

Consultation on the interpretation of ‘public’

Subject of this Consultation:	The interpretation of ‘public’.
Scope of this Consultation:	<p>This consultation exercise seeks stakeholders’ views on the definition of what makes facilities open to the general public as this is a regulatory requirement for some projects. We need to ensure that the guidance which we give clearly reflects the Landfill Tax Regulations 1996 (Regulations). In undertaking this work, we will consider:</p> <ul style="list-style-type: none"> • The definition of public to mean the general public; • Whether current operations allow admission costs or hire charges to be so high that they exclude the general public from having access to an amenity; • How often facilities should be open to be ‘public’; • Age and specific user group considerations, including proportional registration, where the use of the amenity is restricted for the general public at some times when it is open; and • The circumstances under which we request access statements when considering projects for registration.
Who should read this:	Environmental Bodies (EBs)
Duration:	The consultation will be open for 14 weeks. The closing date for responses is 26 September 2014
Enquiries:	If you have any questions about this consultation, you should contact Jane Bailey, Regulations Manager on 01926 488 324 or at Regulations@entrust.org.uk .
How to respond:	<p>You can respond to the consultation in any of the following ways:</p> <p>Email: regulations@entrust.org.uk (please state ‘Public’ in the email subject)</p> <p>On-line: https://www.surveymonkey.com/s/ENTRUSTpublicconsultation</p> <p>Post: Regulations Team, ENTRUST, 60 Holly Walk, Royal Leamington Spa, Warwickshire, CV32 4JE.</p>
Additional ways to become involved:	We will also be holding a focus group to discuss this subject. This will be held on 10 September 2014 at our office in Leamington Spa. If you would like to attend, please email Jane Bailey or Maddy Hodgson at Regulations@entrust.org.uk by 29 August 2014.
After the consultation:	<p>After reviewing the responses to this consultation document, we will publish a summary of responses alongside our ‘Next Steps’ report, which will outline our position on the way forward.</p> <p>This report will be located on the consultation pages on our website.</p> <p>We then plan to hold a focussed training session for EBs on the interpretation of any changes to guidance published as a result of this consultation</p>
Previous engagement:	<p>Our 2008 Regulatory Change consultation exercise concluded that further work should be done on defining allowable admission charges and we have therefore decided it is appropriate to include this area as part of the scope of this consultation.</p> <p>The 2008 consultation also considered whether there should be a minimal level of public access for projects submitted under Object E. We did not recommend any change to the existing guidance at that time, but as we are now considering the interpretation of the word ‘public’, we have decided that we also need to consider Object E where this word is used, to ensure that the Regulations are applied consistently across both Objects.</p>

1. Executive Summary

1.1 Introduction

- 1.1 ENTRUST is the regulatory body appointed by HM Revenue & Customs (HMRC) to regulate the Landfill Communities Fund (LCF). Consultation with stakeholders is key in ensuring that any recommendations for change to the Landfill Tax Regulations 1996 (Regulations), guidance, or procedures are fit for purpose.
- 1.2 The Regulations set out that all projects approved under Objects D (public parks and amenities) and E (buildings and structures that are a place of religious worship or of historic, or architectural interest) are open to the public. A 'public amenity' makes the environment more pleasant and/or improves the aesthetic qualities of an area for the general public. Projects falling under this Object must look to protect either the built, social, or natural environment. We currently interpret 'public' widely, as an amenity that is available to anyone. This consultation exercise will therefore consider:
- The definition of public;
 - Whether current arrangements are sufficient to prevent admission costs or hire charges being so high that they exclude those on low income from having access to an amenity;
 - How often amenities should be open to be 'public'; and
 - Age and specific user group considerations including proportional registration, where the use of the amenity is restricted for the general public at some times when it is open. The circumstances under which we request access statements when considering projects for registration.
- 1.3 This is stakeholders' opportunity to tell us how they think the term 'public' should be applied in accordance with the Regulations. Full details about how to contribute can be found in paragraph 11.
- 1.4 We consider that the matter of 'public' should be dealt with by interpretation of the Regulations, and so it is most likely that the responses received from this consultation will feed into our interpretation of the word 'public' in guidance rather than result in any regulatory change.

2. Reasons for consultation

- 2.1 The LCF allows projects that benefit the environment or local communities to be funded using LCF monies. However, only projects under Objects D and E are required to be open to the public to be eligible to receive LCF funding:

Object D: The provision, maintenance or improvement of a public park or other public amenity (referred to throughout this paper as "amenities"); and

Object E: The maintenance, repair, or restoration of a building or structure that is a place of religious worship or of historic or architectural interest, which is open to the public (referred to throughout this paper as "structures").

2.2 Admission charges

- 2.2.1 Our 2008 Regulatory Change consultation exercise considered the possibility of limiting admission charges for projects, which provide, maintain or improve a public park, or amenity. We have interpreted an amenity to be something that makes the environment more pleasant or comfortable and/or improves the aesthetic qualities of an area for the general public. The feedback we received from the 2008 Regulatory change consultation suggested that the current approach, where admission charges

are allowable so long as they are comparable to similar amenities, was appropriate. In this consultation, we wish to seek assurance from EBs that current guidance in this respect is fit for purpose and the way EBs operate the guidance ensures admission charges are not permitted to be so high that an amenity would not be open to the public. This topic is discussed in section six.

2.3 Opening hours

2.3.1 We have had a number of queries from EBs on the minimum opening hours that amenities and structures must operate in order to be regarded as public. We need to consider if the current guidance relating to the opening times of amenities is overly restrictive, especially for seasonal amenities. At present, we review these types of projects on a case by case basis; however, we are concerned that projects may be discouraged from seeking approval if they do not meet the public access criteria set out in our guidance (paragraph 4.1 below).

2.3.2 The 2008 consultation exercise also considered whether the guidance surrounding opening hours for projects which restore, repair or maintain structures (Object E) should be reviewed as this is currently less restrictive than for projects submitted under Object D. The respondents suggested that the current approach was sufficient and so we did not make any changes to our guidance on this matter. However, we will consider in this consultation the interpretation of the word 'public' in Object E and question whether it is appropriate to continue to apply the principle of 'public' differently between Objects D and E. There is a difference in the way the word 'public' is used in the Regulations for Objects D and E, and this has led to a difference in the guidance for opening hours for projects submitted under these Objects. We wish to consult as to whether this difference is still relevant. We consider these issues further in section seven.

2.4 Age and Specific User Groups

2.4.1 Some EBs have informed us they would support an interpretation of the Regulations to include a wider range of projects as eligible under the current Objects. It has been proposed that the restriction on age and specific user benefit under the current interpreted definition of 'public' be removed, provided that community benefit could be demonstrated. If this increase to the scope of the LCF was applied, EBs have stated this would assist them to draw down more quickly on their unspent funds and deliver increased benefit to local communities.

2.4.2 It has also been brought to our attention that generalising what constitutes a public amenity would increase the diversity and number of eligible facilities. For example youth clubs and disability outreach centres. We consider these issues in more detail in section eight below.

2.5 Proportional Registration

2.5.1 Where public access to an amenity or structure is restricted in some way (e.g. when a project takes place in school grounds and the public only have access to the amenity for a proportion of the total time that it is open) we currently proportionally register the project based on the percentage of time that it is available to the general public. Some EBs have questioned this approach, and stated that they find it restrictive. Therefore we will discuss this further in section eight below.

2.6 Access Statements

- 2.6.1 We will sometimes require an access statement to assess whether an amenity is sufficiently open to the public to be compliant with the Regulations. Access statements are requested where there is any indication from the submission made by the applicant that the use of the amenity could be restricted for example by being accessible to restricted user group. We wish to consider whether access statements are useful and helpful in determining whether an amenity is sufficiently open to the public, particularly when the project pertains to specific user group access. We will discuss this further in section nine below.

3. Regulations

- 3.1 The Regulations set out that LCF money must be spent on approved Objects. The only Objects that require public access are:
- Object D, which allows LCF money to be spent on the provision, maintenance or improvement of a public park or other public amenity; and
 - Object E, which allows LCF money to be spent on the maintenance, repair or restoration of buildings or structures that are a place of religious worship or of historic or architectural interest which are open to the public.
- 3.2 The relevant Regulations are set out in full at Appendix B.

4. Guidance

- 4.1 In line with best practice, we have provided our current interpretation on the application of the Regulations relating to public in our guidance manual. This guidance is given in Appendix C and outlines the following key principles:

Object D

- A park or amenity is 'public' if it is for the public as a whole and there are no unreasonable limitations to the people who can use it.
- In general, any park or amenity that is not available more than four evenings or two days a week, or less than 104 days in any one year would not be considered sufficiently open to the general public.
- A park or amenity is somewhere where the general public can go, join or use without any limit or unreasonable restrictions of use (or with 'reasonable' access costs) being in place.
- If a project will be used by a restricted group for part of the time it will be open, then the LCF can only fund the percentage of the project which is the same as the proportion of time the park or amenity is open to the general public.

Object E

- The project should be open to the general public and the public should benefit from the project going ahead. Acknowledging the varying availability and opening times of this type of project, ENTRUST simply looks to ensure that the building or structure is open an appropriate amount of time as would be expected from similar buildings or structures.

5. What does 'public' mean?

- 5.1 We have sought legal advice on this question and have been informed that there is no definitive legal definition of the word 'public'.

5.2 For Object D, the term public is used in the Regulations as follows:

a public park or another public amenity

Therefore it is used as an adjective and describes the amenity. We therefore currently interpret that a public amenity should be common to the people of a community as a whole.

5.3 In Object E, the word public is used in the Regulations follows:

a building or other structure which is open to the public

In this instance the word 'public' is being used as a noun and we currently interpret that structures should be open to the community.

5.4 If we apply these definitions to the Regulations, as a direct consequence 'public' currently precludes restrictions to a group of people limited by age, gender, race, disability etc (considered in more detail in Section 8 below) which we call "specific user groups". Consequently, we apply proportional registration when there is some type of restriction to general public access. We discuss whether to continue to apply this interpretation and outline the principle of proportional registration in more detail in section eight.

Question one: Do you agree with our current interpretation of the word 'public' for Objects D (public parks and amenities) and E (a structure that is open to the public)? If you answer 'no', why do you not agree?

6. Can the cost of access to an amenity be so high that it is not 'public'?

6.1 Overview

6.1.1 In this section, we consider whether admission and usage fees could be so high that they prevent low income families from having access to the amenity. We will only consider the admission costs relating to Object D amenities because:

- This is where we have concerns that admission fees may be highest;
- They are the types of project that are likely to have the highest community use; and
- They represent over 75% of all approved projects.

6.1.2 We consider the types of amenity where there may be high admission charges are amenities such as museums, theatres, zoos and some types of sporting facilities, so these types of facility would be the most likely to be affected by the outcome of this consultation.

6.1.3 To give some background to this consultation and to determine if certain facilities have high admission charges, in 2011 we reviewed the admission charges of a sample of 42 approved projects for the types of amenities that we consider would have high admission fees. These included:

- 28 museums, 11 of which offered free entry. Four would cost in excess of £40 for a family of four to visit. Adult fees were less than £20 in all but two cases. However in one of these cases, prices did vary from £12.25 - £22.45, dependant on the level of access to the museum and the activities which are participated in;
- 12 theatres, where adult admission fees were less than £20 in all but two cases. However, both of these made some concessions making the minimum ticket

price for adults £9.50 for one and £19 for the other. Four of the theatres would cost a family of four more than £40 to visit most performances; and.

- Two zoos, where adult admission charges were between £15 and £16.30. One offered a family ticket price of £48.00 and the other slightly more expensive at £53.00 during the high season, but this reduced to £41.50 during low season.

6.1.4 We have calculated an estimate for an average disposable income for low income households across the UK. This is provided as supplementary information in Appendix A. We used data available from the Office of National Statistics and in conjunction with the Government's participation indicators from the Department for Culture, Media and Sport (DCMS) report in 2010 'Models of Sporting and Cultural Activity, Analysis of the Taking Part Survey' to determine the frequency of leisure visits, to illustrate the level of admission fees which may be regarded as affordable to this group.

6.1.5 The Regulations do not prevent amenities funded through the LCF to charge for admission or use. However, any income derived from LCF monies must be spent on approved Objects (which include an EB's running costs and the costs of maintaining the amenity). In addition, the Regulations set out that amenities must be operated on a not for profit basis and so it is not expected that amenities will make a large surplus from admission fees. We recognise that some amenities by their nature may have higher running costs and this is often reflected in the admission costs, which is why we consider that setting blanket limits for admission charges would not be reasonable.

6.1.6 In the past, the Charity Commission has ruled that a high adult annual membership fee for a sports club did not make the facility available to people who could not afford the fees and so it breached a charitable requirement to demonstrate 'public benefit'. Based on the principles that people on low incomes should not be excluded from the opportunity to benefit from the facility and the opportunity to benefit must not be unreasonably restricted by ability to pay the fees charged. The Charity Commission subsequently analysed the club's revised plans and decided that their plans demonstrated that the Trustees intended to make a number of changes which when implemented would administer the charity such that the aims of the charity will be undertaken for the public benefit.

6.1.7 The Charity Commission has not given blanket guidance on what levels of fees may be regarded as 'high' as they consider the fee charging sector to be diverse and what may be appropriate for one fee charging charity may not be for another. Therefore they consider admission and usage fees on a case by case basis.

6.1.8 Although 'public benefit' is different to 'public' the two phrases are similar. We consider that it is reasonable for any admission charges to amenities funded through the LCF to be accessible to the majority of people including those on low incomes.

6.1.9 We propose that a LCF facility should not be regarded as sufficiently 'public' if low income families were precluded from using the facility due to the cost of admission.

Question two: Do you agree that Object D public amenities charging admission fees higher than similar amenities in the area should be considered insufficiently open to the public? If you answered 'no', why do you disagree?

Question three: What processes do you currently have in place to ensure that Object D public amenities are not charging admission fees that are prohibitively expensive?

6.1.10 Through this consultation, we wish to seek assurance that EBs are not funding or carrying out projects which provide, maintain or improve amenities which are prohibitively expensive and that the admission fees charged for LCF projects are reasonable for what is offered.

6.1.11 We consider that it would be difficult to set a fair maximum value for admission as appropriate fees will depend upon the nature of the amenity, geographic location and the socioeconomic status of the region. We would expect LCF funded public amenities to charge admission fees in line with similar facilities in the area and offer concessions where appropriate.

Question four: Do you consider any change is needed to our guidance on admission fees? If you answered 'yes' please explain why.

7. Is the amenity or structure open for a sufficient amount of time to be 'public'?

7.1 Amenities

7.1.1 The Regulations relating to Object D refer to '*a park or another public amenity*'. This views public amenities in a similar way to parks, which are generally widely accessible to all. We consider that the comparison between public parks and amenities is pertinent when determining how often or long amenities should be open and the Regulations clearly refer to public parks which should be considered when developing guidance on opening hours for amenities. However, as the Regulations do not define the term 'public' or set opening hours, it is necessary to address these areas through guidance.

7.1.2 We consider that it is necessary to provide guidance to EBs on the level of public access that is required for amenities to be regarded 'public' to ensure that there is public benefit from LCF funded projects and when you can expect to be required to provide us with an access statement. Our current guidance sets out that in general an amenity can be classified as public if it is available for four evenings or two days a week, or for 104 days per year. We are seeking your views on this guidance to determine whether we should make a distinction between 'access hours' or 'opening hours'. Access hours cover the time that there is some kind of limited public access. Opening hours grant full public access. In the case of a village hall amenity project, access to the outside grounds, but not into the hall itself, offers restricted public access to the amenity and we consider this should be included in access hours, but not opening hours. In the case of monuments, we consider that to be able to walk around the outside would constitute sufficient public access to be included in opening hours. We are also seeking your views on whether 104 days is considered reasonable or too restrictive and whether some projects may have been deterred from submitting an application if they do not meet this criteria.

7.1.3 A possible alternative to our current guidance would be to assess public access on a case by case basis to ensure LCF amenities are open for a reasonable amount of time expected for the type of amenity. For example, it would be expected that a community garden should be open more than four evenings a week.

Question five: Do you agree with the proposal that public access requirements as set out by guidance (such as the current 104 day rule) should apply to opening hours (rather than access hours) for Object D public amenities? If you answered 'no', please explain why.

Question six: Do you consider our current guidance of 104 days per year for public amenities to be reasonable and a helpful restriction? If you answered 'no', please explain why.

Question seven: Has the Object D 104 day guidance caused you any problems when submitting projects for approval or deterred any project applicants from submitting their projects? If you answered 'yes', please explain why.

Question eight: For Object D, would you support the removal of the blanket 104 days per year criteria in favour of a case by case, like-for-like public access assessment to bring it in line with the requirement for Object E? If you answered 'yes', please explain why.

7.1.4 There may be some amenities which do not meet the availability test set out in paragraph 7.1.2 above, but could still be considered as public amenities. These may be 'seasonal' projects such as:

Swimming Pool: An outside swimming pool is open for seven days a week during the months of June, July and August for at least seven hours a day. In total the pool is available to the general public for 92 days a year.

Summer Museum: As many of the exhibitions are situated outside, the museum is only open Friday to Sunday during the months of April to September. In total the museum is open for approximately 72 days per year.

7.1.5 If we consider that these types of projects are compliant, we could outline in guidance that 'seasonal' projects must be available to the general public for at least three months a year and be open to the general public for at least five days a week (where a day is equal to seven hours) during this time. However, we would like your views on this approach. Our current approach is to apply the 104 day requirement but to allow these days to be concentrated seasonally.

7.1.6 If we were to allow seasonal projects to be approved, there may be an increase in the number of projects that are submitted for approval by EBs. However, we consider that the administrative cost of this to both EBs and ENTRUST would be minimal.

Question nine: Do you think that there is a case for approving seasonal Object D projects which do not meet the 104 day requirement to receive LCF funds?

Question ten: If you answered yes to question nine, what do you think should be:

- The minimum number of days per year that the amenity is accessible?
- The minimum number of hours per day the amenity is accessible?

7.2 Structures

- 7.2.1 Currently our guidance states that structures should be “*open an appropriate amount of time as would be expected from similar buildings or structures.*” Several EBs have informed us that they find this like-for-like basis useful and operable.
- 7.2.2 While it is acknowledged that the purpose of Object E is different to that of Object D, we have been advised by some other EBs that they generally apply the same principles for public access for Object D to Object E (104 day requirement).

Question eleven: Do you consider our current guidance on like-for-like opening hours for Object E structures to be appropriate? If you answered ‘no’, please explain why.

- 7.2.3 The Regulations relating to Object E refer to buildings and structures which are ‘*open to the public*’ suggesting that there must be some level of public access to structures. Religious buildings are specifically mentioned in the Regulations surrounding Object E and these are often only open at specific times. Consequently there is a basis for us to treat the public access requirements of Object E differently to those for Object D.
- 7.2.4 It is difficult to set minimum opening hours for structures as they can vary significantly from places of religious worship to ancient monuments. Some places of religious worship are only accessible to the general public for services and prayer, or when access is requested from a key holder. We consider these projects are consistent with the Regulations as they open when it is appropriate for their circumstances, and any member of the public can visit them when they are open. However, we are seeking your views on whether you think that the guidance on opening hours for structures should be amended to bring it in line with the public access requirements for amenities.

Question twelve: Would you support the removal of the like-for-like requirement for Object E in favour of introducing the 104 day requirement to bring it in line with the requirement for Object D? If you answered ‘yes’, please explain why.

8. Use of amenities and structures by different specific user groups and proportional registration

8.1 User Groups

- 8.1.1 This section considers situations where amenities and structures have multiple users, including both the general public and some groups that not everyone can join.
- 8.1.2 We use the term ‘specific user group’ for groups that have a restrictive membership on the basis of specific criteria such as age or disability, for example, a youth centre or playgroup. The current interpretation of public access to an amenity is that any member of the public could use that amenity (see section five).
- 8.1.3 Where we consider that general public use is only a proportion of the total use of the facility (by area or time) we will currently only approve the project for a proportion of the total costs, so that LCF money is not spent on elements of projects that are not open to the general public. We have used this principle because we consider it is not

in line with our current interpretation of the Regulations for the LCF to pay for the provision, maintenance or improvement of amenities when they are being used by a specific user group, which some of the public are not able to join.

- 8.1.4 The counter argument to this interpretation is that a relaxation of the public access requirement would allow single-user benefit to be funded through the LCF where this could be shown to benefit the wider community. Our concern is that this current restriction prevents worthwhile projects seeking funding where a social benefit to the community would be achieved.
- 8.1.5 Examples of projects where a wider community benefit may be demonstrated would be youth clubs and centres for disabled users. In such cases, an indirect benefit is likely to be experienced by other family members or the wider community. In addition, community volunteering and training opportunities may be created, which would enhance employment opportunities for local people and benefit businesses in the community.
- 8.1.6 It has also been brought to our attention that it could be argued that some user groups (children, young people, the elderly, and people with disabilities) are a cross-section of the public rather than a subset of the public and should therefore be considered eligible to meet the public requirement even if other 'specific user groups' are not.

Question thirteen: When thinking about user groups, please indicate which of the three interpretations below you support, and give reasons for your choice:

- No project for the benefit of any specific user group can meet the public requirement;
- A project for the benefit of specific user groups which are a cross section of the public (e.g. young people or the elderly) would be considered to meet the public requirement; or
- A project for the benefit of any specific user group and which can demonstrate wider community benefit would be considered to meet the public requirement.

8.2 Proportional Registration

- 8.2.1 Proportional registration is based on the proportion of the facility, which is available to the general public against the total cost of the project. Often this does not cause a problem because the proportion of LCF funds to total project costs is lower than the proportion of public usage to total usage.
- 8.2.2 Some EBs have questioned our reasoning behind the application of proportional registration. Their view is that if an amenity is open for at least two days a week (and meets the current guidance requirements to be regarded as public), then it should not reduce the proportion of funding available to the project if the facility is used by a restricted group of the public during the other five days of the week. However, we do not consider it is correct for LCF funds to be used to meet the costs of providing for the element of non-compliant use.
- 8.2.3 Some EBs have informed us that they differentiate based on the ownership of the amenity – if a village hall group owns the amenity (even if the hall is used predominantly by a specific user group currently), they will not apply proportionality to the project, however if, for example, a nursery group owns the amenity, they would

apply proportionality and only offer funding of the same proportion of the time the amenity is open to the general public. This has resulted in a disparity of treatment by EBs on proportionality and public access. Some EBs will offer 100% of the funding if the amenity meets the requirement to be open to the general public for 104 days per year, even if the amenity is used predominantly by a specific user group.

8.2.4 Conversely, some EBs informed us that they avoid projects where they believe proportional registration will be required because they view it as difficult and risky. These EBs said they would be more inclined to fund projects if specific user groups were allowed under the definition of 'Public'.

8.2.5 Examples of proportional registration are given at Appendix C.

Question fourteen: Do you have any comments on our current approach to proportional registration? If you answered 'no', why do you disagree?

Question fifteen: Please explain any problems you have experienced with proportional registration, giving specific examples. If you are a funding EB, please give details of how you currently apply our guidance on proportional registration in your offers of funding.

9. Access Statements

9.1 Where public access to a project requesting LCF funding could be restricted, or it is unclear from the application made that there is public access to the project, ENTRUST will request a formal access statement from the EB to ensure compliance with the Regulations. The most common example of this are projects on school sites, when only the school pupils (a restricted user group) have access to the amenity (for example, a sports hall) during the day but the amenity is opened up to the general public in the weekday evenings, weekends and during school holidays. In such cases we ask for the hours the amenity is available to the general public to be confirmed by a public access statement from the school governors.

9.2 The details we currently ask for in an access statement are:

- How the public will use it;
- The hours available for access by general public;
- Any restrictions in place (i.e. membership requirements, booking process); and
- How the amenity will be advertised (both on unveiling and once open) including any websites, etc.

9.3 On occasion, if we observe discrepancies in the information provided and the information available (e.g. from a website) we may request more detailed information or confirmation, for example, that admission fees are no more than is charged normally for a similar facility.

9.4 We currently request access statements under certain circumstances which include but are not limited to Object D projects submitted: on grounds owned by restricted user groups such as schools, youth clubs or disability outreach centres, or any age restricted groups. We are seeking EB's views on how can access statements could be used to evidence compliance with the public requirement in the consideration of restricted user groups.

Question sixteen: Do you think that an access statement should be a standard project requirement before projects submitted under Object D & E are approved by ENTRUST? If you answer 'no' please explain why.

Question seventeen: Under what circumstances would an access statement help to evidence the compliance of projects for restricted age or user groups?

Question eighteen: Do you think that requesting an access statement containing the details in paragraph 9.2 to check compliance is useful and sufficient to ensure the amenity is open to the public? If you answer 'no' please explain why.

10. Consultation Questions

10.1 This section sets out the consultation questions that have been asked throughout this document, and reminds you of the relevant paragraph numbers to refer to. If you have any further comments to make about the subject matter of this document, please feel free to add these to your consultation response.

No.	Question	Paragraph
1.	Do you agree with our current interpretation of the word 'public' for Objects D (public parks and amenities) and E (a structure that is open to the public)? If you answer 'no', why do you not agree?	5.4
2.	Do you agree that Object D public amenities charging admission fees higher than similar amenities in the area should be considered insufficiently open to the public? If you answered 'no', why do you disagree?	6.1.9
3.	What processes do you currently have in place to ensure that Object D public amenities are not charging admission fees that are prohibitively expensive?	6.1.9
4.	Do you consider any change to our guidance is needed concerning admission fees? Please explain your answer.	6.1.11
5.	Do you agree with the proposal that public access requirements as set out by guidance (such as the current 104 day rule) should apply to opening hours (rather than access hours) for Object D public amenities? If you answered 'no', please explain why.	7.1.3
6.	Do you consider our current guidance of 104 days per year for Object D public amenities to be reasonable and a helpful restriction? If you answered 'no', please explain why.	7.1.3
7.	Has the Object D 104 day guidance caused you any problems when submitting projects for approval or deterred any project applicants from submitting their projects? If you answered 'yes', please explain why.	7.1.3
8.	For Object D, would you support the removal of the blanket 104 days per year criteria in favour of a case by case, like-for-like public access assessment to bring it in line with the requirement for Object E? If you answered 'yes', please explain why.	7.1.3
9.	Do you think that there is a case for approving seasonal Object D projects which do not meet the 104 day requirement to receive LCF funds?	7.1.6
10.	If you answered yes to question nine, what do you think should be:	7.1.6

	<ul style="list-style-type: none"> The minimum number of days per year that the amenity is accessible? The minimum number of hours per day the amenity is accessible? 	
11.	Do you consider our current guidance on like-for-like opening hours for Object E structures to be appropriate? If you answered 'no', please explain why.	7.2.2
12.	Would you support the removal of the like-for-like requirement for Object E in favour of introducing the 104 day requirement to bring it in line with the requirement for Object D? If you answered 'yes', please explain why.	7.2.4
13.	<p>When thinking about user groups, please indicate which of the three interpretations below you support, and give reasons for your choice:</p> <ul style="list-style-type: none"> No project for the benefit of any specific user group can meet the public requirement; A project for the benefit of specific user groups which are a cross section of the public (e.g. young people or the elderly) would be considered to meet the public requirement; or A project for the benefit of any specific user group but which can demonstrate wider community benefit would be considered to meet the public requirement. 	8.1.6
14.	Do you agree with our current approach to proportional registration? If you answered 'no', why do you disagree?	8.2.5
15.	Please explain any problems you have experienced with proportional registration, giving specific examples. If you are a funding EB, please give details of how you currently apply our guidance on proportional registration in your offers of funding.	8.2.5
16.	Do you think that an access statement should be a standard project requirement before projects submitted under Object D & E are approved by ENTRUST? If you answer 'no' please explain why.	9.4
17.	Under what circumstances would an access statement help when considering restricted age or user groups?	9.4
18.	Do you think that requesting an access statement containing the details in paragraph 9.2 to check compliance is useful and sufficient to ensure the amenity is open to the public? If you answer 'no' please explain why.	9.4

11. Contact details: how to respond

11.1 All EBs are invited to participate in this consultation exercise. Any responses that we receive will be treated in the strictest confidence and will be considered anonymous unless you state otherwise. You can respond to the consultation in any of the following ways:

Email: [Regulations team](#) (please state 'Public' in the email subject)

On-line: <https://www.surveymonkey.com/s/ENTRUSTpublicconsultation>

Post: Regulations Team
ENTRUST
60 Holly Walk
Royal Leamington Spa
Warwickshire CV32 4JE

- 11.2 The closing date for all responses to this consultation is 26 September 2014.
- 11.3 We will also hold a focus group to discuss the topic further. This will take place on the 10 September 2014 at our office in Leamington spa. If you are would like to attend, please email us on [the Regulations Team](#) by 29 August 2014.

12. Next steps

- 12.1 After reviewing the responses to this consultation, we will publish a summary of responses alongside our 'Next Steps' report which will outline what we consider to be the way forward.
- 12.2 This report will be located on the feedback on consultation pages of our website.
- 12.3 We then hope to hold a focussed training session on the implementation of any guidance changes published as a result of this consultation to support EBs in complying with any revised interpretation of the Regulations.

Appendix A

Calculating disposable income of low income families

We consider that families in the lowest income quintile of the population as given by the Office of National Statistics (ONS), 2013, may be precluded from using LCF amenities if admission fees are relatively high. Where this is the case, we do not consider that the amenity can be regarded as being public.

Before taxes and benefits, the richest fifth of households had an average income of £78,300 in 2011/12, 14 times greater than the poorest fifth, which had an average income of £5,400. Overall, taxes and benefits lead to income being shared more equally between households. After taxes and benefits are taken into account, the ratio between the average incomes of the top and the bottom fifth of households (£57,300 per year and £15,800 respectively) is reduced to four-to-one.¹

The 2010 ONS Family Spending report² gives figures relating to the average weekly expenditure of two adult, two children households by the average income that the family receives. The 2013 ONS report 'Effects of Taxes and Benefits on Household Income'² outlines the average income of these households including taxes and benefits. By subtracting the average weekly core expenditure from the average weekly total income, we have calculated the average disposable income that families have per week. Our methodology and all calculations are summarised in Appendix C.

We consider that households on state support would struggle to access many of the amenities funded through the LCF that have admission charges as their disposable income is so low. The disposable income for the lowest income 20% of the population was calculated to be approximately £43 per week. We estimate that half of this will be spent on recreation and culture, with the remaining half spent on restaurants, hotels and alcoholic drinks. This gives a family £21.50 per week to spend on recreation and culture.

The ONS Family Spending report outlined that households spent money on many areas of recreation and culture, and when we reviewed these, we found that not all of categories relate to LCF compatible leisure. It includes expenditure on the following:

- Audio-visual, photographic and information processing equipment
- Other major durables for recreation and culture
- Other recreational items and equipment, gardens and pets
- Recreational and cultural services
- Newspapers, books and stationery
- Package holidays

With this in mind, we will assume that only 50% of expenditure on recreation and culture is consistent with the approved Objects of the Regulations. This gives £10.75 per week (or approximately £560 per annum) for the lowest income families to spend visiting LCF compatible amenities. The calculations are set out in the table overleaf. We will use this figure to illustrate what may be considered reasonable admission fees for families on low incomes.

¹ The Effects of Taxes and Benefits on Household Income report – ONS 2013

http://www.ons.gov.uk/ons/dcp171778_317365.pdf

² Family Spending report - ONS 2010 <http://www.ons.gov.uk/ons/rel/family-spending/family-spending/2010-edition/index.html>

Income including taxes and benefits per household per week	£304.29 ³
Essential expenditure per household per week	£261.40 ⁴
Disposable income per household per week	£42.89
Disposable income available to spent on LCF compatible recreation and culture per week	£10.72⁸
Disposable income available to spent on LCF compatible recreation and culture per annum	£557.55

Participation - The cost and frequency of visits to amenities funded through the LCF

The most common types of amenity which are funded through the LCF are:

Activity centres	Nature reserves
Bridleways and public footpaths	Parks
Canal works and waterways	Public playgrounds
Places of worship	Public woodlands
Community halls and centres	Sporting facilities
Cycle paths	Village greens
Libraries	Zoos and public farms
Museums	

Of these, we expect that a number will generally have no admission fees such as: bridleways/public footpaths, places of worship, parks, cycle paths, and canal works/waterways and so we will not consider admission fees to these facilities any further. The remainder of this section will discuss the cost of visiting amenities where we would expect there to be a charge. We will not factor in to the assumptions the frequency that families may visit facilities that have no charge, as we are aiming to ensure that families can afford to visit facilities with admission charges for the optimum number of times per annum should they wish to do so.

We believe for an amenity to be 'public' individuals in a community should not be precluded from 'participating' due to their socioeconomic status. We therefore looked to the Government's minimum participation requirements as set out in the ONS Department for Culture, Media and Sport (DCMS) report in 2009 – 'Taking Part: The National Survey for Culture, Leisure and Sport'⁵:

³ Effects of Taxes and Benefits on Household Income report – ONS 2013

http://www.ons.gov.uk/ons/dcp171778_317365.pdf

⁴ Family Spending report - ONS 2010 <http://www.ons.gov.uk/ons/rel/family-spending/family-spending/family-spending-2011-edition/index.html>

⁵ Department for Culture, Media and Sport (DCMS) 'Taking Part: The National Survey for Culture, Leisure and Sport' report – ONS 2009

http://s3.amazonaws.com/zanran_storage/www.culture.gov.uk/ContentPages/31321397.pdf

In this report, to be considered to have ‘participated’, an individual must have taken part in two or more different cultural or sport sectors at the required frequency of participation. These sectors were:

1. Used a public library service at least once in the past 12 months;
2. Attended a museum, gallery or archive at least once in the past 12 months;
3. Engaged in the arts at least three times in the past 12 months;
4. Visited at least two historic environment sites in the past 12 months; and
5. Participated in 30 minutes of moderate intensity level sport and active recreation on three or more days in the past week.

In the table below, we have demonstrated what an average low income family (two adults and two children) with a £560 per annum disposable income may be able to afford to pay in order to meet the Government’s indicators on participation for what we assume to be the two most expensive sectors- three and five.

Indicator	Frequency of family visits per year	Family cost per visit	Family cost per annum
3.Arts e.g. theatre	3	£15	£45
5.Sports facility	156	£3.25	£507
TOTAL			£552

We consider indicator number five to be the most expensive to achieve for low income families. This is because the frequency is three times per week for each individual in the family and facilities in which moderate intensity level sport or active recreation could be achieved would tend to charge for admission. Given that the lowest income families are, on average, only likely to have £10.75 at their disposal per week to achieve this participation indicator for two adults and two children, we calculate they will only be able to afford to pay £3.25 per visit for family admission.

Indicators one, two, three and four are measures for public participation in the arts and culture. With the exception of indicator one, we would also expect the types of amenities listed in these indicators to charge for admission. As the required frequency of visits to achieve participation is much lower than for sport, we consider that it would be possible for families to save up some of their disposable income in order to visit these amenities. However, low income families would still be unlikely to be able to afford a £20 standard adult entrance fee as this equates to almost two weeks worth of the whole family’s disposable income and it would require saving for a month to be able to afford entrance for the family (approximately £45). Therefore, amenities which charge in this range would not be accessible to the average low income family without concessionary rates being made available to them. We have calculated that an affordable fee would be in the range of £15 for family admission to allow for three family visits per year.

Appendix B

Relevant Regulations

- Regulation 33(1)** A body is eligible to be approved if—
(b) its objects are or include any of the objects within paragraph (2) below (approved objects).
- Regulation 33 (2)** The objects of a body are approved objects insofar as they are any of the following objects—
d) where it is for the protection of the environment, the provision, maintenance or improvement of—
(i) a public park; or
(ii) another public amenity,
in the vicinity of a landfill site, provided the conditions in paragraph (6) below are satisfied;
- Regulation 33 (2)** The objects of a body are approved objects insofar as they are any of the following objects—
e) where it is for the protection of the environment, the maintenance, repair or restoration of a building or other structure which—
(i) is a place of religious worship or of historic or architectural interest,
(ii) is open to the public, and
(iii) is situated in the vicinity of a landfill site,
provided the conditions in paragraph (6) below are satisfied;
- Regulation 33(6)** The conditions mentioned in sub-paragraphs (d) and (e) of paragraph (2) above are—
(a) in a case falling within sub-paragraph (d), that the provision of the park or amenity is not required by a relevant condition; and
(b) in a case falling within either of those sub-paragraphs, that the park, amenity, building or structure (as the case may be) is not to be operated with a view to profit.
- Regulation 33(10)** For the purposes of paragraphs (3), (3A) and (6) above a condition is relevant if it is—
(a) a condition of any planning permission or other statutory consent or approval granted on the application of any person making a qualifying contribution to the body, or
(b) a term of an agreement made under—
(i) section 106 of the Town and Country Planning Act 1990,
(ii) section 75 of the Town and Country Planning (Scotland) Act 1997, or
(iii) article 40 of the Planning (Northern Ireland) Order 1991,
to which such a person is a party.
- Regulation 33A(1)** An approved body shall—
(b) apply qualifying contributions and any income derived therefrom only to approved objects.

Appendix C

Guidance

1. Guidance to EBs

- 1.1 **Section A – Quick start guide to the Landfill Communities Fund** gives broad details on the types of projects that can be registered.

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.

5.6 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.

- 1.2 **Section D – Object D Guidance** outlines the rules of amenity projects and those relating to public are set out in paragraph 3.2:

3.2 Is the park or amenity public?

3.2.1 A park or amenity is 'public' if it is for the public as a whole and there are no unreasonable limitations to the people who can use it. Limitations would include parks and amenities which are only accessible to specific user groups defined by age, sex, disability, race etc. However, some parks and amenities by their nature may have certain restrictions placed upon their use. For example, the equipment in a play area may be restricted to a certain age range due to health and safety reasons, but the amenity as a whole can be used by the general public as they can access the play area.

3.2.2 Ideally the park or amenity will be open and available to the general public at all times. However some types of amenity will have restrictions on when and how the general public can use them.

3.2.3 In general, any park or amenity that is not available more than four evenings or two days a week, or less than 104 days in any one year would not be considered sufficiently open to the general public.

3.2.4 A park or amenity is somewhere where the general public can go, join or use without any limit or unreasonable restrictions of use (or with 'reasonable' access costs) being in place.

1.3 There are also some instances where a project is only considered 'partially public' and in these circumstances it can only be proportionally registered to the extent that it is open to the general public. This is explained in Section D – *Object D Guidance* at paragraph 4.5.

4.5. Does my project require proportional registration?

4.5.1 ENTRUST recognises that projects classed as public parks or amenities may not be open to the public all the time. Due to the 'public' requirement as stipulated in the Regulations, the LCF can only fund a project to the extent that it is open to the general public. It is important to note that the guidance outlined in paragraph 3.2.3 still applies for projects which are proportionally registered.

4.5.2 If a project will be used by a restricted group for part of the time it will be open, then the LCF can only fund the percentage of the project which is the same as the proportion of time the park or amenity is open to the general public. The most common example of this is works to school sites, when only the school pupils have access to the amenity (i.e. a sports hall) during the day but this is then opened up to the general public when the pupils are not using it.

4.5.3 To ensure the proportion of expenditure charged to the LCF is compliant, ENTRUST requires confirmation of the days and hours that the park or amenity is open to the general public and a calculation showing the percentage of the total time the facility is available hence the proportion when it is available for public use.

Example - Proportional funding for the creation of a small orchard and community garden in the grounds of a school

The community garden and orchard is available for use by the general public outside of school time and during school holidays. This was confirmed by a public access statement from the school governors.

Based on the hours the project is available to the general public, 64% of the total project costs can be funded through the LCF.

4.5.4 Proportional registration may also apply where there are areas of a park or amenity that are not available to the general public.

Example – Proportional funding for a roof on a community centre

The community centre has three small meeting rooms that are exclusively leased out to a local business.

The area of these meeting rooms are equal to 35% of the total floor space of the community centre, this was confirmed by a floor plan. Based on the percentage of the centre that is available to the general public, 65% of the total cost of the new roof can be funded through the LCF.

1.4 Section F – Object E Guidance outlines the rules of structure projects and those relating to public are set out in paragraph 3.3:

3.3 The project must be open to the public

3.3.1 The project should be open to the general public and the public should benefit from the project going ahead. Acknowledging the varying availability and opening times of this type of project, ENTRUST simply looks to ensure that the building or structure is open an appropriate amount of time as would be expected from similar buildings or structures. If you have any queries regarding this, please contact the ENTRUST Registrations Department.