

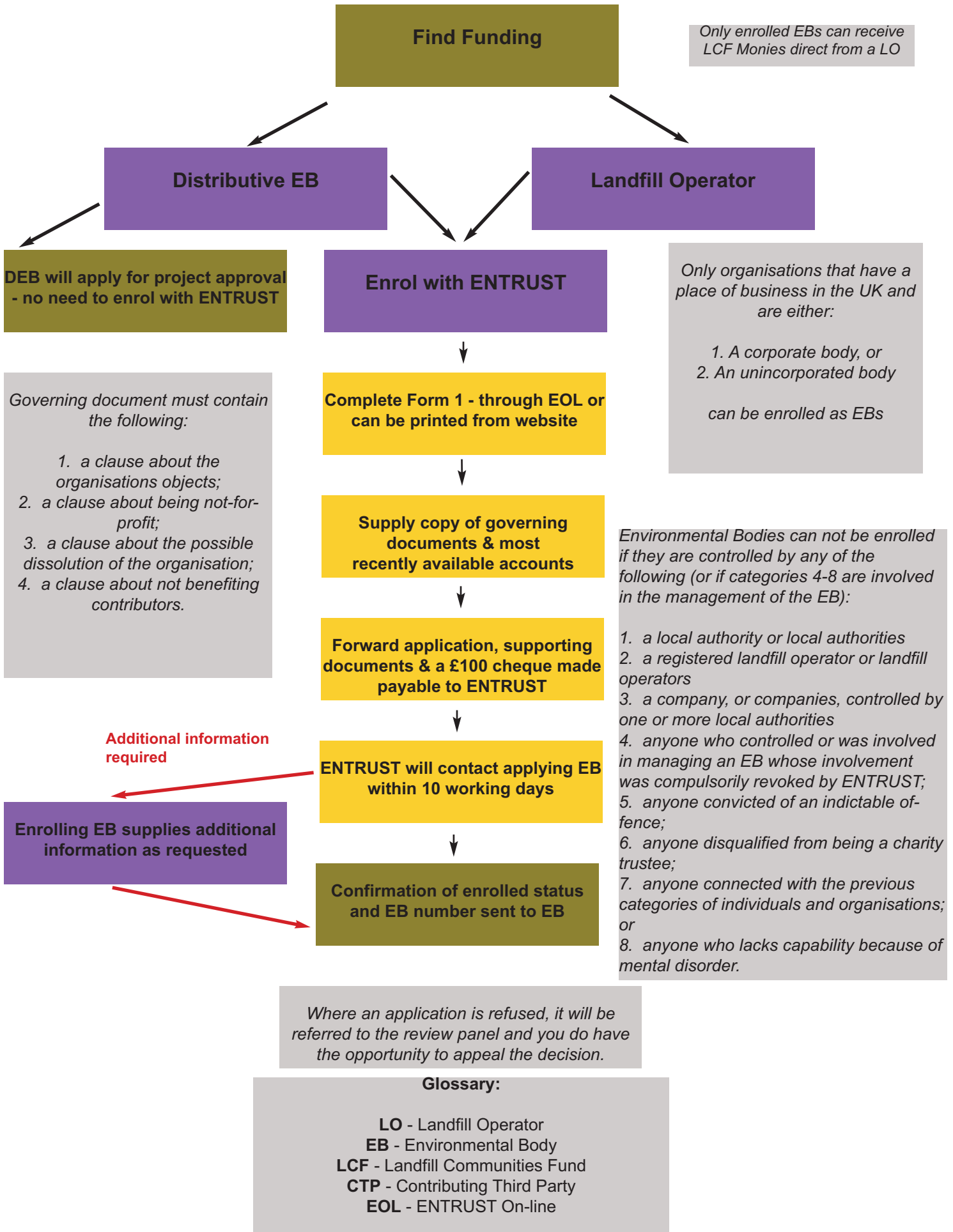


B - Enrolling as an Environmental Body (EB)

The Regulations governing which organisations can receive Landfill Communities Fund monies and the ENTRUST enrolment procedure



Quick start to the Enrolment Process



B) Enrolling as an Environmental Body

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1 Introduction

- 1.1 The Landfill Tax Regulations (Regulations) specify the criteria that organisations wishing to receive Landfill Communities Fund (LCF) monies must comply with. Through ENTRUST's enrolment procedure, checks are made to ensure these criteria are met.

2 The Regulations

- 2.1 The Regulations provide the following:

- 33 (1) A body is eligible to be approved if –
- (a) it is -
 - (i) a body corporate, or
 - (ii) a trust, partnership or other unincorporated body;
 - (b) its objects are or include any of the objects within paragraph (2) below (approved objects);
 - (c) it is precluded from distributing and does not distribute any profit it makes or other income it receives;
 - (d) it applies any profit or other income to the furtherance of its objects (whether or not approved objects); and
 - (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) 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.

3 The Regulations in practice

3.1 Status of organisation

An organisation can be enrolled by ENTRUST as an EB if it has a place of business in the UK and is either:

- A corporate body (such as a limited company or a corporation) or
- An unincorporated body (such as an association, a club or a trust).

4 Governing Document

- 4.1 An organisation must demonstrate to ENTRUST that it continues to meet the criteria in the Regulations. Organisations must maintain documentation that sets out their governing rules. For companies, this is usually the Memorandum and Articles of Association. For other organisations, a constitution, a document entitled Rules or a trust deed are acceptable.

5 Governing Document Requirements

- 5.1 The following points will be reviewed by ENTRUST in your governing documents. If the following points are not present or explicit in your governing documents, ENTRUST may ask for either an amendment or alternative confirmation that your organisation fits the following principles.



5.1.1 A clause about the organisation's objects

An organisation's governing document must include objects for the organisation that match, or closely match, one or more of the objects in the Regulations. An organisation's governing document must also state that the organisation can only spend its money to "further its objects". This means the organisation is limited to spending landfill tax money on works that are covered by the objects stated in the governing document, and which continue to mirror the objects within the Landfill Tax Regulations.

5.1.2 A clause about being not-for-profit

An organisation's governing document must state that the organisation is not allowed to distribute income or profit. In practice, this means no bonus, shares, profit or dividends may be issued. However, this requirement will be dispensed with where the governing documents confirm that the organisation has charitable status.

5.1.3 A clause about the possible dissolution of the organisation

If there is a dissolution clause in your governing document then it should continue to state that after outstanding liabilities have been met, surplus assets must not be distributed amongst the organisation's members and must remain in the LCF.

ENTRUST are looking to ensure that LCF assets are protected if the organisation was to dissolve. This includes all assets that the LCF retains an interest in, LCF cash and LCF monies held in bank accounts.

5.1.4 A clause about not benefiting contributors

Your organisation must have a clause about preventing benefit to contributors in the governing document, stating that the organisation is precluded from using its funds for the benefit of its contributors. Section H -The Benefit Rules of the Guidance Manual outlines the restrictions of benefit under the LCF.

6.1 What the Regulations say

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

- (f) it is not controlled by one or more, of the persons and bodies listed in paragraphs (1A) and (1B) below;
- (g) none of the persons or bodies listed in paragraph (1B) below is concerned in its management;
- (h) it pays to the regulatory body an application fee of £100 or such lesser sum as the regulatory body may require.

(1A) The persons and bodies mentioned in paragraph (1)(f) above are:

- (a) a local authority;
- (b) a body corporate controlled by one or more local authorities;
- (c) a registered person;
- (d) a person connected with any of the persons or bodies mentioned in sub-paragraphs (a) to (c) above.

(1B) The persons and bodies mentioned in paragraph 1(f) and (g) above are:

- (a) a person who controlled or was concerned in the management of a body the approval of which was revoked otherwise than under regulation 34(1)(ee);
- (b) a person who has been convicted of an indictable offence;
- (c) a person who is disqualified for being a charity trustee or a trustee for a charity by virtue of section 72 of the Charities Act 1993;
- (d) a person connected with any of the persons or bodies mentioned in sub-paragraphs (a) to (c) above;
- (e) a person who is incapable by reason of mental disorder.

(1C) For the purpose of paragraph 1(B)(e) above, a person shall be treated as incapable by reason of mental disorder where –

- (a) in England and Wales, the person lacks capacity within the meaning of the Mental Capacity Act 2005 (c.9) to administer and manage his property and affairs,;
- (b) in Scotland, the court has appointed a curator bonis, tutor or judicial factor; or
- (c) in Northern Ireland, the court has exercised any of its powers under Part VIII of the Mental Health (Northern Ireland) Order 1986 (whether or not by virtue of Article 97(2) of that Order),

but shall cease to be so treated where the judge or court concerned has made a finding that he is not or is no longer incapable of managing and administering his property and affairs.

33 (9) For the purpose of paragraph (1) above a body or person (in either case for the purpose of this paragraph, “the person”) shall be taken to control a body where –

- (a) in the case of a body which is a body corporate, the person is empowered by statute to control that body’s activities or if he is that body’s holding company within the meaning of section 1159 of and schedule 6 to the Companies Act 2006, and an individual shall be taken to control a body corporate if he, were he a company, would be that body’s holding company within the meaning of that Act;
- (b) in the case of a body which is a trust or a partnership, where –
 - (i) the person, taken together with any nominee of his, or
 - (ii) any nominee of the person, taken together with any nominee of that nominee or any other nominee of the person,

forms a majority of the total number of trustees or partners, as the case may be;

- (c) in the case of any other body, where the person, whether directly or through any nominee, has the power
 - (i) to appoint or remove any officer of the body;
 - (ii) to determine the objects of the body;
 - (iii) to determine how any of the body’s funds may be applied.



6.2 What the regulations mean in practice regarding organisation 'control' or 'controlled'.

An organisation's governing document must explain the voting procedures, any casting votes and the quorum for meetings of its governing body (the trustees, directors or management committee, for example). This enables ENTRUST to establish by whom the organisation is controlled.

6.3 'Controlled'

The organisation must not be controlled by the following groups or individuals in accordance with the Regulations:

- a local authority or local authorities, including parish councils;
- a registered landfill operator or landfill operators;
- a company, or companies, controlled by one or more local authorities;
- anyone who controlled or was involved in managing an EB whose enrolment was compulsorily revoked;
- anyone convicted of an indictable offence;
- anyone disqualified from being a charity trustee;
- anyone connected with the previous categories of individuals and organisations; or
- anyone who lacks capability because of a mental disorder.

6.4 Model Constitution

An example of a model constitution can be found on the ENTRUST website.

7 'Management'

- 7.1** Similar to the requirements of control, none of the following groups or individuals can be involved in the management of the organisation in accordance with the Regulations:
- anyone who controlled or was involved in managing an EB whose enrolment was compulsorily revoked by ENTRUST;
 - anyone who has been convicted of an indictable offence;
 - anyone who has been disqualified from being a charity trustee;
 - anyone who is connected with the previous categories of individuals; or
 - anyone who lacks capability because of a mental disorder.

8 The quorum

- 8.1** The organisation's governing documents must outline what constitutes a quorum to allow ENTRUST to ensure that at its meetings there is always a high enough number of 'independent' members, confirming that neither landfill operator nor local authority representatives can form a majority (and thereby control a body) when only a quorum is present.
- 8.2** The governing documents should confer a second or casting vote on the chairperson where there is an equality of votes in relation to LCF matters.

9 Control by landfill operators and local authorities

- 9.1** As stated in section 7, the organisation must not be controlled by:
- A landfill operator or landfill operators; or
 - Representatives of a local authority.
- 9.2** Representatives of local authorities include its councillors and senior officers, as well as people appointed by a local authority to serve on EBs.
- 9.3** Neither landfill operators as a group, nor local authorities as a group, are allowed to form the majority on an organisation's governing body (its trustees, board of directors or management committee, for example). For the purposes of identifying control:
- Groups of landfill operators are assumed to act separately from groups of local authorities. In an organisation where representatives of both a local authority and a landfill operator are present, they count as representing different interests. The exception would be where the local authority was a landfill operator.
 - Representatives of different local authorities on an organisation's governing body are assumed to act together.
- 9.4** The casting vote for matters related to LCF must not be conferred on landfill operator or local authority representatives.

10 The Enrolment process

- 10.1** To initiate the enrolment process, it is necessary to submit the Form 1: Applying to enrol as an EB to ENTRUST. ENTRUST recommend that you initially contact funders to ensure that in your case enrolment is necessary. The application form will need to be accompanied by:
- A copy of your organisation's governing documents (i.e. constitution) to allow ENTRUST to ensure your organisation meets the regulatory requirements of enrolled EBs.
 - A cheque for £100 made payable to 'ENTRUST', to cover the cost of the application fee. This fee is non-refundable and will cover the cost of enrolling your organisation as an EB, irrespective of any queries resolved in the process; and
 - The most recently available accounts of your organisation. If your organisation is newly formed and these are not available, please indicate on the Form 1: Applying to enrol as an EB.
- 10.2** Whether your organisation can be enrolled from the initial application or further details are required, you will receive a written response to all correspondence within 10 working days of submission. Please note that all correspondence will be sent to the indicated Main Contact.
- 10.3** Upon enrolment, you will receive a letter confirming the enrolled status of your organisation and a certificate. It is recommended that you keep these for your records as often funders subsequently ask for a copy as assurance of your enrolled status.

11 Refusal and appeal

- 11.1** If your application to enrol your organisation is refused as it is not deemed to fulfil the requirements to become an enrolled Environmental Body, it will automatically be referred to the Review Panel. The applicant is invited to attend these meetings to make their case for enrolling the organisation. For further details on the workings of the Project/Enrolment Review panel, please consult the ENTRUST *Guidance Note G - Review Panel Terms of Reference*.

12 Retaining your enrolled status

- 12.1** Once your organisation is enrolled, you will remain enrolled until you request in writing that you wish to de-register from the Fund or your status is revoked as a result of non compliance with the Landfill Tax Regulations.
- 12.2** If you requested revocation from the Fund and later decide to re-enrol you will be required to resubmit all details including an additional enrolment cheque.