



## Sanctions Framework - Consultation Document

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January 2009

# Contents

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<b>Section</b>	<b>Title</b>	<b>Page</b>
1	Executive Summary	3
2	Introduction	3
3	Gathering Evidence	4
4	The Role of Sanctions	4
5	The Current LCF Sanctions Toolkit	5
6	Use of Sanctions within the LCF	6
7	Consultation Questions	7
8	Contact Details/How to Respond	8
9	Publication of Response	8

# 1. Executive Summary

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- 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 2008/2009 relating to the regulation of the Fund.
- 1.2 The fourth consultation exercise will focus on the sanctions framework operating within the Landfill Communities Fund and the sanctions toolkit available to ENTRUST in cases of non-compliance with the governing Landfill Tax Regulations 1996, as amended.
- 1.3 This consultation will review the current sanctions available to ENTRUST as the regulator of the LCF, compare equivalent situations with similar regulators and outline proposals to develop the sanctions in use. Stakeholder feedback will be used to gauge the impact of the proposals listed and provide input into the development of a more effective sanctions toolkit.

# 2. Introduction

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- 2.1 This paper aims to give stakeholders the background to the current sanctions framework and then outline a number of proposals that have been drawn up based on influencing factors such as:
  - ENTRUST's regulatory experience;
  - The Macrory Review: Making Sanctions Effective;
  - Through reviewing the sanctions toolkit available to other regulatory bodies; and
  - Listening to representations from stakeholders.
- 2.2 The aim of this consultation is to ensure that ENTRUST and the LCF as a whole is equipped with the widest and most suitable range of sanctions allowing an appropriate response to the activity in question.
- 2.3 Issues raised that are deemed to require further development or further consultation of their own will be considered in terms of ENTRUST's consultation plans in forthcoming years. This will help to guide our agenda under the principles of Better Regulation and Regulators' Compliance Code.

## 3. Gathering Evidence

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

- Written responses to this consultation document, which outlines the issues themselves;
- A focus group that will be held to discuss the questions posed and the topic generally; and
- The LCF Online Forum on the ENTRUST website will allow discussion to continue, and will include points raised at the focus group.

## 4. The Role of Sanctions

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### 4.1 Background

4.1.1 Professor Macrory, author of the Macrory Review, advises that compliance is preferably secured through a mixture of advice and incentives. This 'coaching to compliance' principle has underpinned a large part of recent developments in the regulatory field. Compliance can only be obtained when these principles are used in conjunction with effective sanctions.

4.1.2 The sanctions available underpin a regulator's authority, outlining the existing options for the regulator in cases of compliance.

4.1.3 Where a breach of the governing regulations occurs, the sanction used should ensure that no economic gain occurs from non-compliance and that the organisation in question is dissuaded from future breaches. It should also impose societal stigma in appropriate cases.

### 4.2 The Macrory Review: Making Sanctions Effective

4.2.1 Published in 2006, the Macrory Review was undertaken following the issue of the Hampton Review, which aimed to appraise business regulation generally. The Hampton Review outlined that the regulatory framework required a more pro-active and risk-based approach to regulation. The Hampton Review also recognised the importance of sanctions that are appropriate, effective and proportionate.

4.2.2 Based on the recommendations of the Hampton Review, the Macrory Review aimed to assess the penalty and sanctioning regimes of regulators across the UK. As an outcome, the Macrory Review aimed to provide guidance on how to effectively provide and enforce a sanctions toolkit that would allow reasonable and appropriate responses to non-compliance.

4.2.3 To conform to best practice, the sanctions available to a regulator should:

- Aim to change behaviour
- Aim to eliminate financial gain if applicable
- Be responsive
- Be proportionate
- Restore the harm caused if applicable
- Deter future non-compliance

4.2.4 Administrative penalties were considered as part of the Macrory Review. It is suggested that in certain circumstances, imposition of an administrative penalty by a regulator without the intervention of a tribunal, revocation panel or court may lead to a more effective response and resolution.

4.2.5 The rules for use of the administrative penalty system must be well publicised to all stakeholders and no revenues from the penalties should go directly to the regulator.

4.2.6 For further details, the final report entitled 'Regulatory Justice: Making Sanctions Effective' can be accessed at <http://www.berr.gov.uk/files/file44593.pdf>

## 5. The Current LCF Sanctions Toolkit

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5.1 In regulating the Landfill Communities Fund, the sanctions currently available to ENTRUST act as an enforcement tool and encourage compliance with the governing regulations. The sanction used in each circumstance will depend on a number of factors including the severity of the breach, the recent activity and the level of intent of the offender.

5.2 The sanctions include:

- **Advice and Guidance:** At the lowest level of breach and when deemed appropriate, the first course of action from ENTRUST would be to undertake a programme of advice and guidance. This would be aimed at addressing the breach that had occurred and providing assurance that the organisation would now act in a compliant manner.
- **Warning Letter:** The breach that has occurred, coupled with the recent activities of the organisation or the risk that is deemed to exist may lead to a warning letter being sent. This will outline the breach and the action that must be taken to restore compliance.
- **Enforcement Letter:** If there is no resolution following the Warning Letter being sent, it is likely that an enforcement letter would be sent to the organisation in question. This is likely to outline the risks of continued non-compliance and the steps that must be taken to prevent the breach being referred to the following options.
- **Removal of Accredited Status:** If the organisation in question has received accredited status, in the case of a breach it may be deemed appropriate to remove the accredited status.

- **Notification to HMRC:** By officially reporting an organisation that has breached the Regulations to HMRC, HMRC may recover the tax credit that was claimed from the contributing landfill operator. The landfill operator may take action to recover its contribution from the EB.
- **Revocation:** The ultimate sanction, the decision to revoke an organisation results in the organisation being removed from the LCF. This also prohibits any of the organisation's management committee from being involved in the management of any other enrolled organisations.

5.3 Following changes to the Finance Act 1996 and the Landfill Tax Regulations, the ultimate responsibility for revocation has been deferred to HMRC.

5.4 It is important to note that a breach may not prevent two sanctions being employed at the same time, for example, HMRC applying clawback and the removal of accredited status.

## 6. Use of Sanctions within the Landfill Communities Fund

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6.1 The Landfill Communities Fund is governed by the Landfill Tax Regulations 1996, as amended. The Regulations outline the requirements of enrolled organisations and the responsibilities of ENTRUST as the Regulator of the LCF and therefore the sanctions available to it.

6.2 As outlined in the Macrory Review, while compliance may be obtained primarily through a mixture of advice and incentives, the sanctions available are a vital part of ensuring effective regulation. As a result, while ENTRUST is committed to the principle of 'coaching to compliance', an element of changing the behaviour of non-compliant organisations will have to be addressed through sanctions.

6.3 Breaches that occur vary from the relatively minor single occurrence breaches that inhibit the collection of data or the assurance of compliant spend, to major long term breaches that involve the non-compliant spend of LCF monies.

6.4 Through inappropriate sanctions, the Regulator is often required to expend a disproportionate amount of effort to ensure compliance. An effective sanction would provide sufficient inducement to the non-compliant organisations without impacting those that have met and continue to meet the requirement.

6.5 This consultation is looking to gather stakeholder feedback on the current sanctions available to ENTRUST and proposals to increase the levels of compliance with the governing regulations through alternative sanction approaches.

## 7. Consultation Questions

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- 7.1 Do you feel that the sanctions in use in the LCF could be improved? If so, how?
- 7.2 Do you feel it could be appropriate to publicise those organisations that did not fulfil their regulatory requirements? If not, why not?
- 7.3 Would you support a proposal to operate an administrative penalty system (e.g. fines) for organisations that fail to meet their statutory reporting requirements? If not, why not?
- 7.4 One sanction currently available is the removal of an organisation's status as an EB (i.e. being revoked), preventing the directors of the organisation from being involved in the management of other current or future enrolled organisations. Do you feel this is an appropriate sanction?
- 7.5 Do you feel that ENTRUST operates its sanctions toolkit with sufficient justification and transparency?
- 7.6 In your opinion, what other sanctions should be included in the current set?
- 7.7 Please outline any other point/suggestions you feel should be considered in ENTRUST's review of the LCF Sanctions Framework. This could include experiences with other regulatory bodies under different regimes.

## 8. Contact details/ How to respond

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- 8.1 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:

Email: McNabb Laurie (m.laurie@entrust.org.uk) with 'Sanctions Framework Consultation' in the email subject.

Post to: McNabb Laurie  
ENTRUST  
2nd Floor  
Acre House  
2 Town Square  
Sale  
Cheshire  
M33 7WZ

Through the LCF Online Forum: <http://www.entrust.org.uk/home/lcf/lcf-forum>

- 8.2 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 Sanctions Framework Focus Group, please express your interest to McNabb Laurie by 13 February 2009.**
- 8.3 The closing date for responses is 27 March 2009.

## 9 Publication of response

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- 9.1 A paper summarising the responses to this consultation will be published within two months of the closing of the consultation.
- 9.2 The outcomes of the consultation will be reviewed and any proposals will be subject to an impact assessment and publicised to stakeholders appropriately.

**Thank you for taking the time to contribute to this consultation.**