

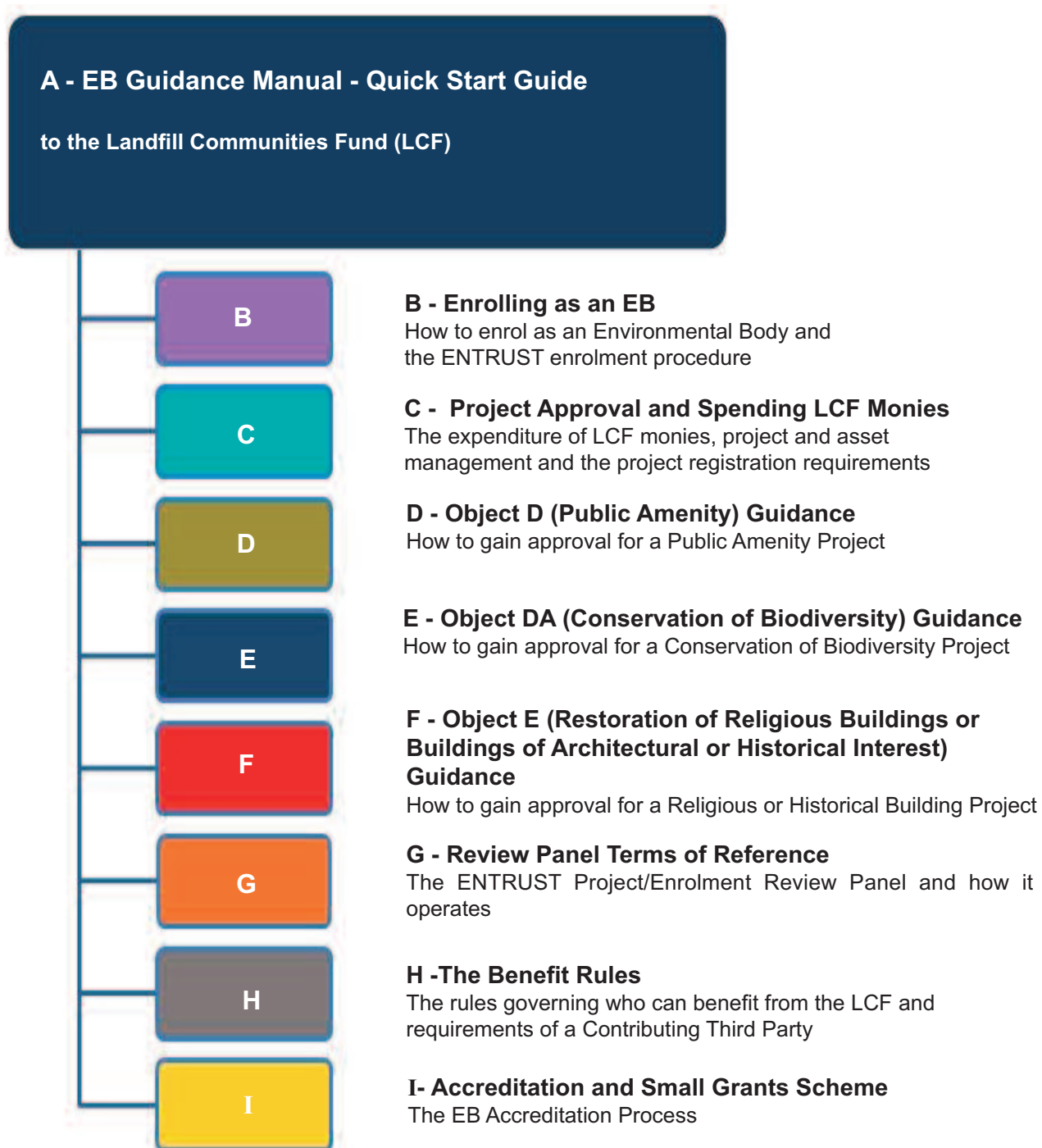
The Landfill Communities Fund

Environmental Bodies Guidance Manual



Introduction to the Environmental Bodies Guidance Manual

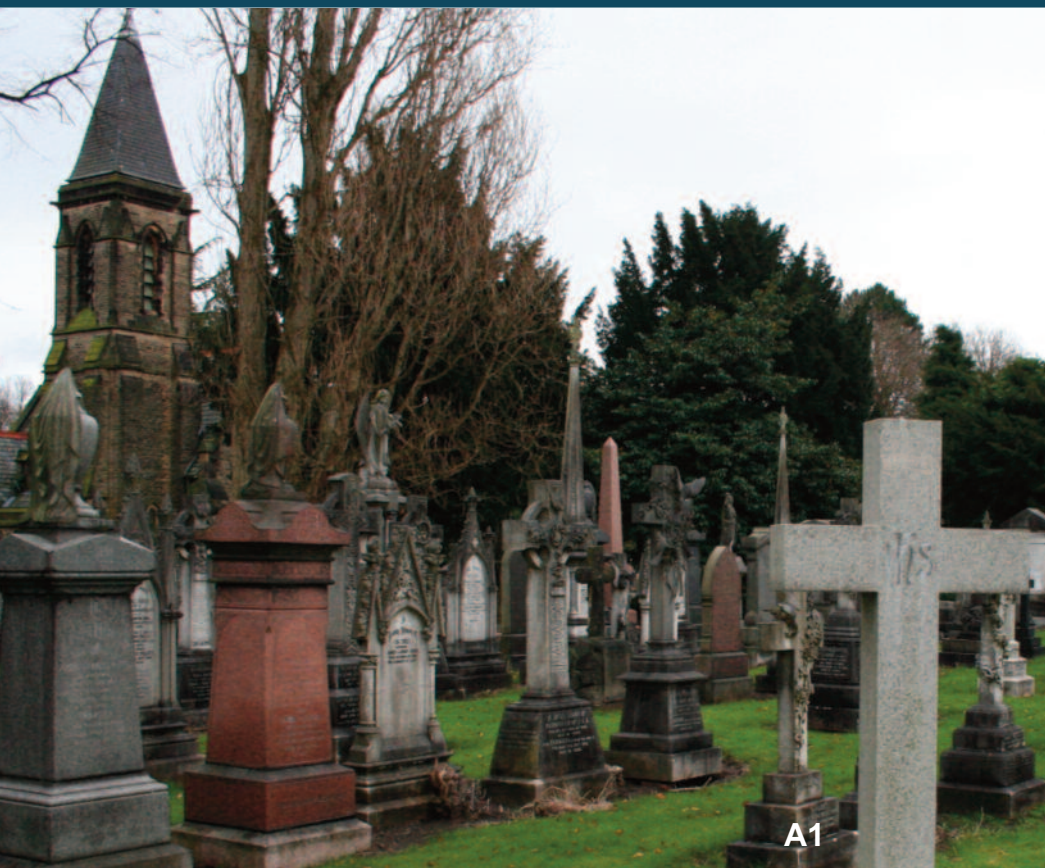
This manual has been drawn up as outlined in the diagram below, the intention being that it allows the reader to review the relevant information easily without having to obtain or read the whole manual. If you have any queries at all, please contact the Regulations Department at ENTRUST on 01926 488 323.





A - Quick Start Guide to the Landfill Communities Fund

An overview of the Landfill Communities Fund and a guide of who to contact



January 2012

Quick Start Guide to the Landfill Communities Fund

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January 2012

To ensure this is the most up-to-date version please check the ENTRUST website.

1 Background to the Landfill Communities Fund (LCF)

- 1.1 The LCF (formerly known as the Landfill Tax Credit Scheme) is an innovative tax credit scheme that allows Landfill Operators (LO) to use some of their landfill tax to directly fund not-for-profit organisations. The LCF allows LOs to contribute a portion of the monies paid as Landfill Tax directly to projects that improve the lives of communities living in the vicinity of the landfill sites themselves.
- 1.2 The LCF is regulated by ENTRUST and managed by Her Majesty's Revenue & Customs. It is ENTRUST's role to ensure that the LCF monies are received and spent by organisations on projects within the governing Landfill Tax Regulations 1996 (Regulations).
- 1.3 ENTRUST regulates the LCF in a number of ways including reviewing and enrolling each organisation before they receive LCF monies, evaluating each project proposal before expenditure starts and undertaking visits to ensure organisations are acting compliantly within the Regulations.
- 1.4 ENTRUST has drawn up this Guidance to assist organisations and individuals to comply with the governing Regulations, and provide assistance in obtaining funds.

2 Receiving money through the LCF

There are two methods of receiving funding through the LCF.

2.1 Directly from a Landfill Operator (LO)

- 2.1.1 You might be able to find LOs who will give landfill tax money directly to your organisation. While many LOs take part in the LCF, not all do. Not all LOs are potential sources of funding for your work. The only way to find out is to contact them directly.
- 2.1.2 The availability of funding directly from LOs varies across the country, lists of applicable Landfill sites can be found on the HMRC website (www.hmrc.gov.uk) or through the relevant registering authority, e.g. Environment Agency.

2.2 From a Distributive Environmental Body (DEB)

- 2.2.1 The most common way to receive funding is to approach a DEB. These bodies distribute funds on behalf of the LO or for more than one LO. DEBs help others to access the LCF monies.
- 2.2.2 Most DEBs will require your organisation to meet certain conditions about the way you will spend the LCF money they may give you.
- 2.2.3 Some DEBs may fund in only one geographical area or across the country and each will have their own policies and application forms. There is a list of all the DEBs, their funding policies and contact details that may fund in your area. You can find this on the ENTRUST Website under 'Funders' Directory' (<http://www.entrust.org.uk/home/lcf/funders-directory>)
- 2.2.4 The DEB will be looking to make sure your expenditure complies with the Landfill Tax Regulations and ENTRUST guidelines. However, their criteria for accepting applications may be more stringent than the governing Regulations as enforced by ENTRUST. This may be because there is a high level of demand for the monies or that they have specific areas of the LCF that they wish to focus on.

3 Do I need to enrol as an Environmental Body (EB)?

It will depend on who you are approaching for funding.

- 3.1** If you are approaching a LO directly, you will need to enrol your organisation as an EB with ENTRUST.
- 3.2** If you are approaching a DEB, you may need to enrol with ENTRUST. This will depend on who you are approaching for funding or the value of the project. Enrolling as an EB will allow you to register your own project under your organisation's enrolment. Due to the enrolment charge and the administrative requirements as outlined below, we recommend you confirm with the proposing funder if you are required to enrol before undergoing the process of becoming an EB yourself.

4 Applying to enrol as an Environmental Body (EB)

- 4.1** In order to enrol as an EB, your organisation must comply with the following criteria:
- It must be a not-for-profit organisation;
 - It must not be controlled either by a Landfill Operator or a Local Authority as stipulated in the Regulations (please note that a Parish Council is deemed to be a Local Authority); and
 - It must share an aim/objective with the aims/objectives of the LCF (as outlined in section 5 - Projects that can be undertaken with LCF monies)
- 4.2** To enrol as an EB, it is necessary to complete a Form 1: Applying to enrol as an Environmental Body. In support of the application, ENTRUST require the most up to date version of your governing document, a copy of your accounts and an application fee of £100 made payable to ENTRUST. This application fee is non-refundable and covers the cost of enrolling your organisation into the LCF.
- 4.3** Due to the administrative and financial cost of enrolling as an EB, ENTRUST recommend you consult the funders in your area as identified above to ensure that enrolling is required, before submitting your application.
- 4.4** For further details on how to enrol as an 'Environmental Body' and what is required, please consult the separate ENTRUST guidance note: *B - Enrolling as an EB*.



5 Projects that can be undertaken with LCF monies

5.1 OBJECT A: Remediation of Land

- 5.1.1** The remediation or restoration of land, which cannot now be used because of a ceased activity.
- 5.1.2** The work must be on a single site where there was once something that took place that now stops it being used. The site may have been contaminated in some way. The principle is that the person who polluted the land must not own or operate from the land. LCF monies must not be used to fulfil any statutory orders that the current landowner is under from the Environment Agency, or similar organisation.
- 5.1.3** When submitting an application, an organisation will be asked to confirm the following:
- The ceased activity;
 - Who carried it out;
 - When it stopped;
 - How the person who polluted the land will not benefit (financially or through obligations being met); and
 - How the ceased activity caused or is causing pollution.
- 5.1.4** For further details regarding Object A projects, please contact the ENTRUST Project Registration Department.



5.2 OBJECT B: Reduction of Pollution

- 5.2.1** The reduction, prevention or mitigation of effects of pollution that has resulted, or may result, from an activity which has now ceased.
- 5.2.2** An organisation must be able to demonstrate that the pollution identified by the project is directly linked to help mitigate, prevent or reduce pollution (as opposed to Object A that is concentrating on reclaiming or remediating the land, Object B focuses on the pollution itself).
- 5.2.3** When submitting an application, you will be asked to confirm the following:
- The ceased activity;
 - Who carried it out;
 - When it stopped;
 - How the person who polluted the land will not benefit (financially or through obligations being met); and
 - How the ceased activity caused or is causing pollution.
- 5.2.4** For further details regarding Object B projects, please contact the ENTRUST Project Registration department.

5.3 Object C/CC: Sustainable Waste Management and developing markets for recycled waste

5.3.1 Objects C and CC were removed from the Regulations in 2003 and following the 2007 amendments, no new projects can be approved and expenditure can only continue on these objects when undertaken in accordance with a written agreement. If you have any queries regarding a C/CC project, please contact ENTRUST's Registration Department.

5.4 OBJECT D: Public Parks and Amenities

5.4.1 The primary intent of this object is to facilitate the protection of the environment by the provision, maintenance or improvement of a public park or amenity. The site where the work takes place must be open and accessible to the general public.

5.4.2 You will therefore be asked to confirm the following points:

- How the amenity that you are providing, maintaining or improving makes the environment more pleasant or comfortable and/or improves the aesthetic qualities of an area for the general public;
- That the park or amenity directly benefits the general public and they have open access to, or use of, it;
- It is somewhere where the general public can go, join or use without any unreasonable limit or restrictions of use (or with "reasonable" access costs) being in place;
- The costs of the project directly relate to the actual improvement, maintenance or provision of the identified park or amenity, rather than its management or its administration;
- How the park or amenity is for the protection of the environment;
- The project site is in the vicinity of a landfill site;
- The works are not a requirement of a relevant condition placed on the Landfill Operator;
- The park or amenity must be set up on a not-for-profit basis and any income made as a result of the LCF funded works must be returned to the EB as LCF derived income; and
- The project is looking to work on a single park, amenity or defined area.

5.4.3 For further details on public park or amenity projects which can be approved under the LCF, please consult the ENTRUST Guidance Note: *D - Object D (Public Parks and Amenities) Guidance*.

5.5 OBJECT DA: Conservation of Biodiversity

5.5.1 The primary intent of this objective must be for the conservation of identified species or habitats. It is best practice that the species or habitats in question are detailed in a Biodiversity Action Plan (BAP) or a Local Biodiversity Action Plan (LBAP). If not, ENTRUST will be looking to ensure that the proposal is looking to protect a habitat or species that is otherwise deemed significant. The proposed costs of the work must be related to the identified species or habitats and the actual place where it naturally occurs.

5.5.2 You will be asked to confirm the following:

- Which species or habitats are going to be conserved directly by the project going ahead;
- The costs of the works solely relate to the conservation of the species or habitats; and
- The costs of the works you propose relate to the place where the species or habitat naturally occurs.



5.5.3 For further details of projects that can be approved under this element of the LCF, please consult the ENTRUST Guidance Note: *E - Object DA (Conservation of Biodiversity) Guidance*.

5.6 OBJECT E: Restoration of Religious Buildings or Buildings of Architectural or Historical Interest

5.6.1 The primary intent of this objective is to maintain, repair or restore a place of worship; or a building or structure that must have listed status (or equivalent), where the general public can access the building. This objective does not allow works to private residences.

5.6.2 You will be asked to confirm the following:

- The building or structure is open and accessible to the general public;
- The works you propose are to repair, restore or maintain the place of worship or structure of architectural interest (i.e. no new works); and
- All the costs of the works relate to the actual place of worship or structure of architectural interest.

5.6.3 For further details on the requirements of an Object E project, please consult the ENTRUST Guidance Note: *F - Object E (Restoration of Religious Buildings or Buildings of Architectural or Historical Interest) Guidance*.

5.7 OBJECT F: Administrative Services to another EB

5.7.1 The provision of financial, administrative or other similar services by one organisation enrolled with ENTRUST to another.

5.7.2 This objective allows an enrolled EB to provide certain services to other EBs. These services may include core administrative or similar services to assist in the running of the other EB.

5.7.3 You will be asked to confirm the following:

- That your EB is going to provide a service to another EB, or you are going to pay a contractor to provide a service to another EB; and
- You are not simply transferring money to another EB to cover its administration costs.

5.7.4 For further details regarding Object F projects, please contact the ENTRUST Registration Department.



6 Project Approval Process

- 6.1 The project approval process is set up by ENTRUST to allow the proposed LCF expenditure to be managed and controlled to ensure compliance with the Regulations. Following the 2007 Landfill Tax (Amendment) Regulations, project approval is now a regulatory requirement and all works must be registered with and approved by ENTRUST before any LCF expenditure is incurred.
- 6.2 Project approval is obtained by completing the Form 2: Applying to Register a Project and the relevant object specific section for the LCF object that your work falls under. An enrolled EB is not limited in the number of projects that it can register. There is no fee for project approval.
- 6.3 Within ten working days of Form 2 submission you will receive a response from ENTRUST, either confirming the project has been approved or asking for further details to allow ENTRUST to ensure compliance with the Regulations. If there is a change to the original application after a project has been approved, or the project does not go ahead, ENTRUST must be informed.
- 6.4 For further details on the ENTRUST project approval process, asset management and project management requirements, please consult the Guidance Note C - *Project Approval and Spending LCF Monies*.

7 Project/Enrolment Review Panel

- 7.1 If, upon review by ENTRUST, the project is not deemed to be compliant with the Landfill Tax Regulations, ENTRUST will refuse the project and this will automatically be referred to the Review Panel. This panel meets every month to review any project or enrolment applications that have been refused and ensures that the correct decision has been made in accordance with the Regulations. The project applicant is invited to attend the review panel to make their case for approval.
- 7.2 For further details on the workings of the Review Panel, please consult the ENTRUST Guidance Note G - *Review Panel Terms of Reference*.



- 8.1 In accordance with the Regulations, all enrolled EBs are required to submit statutory returns to ENTRUST. These returns are as follows:

Regulation 33A(1) An approved body shall –

- (e) provide the following information to the regulatory body ...within seven days of the receipt by it of any qualifying contribution—
 - (i) the amount of the contribution;
 - (ii) the date it was received;
 - (iii) the name and registration number of the person making the contribution;
 - (iv) the name and address of any contributing third party in relation to the contribution notified to it by virtue of regulation 32(2B) above;
- (f) notify the regulatory body within seven days of any transfer to or by it of qualifying contributions or of income derived therefrom of—
 - (i) the date of the transfer;
 - (ii) the enrolment number of the approved body by which the transfer was made;
 - (iii) the amount transferred;
 - (iv) the name and registration number of the person who made the qualifying contribution;
 - (v) the name and address of any contributing third party in relation to the contribution; and
 - (vi) the approved objects to which the transferred funds are to be applied;
- (h) submit to the regulatory body.....within 28 days of the end of the relevant period determined in accordance with paragraph (2) below details of—
 - (i) qualifying contributions and any other income or profit whatsoever received by it,
 - (ii) any expenditure made by it during the period, and
 - (iii) any balances held by it at the end of the period;



8.2 The ENTRUST forms are as follows:

Form 1: Applying to Enrol as an Environmental Body.

This form is completed when an organisation initially applies to enrol as an EB. This form is to be submitted with a £100 enrolment application fee made payable to 'ENTRUST', the current governing documents of the organisation and, if available, the most recent copy of accounts.

Form 2: Applying to Register a Project

This form is to be completed to register LCF project expenditure with ENTRUST before the expenditure takes place. To the back of each of these forms, the relevant Form 2 Object Specific Section must be affixed depending on the LCF object that applies to your project proposal.

Form 3: Contributions from a Landfill Operator (LO)

This **statutory** return is to be completed and submitted to ENTRUST by the receiving EB within seven days. Upon receipt of the form, ENTRUST will invoice you a proportion of the amount you receive from the LO in accordance with the Regulations.

Form 4: Statutory Annual Return

Every enrolled EB must complete this **statutory** return within 28 days of the 31st March, **even if a zero balance is to be reported**. This outlines your LCF activities in the last year, on an income and expenditure basis. Please note that it is not necessary to change your organisation's year-end to correspond with these dates.

Form 4A: Annual Return – C/CC Liabilities

This form is to be completed annually in addition to the Form 4: Statutory Annual Return only if you have ongoing C/CC (Waste minimisation) projects and therefore are required to apportion an element of the funds you hold as 'OLD scheme' money to be spent on these activities. Please note that you can only continue spending on an Object C/CC project if you have a written agreement in place. Please contact the ENTRUST Registration Department if you have any queries.

Form 7: Transfer of LCF monies between EBs

This **statutory** form has to be completed by the transferring EB and submitted to ENTRUST within seven days of the transfer of monies taking place. The recipient is no longer required to inform ENTRUST at the time of transfer, however the funds received will be recorded on the relevant Form 4: Annual Return.

Responsible Officer Update Form/Change of Director/Change of Main Contact Form

An enrolled EB is required to inform ENTRUST of any changes to the make up of the organisation's management committee (or Board of Directors). This notification should occur within seven days of the change taking place. This is required to allow ENTRUST to ensure each organisation is not controlled by a Local Authority, a LO or an individual who has been previously removed from the LCF.

While the responsible officer form is required to be completed for each change to the management committee, it should also be used to advise of changes to the main contact or any other individuals involved with LCF monies.

- 8.3 For further details on the ENTRUST reporting forms and how to complete them, please consult the Guidance Notes on the back of each of the forms or contact ENTRUST directly. Please note that failing to return any of the above forms within the statutorily defined timeframe in most cases represents non-compliance with the governing Regulations.

- 9.1** The contributing LO does not receive 100% tax relief for the amount given to the EB. For every £100 given to the scheme, the LO receives a £90 tax credit, i.e. each contribution made to the LCF costs the LO 10% of the amount given.
- 9.2** In some cases the LO will absorb this loss themselves, aware of the benefits that can be derived from participating in the LCF.
- 9.3** In other cases, often with the major contributors to the LCF (for whom the 10% difference can be a significant amount of money), the LO requires a third party to provide the 10% to make the transaction 'cost neutral'. This Contributing Third Party then provides the required amount to the LO.
- 9.4** If the LO, or the DEB providing the LCF monies on behalf of the LO, requires that you provide a Contributing Third Party, the following points should be considered:
- 9.4.1** The Contributing Third Party payment cannot be:
- LCF monies or derived from LCF monies; or
 - Anyone who will derive a unique benefit from the project going ahead.
- 9.4.2** The Contributing Third Party amount should pass directly to the relevant LO to avoid any confusion with LCF monies.
- 9.5** For further details on the definition of unique benefit and what is considered acceptable Contributing Third Parties, please consult the ENTRUST Guidance Note H - *The Benefit Rules*.

10 Compliance and how ENTRUST manages breaches in the Regulations

- 10.1** ENTRUST ensures that activities undertaken under the LCF comply with the governing Regulations through the following methods:
- 10.1.1** All organisations that apply to ENTRUST for enrolment are reviewed to ensure they meet the required criteria as set out in the Regulations.
- 10.1.2** ENTRUST assesses the work EBs wish to undertake by reviewing individual proposals at the project approval phase (as referred to above), prior to landfill monies being spent.
- 10.1.3** ENTRUST undertakes compliance reviews to verify the project expenditure and the controls in place at the organisation. Before a visit takes place you will be advised of the details that will be required at the visit and upon completion you will receive a report confirming the visit findings; and will be expected to address any findings.
- 10.1.4** Finally, ENTRUST will investigate allegations of breaches of the Regulations.
- 10.2** You must maintain clear records to demonstrate that projects have been carried out in line with their project approval, and that contributions have been spent in compliance with the Regulations. ENTRUST will examine these records during the compliance review.



Regulations:

33A(1) An approved body shall –

- (d) make and retain records of the following:
 - (i) the name, address and registration number of each registered person making a qualifying contribution to the body;
 - (ii) the name and address of any contributing third party in relation to a qualifying contribution received by the body;
 - (iii) the amount and date of receipt of each qualifying contribution and the amount and date of receipt of any income derived therefrom;
 - (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 date of the transfer, the amount transferred, the name and enrolment number of the body from or, as the case may require, to which it was transferred, the name, address and registration number of the person who made the qualifying contribution and the name and address if any contributing third party in relation to the contribution;
 - (v) in respect of each qualifying contribution and any income derived therefrom, including any such amount transferred to the body by another approved body, the date of and all other details relating to its expenditure.

10.3 EBs are required to keep and maintain a clear audit trail to show a link between expenditure and the contributing LO, and any Contributing Third Parties relating to the LO contribution. All records must clearly indicate which expenditure is funded by which LO contribution. This applies to all expenditure funded by the LCF, including both project expenditure and legitimate EBs running costs. Furthermore, EBs must also track all derived income against the original LO contribution. These records should be kept indefinitely.

10.4 The Regulations state the following:

- 34(1)** The regulatory body:-
- (i) shall satisfy itself, by reference to such records or other documents or information that it thinks fit, that all the qualifying contributions received by the body have been spent by it only in the course or furtherance of its approved objects;

10.4.1 Therefore, EBs will be required to produce their records for inspection by ENTRUST on request.

11 Revocation and Clawback

11.1 Where an EB no longer wishes to remain enrolled, they can request voluntary revocation by writing to the Compliance Manager. Once an EB requests revocation, the Compliance Team will make certain checks to ensure that the projects and assets remain in compliant use and continue to benefit communities.

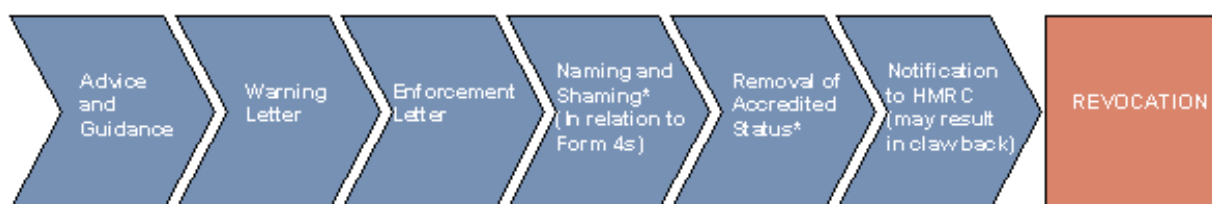
11.2 Where a serious breach of Regulations occurs and an EB is found not to have met its obligations as an approved body, HMRC have the power to compulsorily revoke an EB.

- 11.3** Where HMRC are not satisfied that an EBs expenditure is compliant or when an EB breaches a condition HMRC have the power to recover the tax credit claimed by the LO against their qualifying contribution. Re-payment of credit is known as clawback.
- 11.4** LOs can seek to reclaim their contributions from an EB, for example, if the EB failed to honor a contractual obligation that the contribution was spent on approved objects.
- 11.5** Where an EB transfers a contribution to another EB, the LO is still treated as the contributor. Therefore the LO is still liable to clawback even if a contribution is transferred. Consequently, as a matter of best practice, EBs should ensure that there are adequate arrangements in place to protect the LOs interests against clawback.
- 11.6** HMRC have issued comprehensive notes to LOs with respect to clawback and the LCF. Of particular note they advise LOs that;
- “The precautions you have taken to ensure that money is spent on approved objects will be an important factor in our decision on repayment of tax credits”*
- The HMRC guidance notes for LOs on the LCF are in Section 11 of the general guide to landfill tax found at:
<http://customs.hmrc.gov.uk>
- 11.7** For other details on the LCF and the activities of ENTRUST, please either consult the website, contact ENTRUST or find further information in the following guidance notes as outlined in this document.

12 ENTRUST Enforcement Sanctions

- 12.1** The responsibility for managing breaches in Regulations is split between ENTRUST and the Commissioner of HMRC.
- 12.2** If an EBs expenditure is found to be non-compliant, HMRC can administer clawback and/or compulsory revoke an EB.
- 12.3** Where ENTRUST considers that an EBs actions and responses suggest that regulatory breaches are evident or could become evident, a series of events will take place, under the general heading of the Enforcement Process. Whilst a diagrammatic representation of the enforcement process is shown below, it may not be a linear process as the most appropriate sanction will be applied.

Diagrammatic Representation of the Enforcement Process:



**Only if applicable.*

12.4 ENTRUST has a policy of 'Naming and Shaming' EBs who do not return their Statutory Annual Returns (Form 4) in the first instance.

12.5 The decision to impose sanctions against an EB is a serious step. A fair, transparent and proportionate enforcement framework is essential to the maintenance of stakeholder confidence in the regulation of the LCF. Each case identified by ENTRUST is unique and will be considered on its own facts and merits. However, there are a number of principles that apply in all circumstances and which ENTRUST will adopt:

- ENTRUST must demonstrate that the process applied in arriving at a decision, is fair, independent and objective;
- The person or organisation with legal responsibility must be made accountable for the breach; and
- In assessing the case it is important that the relevant part of the Regulations is applied.



13 Further Information and Contacting ENTRUST

Please consult the following guidance notes for further information:

Please consult the following guidance notes for further information:

B - Enrolling as an Environmental Body (EB)

The governing Regulations and detailed guidance on what is required to enrol as an EB.

C - Project Approval and Spending LCF Monies

Guidance on the project approval process as a whole with project management requirements and asset management guidance.

D - Object D Guidance

How to ensure your Object D: Public Amenities project is compliant.

E - Object DA Guidance

How to ensure your Object DA: Conservation of Biodiversity project is compliant.

F - Object E Guidance

How to ensure your Object E: Restoration of Religious Buildings and Buildings of Architectural Interest project is compliant.

G - Review Panel – Terms of Reference

The Terms of Reference covering the Review Panel.

H - The Benefit Rules

Guidance on the definition of 'benefit' and further details on Contributing Third Party restrictions.

I - Accreditation and Small Grants Scheme

The EB Accreditation process.

Contacting ENTRUST

ENTRUST can be contacted through the following methods

Post to: ENTRUST
60 Holly Walk
Royal Leamington Spa
Warwickshire
CV32 4JE
Telephone: 01926 488 300
Fax to: 01926 488 388
Email to: information@entrust.org.uk

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Other Contacts connected to the LCF

The Landfill Tax Regulations (1996, amended 1999).

- Available from bookshops or www.opsi.gov.uk

Landfill Operators registered for tax purposes

- HMRC website www.hmrc.gov.uk
- Tel: 0845 010 9000

Landfill Operators in your area

- Environment Agency (England and Wales) www.environment-agency.gov.uk
- Scottish Environmental Protection Agency (Scotland) www.sepa.gov.uk
- Environment and Heritage Service (N. Ireland) www.ehnsi.gov.uk

Directory of LCF Funder (Distributive Environmental Bodies)

- ENTRUST website www.entrust.org.uk

Application to Enrol

- Form 1: Applying to Enrol as an EB available on ENTRUST website www.entrust.org.uk