please provide us with a flow diagram to outline this process.

Question Two: Does your EB currently pass on funds to the LO on behalf of the CTP?

Project: Souter Lighthouse play equipment.

Description: Updating the play area in Souter- Tyne and Wear.

Supported by: SITA Trust.



Question Three: If the answer to the above is yes;

- (a) do you keep a separate account for these monies?
- (b) please can you outline how your EB does this (e.g. passes on a cheque, pays the LO from a bank account etc)?

Question Four: Please highlight any areas of concern if it was made compulsory that:

- (a) all CTP monies are required to be paid direct from the CTP to the LO; or
- (b) EBs passing on funds to the LO on behalf of the CTP are required to do so by way of a separate bank account.

Keeping records and reporting of the CTP in the initial payments of LCF monies:

Question Five: Does your EB arrange the CTP on behalf of the LO?

Question Six: Does your EB know who the CTP's are for each of the qualifying contributions that they receive?

Question Seven: What additional administrative burden would an amendment to Form 4 to capture CTP information place on your EB?

Keeping records and reporting of CTP during transfer of LCF monies:

Question Eight: Do you currently keep a record of CTP for transfers that you have received?

Question Nine: Is your EB always able to inform ENTRUST of CTP when transferring monies?

Question Ten: Does your EB ever transfer monies where a CTP is required, but has not been identified?

Question Eleven: In your experience, do you believe that the CTP would like to know when monies relating to their contribution are transferred to other EB's?

Question Twelve: In your experience, what percentage of transfers of monies between EB's usually have a CTP connected to them?

Monitoring ongoing compliance of CTP unique benefits:

- Question Thirteen:** Does the funding agreement between your LO's and EB have a clause stating that there is to be no unique benefit to any CTP's that have ever made a contribution to a LO associated with your EB?
- Question Fourteen:** Would a clause such as that mentioned in question eight place any additional administrative burden on the EB?
- Question Fifteen:** How does your EB monitor the guidance surrounding, 'once a contributor, always a contributor' that requires that a CTP will remain a CTP to the EB for all projects once it has become associated?
- Question Sixteen:** What methods do you have in place to ascertain if a CTP receives any unique benefit from a project and/or any other projects that you undertake?
- Question Seventeen:** Are you aware of any of your CTPs having an agreement with the LO for repayment of their element in the event that HMRC exercise claw back in respect of the LO payment?
- Question Eighteen:** Is your EB aware of the Regulations surrounding CTP and unique benefit as outlined in this paper?
- Question Nineteen:** Please outline any further points that you wish to add regarding this consultation.

5.2 Questions for LOs

- Question One:** Can you please confirm how a CTP is identified for your qualifying contributions?
- Question Two:** Do you receive a CTP payment direct from the CTP or through an EB?
- Question Three:** Do you know who the CTPs are for each of the payments made to EBs?

- Question Four:** Do you confirm CTP details to ENTRUST? If so, when and how?
- Question Five:** In your experience, do you think a CTP would like to know when monies relating to their contribution are transferred to another EB?
- Question Six:** Do any CTPs have an agreement with you for repayment in the event that HMRC exercise clawback?

6. Contact Details – How to Respond

- 6.1** The consultation is open to all stakeholders of the LCF. Any feedback submitted will be treated in strictest confidence and will be considered anonymous unless you state otherwise. Responses can be returned through the following methods:

Online: Please use the following link - Online Survey
(<http://www.surveymalaxy.com/surPublishes.asp?k=GBNTDIOA2CLC>)

Email: Regulations (regulations@entrust.org.uk) with 'CTP' in the email subject.

Post to: Pardeep Bansi
ENTRUST
60 Holly Walk
Royal Leamington Spa
Warwickshire
CV32 4JE

- 6.2** A focus group will be held to discuss this topic further. The location and date will depend on those expressing an interest in attending. If you wish to attend the Contributing Third Parties Focus Group, please express your interest to Pardeep Bansi by 16 October 2009
- 6.3** The closing date for responses is 04 December 2009

7. Publication of Response

- 7.1** A paper summarising the responses to this consultation will be published together with any report to HMRC after approval by the ENTRUST Board and in consultation with HMRC.
- 7.2** The outcomes of the consultation will be reviewed and any proposals will be subject to an impact assessment and publicised to stakeholders appropriately.



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