



Compliance and enforcement update

April 2017 to March 2018

Published 1 May 2018

Introduction

ENTRUST is required under the Landfill Tax Regulations 1996 (Regulations), Regulation 33 (1) (i) to satisfy ourselves, by reference to records, or other documents, or information held by Environmental Bodies (EBs), that the qualifying contributions received by an EB have been spent by it only in the course, or furtherance of the Regulations and the EB's approved objects. Fundamental to our approach in delivering this statutory requirement is visiting EBs to review their governance arrangements; operating systems and project spend to ensure that they comply with best practice and the Regulations.

At the conclusion of each compliance review we issue a report which details our findings and where appropriate, makes recommendations for corrective actions. A summary of these findings for the period April 2017 to March 2018 is detailed below.

Furthermore breaches of the Regulations by EBs are managed in accordance with our [Enforcement Framework](#), which we have agreed with HMRC and which complies with best regulatory practice, for example, repeated breaches of the Regulations are escalated to a higher stage of the intervention and enforcement framework.

Compliance

Failure to comply with the Landfill Tax Regulations 1996 (Regulations)

During the financial year 2017/2018, 218 Compliance reports were issued, compared to 308 for 2016/2017. A total of 268 recommendations were raised (377 in 2016/2017) of which 82 (30.6%) were made to correct issues of non-compliance (123 (32.6%) in 2016/2017) and 186 (69.4%) were guidance recommendations (254 (67.4%) in 2016/2017).

The most common non-compliant issues identified included:

- Spending outside of the prescribed period
- Inaccurate Annual Returns (Form 4);
- Use of ineligible funds for Contributing Third Party (CTP) donations;
- Lack of CTP donor records;
- Failure to maintain records of expenditure;
- Non-compliant use of LCF funds;
- Failure to report transfers of funds between EBs (Form 7)

Non-compliant recommendations are categorised and ranked in order of frequency as detailed in the following table:

Compliance issue	Number of recommendations					% of non-compliant recommendations
	Q1	Q2	Q3	Q4	Total	
Project expenditure outside of the prescribed period	5	2	6	6	19	23.2
Statutory reporting – Form 4	3	7	3	3	16	19.5
CTP compliance		2	4	8	14	17.1
Failure to maintain records of LCF expenditure	4	2	3	1	10	12.2
Statutory reporting – Form 7	1		4	1	6	7.3
Failure to maintain CTP records	1	2	1	1	5	6.1
Non compliant use of LCF funds		3	1		4	4.9
Failure to maintain records of LCF income	1		1	1	3	3.7
Statutory reporting – Form 3			1	1	2	2.4
Project non compliance			1		1	1.2
Failure to meet criteria for enrolment	1				1	1.2
Unapproved project expenditure			1		1	1.2
Unique benefit to a contributor						0
Totals	16	18	26	22	82	100%

Guidance recommendations

Guidance recommendations are made when an EB has failed to follow our EB guidance. These issues are not breaches of the Regulations but as we expect EBs to meet our guidance requirements, these are raised in the compliance report. The majority of guidance issues identified were recommendations intended to improve the standards of governance within EBs, the more frequent issues were the lack of checks on newly appointed trustees/directors to confirm that they are eligible to act as a trustee/director and a lack of formal declarations of interest at Board/Management committee level. EBs failing to notify ENTRUST of changes to their organisation continues to be a frequent issue also. These included Trustee and Main Contact records and changes to governance documents.

The increased scrutiny of EB administration costs during 2017/2018 resulted in a high proportion of guidance recommendations being raised. A number of recommendations were also raised concerning the correct reporting of project information to ENTRUST via both annual returns and project completion forms.

Guidance recommendations raised during 2017/2018 are categorised and ranked in order of frequency as detailed in the following table:

Compliance Issue	No. of Recommendations					% of Guidance recommendations
	Q1	Q2	Q3	Q4	Total	
Governance	7	8	6	11	32	17.2
Failure to maintain EB records with ENTRUST	12	7	8	0	27	14.5
Administration costs	2	3	3	18	26	14.0
Project completion reporting – Form 9	3	5	6	4	18	9.7
Project completion reporting – Form 4	3	4	5	5	17	9.1
Guidance required – Projects	4	5	3	3	15	8.1
Guidance required – EB procedures	2	3	1	4	14	7.5
Unspent funds	2	3	1	5	11	5.9
Business continuity	3	2	1	2	8	4.3
Guidance required – Voluntary revocation	0	3	2	2	7	3.8
Asset monitoring	0	2	1	2	5	2.7
Project file documentation	2	2	0	0	4	2.2
Guidance required – Other	5	1	0	0	2	1.1
Totals	45	48	37	56	186	100.0

Analysis of Issues

Non compliant issues:

ENTRUST's analysis of the issues identified during 2017/2018 highlighted a significant number of cases where EBs had spent LCF monies outside of the prescribed period, despite the change to the Regulations being introduced in April 2015, which makes any expenditure outside of the prescribed period non compliant. Our findings suggest that EBs are not adequately monitoring projects to identify potential delays with project completions and not therefore able to request extensions before the approved completion date has passed. Guidance on delivering compliant projects has previously been issued to all EBs and is available in the ENTRUST [Guidance Manual](#) section 5.4, Extending a Project.

Errors in statutory annual returns (Form 4) continue to be identified. Guidance on how to complete the annual return is signposted to EBs through all ENTRUST communications during the Annual Return reporting period, in [Section 3 of the EB Guidance Manual](#) and [guidance notes](#) available on the ENTRUST website. The data provided to ENTRUST by EBs via the annual return is the basis of our reporting to HMRC on the performance of the Fund and inaccurate reporting could adversely affect our reporting.

Various issues have been identified with the quality of EBs recordkeeping. EBs are required to maintain records of all LCF income and expenditure and these records must be sufficient to demonstrate that LCF funds are being held securely or have been spent on compliant projects. The most frequently identified omissions were with project expenditure records, typically a lack of invoices to demonstrate how the LCF funds had been spent. There is also a requirement on EBs to maintain records of individual CTP donors. The requirement is there to demonstrate that individual donors do not receive a unique benefit from any projects funded by the LCF and we have found a small number of cases where the EB records have been insufficient.

Guidance issues:

The most frequent guidance issues identified during 2017/2018 was a lack of checks by EBs to ensure no excluded individuals are appointed to the Board of EBs. Failing to notify ENTRUST of changes to Main Contacts and/or Trustees continues to be a frequent omission with EBs. Without a current Main Contact, EBs will no longer receive regular contact from ENTRUST on Regulatory issues which may affect the EB. Also, the knowledge and understanding of the LCF and what needs to be done to remain compliant is lost to the EB.

A wide range of guidance issues are raised with EBs and we would recommend that EBs ensure they are familiar with the [EB Guidance](#) published on the ENTRUST website and refer to the guidance as part of their day to day LCF operations.

ENTRUST's recommended corrective actions

ENTRUST's recommended corrective actions to the five most frequently raised findings are detailed below for EBs to consider:

Recommendation type	ENTRUST recommended action
Non compliant expenditure – spend outside of prescribed period (Non compliant)	<ul style="list-style-type: none">• EBs reminded to monitor the completion of projects and request extensions to projects approaching their completion date• EBs reminded to obtain project approval before spending LCF monies• EBs to ensure LCF monies are only spent on the areas detailed in the project cost breakdown approved at registration
Form 4 – inaccurate, non reconciled or late (Non compliant)	<ul style="list-style-type: none">• EBs must review their financial records and re-submit an updated and accurate Form 4• EBs must provide start and end dates for projects• EBs reminded they can make adjustments and corrections to their Form 4 on EOL• Deadline for submitting the annual return should be recorded on EB management team calendars/agendas
Failure to maintain records of expenditure (Non compliant)	<ul style="list-style-type: none">• EBs should retain documentary evidence or financial systems to evidence all financial transactions
Governance - lack of checks on excluded individuals (Guidance)	<ul style="list-style-type: none">• EBs' governance procedures should include a declaration by new appointees that they are not an excluded individual• EBs' recruitment processes to include a check for excluded individuals
Director/Main Contact updates (Guidance)	<ul style="list-style-type: none">• EBs' governance procedures should note requirement to notify ENTRUST of retiring Trustees and new appointments at the same time as Companies House and/or Charities Commission are notified (where applicable)• Main Contacts to carry out regular review of EB data held on EOL

Enforcement

EBs which breach the Regulations are issued with an enforcement letter if the breach has not already been addressed through the Compliance process. The letters are issued as per our [Enforcement framework](#) with repeated breaches escalated to a higher stage of the enforcement process. For the first breach an EB will receive an Advice and Guidance letter; subsequent breaches of any type of breach in a rolling 12 month period are addressed by higher stages of the Framework. The letter informs the EB of the breach and requires the EB to take steps to prevent the breach occurring again.

The table below provides the number of letters addressing regulatory breaches sent during the financial year 2017 - 2018. If an EB has had multiple breaches in a month then they receive one letter covering all breaches; to minimise administrative burden. In the table we have also included some actions that EBs should take to avoid these issues arising. For more detailed information as to the obligations of EBs please see our [guidance manual](#).

For breaches relating to project spend outside the prescribed period we issue the letters as we become aware of the breach. For this reason there is a peak during the Annual Return (Form 4) submission period in April when EBs report their projects as completed and the payment dates are entered. The actual breach may have occurred at any point in the prior financial year.

Regulatory breach	Enforcement stage	No. of letters					Action EBs should take
		Q1	Q2	Q3	Q4	Total	
Late Statutory reporting – Form 3 (notification of contribution from Landfill Operator)	Advice and Guidance letter	4	1	4	4	13	EBs should monitor bank accounts to ensure that they are aware of when money has been received
	Warning letter	3		1	1	5	
	Enforcement letter						
Late Statutory reporting – Form 7 (notification of transfer of monies between Environmental Bodies)	Advice and Guidance letter	5	1		4	10	EBs should ensure they have a process established to report all transfers in the appropriate timeframe. This must include identifying if an organisation they are funding is an EB or not
	Warning letter		1		2	3	
	Enforcement letter						
Late levy payment	Advice and Guidance letter	3	2	4	1	10	EBs should have a process established to pay the levy in the appropriate timeframe
	Warning letter						
	Enforcement letter						
Project expenditure outside of the prescribed period	Advice and Guidance letter	22	2	6	7	37	EBs should monitor the completion of projects and request extensions to projects approaching their completion date
	Warning letter						
	Enforcement letter				1	1	
Total	All letters	37	7	15	20	79	

Enforcement cases

If we believe that there has been a serious breach of the Regulations we will open an enforcement case. Cases will either be closed where the issue has been resolved to our satisfaction or the case will be considered by the ENTRUST Board for referral to HMRC for consideration of forcible revocation of the EB and/or claw back of the tax credit claimed by the Landfill Operator. We address enforcement cases using letters, meetings and other tools available to us, in order to ensure a satisfactory outcome. At all times our focus is to ensure Landfill Communities Fund (LCF) monies are spent compliantly.

During the period there were ten open cases; the reasons for these cases being opened are explained in the table below.

In the table we have also included some actions that EBs should take to avoid these issues arising. For more detailed information as to the obligations of EBs please see our [guidance manual](#).

Period	Regulatory breaches	Action EBs should take
2017/2018	Non compliant spend of LCF funds including spending on non LCF activity	EBs should ensure LCF monies are ring-fenced and only spent on LCF objects and approved projects
	Non compliant project expenditure	EBs should ensure LCF monies are only spent on the areas detailed in the project cost breakdown approved at registration and that resultant projects or amenities remain compliant
	Expenditure on projects prior to project approval by ENTRUST	EBs should obtain project approval before spending LCF monies
	Project expenditure not being supported by invoices	EBs should retain documentary evidence or financial systems to evidence all financial transactions
	EB not able to provide proof of LCF monies held	EBs should be able to provide proof of LCF monies held at all times: bank statements or online banking records
	EBs not responding to ENTRUST regulatory requests for information	EBs should always respond to our requests for information within the timescales provided

Non return of Statutory Annual Return (Form 4)

At the end of 2017/2018 there were nine EBs frozen for not returning their Statutory Annual Return (Form 4).

Please contact our Helpline on 01926 488 300 or by emailing helpline@entrust.org.uk for more information on our compliance or enforcement processes or see [our website](#).