



REPORT ON THE REVIEW OF REGULATORY CHANGE PROPOSALS 2008-2009



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

Consultation Paper

June 2009

Contents

Executive Summary	3
Background	6
Issues	6
Methodology	6
Definition of Public Amenity - Consultation Results	7
Entry Fees to Object D - Public Amenity Projects	13
Public Access to Object E - Maintenance, Repair or Restoration of a Structure of Religious or Historical Interest	16
Administrative Burden that Stakeholders are currently subject to resulting in a restriction of abilities under the LCF	18
Any other issues being faced by stakeholders or areas for review that could improve the efficiency or effectiveness of the LCF	20
Appendix A: Summary of Consultation Responses	23



Project: Daniels Mill, Shropshire.

Description: Replacing the tank and cast iron piping to rennovate the only working watermill in Shropshire.

Supported through: Grantscape.



Executive Summary

1.1 Background

1.1.1 This report sets out the results of ENTRUST's third consultation exercise of 2008/2009, on potential regulatory changes to the Landfill Tax Regulations 1996 (Regulations).

1.1.2 Regulatory issues which were consulted on were developed from ENTRUST's staff and feedback from stakeholders included:

- Definition of a Public Amenity;
- Allowable Admission Charges to a Public Amenity;
- Public Access required to a Religious or Historic Building;
- Areas of administrative burden; and
- General issues.

1.2 Methodology

1.2.1 A consultation document was published and it was open for twelve weeks for comments. Responses were welcomed electronically or by post. In addition ENTRUST held a focus group with interested stakeholders to further discuss the issues covered in the document.

Project: Myatt's Field Playground project.

Description: To increase play and learning by developing a new playground linked to a wildlife area in Lambeth.

Supported through: Biffaward.



1.3 Analysis of Findings

- 1.3.1** There were fifteen respondents to the consultation document. There was a high degree of support for a change to the current definition of a public amenity with over two thirds of the fifteen respondents suggesting a change from 'Where the general public go for leisure or recreation'. The changes suggested related to the extension of the definition to include projects classed as providing 'respite' facilities and 'community learning' facilities. There was another suggestion that the definition should simply be classed as work that is requested by the general public. These three options have been evaluated, however the only recommendation for change is to include in the Regulations the current definition provided in the ENTRUST guidance.
- 1.3.2** The element of the consultation relating to the need for parameters in relation to allowable admission charges to a public amenity did not receive support from the consultees. It was felt that there is too much diversity in the types of project supported to set universal parameters and in any event the requirement not to make a profit precludes excessive charges. However it is proposed ENTRUST does further work on the relationship between admission charges and average wages and benefit wages.
- 1.3.3** The consultation revealed that the range of projects undertaken under Object E: Restoration of Religious or Historic Building results in buildings being open at various times and by their nature some will have few open days to the public. Consultees did not support a minimum number of open days, and no projects had been refused on these grounds. Some Landfill Operators (LO) and Environmental Bodies (EB) set their own minimum number of days. There is no recommendation to change the current system.
- 1.3.4** There were four issues raised in response to the administrative burdens element of the document. Two of these, related to communicating outcomes by e-mail and changes to Form 4 project information, will be considered for development with the introduction of a revised ENTRUST on-line (EOL), and the other two in relation to the data requested on application forms and the definition of the vicinity of a landfill site will be referred to HMRC.
- 1.3.5** There were a number of issues raised under the other comments section and proposals are made for taking each of these forward.

1.4 Recommendations

1.4.1 A summary of the recommendations made is set out below:

- The Regulations are amended to incorporate a definition of what is considered to be a public amenity (Para 5.5.1);
- The Regulations are amended to define a public amenity as where the general public go for leisure (Para 5.7.3);
- Further work is done by ENTRUST on the relationship between admission charges and average and benefit wages/income to see if it is possible to identify what might generally be accepted as limits to charges for access and consult further (Para 6.6.1);
- No changes are made to the Regulation for Object E in respect of minimal opening hours (Para 7.5.2) ;
- The issues raised by EB regarding project outcomes by e-mail and Form 4 formats should be added to the list of requirements for the revised ENTRUST on line (EOL). (Para 8.3.1) ;
- HMRC is asked to review the need for all the statistics they have requested (Para 8.3.2);
- Issues relating to the 'vicinity of a landfill site' and the geographical requirements of projects are referred to HMRC; (Para 8.3.3)
- Evidence should be collected by ENTRUST to consider if further work should be done to enforce time limits on the commencement of registered projects (Para 9.2.4);
- Details of tendering when undertaking a LCF funded project will be covered in training and this will enable ENTRUST staff to ascertain if this a Regulatory issue in addition to a training need (Para 9.2.5);
- THE LCF communication strategy needs to consider how LCF effectiveness can be enhanced (Para 9.2.6);and
- ENTRUST statistics should be refined to identify active EB so data is not compromised by inactive EB (Para 9.2.7).

Project: Sharrow Green Space

Description: Creating access and improving woodland.

Supported through: Veolia Trust



2 Background

- 2.1 ENTRUST is committed to engaging stakeholders wherever possible, to ensure that the regulation of the LCF complies with best regulatory practice. As part of this process, ENTRUST's Regulations Team ran four consultation exercises during 2008/2009.
- 2.2 The third consultation exercise reviewed a number of Regulatory issues that had developed from within the regulator and in the stakeholder community.
- 2.3 This report will be submitted to HMRC, who have ultimate responsibility for the Regulations. Issues that require further discussion or subsequent individual consultations will be considered for inclusion in the consultation schedule in later years.

3 Issues

- 3.1 The topics covered in this report are based on the issues being encountered by ENTRUST regarding the registration of projects and feedback from stakeholders on issues they consider need to be addressed:

Topics covered in the Third consultation 2008/2009

Definition of a Public Amenity
Allowable Admission Charges to a Public Amenity
Public Access required to a Religious or Historic Building
Areas of current Administrative Burden
Other issues Identified by Stakeholders

- 3.2 This report covers each of these issues and reviews the consultation responses received with a view to submitting the outcomes to HMRC for their action.

4 Methodology

- 4.1 The work undertaken through this review centred on responses received to a consultation document that was published and open for twelve weeks. Responses were welcomed electronically, or by post.
- 4.2 Separately, ENTRUST held a focus group with interested stakeholders to further discuss the issues covered in the consultation. Notes taken at the focus group have been added to the official consultation responses for review. There were fifteen respondents and an analysis of the responses in relation to all elements of the consultation is set out in Appendix A.

5 Definition of Public Amenity

5.1 Background

- 5.1.1** Object D of the Regulations permits expenditure on providing, maintaining or improving a ‘public amenity’.
- 5.1.2** ENTRUST, with the endorsement of HMRC, adopted the definition in guidance of ‘where the general public go for leisure or recreation’ for the definition of a public amenity. This has now been established in excess of five years, and is used to guide all applicants wishing to receive LCF monies.
- 5.1.3** The definition is only guidance, used to ensure a uniform interpretation of the Regulations. When subject to challenge from an applicant, ENTRUST is currently unable to refer to the Regulations for a statutory definition, because there is none.

5.2 The Regulations

- 5.2.1** The Regulations allow LCF expenditure only on the approved objects of the scheme.
- 5.2.2** Regulation 33(2)d specifies that expenditure is classified as an approved object:

“where it is for the protection of the environment the provision, maintenance or improvement of –

- (i) a public park; or
- (ii) another public amenity”

Project: Reserve improvements at Sandwell.

Description: Enhancing access to wildlife through improvements to visitor facilities.

Supported through: Ibstock Cory Environmental Trust.



In the vicinity of a landfill site, provided the conditions in paragraph (6) below are satisfied;

- (6) The conditions mentioned...above are-
- (a) in a case falling within subparagraph (d), that the provision of the park or amenity is not required by a relevant condition; and
 - (b) in a case falling within either of those sub-paragraphs, that the park, amenity, building or structure (as the case may be) is not to be operated with a view to profit.”

5.2.3 As is confirmed above, the Regulations do not provide a definition of a public amenity.

5.3 Guidance

5.3.1 Guidance has developed defining a public amenity as ‘where the general public go for leisure or recreation’. This has been published to all stakeholders through ENTRUST’s EB guidance manual and has been established for at least five years.

5.4 Analysis of Consultation Results

5.4.1 The full consultation responses with initial analysis are outlined in Appendix A.

5.4.2 Two thirds of the fifteen respondents advised that they did not consider the current definition to be appropriate.

5.4.3 Consultees raised the following types of projects that could not be registered under the current definition:

- Respite facilities;
- Education projects;
- Social support projects; and
- Non-Statutory services that benefit the general public.

5.4.4 Respite facilities would include improvements to homes for the elderly and hospices. These are not currently classed as being where the general public go for ‘leisure or recreation’ and therefore are not considered to be compliant under the current definition.

- 5.4.5** It was argued that education projects often provide a benefit to the local community, but are currently penalised due to the fact that they do not result in physical works taking place and in cases they cannot be considered to be where the general public go for leisure or recreation. The example given was of providing a dedicated education centre for 'community learning and development'.
- 5.4.6** Social support projects included drop in centres for the homeless, or drug treatment facilities. While these are not accessed by the general public, they are open to the general public when needed, and can certainly not be classed as providing leisure or recreation services. These projects often enjoy high levels of public support and respondents advise that they would be strongly endorsed by the general public as an appropriate use of LCF monies.
- 5.4.7** Generally, it was stressed by respondents that the current definition does not provide for projects that they advise are requested and desired by the local community and yet do not fulfil the current definition of being for leisure or recreation.
- 5.4.8** Examples of this include an air ambulance service and a bereavement centre that are non-statutory requirements, operating on a not-for-profit basis and would provide a benefit to the local community. A layman might consider these to be to be 'amenities' for the 'public'. At present these projects are rejected due to the guidance in place referring to 'public amenity' and not due to any regulatory definition.
- 5.4.9** A revised definition of what is meant by public amenity is generally supported by the consultation results.

Project: Revamp the Rec.

Description: The provision of a skate and BMX park in Stockport.

Supported through: Greening Greater Manchester.



5.5 Recommendations

5.5.1 The lack of a statutory definition has led to a guidance being issued by ENTRUST as to what is considered to be a 'public amenity'. As there is no statutory definition outlined in the Regulations, ENTRUST is at risk of legal challenge from a project applicant that is refused project registration based on the current definition.

Recommendation 1: The Regulations are amended to incorporate a definition of what is considered to be a public amenity.

5.5.2 The options are to:

- Include the current guidance “where the general public go for leisure or recreation” in the Regulations; or
- Include an amended definition of a public amenity.

5.6 Alternative options for Public Amenity Definition and Impact Assessment

5.6.1 Definition #1: “A service or improvement requested by the general public”

5.6.1.1 This definition would allow all projects raised by stakeholders through the consultation process to be registered, providing the proof of general public support could be provided. It would be possible for the proof of general public support to be required through a petition, public meeting or local referendum. However there could be problems in gauging the degree of support, or opposition.

5.6.1.2 Fulfilling the holistic aim of the Regulations to benefit the community surrounding a landfill site, this definition would allow the community to dictate the services or improvements made. The broad scope of this definition would allow EB to locally tailor their activities to what the community requires.

5.6.1.3 It is important to stress that the current statutory requirements that forbid a profit making project, or one which fulfils a statutory obligation would still apply.

5.6.1.4 This definition does not however provide a simple, uniform interpretation of a public amenity and the lack of clarity resulting from the adoption of this interpretation would result in a subjective interpretation of a public amenity and problems with enforcement.

5.6.2 Definition #2: “Where the general public go for leisure, recreation or community learning”

5.6.2.1 Adding community learning to the definition would allow projects that cannot currently be registered due to the requirement that each project provides ‘leisure or recreation’ to the general public.

5.6.2.2 Anticipating the impact of these projects becoming compliant is difficult to quantify due to the fact that these projects do not currently enter the registration process. The revised definition, once incorporated into the governing Regulations, would allow individual EB to consider projects that aim to provide learning facilities for the general public

5.6.2.3 All works would have to involve the provision of learning services to the general public, and in the case of schools not just the children of a school. This means that the number of projects that will be affected by this change in definition could be limited. For example, at present projects such as providing an IT suite can be considered to be for leisure or recreation if they can be booked and used by a range of community groups.

5.6.2.4 The Government has a policy on extended schools with one of the six core offerings being community access, where schools ensure that where they have appropriate facilities, such as ICT suites, sports and arts facilities, they are opened up to the community to make the most of them. Schools also provide access to adult learning. However, it is clear that schools should charge communities for using their facilities.

5.6.2.5 Local Authorities have a duty to secure adequate facilities for further education under Section 15 of the Education Act 1996.

5.6.2.6 Given that this is local authority duty it is not felt appropriate to recommend this definition as an addition to the definition in the Regulations.

5.6.3 Definition #3: “Where the general public go for leisure, recreation or non-statutory respite”

Project: Flockhouse Fun Park

Description: The play area includes adventure play equipment for children and a quiet seating area.

Supported through: Fife Environmental Trust.



5.6.3.1 This definition would allow registration of projects that can be classed as providing non-statutory respite services for the general public.

5.6.3.2 This work to assist with 'Social Welfare' was not supported by all stakeholders due to the view that this was not within the original remit of the LCF. This is linked to the statutory obligations of the Local Authority. It would be difficult in a number of instances to distinguish between the statutory and non-statutory element of provision. This would have to be maintained to ensure the LCF does not, and is not perceived to fulfil statutory obligations.

5.6.3.3 The definition of respite would also be open to wide interpretation, and could include a wide variety of services such as bereavement centres and womens aid services.

5.6.3.4 The LCF concentrates on environmental works to compensate for landfill. However respite would not necessarily provide an environmental benefit.

5.7 Summary

5.7.1 The current definition of "where the general public go for leisure or recreation" allows a uniform interpretation and yet is deemed to be overly restrictive to the projects raised through the consultation.

5.7.2 Any definition needs to be included in the Regulations to be enforceable and stand up to challenge. However, an appropriate change has not been identified through this consultation. This does not preclude the need to place the current guidance on a firmer basis.

5.7.3 The current guidance refers to 'leisure and recreation'. However these words generally mean the same, so it is recommended that the Regulations are only amended to include the word 'leisure'.

Recommendation 2: The Regulations are amended to define a public amenity as where the general public go for leisure.

6 Entry Fees to Object D Public Amenity Project

6.1 Background

- 6.1.1** At present, the Regulations do not stipulate the parameters of an entry fee, or membership costs that may be in place in a compliant project.
- 6.1.2** When reviewing a proposed project for registration, ENTRUST looks to ensure that any entry fee or membership costs that may be in place are reasonable and proportionate when compared to similar amenities. This allows an organisation such as a cricket club to charge an annual membership fee of £25, similar to charges of other cricket clubs in the area.
- 6.1.3** The current method allows each project to be considered on a case-by-case basis and assessed in terms of 'reasonableness'. Ultimately, ENTRUST is looking to ensure that charges in place for use of an amenity are not considered to be excessive or restrictive.
- 6.1.4** ENTRUST currently reviews each project to ensure the entry costs will not be considered to be restrictive to the general public and can be classed as 'reasonable'.
- 6.1.5** With a view to reviewing the suitability of this current method, this consultation looked to review the stakeholder opinions towards charges for use of an amenity and how stakeholders ensure the charges are not excessive or restrictive.

6.2 Regulations

- 6.2.1** Regulation 33(2)d specifies that expenditure is classified as an approved object:

Project: Red squirrel project, Anglessey.
Supported through: Mentor Mon.



“6.2 Regulations

6.2.1 Regulation 33(2)d specifies that expenditure is classified as an approved object:

where it is for the protection of the environment the provision, maintenance or improvement of –

- (i) a public park; or
- (ii) another public amenity”

In the vicinity of a landfill site, provided the conditions in paragraph (6) below are satisfied;

- (6) The conditions mentioned...above are-
 - (a) in a case falling within subparagraph (d), that the provision of the park or amenity is not required by a relevant condition; and
 - (b) in a case falling within either of those sub-paragraphs, that the park, amenity, building or structure (as the case may be) is not to be operated with a view to profit.”

6.2.2 As outlined above, the Regulations do not therefore stipulate the requirements of any charges in place. It is significant to note, however, the statutory requirement that all projects are not operating with a view to profit.

6.3 Guidance

6.3.1 The guidance on Spending Landfill Communities Fund (LCF) Monies and Registering Projects states that “any income an EB receives from its LCF monies must also be spent on the approved objects. This includesany other derived income resulting from LCF project expenditure (for example, a royalty as a result of project activity” and this is repeated in the Benefit Rules.

6.3.2 These is no mention of reasonableness of charges.

6.4 Analysis of Consultation Results

6.4.1 All consultation respondents advised that they felt it could be appropriate for a project to charge admission charges, whether it was through membership costs or to pay for usage of the amenity directly. All of the respondents would provide funding to a project that had entry costs, providing this could be justified.

- 6.4.2** Income derived through the charges in place must be confirmed as being re-invested in the amenity or ultimately returned to the funding EB as derived LCF income.
- 6.4.3** All respondents strongly stressed the range of projects that are undertaken under Object D and therefore the need for entry costs to be calculated on a ‘reasonable’ or ‘acceptable’ basis rather than being within a centrally prescribed value. Some projects by their very nature require high admission or membership costs to sustain the activity, as illustrated by the example of a rowing club.
- 6.4.4** The need for admission or membership costs connected to certain amenities was stressed when looking to ensure the amenity itself was sustainable. Often a funding LO, or EB will look to satisfy themselves that a proposal is sustainable before considering it for funding. The admission or membership fees may act as an important revenue stream to ensure maintenance, upkeep and ultimately sustainability.
- 6.4.5** Based on the responses received through the consultation, stakeholders feel that the current process used to confirm the acceptability of charges based on similar amenities is appropriate and that a centralised cap on allowable amenity charges would unnecessarily restrict eligible projects.
- 6.4.6** The current requirement that a project is not operated with a view to a profit prohibits applicant organisations from charging more than is required to run a public amenity project. However, this could lead to excessive costs, and doesn’t in itself demonstrate that charges are not a barrier to usage by the general public.

Project: Harpurhey Ponds
Description: Walking to the ponds.
Supported through: Veolia Trust



6.5 Recommendation

- 6.5.1** Reviewing the consultation responses and the range of projects registered under Object D, at this stage there is not enough evidence to recommend any limitations to charges, or carry out an impact assessment. However the fundamental issues of what the public might consider reasonable is not addressed, and there is the potential for access to be restricted on the basis of affordability. It is therefore proposed that further work is done on the relationship between admission charges and average and benefit wages/income and see if it is possible to identify what might generally be accepted as limits to charges for access and consult further.

Recommendation 3: Further work is done by ENTRUST on the relationship between admission charges and average and benefit wages/income to see if it is possible to identify what might generally be accepted as limits to charges for access and consult further.

7 Public Access to Object E Maintenance, Repair or Restoration of a Structure of Religious or Historical Interest

7.1 Background

- 7.1.1** The Regulations require all Object E projects to be “open to the general public”. However, they do not specify a minimum level of general public access required.
- 7.1.2** As a result, ENTRUST do not require a minimum level of general public access from an Object E project, simply that the level of general public access is appropriate to the structure or building in question.
- 7.1.3** Stakeholders were for their views on minimum levels of general public access.

7.2 The Regulations

- 7.2.1** Regulation 33(2)(e) specifies that expenditure is classed as an approved object:

“where it is for the protection of the environment, the maintenance, repair or restoration of a building or other structure which –

- (i) is a place of religious worship or of historic or architectural interest;
- (ii) is open to the public; and
- (iii) is situated in the vicinity of a landfill site

- 7.2.2** The Regulations do not specify the minimum levels of public access required to be considered compliant. Some Object E projects have very restricted public access by their nature.

7.3 Guidance

- 7.3.1** The guidance for Object E states “The project should be open to the general public and the public should benefit from the project going ahead. Acknowledging the varying availability and opening times of this type of project, ENTRUST simply looks to ensure that the building or structure is open an appropriate amount of time as would be expected from similar buildings or structures.

7.4 Analysis of consultation responses

- 7.4.1** Initially, the consultation queried whether the respondents had ever been unable to register or support an Object E project due to the current public access requirements. All respondents advised that they had not been prevented from registering an Object E: Restoration of Historic Building project on the grounds of insufficient public access, either through their internal review processes or upon review by ENTRUST.

- 7.4.2** The majority of respondents did not enforce a quantifiable minimum general public access requirement, in each case considering the ‘appropriateness’ of the access. This case by case review process provides the management committee of the EB with the decision of whether the proposal can be considered to be appropriate.

- 7.4.3** Four respondents advised that they required 104 days general public access a year, as stipulated for an Object D Public Amenity project. This was used as a criterion to ensure that the Object E projects that received funding were those that provided the largest public benefit. One respondent advised that they required access one day a week to be considered for funding.

Project: Japanese Garden, Trafford

Description: The redevelopment of Walkden Gardens.

Supported through: Greening Greater Manchester.



7.4.4 Examples were cited of historical structures and buildings that may by their very nature be open to the general public at certain times of the year. This is particularly true of those associated with national heritage that are often only open on designated 'heritage days' or rural churches for which the demand for services was limited. On these occasions, the respondents advised that alternative efforts were made to confirm general public access, i.e. ensuring the key-holder is advertised and available for bookings etc.

7.4.5 It was stressed by respondents that the range of projects undertaken under Object E was very large and included historic buildings that often had irregular or varied levels of general public access. The Regulations and guidance in this area were argued to be sufficient in that all projects did have to be open to the general public an appropriate length of time

7.5 Recommendation

7.5.1 Reviewing the responses received through the consultation and the experience of ENTRUST with regards to the operation of the Regulations connected to Object E projects, it is not deemed to be necessary to propose a change to the governing Regulations.

7.5.2 At present the Regulations require an element of public access and the LCF guidance stipulates that this must simply be appropriate level for a structure or building of the type in question. Due to the wide variety of projects which fall under this definition this is variable. In practice, stakeholders often require high levels of public access, with the aim of maximising the public benefit of projects supported.

Recommendation 4: No changes are made to the Regulation for Object E in respect of minimal opening hours.

8 Administrative Burden that Stakeholders are Currently Subject to Resulting in a Restriction of Abilities under the LCF

8.1 Background

8.1.1 The consultation asked stakeholders of areas of administrative burden they are currently subject to in the LCF. This was with the intention of providing a feedback opportunity to ENTRUST to outline areas of the governing Regulations that required review to lessen the administrative burden on LCF stakeholders.

8.2 Analysis of Consultation Responses

- 8.2.1 It was widely reported that significant improvements had been made in recent years regarding the administrative burden.
- 8.2.2 It was stressed by one respondent that there are still unnecessary questions asked at the stage of project registration and there continues to be excessive queries asked about a project proposal before registration.
- 8.2.3 While not a regulatory point, it was requested that ENTRUST communicates the outcomes of submissions to the applicant by email.
- 8.2.4 Another administrative point is that the Form 4 on EOL is not compatible with other formats such as spreadsheets and therefore the detailed project expenditure information that is held must be individually inputted into ENTRUST. This has been logged as a development issue for EOL.
- 8.2.5 Queries were raised regarding the relevance of the current ‘vicinity of a landfill site’ requirements for projects. At present, considerable administrative burden exists both for the applicant EB and ENTRUST regarding the required ‘vicinity of a landfill site’ requirement on LCF funded projects. Consultees proposed that this requirement be removed from the Regulations either to allow all projects across the UK to be funded or to map the few areas that are not in the vicinity of a landfill site and therefore cannot receive funding.

8.3 Recommendations

- 8.3.1 The two points regarding communicating outcomes by e-mail and the Form 4 need to be included in the review of potential changes to EOL as both of these result from the current system procedures.

Project: One Minet Skate Park.
Description: The building of a skate park in Saffron Walden.
Supported through: Biffaward.



Recommendation 5: The issues raised by EB regarding project outcomes by e-mail and Form 4 formats should be added to the list of requirements for the revised EOL.

- 8.3.2** With regards to the unnecessary questions on the project registration forms, the forms continue to be under review. In order to effectively collate statistics and to ensure compliance with the Regulations, it will be necessary to ask a number of questions at the project registration stage. Accredited EB are currently trialling an abbreviated project registration form that results in a much reduced administrative burden. A substantial number of the questions refer to statistics that HMRC require so it would be appropriate to ask them to review the need for all the statistics required.

Recommendation 6: HMRC is asked to review the need for all the statistics they have requested.

- 8.3.3** The issue of 'vicinity of a landfill site' and the geographical requirements of projects has previously been raised with HMRC by ENTRUST, so this is referred to them for their review.

Recommendation 7: Issues relating to the 'vicinity of a landfill site' and the geographical requirements of projects are referred to HMRC.

9 Any Other Issues Being Faced By Stakeholders or Areas for Review that could Improve the Efficiency or Effectiveness of the LCF

9.1 Background

- 9.1.1** Under a more general heading, stakeholders were asked for any other issues they were currently encountering that limit the efficiency or effectiveness of the LCF.
- 9.1.2** This was with a view to providing an opportunity to feedback any points currently being encountered that limit the effectiveness or efficiency of the LCF and any other issues.

9.2 Analysis of Consultation Results

- 9.2.1 Issues relating to administrative burden covered above are omitted from this discussion
- 9.2.2 A couple of respondents cited the lack of clarity surrounding the definition and management of an asset purchased with LCF monies. This is now being covered by 2009/2010, regulatory review.
- 9.2.3 Clarification was sought with regards to the ability to collect Contributing Third Party payments from projects and submit the quarterly total to the contributing LO. This would considerably reduce the current requirement to report each contribution separately to the LO. This issue will be covered in the Contributing Third Party Regulation Review being undertaken in 2009/2010.
- 9.2.4 It was recommended that ENTRUST be statutorily enabled to enforce time limits on the commencement of registered projects. This would require all registered projects to be underway within two years or otherwise be de-registered. Evidence will be collected on this to consider if further work should be done.

Recommendation 8: Evidence should be collected by ENTRUST to consider if further work should be done to enforce time limits on the commencement of registered projects.

- 9.2.5 One respondent advised that the requirement and details of tendering when undertaking a LCF funded project needs to be clarified in the Regulations. This will be covered in training and this will enable ENTRUST staff to ascertain if this is a training or a Regulatory issue.

Recommendation 9: Details of tendering when undertaking a LCF funded project will be covered in training and this will enable ENTRUST staff to ascertain if this is a Regulatory issue in addition to a training need.

Project: Beveridge Bog Garden
Description: To turn the former animal centre into a bog garden to enhance biodiversity.
Supported through: Fife Environmental Trust.

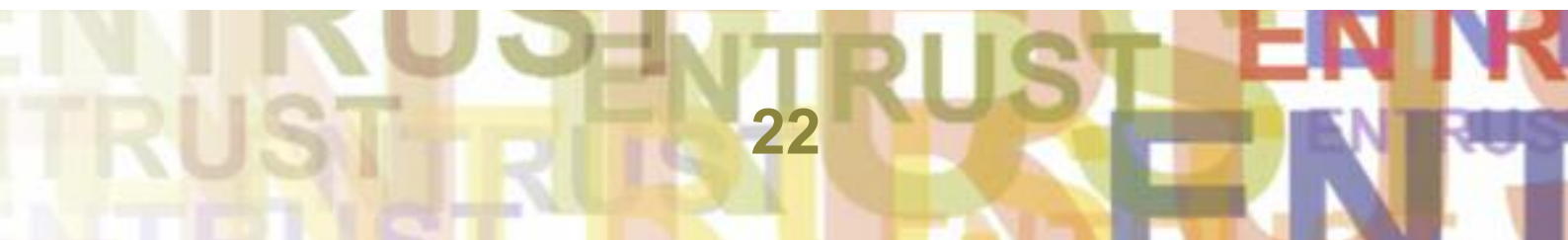


- 9.2.6** It was also suggested that the effectiveness of the LCF could be greatly enhanced through a greater use of the LCF statistics. These are currently publicised in the ENTRUST Annual Report, newsletters and the website. It was felt that publicising the consolidated information would greatly improve the effectiveness of the LCF publicity. However no suggestion was made as to where. It is anticipated that this can be addressed in the LCF communication strategy.

Recommendation 10: THE LCF communication strategy needs to consider how LCF effectiveness can be enhanced.

- 9.2.7** It was also suggested that ENTRUST should have the ability to de-register single project EB that did not undertake any LCF activities over a long period of time. This would assist in the provision of effective statistics and in the targeting of ENTRUST's resources. As EB have paid to enrol as long as they complete all statutory returns there is no reason why they should be de-registered. However, the statistics could be refined to identify active EB's and this will be done.

Recommendation 11: ENTRUST statistics should be refined to identify active EB.



Please note: This report has been submitted to HMRC and any comments will be published in due course.

Summary of Consultation Responses

1 'Is the current definition an appropriate interpretation of a public amenity?'

1.1 Of the fifteen respondents to this question, ten advised that they did not consider the current guidance definition to be appropriate.

2 'If you do not agree that this is an appropriate definition, what type of projects do you feel should be considered compliant that cannot currently be registered?'

2.1 A point raised by a few of the respondents that did not agree with the current guidance concerned the restriction on education orientated projects. It was stressed that these projects often benefitted from wide public support and yet could not be considered to be for leisure or recreation. The range of education projects cited that could not be registered under the current definition vary from employing a guide on a woodland walk educating school children, to providing a dedicated education centre. It was argued that generally, 'community learning and development' opportunities should be acknowledged in the definition of a public amenity.

2.2 Two respondents also advised that the current definition did not allow for projects aimed at providing social support facilities. These included drop in centres, homes for the elderly and welfare organisations.

2.3 It was also stressed that projects providing 'support and community advice' are not currently registered due to the definition in place.

2.4 One respondent argued that the current definition was excessively prescriptive and not representative of what would be considered a public amenity by a member of the general public. The main principles to be considered when reviewing the suitability of a project are

- a) It is considered by the general public to be a general public amenity;
- b) 'Amenity' should be considered in reference to the accepted dictionary definition of 'pleasantness'; and
- c) The principle that the amenity should be useful to people.

2.5 Another respondent advised that 'respite' should be included in the public amenity definition. This would allow the funding of projects such as a disabled children's centre or a hospice. Again, these benefit from high levels of public support but cannot be classed as being open for leisure or recreation.

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- 2.6** Concern was raised regarding the current requirement that all object D Public Amenity projects are required to be open to all elements of the general public. Subject of a separate consultation, these specific user group projects should not be excluded when they enjoy full general public support.
- 3** **ENTRUST would require any admission charge to be comparable to that of similar amenities. Do you believe Object D should include projects which have an entry fee? If so, how should allowable costs be calculated?**
- 3.1** All respondents agreed that it was appropriate that an object D project could charge admission costs, obviously depending on the project in question.
- 3.2** It was stressed that the costs should not be prohibitive to members of the general public that are looking to use the amenity. The actual entry costs themselves should be based upon a full recovery of costs. Any additional income derived should be used to maintain and run the amenity.
- 3.3** Another respondent advised that an applicant should be required to outline a business plan to ensure that any scheme is economically viable and costs can be justified.
- 3.4** With regards to a prescriptive level of maximum costs that can be charged at an Object D project, stakeholders stressed that charges must only be confirmed as reasonable and comparison made with other similar activities. Any income generated after cost recovery should be used to maintain and improve the amenity.
- 3.5** It was also stressed that confirming that the amenity was operating on a not-for-profit basis provided assurance regarding the organisation's aims and resultant admission costs.
- 3.6** With regards to how allowable costs should be calculated, it was strongly stressed by all respondents that it was not appropriate to centrally prescribe a quantitative level of 'acceptable' admission costs for a public amenity project that is receiving LCF funding. This is due to the range of projects supported and the resulting variability of admission costs. Some projects by their very nature require high admission or membership costs to sustain the activity, as illustrated by the example of a rowing club.

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3.7 The need for admission or membership costs connected to certain amenities was stressed when looking to ensure the amenity itself was sustainable. Often a funding Landfill Operator or Environmental Body will look to satisfy themselves that a proposal is sustainable before considering it for funding. The admission or membership fees may act as an important revenue stream to ensure sustainability.

4 **The governing Regulations states that Object E projects looking to Maintain, Repair or Restore a Structure of Architectural Interest must be ‘open to the public’ (33(2)(e)). ENTRUST guidance requires these projects to be open to the public an appropriate amount of time for a building or structure of this type. Has your organisation ever encountered problems registering an Object E project on this basis?**

4.1 All respondents advised that they had never been unable to register an Object E: Restoration of Historic Building project on the grounds of insufficient public access, either through their internal review processes or had been rejected by ENTRUST.

5 **What is the minimum general public access required by your organisation for an Object E project to be registered?**

5.1 The majority of responding organisations did not enforce a quantifiable minimum general public access requirement on an Object E project, interpreting instead the appropriateness of the access.

5.2 This case by case review process provides the management committee of the Environmental Body with the decision of whether the proposal can be considered to be appropriate.

5.3 Examples were cited of historical structures and buildings that may by their very nature be open to the general public at certain times of the year. This is particularly true of those associated with national heritage that are often only open on designated ‘heritage days’.

5.4 It was also stressed that certain projects, such as rural churches, may only be open for comparatively rare services. Efforts were often made in these occasions to ensure the use of the building was well signposted and the key-holder was advertised so that the building could be accessed outside regular service occasions.

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- 5.5** A couple of respondents did enforce minimum general public access requirements on Object E Projects. These varied from the 104 days of general public access a year required for Object D Public Amenity projects, to one day a week for places of worship.
- 5.6** A respondent cited the requirement, on occasion, that a historic or religious building registered under Object E may often have to be locked and protected from the risk of theft and vandalism.
- 5.7** Ultimately, it was stressed by all EB that the range of projects registered under object E prohibits a universal interpretation of acceptable public access.

6 Please detail any areas of administrative burden that you are currently subject to that restrict your abilities under the LCF

- 6.1** It was stressed by a respondent that there are still unnecessary questions asked at the stage of project registration.
- 6.2** The same respondent also advised that currently projects are excessively queried or have additional information requested.
- 6.3** It was acknowledged by a couple of respondents that a level of administrative burden is inevitable when taking into account the setup and organisations involved in the LCF.
- 6.4** While not a regulatory point, it was requested that ENTRUST communicate the outcome of project reviews etc. by email to the applicant.
- 6.5** A couple of respondents cited the lack of clarity surrounding the definition and management of an asset purchased with LCF monies.
- 6.6** Clarification was sought with regards to the ability to collect Contributing Third Party payments from projects and submit the quarterly total to the contributing Landfill Operator. This would considerably reduce the administrative requirements of currently reporting each contribution separately to the Landfill operator.
- 6.7** It was also stressed that at present the Form 4: Statutory Annual Return on ENTRUST Online is not compatible with other formats and therefore the detailed project expenditure information that is held must be individually inputted into ENTRUST Online.

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6.8 Queries were raised regarding the relevance of the current 'vicinity of a landfill site' requirements for projects. It was proposed that this be removed to allow projects across the UK to be applicable for funding. It was argued by one respondent that at present the ten mile interpretation of vicinity included the vast majority of the UK and unfairly disadvantaged those few areas that may still be affected by waste operations but are not within ten miles of a landfill site. This creates an administrative burden for the individual EB and the regulator.

6.9 The information currently collected through the optional 'Project Start and Complete' forms does not automatically transfer to the Form 4: Statutory Annual Return. This information is often inputted twice as a result.

7 Please outline any other issues you currently face due to the governing Regulations or propose any changes that would improve the efficiency or effectiveness of the LCF.

7.1 It was again suggested that the effectiveness and efficiency of the correspondence could be improved through the adoption of email as the communication method when accepted by the EB in question. This would reduce the costs and the delay in corresponding between the regulated community and ENTRUST.

7.2 It was suggested that a capped limit of management fees be established to restrict Local Authorities and other organisations from charging excessive management fees to undertake a project.

7.3 Queries were also raised by a respondent regarding the position on Object D Public Amenity projects whereby every project had to be open to all elements of the general public. While this has been covered in a separate consultation, it is important that a consistent view is taken with regards to the required user groups of a compliant project.

7.4 It was recommended that ENTRUST be statutorily enabled to enforce time limits on the commencement of registered projects. This would require all registered projects to be underway within two years or otherwise be de-registered.

7.5 One respondent advised that the requirement and details of tendering when undertaking a LCF funded project needs to be clarified in the governing Regulations.

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- 7.6** It was also recorded that the effectiveness of the LCF could be greatly enhanced through a greater use of the LCF statistics. Currently publicised in the ENTRUST Annual Report, newsletters and the website, publicising the consolidated information would greatly improve the effectiveness of the LCF publicity.
- 7.7** It was also suggested that ENTRUST should have the ability to de-register single project EB that did not undertake any LCF activities over a long period of time. This would assist in the provision of effective statistics and in the targeting of ENTRUST's resources.
- 7.8** A respondent also advised that the issues of sustainability and climate change should be considered in terms of requiring LCF emphasis. At present there is no object to allow dedicated expenditure on these areas.

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