

E – Object DA Guidance

Ensuring *Conservation or Promotion of Biodiversity* projects are compliant with the Landfill Communities Fund

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1. Registering an Object DA Project – Conservation or Promotion of Biodiversity

1.1 This document provides guidance on the Regulations governing the types of projects for conservation or promotion of biodiversity which can be undertaken with the Landfill Communities Fund (LCF). We have outlined the governing regulations and then provided guidance on what these regulations mean in practice. Examples are then listed to give illustrations of compliant projects.

2. The Object DA Regulations

2.1 Regulation 33 provides as follows:

(2) The objects of a body are approved objects insofar as they are any of the following objects-

...

(da) where it is for the protection of the environment, and subject to paragraph (3A) below, the conservation or promotion of biological diversity through-

(i) the provision, conservation, restoration or enhancement of a natural habitat; or

(ii) the maintenance or recovery of a species in its natural habitat,

on land or in water situated in the vicinity of a landfill site;”

(2A) In paragraph (2)(da) above “biological diversity” has the same meaning as in the United Nations Environmental Programme Convention on Biological Diversity of 1992.

(3A) An object shall not be, or shall no longer be, regarded as falling within paragraph (2)(da) above if it involves works which-

(a) are required to be carried out by a notice or order within paragraph (4) below;

(b) are required to be carried out in accordance with an agreement made under section 16 of the National Parks and Access to the Countryside Act 1949(iii);

(c) are required to be carried out in accordance with an agreement made under section 15 of the Countryside Act 1968;

(d) give effect to any provision of a management scheme under section 28J of the Wildlife and Countryside Act 1981 or are required to be carried out by a notice served under section 28K of that Act;

(e) are wholly or partly required to be carried out by a relevant condition; or

(f) are carried out with a view to profit.

2.2 Paragraph (4) of Regulation 33 is different in different parts of the UK.

In England and Wales, paragraph (4) is as follows:

(4) The notices and order mentioned in paragraph (3) above are-

(a) a works notice served under section 46A of the Control of Pollution Act 1974;

- (b) an enforcement notice served under section 13 of the Environmental Protection Act 1990;
- (c) a prohibition notice served under section 14 of the Environmental Protection Act 1990;
- (d) an order under section 26 of the Environmental Protection Act 1990;
- (e) a remediation notice served under section 78E of the Environmental Protection Act 1990;
- (f) ...
- (g) a works notice served under section 161A of the Water Resources Act 1991;
- (h) an enforcement notice served under regulation 36 of the Environmental Permitting (England and Wales) Regulations 2010;
- (i) a suspension notice served under regulation 37 of those Regulations; or
- (j) an order under regulation 44 of those Regulations.

2.3 In Northern Ireland, paragraph (4) is as follows:

- (4) The notices and order mentioned in paragraph (3) above are-
 - (a) a works notice served under section 46A of the Control of Pollution Act 1974;
 - (b) an enforcement notice served under section 13 of the Environmental Protection Act 1990;
 - (c) a prohibition notice served under section 14 of the Environmental Protection Act 1990;
 - (d) an order under section 26 of the Environmental Protection Act 1990;
 - (e) a remediation notice served under section 78E of the Environmental Protection Act 1990;
 - (f) an enforcement notice served under section 90B of the Water Resources Act 1991;
 - (g) a works notice served under section 161A of the Water Resources Act 1991;
 - (h) an enforcement notice served under regulation 24 of the Pollution Prevention and Control (England and Wales) Regulations 2000;
 - (i) a suspension notice served under regulation 25 of those Regulations;
 - (j) an order under regulation 35 of those Regulations;
 - (k) an enforcement notice served under regulation 24 of the Pollution Prevention and Control Regulations (Northern Ireland) 2003;
 - (l) a suspension notice served under regulation 25 of those Regulations; or
 - (m) an order under Regulation 36 of those Regulations.

2.4 In Scotland, paragraph (4) is as follows:

- (4) The notices and order mentioned in paragraph (3) above are-
 - (a) a works notice served under section 46A of the Control of Pollution Act 1974;

- (b) an enforcement notice served under section 13 of the Environmental Protection Act 1990;
- (c) a prohibition notice served under section 14 of the Environmental Protection Act 1990;
- (d) an order under section 26 of the Environmental Protection Act 1990;
- (e) a remediation notice served under section 78E of the Environmental Protection Act 1990;
- (f) an enforcement notice served under section 90B of the Water Resources Act 1991;
- (g) a works notice served under section 161A of the Water Resources Act 1991;
- (h) an enforcement notice served under regulation 55 of the Pollution Prevention and Control (Scotland) Regulations 2012;
- (i) a suspension notice served under regulation 56 of those Regulations;
- (j) an order under regulation 70 of those Regulations; or
- (k) a notice served under regulation 28(2) of the Water Environment (Controlled Activities) (Scotland) Regulations 2005.

3. What is 'Biological Diversity'?

- 3.1** "Biological Diversity" is defined as "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems".

4. Applying the Regulations

4.1 Each application must identify the specific species or habitat to which the project relates

The project application should specify a primary species or habitat to which the project relates (although it is acceptable for further species or habitat to be positively affected by the project).

4.2 Each project must be for a single, identifiable site

The project site should be recorded as the location at which the work is taking place. For example, if your project is for tree felling at five distinct points in the Forest of Dean, the project site should be recorded as "The Forest of Dean".

4.3 The project activities must take place where the species or habitats would naturally occur

- 4.3.1** LCF monies can be used for the maintenance or recovery of a species in its natural habitat, or the provision, conservation, restoration or enhancement of a natural habitat. This means that a species should be protected in habitat in which it would naturally occur. Programmes to re-introduce species or recreate habitats are acceptable.

- 4.3.2** Proposals looking at the conservation of biodiversity in a place other than the natural habitat (i.e. ex situ conservation) are excluded under Object DA as they are not compliant with the Regulations. This also therefore excludes projects proposing to fund research positions studying a species out of its natural habitat.

4.4 The project must take place in the vicinity of a landfill site

4.4.1 Object DA projects must take place in the vicinity of a licensed landfill site, which we interpret as being within ten miles of a licensed landfill site. (Please note that some funders have their own, more strict, requirements.) Whilst the application form asks for a postcode of the project site, ENTRUST understands that in some instances a grid reference or map showing the ten mile radius may be more appropriate. If you can provide evidence that your project site is adversely impacted by a licensed landfill site which is further than ten miles away, this can be deemed eligible.

4.4.2 A 'licensed' landfill site is one where there is a licence, resolution or permit authorising disposals of materials as waste in or on the land. Some inactive landfill sites are still 'licensed'. The details of landfill sites can be accessed either on the [HMRC website](#) or through the relevant authority (e.g. the [Environment Agency](#)). You will need to ensure that the landfill site has a licence in place for the project to be compliant. Please contact ENTRUST if you have any queries on this point.

4.4.3 It is important to note that the Regulations do not require the closest applicable landfill site to be owned by the LO contributing to your project (although some funders will require that it is). As long as some part of your project site is within the vicinity of a landfill site, the whole project will be acceptable.

4.5 The project must be to provide, conserve, restore or enhance a natural habitat or to maintain or assist in the recovery of a species

4.5.1 The focus of all LCF funded projects must be to undertake "direct project works" on the project in question. Therefore a project under Object DA must be for "direct project works" to undertake one of the above activities for an identified species or habitat. ENTRUST will review applications to ensure that every proposal concentrates on direct project works and that any additional associated costs are at an acceptable level.

4.5.2 "Direct project works" are defined as those that are solely attributable to the delivery of the project. This would include all costs that can be directly linked to improvements on site, such as a contractor, volunteer management and physical works on site which conserve or promote biodiversity. In some instances costs relating to preliminary studies may also be included as direct project works. Examples of acceptable preliminary work include:

- Research and feasibility of the works that will be undertaken (but see further below);
- Environmental impact assessment;
- Other assessments which are necessary for the project to commence;
- Licences and consents;
- Land acquisition and associated legal fees; and
- Valuation fees.

When considering whether preliminary works can be included as direct project costs, a general rule of thumb is that if you can demonstrate that the project would not be able to go ahead without the works being undertaken, then they can be defined as direct project costs. However, yes/no feasibility studies or any research which may result in the project not going ahead cannot be funded using LCF monies.

4.5.3 In some circumstances, projects have an element of research into a species or habitat. In these instances we would expect the project application to include details of the works which will conserve or promote diversity, even if the LCF will not be funding these works. The works may include items such as educational leaflets specifically targeted at those who are currently harming the species or habitat. We recognise that works may be undertaken as part of a management plan and the nature of some works may be clarified following the research.

4.5.4 We may inspect your project to gauge compliance. At our inspection we will want to see details of the works which conserve or promote biodiversity so, even if this element is not funded through the LCF, the project applicant must ensure that these works are completed.

- 4.5.5** Any ongoing project management or costs incurred to safeguard the site or habitat (e.g. fences, gates and boundary markers) can also be classed as direct project works. This is in contrast to visitor facilities which do not, in themselves, conserve or promote biodiversity.
- 4.5.6** “Additional associated costs” include costs that are not necessary for the physical works. This includes elements such as any head office costs not solely related to the project, publicity material (including leaflets and posters for the project), an opening ceremony and all other activities that do not *directly* result in physical work being undertaken. ENTRUST is not able to approve projects that have excessive additional associated costs (i.e. more than 10% of total project expenditure).
- 4.5.7** For a number of reasons (including the requirement to maintain an audit trail and statistics provision) a single project application which covers multiple projects on different sites is not able to be approved as a single project. However, each project may be approved separately or by project site.
- 4.6 The proposed works must not be required by statute or as a condition of planning permission**

The project proposals must not include works which are required to be carried out:

- by a notice or order under the legislation specified in paragraph 33(4) or
- under an agreement made under the legislation specified in paragraph 33(3A)
- as a condition (of any planning permission) imposed on either the contributing Landfill Operator or a Contributing Third Party

Paragraph 33(4) (as it applies in the different countries of the United Kingdom) is set out above. Further information relating to these Acts and orders can be found in section E of this Guidance Manual.

5. Other Criteria and Parameters when Registering an Object DA Project

5.1 Biodiversity Action Plans

5.1.1 Biodiversity Action Plans (BAPs) or Local Biodiversity Action Plans (LBAPs) have been set up to co-ordinate conservation activities on the most threatened species and habitats. It is not a regulatory requirement that the species or habitat specified for the proposed LCF funded project is listed in a BAP or LBAP but wherever possible it would be best practice for project promoters to take account of BAPs or LBAPs (or equivalent).

5.2 Involvement of the Lead Partner

5.2.1 When the priority species or habitat is part of a BAP or a LBAP there will be a designated lead partner who has been allocated the responsibility of co-coordinating activities in relation to that species or habitat. It is best practice that all proposed projects involving a species which is part of a BAP or LBAP be endorsed by the relevant lead partner.

5.2.2 Further information on BAPs and LBAPs can be found on the [UKBAP website](#).

6. Project Examples

6.1 Lapwing breeding near Barnsley

This project focuses on de-silting an outflow ditch and relocating the silt to the reserves mere, improving waterflow and boosting the food chain in the mere, benefiting passage waders and wintering waterfowl.

6.2 Rush pasture in the Upper Tawe Valley

This project brings together five sites forming a backbone along the Tawe Valley, creating a living landscape. This project safeguards key Rush Pasture sites through actively managing sites through grazing, restoring 25 hectares.

6.3 Norfolk Breck Heath Land Restoration for butterflies and moths

The project is restoring heath land across 15 ecologically linked Norfolk Breckland sites to conserve 15 UKBAP Priority Species of lepidoptera.