

# **Compliance and Enforcement update**

**April to June 2019**

**July 2019**

## 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 April to June 2019 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 period April 2019 to June 2019, 31 draft Compliance reports were issued. A total of 40 recommendations were raised of which 9 (22.5%) were made to correct issues of non-compliance and 31 (77.5%) were guidance recommendations.

The most common non-compliant issues identified included:

- Statutory reporting omissions;
- Non-compliant use of LCF funds;
- Failure to maintain records of expenditure;
- Spending outside of the prescribed period;

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

Non-compliant issue	Number of recommendations					% of non-compliant recommendations
	Q1	Q2	Q3	Q4	Total	
Statutory reporting - Form 4	2				2	22.2%
Unapproved project expenditure	2				2	22.2%
Failure to maintain records of LCF expenditure	1				1	11.1%
Failure to maintain records of LCF income	1				1	11.1%
Non-compliant use of LCF funds	1				1	11.1%
Project expenditure outside of the prescribed period	1				1	11.1%
Statutory reporting - Form 7	1				1	11.1%
<b>Totals</b>	<b>9</b>				<b>9</b>	<b>100%</b>

## 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 issues are raised with EBs in our Compliance reports.

The majority (8 (25.81%)) of guidance issues identified during the first quarter of 2019/2020 were intended to improve EB internal controls in a number of areas such as:

- documenting LCF procedures;
- improvements to tender processes;
- checks for excluded individuals

Four (12.9%) guidance recommendations were raised on Administration costs, three of these were to EBs which had exceeded the 7.5% guidance level and one recommendation was made to improve documentation to justify costs incurred.

Guidance recommendations raised during April to June 2019 are categorised and ranked in order of frequency as detailed in the following table:

Guidance issue	Number of recommendations					% of guidance recommendations
	Q1	Q2	Q3	Q4	Total	
Guidance required - EB procedures	8					25.81%
Administration costs	4					12.90%
Unspent funds	3					9.68%
Project file documentation	3					9.68%
Guidance required - Projects	3					9.68%
Guidance required - Other	3					9.68%
Failure to maintain EB records with ENTRUST	2					6.45%
Asset monitoring	1					3.23%
Guidance required - Voluntary revocation	1					3.23%
Project completion reporting - Form 9	1					3.23%
Governance	1					3.23%
Business continuity	1					3.23%
<b>Totals</b>	<b>31</b>					<b>100%</b>

## Analysis of Issues

### Non-compliant issues:

ENTRUST's analysis of the issues identified during the first quarter of 2019/2020 highlighted a small number of cases where EBs have spent LCF monies on items which have not been covered by the project approval. EBs are reminded that LCF funds must only be spent on approved works which have the prior approval of ENTRUST and are itemised in the cost approved cost breakdown. Changes to the scope of works or to the value of LCF funds to be spent on a project should be notified to ENTRUST Registrations team for approval and to ensure project details are updated. Guidance on running a project can be found in [Section 5 of the EB Guidance Manual](#).

A case of non-compliant use of funds was also identified and EBs need to be aware that LCF funds must never be used by organisations as general or unrestricted funds and should only be spent on items covered by the Objects within the Regulations. Guidance on compliant use of LCF funds can be found in [Section 4 of the EB Guidance Manual](#).

A small number of errors and omissions on the annual returns were also identified. It is important that the data provided to ENTRUST via statutory returns is accurate as this information is used to report on the performance of the Fund to HMRC and could influence decisions on the strategic direction of the Fund.

### Guidance issues:

A wide range of guidance issues were raised with EBs during first quarter of 2019/2020 which are intended to improve internal procedures and controls. There are a number of on-going obligations on EBs once they are enrolled and these obligations are detailed within [Section 3 of the EB Guidance Manual](#).

EBs are expected to demonstrate adequate governance arrangements are in operation within their organisations and a number of recommendations have been made to improve EB procedures. The most frequently raised issue is the lack of annual checks on excluded individuals being involved in the management of EBs.

Administration costs and Unspent Funds remain high profile issues for HMRC and are subject of separate sector-wide information and reporting exercises outside of the compliance process. However, we will continue to raise issues with individual EBs as and when they are identified through compliance reviews.

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 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"> <li>• EBs reminded to monitor the completion of projects and request extensions to projects approaching their completion date</li> <li>• EBs reminded to obtain project approval before spending LCF monies</li> <li>• EBs to ensure LCF monies are only spent on the areas detailed in the project cost breakdown approved at registration of a project</li> </ul>
Form 4 – inaccurate, non reconciled or late (Non compliant)	<ul style="list-style-type: none"> <li>• EBs must review their financial records and re-submit an updated and accurate Form 4 if required</li> <li>• EBs must provide start and end dates for projects</li> <li>• EBs reminded they can make adjustments and corrections to their own Form 4 on EOL</li> <li>• Deadline for submitting the annual return should be recorded on EB management team calendars/agendas</li> </ul>
Failure to maintain records of expenditure (Non compliant)	<ul style="list-style-type: none"> <li>• EBs should retain documentary evidence or financial systems to evidence all financial transactions</li> <li>• EBs must be able to provide documentary evidence that LCF balances are held securely and are available on an 'instant access' basis, i.e. not committed to long-term investments or savings</li> </ul>
Governance - lack of checks on excluded individuals (Guidance)	<ul style="list-style-type: none"> <li>• EBs' governance procedures should include a declaration by new appointees that they are not an excluded individual</li> <li>• EBs' recruitment processes to include a check for excluded individuals</li> </ul>
Director/Main Contact updates (Guidance)	<ul style="list-style-type: none"> <li>• 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)</li> <li>• Main Contacts to carry out regular review of EB and personal data held on EOL</li> </ul>

## 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 April to June 2019. 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](#).

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	2				<b>2</b>	EBs should monitor bank accounts to ensure that they are aware of when money has been received
	Warning letter						
	Enforcement letter						
Late Statutory reporting – Form 7 (notification of transfer of monies between Environmental Bodies)	Advice and Guidance letter	3				<b>3</b>	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				<b>1</b>	
	Enforcement letter						
Late levy payment	Advice and Guidance letter	1				<b>1</b>	EBs should have a process established to pay the levy in the appropriate timeframe on receipt of invoice
	Warning letter						
	Enforcement letter						
Project expenditure outside of the prescribed period	Advice and Guidance letter	6				<b>6</b>	EBs should monitor the completion of projects and request extensions to projects approaching their completion date
	Warning letter	1				<b>1</b>	
	Enforcement letter	1				<b>1</b>	
<b>Total</b>	<b>All letters</b>	<b>15</b>				<b>15</b>	

## 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 April to June 2019 there were five 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
Q1 2019/2020	Non-compliant spend of LCF funds including spending on non LCF activity	EBs must ensure LCF monies are ring-fenced and only spent on LCF objects and approved projects
	EB not able to provide proof of LCF monies held	EBs must be able to provide proof of LCF monies held at all times: bank statements or online banking records
	EB failing to respond to requests to return unspent funds	EBs must ensure that any unspent funds are returned to their funder

## Non return of Statutory Annual Return (Form 4)

At the end of June 2019 there remained 57 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](mailto:helpline@entrust.org.uk) for more information on our compliance or enforcement processes or see [our website](#).