



Compliance and Enforcement update

April to September 2018

October 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 to September 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 April to September 2018, 110 draft Compliance reports were issued. A total of 101 recommendations were raised of which 41 (40%) were made to correct issues of non-compliance and 60 (60%) were guidance recommendations.

The most common non-compliant issues identified included:

- Spending outside of the prescribed period;
- CTP compliance;
- Failure to maintain records of expenditure;
- Failure to maintain records of income.

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	
Project expenditure outside of the prescribed period	7	5			12	29%
Failure to maintain records of LCF expenditure	4	5			9	22%
Failure to maintain records of LCF income	4	1			5	12%
CTP compliance	1	4			5	12%
Statutory reporting - Form 4	2	2			4	10%
Other - Non-compliant	2	1			3	7%
Non-compliant use of LCF funds	1	1			2	5%
Statutory reporting - Form 7	0	1			1	2%
Totals	21	20			41	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 Compliance reports. The majority of guidance issues identified during April to September 2018 were recommendations intended to improve EB procedures. EBs failing to notify ENTRUST of changes to their organisation, such as Trustee and Main Contact records and changes to governance documents, continues to be a frequent issue.

Guidance recommendations raised during 2018/2019 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	3	10			13	22%
Failure to maintain EB records with ENTRUST	2	8			10	17%
Guidance required - Other	4	5			9	15%
Project completion reporting - Form 9	2	3			5	8%
Project file documentation	2	2			4	7%
Guidance required - Projects	0	4			4	7%
Administration costs	2	1			3	5%
Business continuity	1	2			3	5%
Guidance required - Funding Agreement	2	0			2	3%
Project completion reporting - Form 4	2	0			2	3%
Unspent funds	1	1			2	3%
Asset monitoring	1	0			1	2%
Governance	1	0			1	2%
Guidance required - Voluntary revocation	1	0			1	2%
Totals	24	36			60	100

Analysis of Issues

Non compliant issues:

ENTRUST's analysis of the issues identified during April to September 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.

Various issues have been identified with the quality of EBs recordkeeping in relation to the receipt and expenditure of LCF funds. 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. A small number of EBs were also unable to provide evidence at the time of requests to demonstrate reported balances were held on deposit. [Section 3 of the EB Guidance Manual](#) explains the obligations on enrolled EBs including record keeping requirements. There is also guidance on project file documentation within [Section 5 of the EB Guidance Manual](#).

An increased number of CTP issues have been identified during Quarter 2. Issues ranged from failure to maintain records of donors and failure to adequately explain the intended use of donations when fundraising for CTP monies. Additional guidance was published on the ENTRUST website in July 2018 in response to stakeholder feedback on this issue. Guidance can be found on the [CTP page of the website](#).

Guidance issues:

A wide range of guidance issues were raised with EBs during April to September 2018. Guidance recommendations raised were specific issues with individual EBs to improve internal procedures and controls, with no clear trends emerging of frequently identified areas. Failure of EBs to maintain accurate EB records with ENTRUST remains the single most common issue.

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"> • 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 of a project
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 if required • EBs must provide start and end dates for projects • EBs reminded they can make adjustments and corrections to their own 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 • 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
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 and personal 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 April to September 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](#).

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	5	1			6	EBs should monitor bank accounts to ensure that they are aware of when money has been received
	Warning letter	2				2	
	Enforcement letter						
Late Statutory reporting – Form 7 (notification of transfer of monies between Environmental Bodies)	Advice and Guidance letter	2				2	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	4				4	
	Enforcement letter						
Late levy payment	Advice and Guidance letter	2	1			3	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	4	1			5	EBs should monitor the completion of projects and request extensions to projects approaching their completion date
	Warning letter	1				1	
	Enforcement letter						
Total	All letters	20	3			23	

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 first two quarters of 2018/2019 there were twelve 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
2018/2019 Q1 Q2	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
	Non-compliant project expenditure	EBs must 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
	Project expenditure not being supported by invoices	EBs must retain documentary evidence or financial systems to evidence all financial transactions
	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
	EBs not responding to ENTRUST regulatory requests for information	EBs are required to respond to our requests for information within the timescales provided
	EB not reporting significant transfer of monies appropriately	EBs must ensure that any funds transferred between EBs is reported to ENTRUST
	EB failing to respond to Compliance report	EBs must always provide their response to the Compliance report findings in the timescale given

Non return of Statutory Annual Return (Form 4)

At the end of September 2018 there remained 24 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](#).