



Object D Guidance - Next Steps



**REGULATING THE LANDFILL COMMUNITIES FUND
BENEFITING PEOPLE AND THE ENVIRONMENT**

Consultation Paper

January 2011

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1. Introduction

- 1.1 Earlier in 2010/2011, ENTRUST undertook a consultation exercise to introduce a new interpretation of the word amenity which is included in the Regulations surrounding Object D. The revised interpretation was implemented with immediate effect and is as follows:

“Something that makes the environment more pleasant or comfortable and/or improves the aesthetic qualities of an area for the general public.”

- 1.2 We also consulted on the matter that all projects submitted under Object D must be able to demonstrate that the park, or amenity, which is being provided, maintained, or improved is for the protection of the environment. As it was thought that this may have a detrimental effect on projects being registered, this change was not implemented until a full impact assessment could be undertaken.
- 1.3 The full consultation can be found on the ‘Closed Consultations’ pages of the ENTRUST website.

2. Consultation Responses

- 2.1 The consultation ran for a period of eight weeks, as we had been informed by our legal advisors and HMRC that our current interpretation of the Regulations was incorrect. Consequently, it was necessary to collate responses to the consultation as a matter of urgency. We consider that the shortened time period did not adversely affect the response rate as reported below.
- 2.2 Responses were received from 66 EBs and one EB representative organisation, representing a total of 81% of LCF monies held by EBs. There were an additional seven anonymous responses.
- 2.3 A focus group was held, which was attended by representatives from 11 EBs who represent 35% of the Fund.
- 2.4 A summary of the consultation responses is set out at Appendix A.

3. Next Steps

- 3.1 Having considered the responses submitted by EB respondents, the following next steps will be taken:
- 3.1.1 The Regulations are interpreted as the ‘protection of the environment’ being a condition precedent, guidance and application forms will be amended to reflect this.
- 3.1.2 ENTRUST interprets the environment to include the natural, built and social environment for the purposes of the LCF, guidance and application forms will be amended to reflect this.
- 3.1.3 Project rejections under Object D will be subject to ongoing review and a full assessment of the impact of the changes in our guidance will be undertaken in early 2011/2012.
- 3.1.4 The interpretation of protection in our guidance will be extended to include preservation.

3.1.5 The guidance manual will provide additional clarity on the areas highlighted by EBs which include:

- Common examples of amenities to be included within the guidance for reference;
- The implications of the requirement that all amenities should be run on a not-for-profit basis;
- Further information on the requirement that access to parks and amenities should not be limited to a Specific User Group;
- Further clarity on what constitutes a landfill site; i.e. whether a permit, licence or resolution must be in place and whether historic landfill sites are eligible for the '10 mile' rule; and
- Examples of proportional registration, project management costs and direct project costs, which will be re-named and re-defined following the EB Running Costs consultation.

3.1.6 ENTRUST will investigate developing a definitive list of landfill sites which all EBs can access.



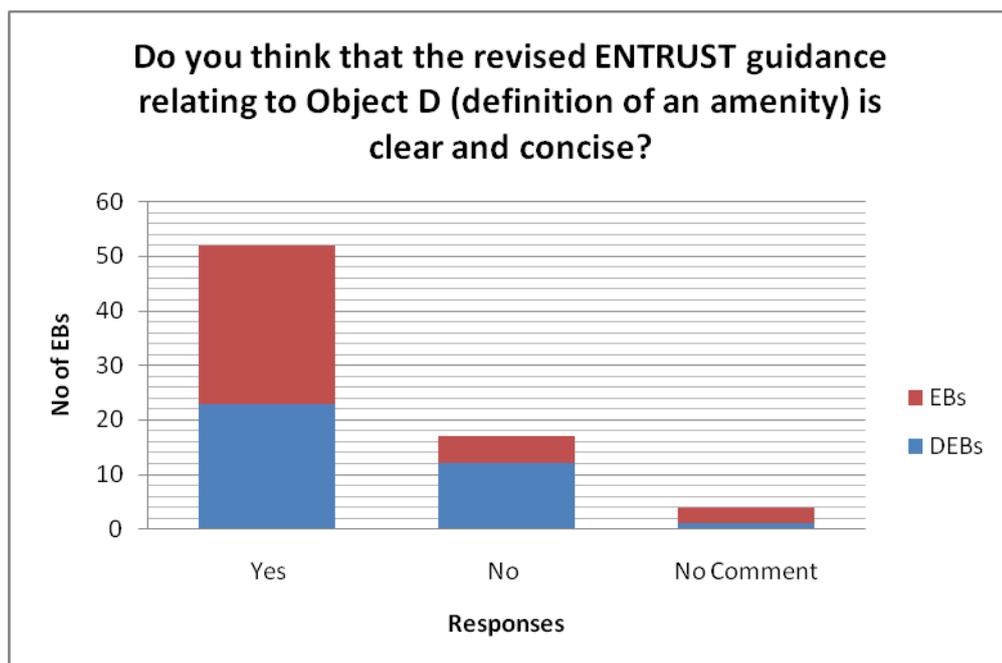
OBJECT D - ANALYSIS OF CONSULTATION FEEDBACK

1. OVERVIEW

- 1.1 The first consultation exercise of 2010/2011 focused on the interpretation of Object D and both the proposed and implemented revised guidance. ENTRUST engaged Environmental Bodies (EBs) in an eight week consultation exercise. Given that we had been informed by our lawyers and HMRC that our current interpretation of the Regulations was incorrect, it was necessary to collate responses to the consultation as a matter of urgency. This did not adversely affect the response rate.
- 1.2 In total, there were 74 responses to the Object D consultation. The respondents were as follows: 73 EBs (including 37 DEBs) and one DEB representative association. The DEB association that submitted a response was the Association of Distributive and Environmental Bodies (ADEB) (which consists of 22 members and nine associate members), and some members of this association also submitted individual responses to the consultation. The EBs that are described as DEBs have been determined by considering their contribution, transfer and project activity.
- 1.3 The 73 EB respondents represent 76% of the Fund and account for a total of 2.6% of all EBs currently enrolled with ENTRUST. Factoring in the collective response from ADEB would mean that 81% of the fund is represented as well as 83 EBs which is equal to 2.9% of all EBs that are currently enrolled.

2. EB RESPONSES TO THE CONSULTATION QUESTIONS

- 2.1 **Do you think that the revised ENTRUST guidance relating to Object D (definition of an amenity) is clear and concise?**
 - 2.1.1 71% of EBs (comprised of 23 DEBs and 29 EBs), in addition to ADEB, found the revised ENTRUST guidance relating to the definition of an amenity to be clear and concise. 23% of EBs (comprised of twelve DEBs and five EBs) did not think the revised guidance was clear and concise. 5% of EBs (including one DEB and three EBs) did not comment on this part of the consultation.



- 2.1.2 Three EBs that found the new guidance to be clear and concise welcomed the reference to the environment and the environmental emphasis in the definition of amenity, as well as the implied importance of well-maintained and accessible greenspace to communities. For them, the revised guidance was seen as an improvement on previous interpretations and guidance.
- 2.1.3 Eight EBs (including seven DEBs) noted that the definition of amenity is lacking in clarity due to the fact that the language used (i.e. 'pleasant', 'comfortable', 'aesthetic') does not take into account terms like 'desirable', 'practical', 'sustainable', 'accessible', 'useable', 'a useful or enjoyable feature' etc which were suggested to be more relevant. One of these DEBs stated that it may be better to consider what the real benefits of Object D are, i.e. that it supports amenities which are needed, useful, accessible and enjoyable for the general public.
- 2.1.4 Six EBs (including five DEBs) and ADEB find that the addition of the 'aesthetic qualities' criteria is questionable since it is a highly subjective concept and is therefore open to wide interpretation. One of these DEBs stated that by adding 'aesthetic qualities' to the definition, it moves the emphasis to restrict amenities that enhance the environment and its appearance, i.e. prioritising the aesthetics of things rather than their utilitarian value for the general public. This DEB stated that the result is an erroneous definition of an amenity, which is partially exacerbated by a reliance on simple dictionary definitions. This EB suggested the following as an alternative definition for an amenity: "An amenity is a useful facility or feature of a place or building that makes life more pleasant for the general public and/or improves their quality of life."
- 2.1.5 One DEB stated that while the previous guidance was very clear, the revised guidance is not clear or concise as it would widen far too much the scope of the projects Landfill Communities Fund (LCF) could support and therefore would not assist EBs.
- 2.1.6 One DEB stated that it was unable to establish a clear definition of an amenity. The consultation document and its covering letter referred to both the 'interpretation' and 'definition' of the word amenity. These terms were used interchangeably yet there is an important distinction in these terms, and therefore consistency in the use of language would assist general clarity.
- 2.1.7 One DEB stated that it would appear that there has been some confusion introduced by the addition of the adjective 'general' before public. The provision of an amenity will primarily benefit the local public. For example, a new park in Devon may not be of benefit to the general public in Northumberland but it will be available to them to use as members of the general public. The DEB continued that the situation could be reversed in that the provision of amenity will not necessarily be of benefit to the public who live locally but will be of great benefit to the public that come from farther afield to use that amenity.
- 2.1.8 One DEB commented that the wording contained in the Regulations (as amended) is the only wording that has Parliamentary approval. The wording that received Parliamentary approval was simple, concise, and as initially administered by ENTRUST, worked well. However, in its interpretation of the Regulations, ENTRUST has added various phrases without justification. For example, in construing the word 'public' in the context of the Regulations there can be no justification for associating the word 'general' with 'public'. The words of the Regulations should normally be construed literally and words used in their normal sense unless otherwise defined in the statute, or the context clearly shows that a technical meaning is intended.

2.2 Please explain if you think that there are any other areas within the revised ENTRUST guidance that require further explanation or examples?

- 2.2.1 One DEB stated that further clarity is required in relation to the meaning of 'improvement' (as appears at paragraph 5.4), as this concept is very subjective. The DEB also suggested that in order to achieve consistency among scheme users, there is a need to have a method of measuring levels of improvement.
- 2.2.2 One DEB suggested that every reference to 'public amenity' should be appended with the phrase 'or facility' in the guidance. This is due to the fact that the dictionary definition of amenity includes facility.
- 2.2.3 Six DEBs requested clarification on whether the not-for-profit requirement relates to the project or the amenity. Paragraphs 5.4.1 and 5.4.2 of the Central Document of the Guidance Manual and heading 3.6 of the Object D section of the Guidance Manual state that the project is to be run on a not-for-profit basis, however, paragraph 3.6.1 of the Object D section states that it is the amenity that is subject to such a requirement. One of these DEBs wanted clarification of the not-for-profit concept in the context of new Community Interest Companies.
- 2.2.4 Six DEBs were not satisfied with the inclusion of the reference to 'aesthetic qualities', especially as it is such a subjective concept. One of these DEBs questioned where the use of the word 'aesthetic' arose from, given that most dictionaries describe it as 'people's appreciation of art', 'of pleasing appearance' and 'appreciation of beauty'. Two of these DEBs also highlighted that the word 'aesthetic' is quite non-specific and capable of subjective interpretation, and which in effect makes the guidance broader, which may result in the Regulations becoming unclear and easier to misinterpret. Furthermore, the concept of aesthetic qualities is not easily measurable as an outcome of a project that has been successfully funded under the scheme. The EBs stated that if the phrase continues to be adopted, then ENTRUST should provide a definition of it in the guidance.
- 2.2.5 One DEB stated that section 3, 'Applying the Regulations', needs revised paragraph headings. The heading for paragraph 3.1 is "Can my project be considered as an amenity?", yet the project itself does not have to be an amenity, the project must simply take place at the amenity. Similarly, the heading for paragraph 3.2 is "Is my project public?"; however it is the amenity that is required to be public and not the project itself.
- 2.2.6 14 EBs (including nine DEBs) stated that generally the public access section, as laid out at paragraph 3.2 of the Object D guidance, needs further clarification, and found the following problems:
- 2.2.6.1 Two DEBs stated that paragraph 5.4.2 of the revised guidance states that there should be no limits or restrictions on access, yet paragraph 3.2.3 of the Object D guidance states that access can be restricted as long it is available for a minimum of 104 days.
- 2.2.6.2 Six of these DEBs stated that the definition given at paragraph 3.2 was too restrictive as it could exclude certain play areas and other amenities.
- 2.2.6.3 Ten EBs said that the paragraph was too restrictive in that it would not allow reasonable restrictions that would, for example, prevent vehicular access of a site, help minimize damage to the amenity/facility or environment, help to manage health and safety risks or to help manage the behaviour of visitors. Therefore, public access needs to be balanced against common sense restrictions.

- 2.2.6.4 One DEB thought that based on the examples cited in the guidance, it is possible to register a play area for the under 8s but not a craft room for the over 50s, and that this kind of discrimination should not be allowed.
- 2.2.6.5 One of these DEBs feels that the problem is that ENTRUST is looking at the word “public” in isolation from its context in “public amenity”, and the DEB does not feel that a public amenity has to be universally available to every member of the public in order to be recognised as a public amenity. The interpretation needs to reflect a “common sense” understanding of “public amenity”, and the DEB suggested the following as an alternative: “*A public amenity would normally be open to the public as a whole. However, there could be cases where there use is restricted to a class or category of persons within the public. Where this is the case, both the class/category must be seen as a reasonable one (e.g. by age, sex or disability) that is essential to the reasonable use of that amenity; and there must be no restrictions within that class/category (e.g. a play area designed for children under 10 must be available to all children under 10)*”. Two EBs requested further explanation about access/admission charges, and what is deemed as reasonable.
- 2.2.7 Three DEBs pointed out that the term ‘restricted group’ as at paragraph 4.5.2 may require clearer definition as, for example, it is sometimes suggested that a Scout Group is such a group, but it has to be accepted that in most groups it is possible for people of all ages to become involved within it. It is not always clear what ENTRUST regard as Specific User Groups, some seem to be acceptable (eg skate parks for youngsters, children’s playgrounds) whereas others are not.
- 2.2.8 Another DEB commented that with the way that the sections on public access and proportional registration now read, the implication is that Scout Huts will need to undergo proportional registration given that Scouts Groups constitute one group which is ‘limited to specific users defined by age and sex’. However, Scouts Groups often only use a building for a few hours a night on certain days of the week. These buildings with a headline purpose or ‘sponsor’ (i.e. the Scouts) are often the most publically beneficial as they guarantee a certain level of usage and fundraising/maintenance activities are more active. In the same way, other projects, such as provision of youth clubs, will also be excluded or at least required to register on a proportional basis.
- 2.2.9 Nine DEBs raised various issues with paragraph 3.4, concerning licensed landfill sites:
- 2.2.9.1 One DEB objected to the qualification that the landfill site must be licensed (as at paragraph 3.4) because this wording does not appear in the relevant regulation (Regulation 33(2)(d)) and it is, therefore, unsure as to why it has been introduced. The DEB considers this to be an unnecessary restriction on potential projects and goes against the spirit of the legislation which is to allow improvement of the environment around old landfills which may well not have been subject to modern Town Planning and Permitting rules as are new sites.
- 2.2.9.2 Two DEBs noted that there is also a technical deficiency with using the wording ‘licensed’. The term ‘licensed’ should be removed as landfill sites because licences were replaced by permits as of 06 April 2008. However, this only applies to England and Wales, as Scotland and Northern Ireland still use the licence system.
- 2.2.9.3 Four DEBs sought clarification on whether the licensed site is required to be active or whether it just needs to hold a current licence and for how long a historic landfill site would qualify under this definition of landfill site.

- 2.2.9.4 Five DEBs stated that there is currently no single definitive list of current up-to-date licensed landfill sites, so it is often difficult for EBs to ascertain the status of a landfill site and whether it is 'licensed'. The lists provided by the various agencies are known to have errors and/or omissions and there is no consistency in the level of detail/accuracy provided, resulting in a minefield for applicants. This area requires additional resources, as this is a fundamental requirement of the scheme, which could result in a project being non-compliant. One of these DEBs suggested that ENTRUST should obtain this data in order help save EBs' cost and administrative resources. Another of these DEBs stated that one authority should be responsible for producing a single comprehensive, accurate and up-to-date list of all eligible landfill sites. Furthermore, the guidance should explain that it is not necessary for projects to be in the vicinity of an active landfill site which is currently receiving waste as long as it has a license it still qualifies (i.e. historic landfill sites can be used).
- 2.2.9.5 One DEB highlighted a key problem in that any changes made in this area would be likely to cause a great restriction on the areas of Scottish Borders that can be deemed eligible for compliant project approvals. Some of the Scottish Borders sites currently deemed in use by resolution by the Local Authority do not appear on SEPA's list of licensed sites. In recent years, for regulatory or economic reasons, the number of sites at which waste is disposed has reduced dramatically and there is only one within the Unitary Authority area. The concept of projects within ten miles of a landfill site being able to benefit from the LCF was adequate at the time the scheme was set up, however, with the advent of a stricter regulatory authority a number of these sites have been closed with waste travelling further to be deposited. However, it is unlikely that many of the communities within the ten mile 'catchment' area of former landfill sites will have seen a reduction in the annoyance of waste disposal. Therefore, the EB suggested that a wider interpretation of landfill sites should be adopted.
- 2.2.10 Four DEBs stated that the issue of proportional registration (especially as specified at paragraph 4.5.2 of Appendix B) requires further explanation. They commented that it is not clear how this method of registration would be workable, and if it is included as part of the registration process then ENTRUST should supply a working example of how this could be calculated. A further complication is posed by the difference between current usage and predicted usage (or opportunity to use) by the wider public, as one of the points of the works may be to widen out the community usage but an exact percentage of use at the time of registration is likely to be impossible to calculate accurately. One of these DEBs was very unhappy with the introduction of proportional registration, which is not provided for in the Regulations.
- 2.2.11 Thirteen EBs thought that paragraph 5 ("Project Examples") needs further explanation and examples. Four of these EBs stated that this section only gives project examples that relate to outdoor or external works projects. It was deemed necessary to provide examples of eligible community buildings projects to give a better balance. Similarly, another two DEBs stated that paragraph 5 should be expanded to include examples of ineligible projects. Another EB suggested that the section should contain an example of a hall being available for rent as it was not clear from the guidance offering the facility to hire a hall counted as being available or open to the public. One DEB suggested that the revised guidance should contain an example of a project that involves the provision of toilet facilities within an amenity. Another three EBs stated that they would like a more varied set of examples to illustrate what is covered. One DEB commented that the examples of projects are subjective and serve no purpose. For example, it stated that one of the examples listed proposes that a benefit of any play area is discouraging anti social behaviour and protecting the environment, however, this is asserted without any evidence as play areas can become sources of anti-social behaviour and therefore do not protect communities and the environment.

- 2.2.12 One DEB commented that it would like more guidance on the difference between direct project works and project management costs.
- 2.2.13 One DEB stated that the new structuring of the guidance manual is now very confusing, as the numbering and lettering of sections and paragraphs does not make for easy reading and also that it is incorrectly structured in parts. Therefore, the DEB feels that the substance, structure and presentation of the guidance needs to be reviewed entirely.
- 2.2.14 28 EBs (including 14 DEBs), in addition to ADEB, did not think that there are any other areas in the revised guidance that require further explanation or examples.
- 2.2.15 18 EBs (including five DEBs) declined to comment on this part of the consultation.

2.3 Please explain if you think that there are any areas which are not covered within the proposed Object D guidance and detail the element of the Regulations that you do not think is covered (with the exception of protection of the environment)?

- 2.3.1 One EB stated that while the phrase ‘another public amenity’ could be interpreted as applying to tangible public amenities (e.g. parks, libraries, cycle paths, play areas) the guidance should also include intangible public amenities such as low crime rates, good schooling availability, nearby activities and pleasant views.
- 2.3.2 38 EBs (including 20 DEBs), in addition to ADEB, commented that they do not think that there are any areas which are not covered within the revised guidance.
- 2.3.3 33 EBs (including 15 DEBs) declined to comment on this part of the consultation.

2.4 If you think there is too much or too little detail contained within the revised ENTRUST guidance please can you explain where and why?

- 2.4.1 33 EBs (including 18 DEBs) and ADEB thought that the level of detail contained within the revised guidance was sufficient.
- 2.4.2 One DEB stated that it could not assess whether there was too much or too little detail because it feels that the guidance is now becoming a mishmash of thoughts that needs to be better structured and simplified, particularly for first time users.
- 2.4.3 Three EBs (including two DEBs) thought that the revised guidance is too detailed, and that a return to a simpler, more common sense approach would be welcome. One of the DEBs stated that guidance should adopt a more literal interpretation of the Regulations.
- 2.4.4 36 EBs (including eleven DEBs) declined to comment on this part of the consultation.

2.5 Do you think that the revised application form is clear and understandable? If not, what changes would you propose?

- 2.5.1 66% of EBs (including 25 DEBs and 23 EBs), in addition to ADEB, believed that the revised application form is clear and understandable. 4% of EBs (including three DEBs) did not think that the revised form was clear and understandable. 5% of EBs (including four DEBs) did not suggest any changes to the revised form. 25% of EBs (including two DEBs and 16 EBs) did not comment on this part of the consultation.
- 2.5.2 Ten DEBs suggested that in order for the new question on defining the amenity to be answerable, given the subjective nature of aesthetic improvements, the guidance

- notes accompanying the application form should give examples of suitable aesthetic qualities and suggest possible additional information or evidence that could be provided.
- 2.5.3 One DEB stated that whilst it could understand the need to capture data that reflects the positives being achieved and the value for money provided, it could not understand the need for the project registration form to capture data relating to “pleasant”, “comfortable” and “aesthetic”, as such concepts are poetic and immeasurable.
- 2.5.4 One DEB commented that it does not believe that the new question on defining the amenity is necessary because the project description on the Form 2 should be able to convey to ENTRUST whether the scheme is a genuine amenity or not under the terms that are now proposed. The DEB further added that, having recently completed registration forms, it found itself duplicating information on both the Form 2 project description and Form 2 Appendix – Object D.
- 2.5.5 One EB stated that the Form may need to be changed in structure if applicants are expected to provide supporting evidence on the application form. The Form should be capable of presenting evidence.
- 2.5.6 One DEB commented that the Form should request either the postcode or the Grid Reference of the landfill site or even of the project.
- 2.5.7 One DEB stated that question 4 should be reworded for consistency, as the word ‘maintain’ should follow ‘provide’.
- 2.5.8 One DEB found question 4 (regarding the classification of the amenity) to be vague. Another DEB stated that question 4 should include the following categories: art gallery; youth centre; public park (as opposed to country parks); rivers and lakes; ornamental water features and ponds; public garden; play group; and theatre workshop.
- 2.5.9 One DEB suggested that the new question on defining the amenity should inquire about the usefulness of the project, i.e. the community value of the facility to be provided. For example, a possible rewording could be: “State how the amenity to be provided will improve the community facilities of the area?”
- 2.5.10 One EB stated that the application form should make it clear that separate applications can be made, both consecutively and concurrently. This EB had initially assumed that all parts or phases of the project had to be outlined in a single project registration form.
- 2.6 Would the revised guidance allow you to register projects which have previously been rejected? If yes, please explain.**
- 2.6.1 51% of EBs (including 24 DEBs and thirteen EBs) stated that the revised guidance would not now allow it to register projects that had previously been rejected. ADEB shared the same view.
- 2.6.2 One EB (including one DEB) commented that the revised guidance is likely to make applications stronger.
- 2.6.3 Two EBs stated that the new guidance would open up further project opportunities for its funding activities, but did not specify the types of projects that would now be registrable.
- 2.6.4 One DEB noted that it always asks applicants to consider environmental aspects of their requests before applying.

- 2.6.5 Another DEB claimed that the revised guidance could severely limit the registration of projects, rather than opening up the parameters of Object D. The DEB stated that this is due to the fact that Object D now seems to be focusing on projects that involve visual amenities at the expense of amenities that offer utility.
- 2.6.6 Thirteen EBs highlighted the kinds of projects that might now be registrable under the revised definition of amenity:

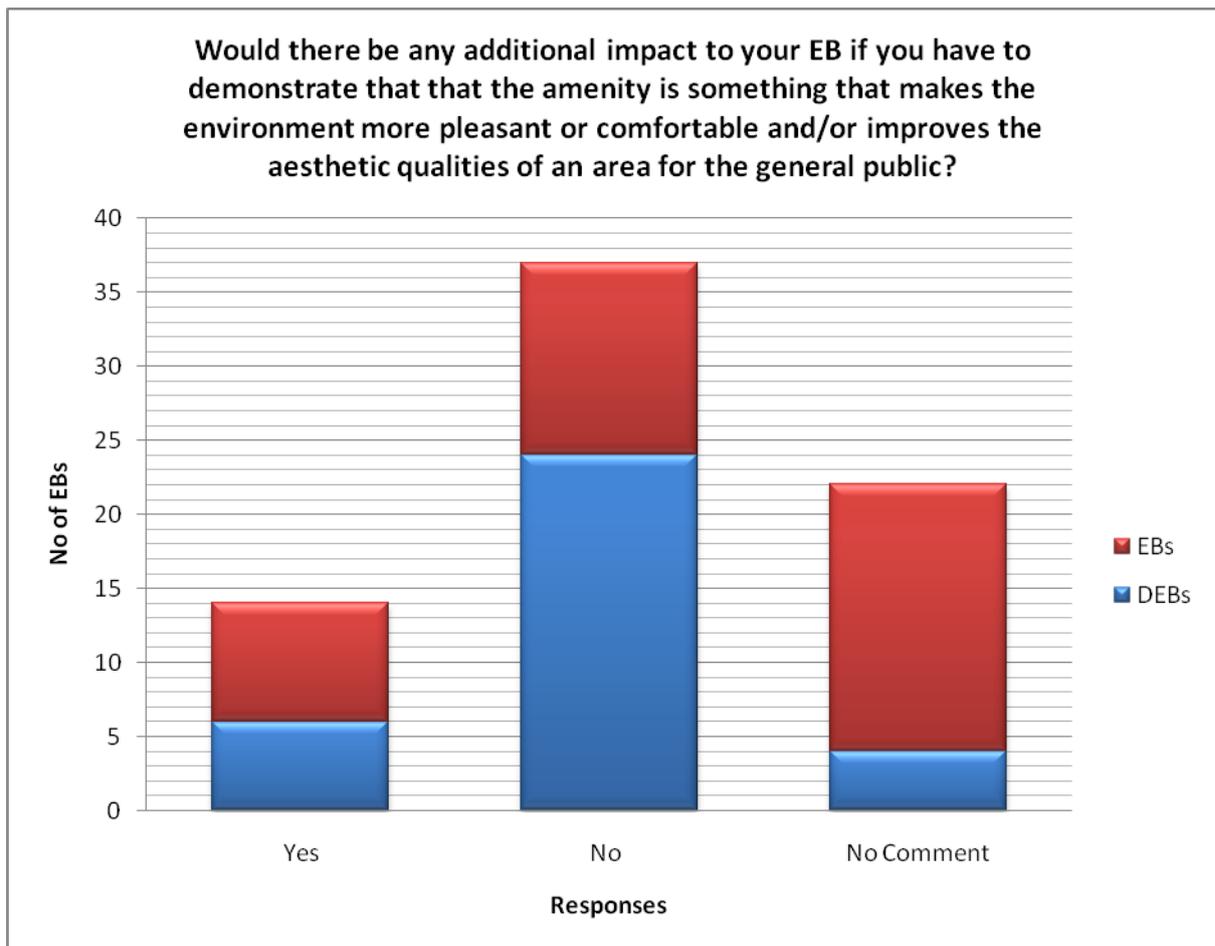
Figure 1: EB projects now capable of registration under the revised guidance

Project Type	No. of EBs
Highways projects (e.g. trees, benches, signs, verge planting/landscaping)	4
Public conveniences (e.g. toilets, bus shelters)	4
Visual amenities / a "view" (even where this necessitates works of private land, or land that is not otherwise accessible to the public)	5
Car parks & parking facilities	3
Urban renewal (e.g. facelifts to town centres)	4
Improvements to amenity greens	1
Allotment projects	1
Shopping access and pedestrian area (where it is not for profit and open to the public)	1
Street tree planting	3
Citizen's advice centres (e.g. bereavement/marriage counselling centres)	2
Re-instating village memorial (which would incorporate a clock)	2
Provision of hanging baskets	1
Public walk (works to interplant existing beech canopy following tree surgery along a roadside/verge)	1

- 2.6.7 30% of EBs (including three DEBs and 19 EBs) did not have any comment on this part of the consultation.

2.7 Would there be any additional impact (e.g. administrative, financial) to your EB if you have to demonstrate that that the amenity is something that makes the environment more pleasant or comfortable and/or improves the aesthetic qualities of an area for the general public? If yes, please give us clear details of any estimated change in time or cost that you think you would experience.

- 2.7.1 51% of EBs (including 24 DEBs and thirteen EBs) and ADEB stated that they would not experience any significant additional impact from having to demonstrate that the amenity is something that makes the environment more pleasant or comfortable and/or improves the aesthetic qualities of an area for the general public. 19% of EBs (including six DEBs and eight EBs) stated that they may suffer an adverse impact from having to demonstrate the new criteria of an amenity. One DEB commented that it cannot estimate the impact, other than the change in the kinds of projects that are registered. 30% of EBs (including four DEBs and 18 EBs) did not comment on this part of the consultation.



- 2.7.2 One of the DEBs added that it would not suffer any adverse impact from the change in guidance as every project that it is involved in has the aim of protecting the environment, which in its' opinion improves the aesthetic quality of all of the amenities involved.
- 2.7.3 Twelve of the above EBs that believed they suffer an impact stated that any possible administrative and/or financial impact will be dependent on whether extra evidence or additional demonstration of this point is required. The demonstration of this point may lead to extra time being allocated to completing a project registration form and to settle disagreements with ENTRUST over project registrations, which would inevitably lead to delays in projects being able to start if registrations are held up or even declined. One of these DEBs noted that there may be an additional requirement to support with photos and site visits. Another DEB stated that, due to the subjective nature of aesthetic qualities, the demonstration of an amenity may require survey activities to obtain a representative sample of the general public. Two EBs mentioned surveys or studies may be required.
- 2.7.4 One of the above DEBs who would suffer an impact estimated that project administration and interpretation would increase by about 50%. It commented that it may need additional specialist environmental advice, greater interaction with the applicant and increased site visitations to determine whether the amenity fits the new criteria. This is mainly due to the subjectivity of the new criteria for amenities.
- 2.7.5 Three DEBs highlight the impact on staff training. Two of the DEBs that stated any impact experienced will only be short term while their staff learn how to apply the new definition of amenity, however, this impact is not expected to be significant in the medium to longer term. Another DEB highlighted that its employees have built up an

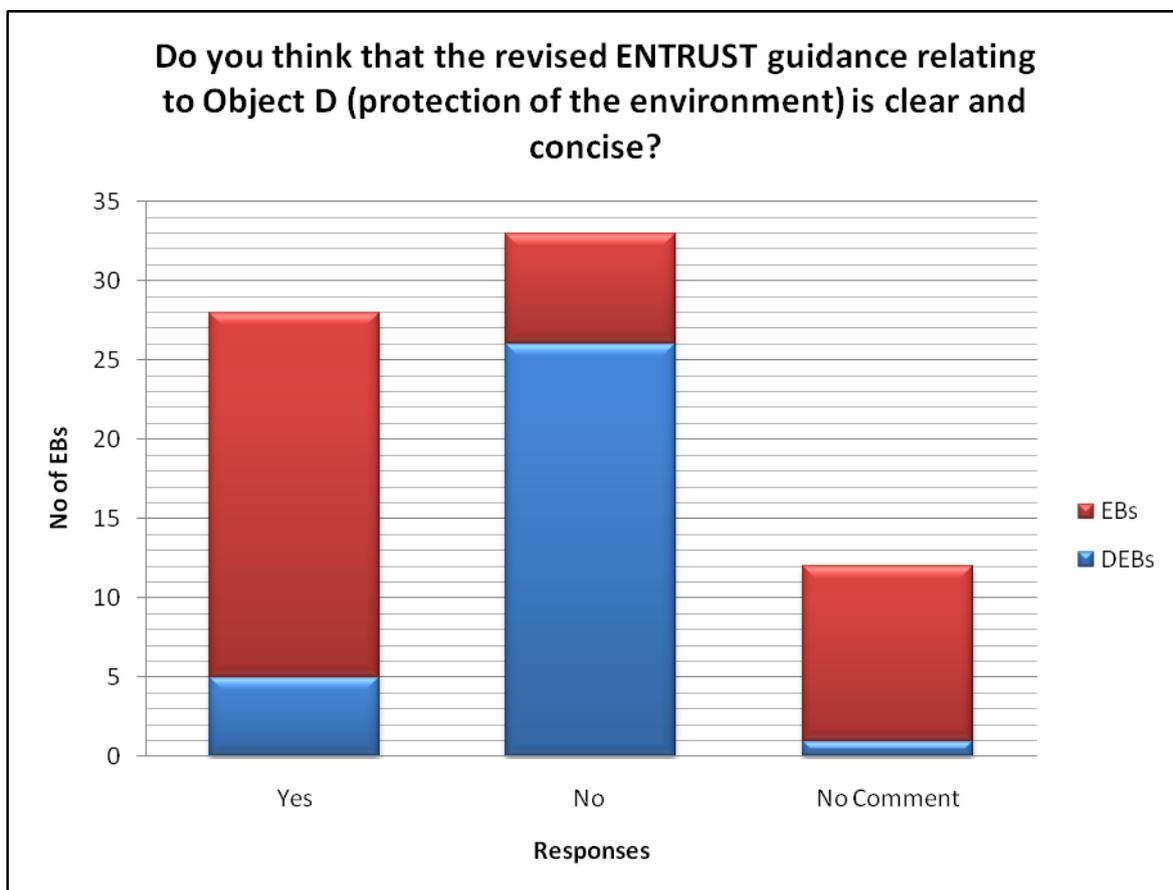
understanding of having to substantiate amenities that have to deliver on the basis of need, consultation (with the community) and additional benefits such as use of volunteers, training etc. However, the revised guidance on Object D potentially disrupts this understanding and will require staff to be constantly supported on the issue of whether projects are eligible or not.

2.7.6 Three EBs commented that the revised definition of amenity might involve an increase in the amount of time liaising with project promoters and the bid writing process. One of these EBs also mentioned that consultations may have to be held with the public to determine whether an amenity is pleasant, comfortable or aesthetically pleasing.

2.7.7 One DEB stated that the changes would, in the short term, cause it to change its guidance and application forms to include these questions for applicants to answer. For applications that the DEB is currently assessing (after the issuance of the revised guidance), it would need to write out to the applicants requesting the additional information. There would also be the requirement for the DEB to inform its application assessment panel and its Board of the changes so that decisions are made on the basis of the new guidance. This is estimated take at least 10 extra days annually.

2.8 Do you think that the revised ENTRUST guidance relating to Object D (protection of the environment) is clear and concise?

2.8.1 38% of EBs (including five DEBs and 23 EBs) believed the revised ENTRUST guidance relating to protection of the environment to be clear and concise. 45% of EBs (including 26 DEBs and seven EBs), in addition to ADEB, thought that the revised guidance was not. 16% of EBs (including one DEB and eleven EBs) did not comment on this part of the consultation.

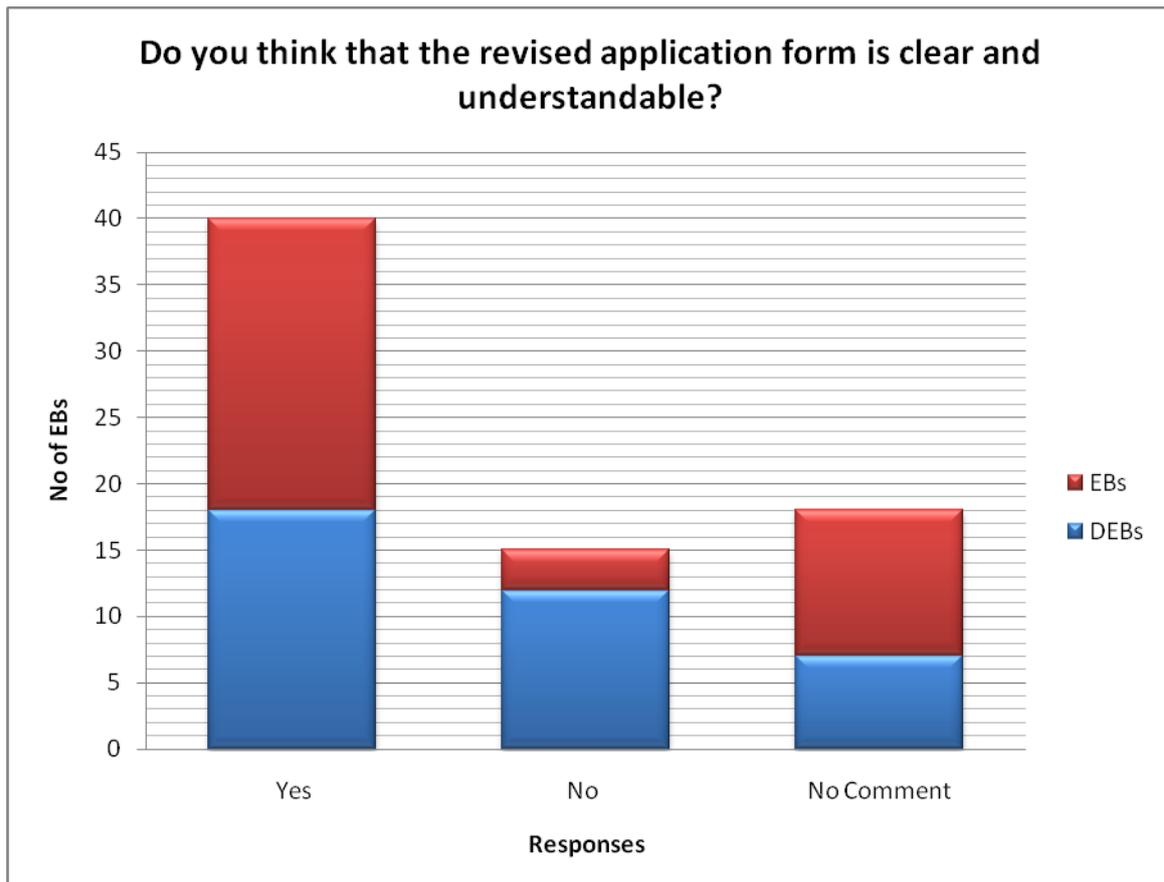


- 2.8.2 14 DEBs and ADEB noted that Regulation 33(2)(d) had been inaccurately reproduced, by failing to include a comma after the word 'environment'. This error has caused a misinterpretation in the Regulations which throws doubt on the context of the second part of the consultation and the resulting revised guidance. This error was corrected on the electronic version of the consultation document, as soon as ENTRUST was made aware.
- 2.8.3 15 DEBs and ADEB stated that ENTRUST has attempted to reinterpret the Regulations in a way that does not reflect how the scheme has operated for many years. The majority of the DEBs thought that the presence of the comma means that the protection of the environment is not the primary intent of Object D, rather, it is one of four intents along with 'provision, improvement or maintenance of a park or another public amenity'. Therefore, the intent of Object D is much wider and by focusing on this particular aspect the revised guidance may exclude certain projects from funding in the future. These DEBs commented that to now require demonstration of the protection of the environment would be to run contrary to the spirit of the scheme.
- 2.8.4 Three DEBs stated that the proposed guidance fails to define 'protection of the environment', instead choosing to define 'protection' and 'environment' separately. The definition of 'protection of the environment' needs to be stated in the context of the LCF scheme and not a reproduction of dictionary definitions. This is because every project would be required to be justified primarily in terms of 'protection of the environment'.
- 2.8.5 Four DEBs stated that the protection of the environment concept was not detailed clearly in the revised guidance, and even the given project examples were insufficient to demonstrate the practical application. It was felt that the justifications in the examples were tenuous and poor and do not demonstrate protection of the environment as the primary intent. One DEB noted that ENTRUST had chosen not to give examples of building projects that protect the environment under Object D. Another of the DEBs pointed out that project example 5.1 does not exhibit protection of the environment as the primary intent as it seeks to provide high quality play experiences and to plant trees, however, the protection of the environment can be achieved by planting trees as a standalone project, without having to undertake the works relating to the play area. Therefore, the DEBs highlighted the need for better examples.
- 2.8.6 One DEB stated that the revised guidance was too restrictive.
- 2.8.7 Two DEBs stated that they did not think that the revised guidance was clear and concise because they found confusing and unnecessary the attempt to issue consultation containing certain changes that were effective immediately and other changes that were planned for the future. The consultation document and revised guidance, therefore, appeared very confusing in its repetitiveness. The DEBs stated that it would have been simpler to implement the changes at the same time.
- 2.8.8 One DEB stated that prospective applicants to LCF grants are likely to be discouraged from applying for funding if the proposed revised guidance is the first point of reference. The DEB stated that it would then fall on individual DEBs to interpret the revised ENTRUST guidance into their own application forms and guidance for clarity.
- 2.8.9 One DEB stated that it would have assumed that all projects undertaken were automatically for the protection of the environment in some way.
- 2.8.10 One EB was confused with the concept of the protection of the environment.

2.8.11 One EB commented that some guidance on what kind of evidence ENTRUST would require in applications (and possibly post project completion) to demonstrate that projects are for the protection of the environment would be useful.

2.9 Do you think that the revised application form is clear and understandable? If not, what changes would you propose?

2.9.1 55% of EBs (including 18 DEBs and 22 EBs) believed the revised application form (the new question relating to protection of the environment) to be clear and understandable. 21% of EBs (including twelve DEBs and three EBs) and ADEB thought that the revised application form was not. 24% of EBs (including seven DEBs and eleven EBs) did not comment on this part of the consultation.



2.9.2 Two DEBs stated that in order to answer the proposed new question, relating to protection of the environment, further examples are needed to demonstrate what would constitute the protection of the natural or built environment.

2.9.3 Three EBs (including two DEBs) commented that the guidance needs to include further clarification of what information or evidence is required to be provided for the new question relating to protection of the environment, possibly in the form of explanatory notes. One of these DEBs stated that the guidance at the moment would lead it to believe that it could spend a small sum planting trees and that this would meet the requirement for environmental protection.

2.9.4 One of the DEBs that found the new form to be clear and understandable did, however, question the purpose of re-introducing the new question relating to protection of the environment which was previously incorporated into the project registration form until around 2003. This question was apparently removed from the form because it was not clear what evidential value it provided to ENTRUST.

- 2.9.5 Eight DEBs, in addition to ADEB, stated that the new question relating to protection of the environment should be removed. Four of these DEBs thought protection of the environment should not be specifically referred to in the project application form as it only represents one of the intents, the others being provision, maintenance, improvement. Another two of the DEBs thought that the question should be removed until the issue of the interpretation of the Regulations is resolved.
- 2.9.6 One DEB stated that the question relating to specifying the closest landfill site (i.e. question 2) should read “What is the name of the closest licensed landfill site?”
- 2.9.7 One DEB stated that questions relating to specifying the closest landfill site and the distance from the site (i.e. questions) 2 and 3 should be deleted from the Object D Appendix and placed in the main Form 2 application.
- 2.9.8 One DEB suggested that the new question relating to protection of the environment should not demand a positive action to protect the environment. Instead, it should be reworded as follows: “Will the provision of the amenity or facility proposed adversely affect the environment within which it is located?” Whilst all questions are expected to be answered in the negative, the question will have ascertained that the environment will be protected from any adverse affects.
- 2.9.9 One EB stated that the term protection of the environment is generally understood to mean the natural environment, and to avoid misconceptions the question should be changed so that it asks applicants to provide details of how the amenity is for the protection of the built or natural environment. This would help avoid discouraging applications from amenity building projects.
- 2.10 Do you have any comments relating to the definition of environment as outlined in paragraph 7.3?**
- 2.10.1 Eight EBs (including four DEBs) commented that the definition of environment given in the consultation document seems appropriate and/or reasonable. One of these DEBs thought that the definition of environment is all encompassing and that it would be difficult to think of anything that is not covered within this definition.
- 2.10.2 The common theme in the responses relating to the definition of environment was that the majority of EBs thought that the definition of environment should not exclude the social environment. 34 EBs (including 28 DEBs), in addition to ADEB, thought that the exclusion of the social environment was erroneous for the following reasons:
- 2.10.2.1 In relation to the exclusion of the social environment, two DEBs noted that there is no qualification to the word environment in the Regulations and, therefore, all environments, including social environment are covered by the Regulations. One of these DEBs stated that the social environment includes many aspects of the physical and natural environment, given many have been at least partially shaped by human social processes. Another two of these DEBs thought that ‘social environment’ consists of “social and cultural institutions, forms, patterns and processes that influence the life of individuals and communities”.
- 2.10.2.2 Furthermore, EBs claimed that ENTRUST has, in various documents, recognised the social environment and this undermines any attempt to exclude it. Three DEBs noted that the social environment was previous explicitly recognised for the purposes of Object D, and gave the example of the 2003 guidance manual which referred to the ‘social’ environment. These DEBs claimed that subsequent changes to the Object D guidance in 2005 also referred to the social environment. As far back as December

1998, with reference to the ENTRUST led pilot scheme for project self-registration, the social environment was considered under Object D. Furthermore, seven EBs stated that the current revised guidance also recognises the social environment in project example 5.1, as it describes an outdoor play area and the phrases contained within (e.g. 'help to reduce crime', 'build a safer community' and 'discourage anti social behaviour') relate to neither the natural and built environment but the social environment. This would demonstrate that it is not easy to differentiate between the social and built environment in many cases.

2.10.2.3 The combined view of the EBs and ADEB was that recognition of the social environment has been an integral part of the scheme and that to remove it would have an adverse impact on the scheme, especially given that a significant proportion of their projects relate to the social environment. Nine DEBs noted that the LCF was established to help compensate those communities that had been adversely affected by landfill, and that this adverse effect of landfill is not confined to the physical environment as it had significant health and social impacts as well. The LCF has been successful in starting to mitigate this impact, and that the definition of environment should therefore continue to include the social environment. Another DEB noted that current government initiatives towards society's involvement in the running of projects and the chancellor's previous challenge to the LCF to undertake volunteering both strongly tie in with social environment considerations.

2.10.3 Eight DEBs stated that while references are made to natural, built and social environment, these terms need more explanation. Five of the DEBs questioned why the built environment was restricted to 'on land' only, and not extended to structures over water. One of these DEBs gave examples of previously funded projects that involved structures over water, including floating museums, refurbishment of watermill wheels etc. Another of these DEBs stated that small piers, jetties or other structures over water are well established amenities. It also commented that boats should not be precluded as these could be considered an amenity and certainly be used to protect the environment if being used either by projects to access and carry out work (e.g. on a river) or as part of the wider education of the general public about what they are seeing or experiencing. One DEB sought clarification on whether the built environment would include Grade I or II listed buildings, and whether a new build or structure would be required to be environmentally friendly or be designed and built to fit in with the local environment.

2.10.4 One DEB expressed concern that highlighting the built environment may increase the number of successful applications relating to this at the expense of projects focusing on the natural environment.

2.10.5 Three EBs were confused by the reference to the 'social environment' and thought that the revised guidance should explain this in more detail.

2.10.6 31 EBs (including five DEBs) had no comments about the definition of the environment, as outlined in the consultation document.

2.11 Do you have any comments relating to the definition of protection as outlined in paragraph 7.4?

2.11.1 Eleven EBs (including seven DEBs) commented that the definition of protection is sufficient. One of these DEBs stated that the definition of protection is clear and it is pleased to see that projects will need to be attached to the environment in this fashion.

2.11.2 Five EBs (including four DEBs) and ADEB considered the definition to be accurate but of no relevance in the context of the LCF and the Regulations.

- 2.11.3 Nine EBs (including eight DEBs) stated that the word 'protection' is highly subjective and open to a number of interpretations, especially in the context of the LCF scheme. This is due to the fact that for every aspect of protection being proposed there can be a counter argument. For example, in some areas rhododendrons are seen as invasive species, and therefore the removal of these could be seen as maintaining and improving green spaces. However, the removal of this species may actually threaten ancillary species in the vicinity of the rhododendron. The example of the provision of a boardwalk over reed beds was also given, where some might be of the opinion that it protects the reed beds and others might be of the opinion that the creation of the boardwalk would itself constitute an intrusion and disturbance into the natural environment and, therefore, not protect the natural environment.
- 2.11.4 Further highlighting the subjective nature of the word 'protection', three EBs (including two DEBs) stated that the guidance should make it clear whether a narrow or wide view is taken of the environment when it is considered what is being protected, for example whether just the immediate or local environment considered or as a whole. The upgrading of the insulation standards in a village hall would obviously be an improvement, as the consequent reduction in emissions to the atmosphere would clearly be a protection of the wider environment. Clarification is required whether the following matters will be relevant when assessing the protection of the environment: measures to reduce carbon footprints; utilising cleaner sources of energy; and the generation of energy locally through renewable energy resources such as solar panels and wind turbines. Therefore, the question of protection is led by the aims and outcomes of the project.
- 2.11.5 Two EBs (including one DEB) thought that protection can also be brought about by educating and informing the public by a variety of means (in person, in print, CCTV and multimedia) and not just in the physical sense. The current definition of protection does not recognise educating and raising awareness about environmental issues. Encouraging behavioural change can help protect the environment, and therefore the current definition fails to look at the bigger picture.
- 2.11.6 Two EBs noted that the definition of protection referenced 'bad influences' and felt that this supported their views that the social environment should be included in the definition of environment, as only the social environment could be susceptible to bad influences.
- 2.11.7 One EB thought that the definition of 'protect' is static and defensive. The words provision and improvement both imply something more than simply preserving from damage. Both suggest something more dynamic - creating something better than what was there before. The current definition of protect only seems to allow the preservation of things from harm.
- 2.11.8 One DEB thought that the definition was too restrictive.
- 2.11.9 One DEB stated that the definition of protection should include some narrative regarding damage or deterioration to the environment due to the local environment or age of the amenity.
- 2.11.10 Two DEBs noted that the definition of protection should also refer to the sustainability of a project and how that protects the environment.
- 2.11.11 Five EBs (including three DEBs) stated that they have no problem with the definition of protection provided it is seen as encompassing enhancements or improvements.

2.11.12 42 EBs (including 4 DEBs) offered no comment on the definition of protection as outlined in the consultation document.

2.12 Are there any projects currently registered where you would not be able to demonstrate that the park or amenity is for the protection of the natural or built environment? If yes, can you please give examples of these projects and provide further information on them?

2.12.1 20 EBs (including seven DEBs) confirmed that they do not currently have any projects registered that would not be able to demonstrate that the park or amenity is for the protection of the natural or built environment.

2.12.2 One of the above DEBs commented that it would be able to easily demonstrate that its amenities are for the protection of the natural or built environment, because the definition of environmental protection would arguably encompass all kinds of amenities. Another of the above DEBs commented that it currently asks its applicants to consider environmental benefits on their application form and have done so for the past two years. A further DEB confirmed that all of its projects have environmental protection as their key aim.

2.12.3 Three DEBs and ADEB commented that the protection of the environment concept, in its current form (i.e. with the exclusion of social environment), would exclude newly built facilities. ADEB noted that it would be difficult to build a new play area and consider it protecting the environment. One of these DEBs noted that results produced may be inconsistent in practice, insofar as that it would exclude new builds only to the extent that the proposed new build is an amenity. However, this would not exclude new builds if they were created within an amenity. For example, community based improvements such as new village halls or skate parks could not be created if they were the amenity in themselves, however, a new visitor centre could be erected within a park or nature reserve, where the latter serves as the amenity.

2.12.4 Three EBs (including two DEBs) commented that many projects would not be able to demonstrate protection of the environment, but they did not specify the types of projects.

2.12.5 EBs highlighted the following kinds of projects that might not be registrable under the revised guidance which includes the protection of the environment:

Figure 2: EB projects currently registered where it could not be demonstrated that the park or amenity is for the protection of the natural or built environment?

Project Type	No. of EBs
Skate parks (new build)	16
Play area and recreation facilities/Multi-Use Gaming Areas (MUGAs) (new build)	8
Village hall and community centres (new build)	10
Miscellaneous new amenity projects	1
Cricket practice facilities and equipment (e.g. nets)	9
Relaying of bowling greens*	4
Resurface of tennis courts*	7
All weather sports pitch resurfacing *	5
General facility improvements (toilets, access improvements, hearing loops)*	8
Replacement of Kitchen at a village hall (improving)*	1
Replacement of a heating boiler at a village hall*	1
Improved multi user access at a local nature reserve*	1

Floodlighting*	4
Purchase of training dinghies*	4
Installing remotely operated bird cameras & audio nature trail (nature reserve)*	1
Audio equipment*	4
Projects which include boats (mainly small craft) used to access and carry out works (e.g. on a river) or as part of the wider education of the general public about what they are seeing or experiencing	1
Scouts halls	1
Sports club facilities (e.g. boxing clubs, football and rugby club stands)	4
Youth shelters	1
Old age activity centre	1
Gymnastic/trampoline equipment at sports centres*	3
Computer/IT equipment for community centre*	3
Museum on a boat	1
Sailing/rowing boats	4
Education/awareness programmes (e.g. raising awareness of conservation)	3
Access paths in woodlands	1
Interpretation boards in woodlands	1

* These examples of project types should be given less weighting as the EB is confused whether the protection of the environment should be demonstrated by the amenity or the project works. This may relate to a typographical error that appeared in Appendix C, where paragraph 3.3 erroneously stated that “the project must demonstrate protection of the environment”.

2.12.6 One DEB reviewed all of the projects it has registered since 1998, and found that 909 projects could not have been registered as they would not be deemed to protect the built or natural environment. The value of LCF monies committed to these projects was £27,309,935. Of these 909 projects:

- 99 (11%) are new skate-parks or wheeled sports facilities - £2,749,817;
- 501 (55%) are new play and recreation facilities including MUGAs - £12,589,644;
- 255 (28%) are new build village halls and community centres - £10,766,555; and
- 54 (6%) are new amenity projects of a miscellaneous nature - £1,203,919.

Based on the DEBs average statistics for the last 3 years these would have produced:

- Over 300 full time jobs;
- Almost 550 part time jobs;
- 7,000 training opportunities;
- Over 9,000 volunteers (over 25);
- Almost 4,000 volunteers (between 16 and 25); and
- Almost 7,000 volunteering days created for the 16 to 25 years group.

The DEB highlighted that the funding it provides to project applicants helps lever in match funding equal to 3.5 times their funding amount. The impact to the communities in the operational area of the DEB would be to lose over £100 million in new build capital projects.

2.12.7 Another DEB highlighted the implications of enforcing the protection of the environment concept by highlighting the types of projects that may be affected, including quantitative data since 2004:

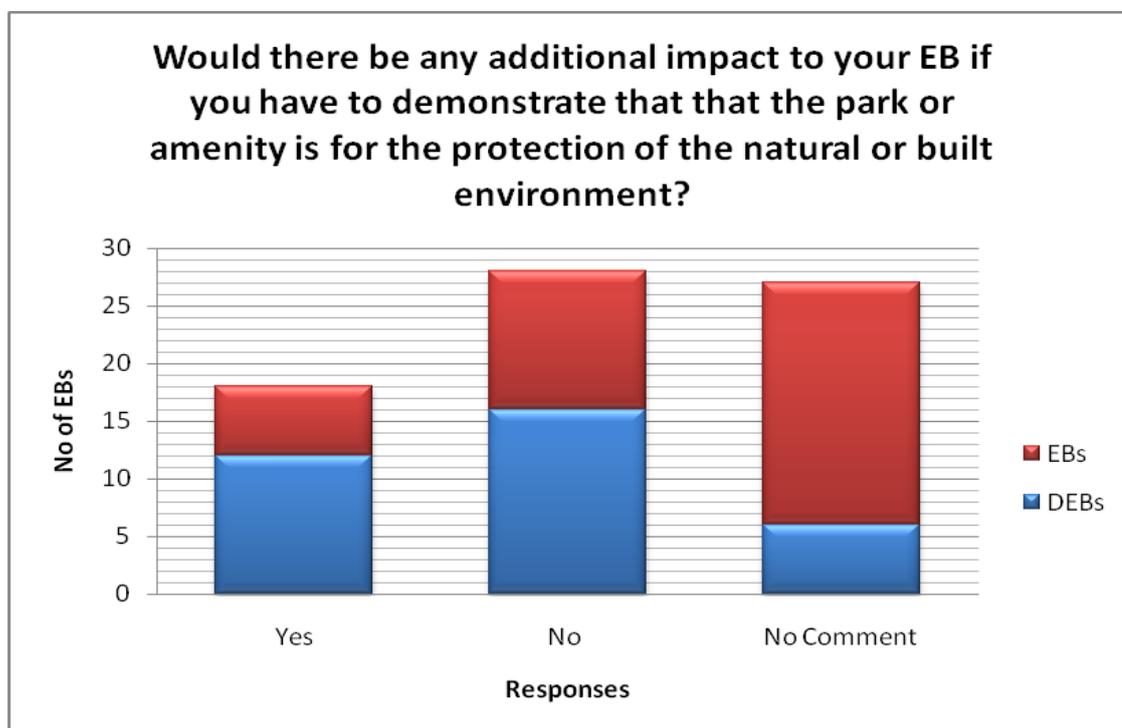
- Seven new skate parks with a total value of £384,000;
- 10 new MUGAs with a total value of approximately £280,000;
- 19 new children’s playgrounds with a total value of approximately £386,000; and
- Nine new community buildings with a total value of approximately £534,000.

2.12.8 Eight DEBs stated that they feel that grant applicants, EBs and DEBs would have to conjure up imaginative, irrelevant and superficial descriptions to justify protection of the environment in order to register projects. The result is that more imaginative EBs/project applicants may secure registration for some of these projects, while less experienced or imaginative ones do not, and that this would not be good for applicants or for the reputation of the LCF scheme.

2.12.9 25 EBs (including five DEBs) did not comment on this part of the consultation.

2.13 Would there be any additional impact (e.g. administrative, financial) to your EB if you have to demonstrate that that the park or amenity is for the protection of the natural or built environment? If yes, please give us clear details of any estimated change in time or cost that you think you would experience.

2.13.1 38% of EBs (including 16 DEBs and twelve EBs) confirmed that there would not be any significant additional impact arising from having to demonstrate that the park or amenity is for the protection of the natural or built environment. 25% of EBs (including twelve DEBs and six EBs) commented that there may be an additional impact from having to evidence that the park or amenity protects the environment. 37% of EBs (including six DEBs and 21 EBs) and ADEB did not comment on this part of the consultation.



2.13.2 Eleven EBs who stated that they may suffer an impact believed that any possible administrative and/or financial impact will be dependent on whether extra evidence or additional demonstration of this point is required. The demonstration of this point may lead to extra time being allocated to completing a project registration form and to settle disagreements with ENTRUST over project registrations, which would inevitably lead to delays in projects being able to start if registrations are held up or even declined.

One of these estimated that it may take an extra two-to-three days to obtain the additional information. One of these DEBs noted that there may be slight impacts in terms of the time it takes to investigate and consider the environmental protection issues. Another of these DEBs estimated that project administration and interpretation would increase by about 50%. It commented that it may need additional specialist environmental advice, greater interaction with the applicant and increased site visits to determine whether the amenity fits the new criteria. This is mainly due to the subjectivity of the new criteria for amenities.

- 2.13.3 14 EBs commented that there would be an administrative and financial impact to the extent that it would take additional time to secure project registration. Two of these DEBs commented that its staff may have to exercise lateral thinking on how protection of the environment could be established or demonstrated, and this is mainly because the topic is so subjective. One of these DEBs stated that there will be (unquantifiable) additional costs in obtaining support from appropriate bodies for some schemes.
- 2.13.4 One DEB commented that a great deal of administrative time will be spent in attempting to explain to the public that hitherto acceptable projects will have to be rejected where they cannot demonstrate a protection of the environment.
- 2.13.5 Two DEBs stated that the changes would, in the short term, cause it to change its guidance and application forms to include these questions for applicants to answer. For applications that the DEB is currently assessing (after the issuance of the revised guidance), it will need to write out to the applicants requesting the additional information. There would also be the requirement for the DEB to inform its application assessment panel and its Board of the changes so that decisions are made on the basis of the new guidance. This is estimated take at least 10 extra days.
- 2.13.6 One EB stated that they would suffer from the impact of having to establish the degree of protection afforded; an assessment of the original conditions would be required together with a way of establishing the degree of protection achieved and a way of monitoring whether these are ongoing.
- 2.13.7 Two DEBs questioned how such a radical change would be put into practice. The wider implications are that some previously compliant projects would become ineligible under the scheme, and therefore projects would retrospectively become non-compliant. Both DEBs identified potential problem areas where the changes are introduced mid-way through a project (prior to completion of funding) and where the DEB has committed to funding but the project has not been registered with ENRUST at the time the change takes place. Therefore, sufficient notice of any changes would have to be given prior to the implementation stage to ensure that projects had recently applied for funding and were being processed, were not deemed ineligible.

2.14 Do you have any other comments on the proposal that all amenities or parks that are being provided, maintained or improved must demonstrate protection of the environment?

- 2.14.1 Ten DEBs and ADEB stated that making the protection of the environment the condition precedent will alter the current meaning of Object D Regulations, not necessarily for the better. Four DEBs and ADEB stated that the purpose of the consultation is to provide clear and concise guidance and they do not feel that the proposals have done this as implementing the proposed changes would make the whole LCF process more confusing rather than seeking to simplify it. The result of this may be a loss of valuable project applicants.

- 2.14.2 One DEB commented that it was advised at the start of the scheme that ENTRUST would be using the broadest possible interpretation of the word 'environment'. Therefore, the DEB cannot understand why this needs to be re-visited when the scheme has been operating successfully for 13 years. Another DEB commented that ENTRUST should re-visit and understand the origins of the LCF scheme before re-interpreting the Regulations. It concluded that the current revision of the guidance does not reflect the spirit of the scheme.
- 2.14.3 Six DEBs stated that many applicants would automatically assume protection of the environment relates to the natural environment and may, therefore, be discouraged from making project/funding applications for non-green/non-biodiversity projects.
- 2.14.4 One DEB stated the change in emphasis brought about by implementing the protection of the environment criteria will effectively eliminate the prospects of the voluntary sector gaining funds in the local area. The DEB further stated it may come to a situation where green fields and places of worship will be the only activities funded. The implication of this is that LCF grants will be concentrated in communities with green fields and places of worship, and other sectors and communities would not benefit from the LCF.
- 2.14.5 Four DEBs stated that prior to issuing the consultation paper, it might have proved more fruitful if ENTRUST had developed the revised guidance with input from ADEB, in order to fully capitalise on the wealth of knowledge and experience that has been built up over the life of the scheme. Similarly, another two DEBs commented that it may have been more beneficial for ENTRUST to consult with LCF practitioners when formulating its guidance, instead of merely relying on its legal advice.
- 2.14.6 Ten EBs (including nine DEBs) endorsed the suggestion to change the wording from 'protection of the environment' to 'benefit of the environment', on the basis that the word benefit would encompass both protection and improvements. It would also be easier to demonstrate benefit rather than protection and would be more in the spirit of the scheme. Furthermore, one DEB claimed that not many projects could demonstrate the protection of the environment as defined, but nearly all would benefit it. Alternatively, another three DEBs suggested that the word protection is replaced with or accompanied by the words 'enhancement' or 'improvement', on the basis that 'protection of the environment' will actually exclude potential projects rather than promoting inclusiveness. Another two EBs advocated replacing the word 'protection' with the word 'preservation'. Alternatively, another two EBs commented that the guidance should be amended so that it states that provision of the amenity or facility shall not adversely affect the environment within which it is located.
- 2.14.7 One DEB stated that the proposed guidance would need to further explore how the protection of the environment concept is compatible with the new definition of amenity, as both concepts are highly subjective. The current guidance covers issues in relation to the provision, maintenance or improvement of an amenity, but it provides little information as to how these kinds of works are carried out and how they would fit in with the protection of the environment concept. For example, there is a possibility that in providing an amenity there may be parts of the environment that are destroyed. The DEB has experienced projects that have cut down large old trees to make an amenity more visible and, therefore, more aesthetically pleasing. However, although new trees were planted as compensation, it is unclear whether this would fall foul of the protection of the environment requirement. The DEB gave a further example of a project that involved converting meadows to grassed play surfaces, and was unclear whether this protected the environment or destroyed the original environment.

- 2.14.8 One DEB stated that it is the interpretation of the Regulations that is being altered and not the Regulations themselves and so the issues raised are subjective narrow judgements and views. It is commented that the fact that ENTRUST has taken legal advice does not necessarily mean that the interpretations it is to use are necessarily the right ones. One of the principal agreements in the 2008 Objective Forum was that the guidance issued by ENTRUST needed to be severely pruned and replaced with a reversion to the actual wording of the Regulations.
- 2.14.9 One DEB stated that it is extremely concerned about introducing the concept of protection of the environment against Object D as it believes that this is more in keeping with the ethos of Object DA and Object E.
- 2.14.10 One DEB stated that it is obvious that a good deal of work has gone into producing the proposal and, on the whole, it looks fine. Another DEB stated that protection of the environment can be easily evidenced, in the case of the built environment, by obtaining planning permissions and consents.
- 2.14.11 One DEB commented that the wording of paragraph 3.4 is incorrect insofar as it states that the amenity must protect the environment. The DEB suggests that it should be the project that protects the environment.
- 2.14.12 One DEB was very concerned at the legality of any interpretation or changes to the definition that ENTRUST may make. The DEB stated that, legally, definitions must be within the respective Statutory Instruments. Whilst it welcomes the role of guidance, however, it feels that the guidance may potentially become obstructive when attempting to introduce terms not in the primary legislation.
- 2.14.13 One DEB, whilst conceding that the protection of the environment concept is contained within the Regulations, stated that in the practical implementation of the legislation it has always been ignored and by so doing a precedent has been established. Therefore the protection of the environment concept should not be enforced.
- 2.14.14 One EB stated that paragraph 7.2 (of the consultation document), which attempted to explain the condition precedent status of 'protection of the environment', should have been explained more simply and in plain English.
- 2.14.15 44 EBs (including nine DEBs) offered no comment on this part of the consultation.

2.15 Are there any additional comments that you would like to be considered on the contents of this paper?

- 2.15.1 14 EBs (including twelve DEBs) and ADEB expressed their concern with the way consultation was carried out, especially with the way in which the changes relating to the definition of amenity were implemented. Six of these EBs stated they found the consultation process on Object D to be inequitable, as it was essentially a retrospective consultation which is not in line with ENTRUST's claim to be 'fully committed to engaging stakeholders.....to comply with best regulatory practice'. Eight EBs expressed concern that there was no advance warning about the changes that were implemented immediately. This was viewed as highly unreasonable as it is important that all EBs involved in the scheme are provided the same opportunity for open consultation and to ensure that the scheme is as transparent as possible. One of the key problems with this identified by EBs is that the sudden introduction could result in some grant-seekers being told that whilst their applications had been compliant previously they were not compliant currently and therefore all the work they had put into preparing their projects and grant applications would have been wasted.

Another DEB noted that conducting consultation exercises in this way may cause stakeholders to become less committed to the consultation process.

- 2.15.2 Eight DEBs and ADEB noted that the background behind these changes was not adequately explained prior to the consultation. Whilst the EBs attending the focus group on Object D had an opportunity to explore the issue further, all other EBs required a better understanding of the reasoning behind this consultation. Five of these DEBs and ADEB noted that they would welcome a copy of the legal advice given to ENTRUST or at least an overview of the rationale behind it.
- 2.15.3 One DEB commented that it did not think that the current Regulations are encouraging projects to consider all the environment effects of their projects.
- 2.15.4 One DEB commented that if ENTRUST wants to integrate environmental protection into the LCF then this would be achieved through asking additional questions of projects. The DEB is not of the opinion that environmental protection is demonstrated simply by planting a couple of trees. The DEB thought that the value for money questions on the project registration form relating to the number of trees planted would seem to imply that this is all that is required to demonstrate protection of the environment.
- 2.15.5 Three DEBs questioned whether projects under Object E would be required to demonstrate 'protection of the environment' since the wording also appears in the Object E Regulation.
- 2.15.6 One DEB noted that the consultation document would have benefited greatly from a glossary of terms and more scrutiny given to consistency of terms throughout.
- 2.15.7 Two EBs (including one DEB) thought that the Object D consultation was positive. One of these EBs stated that it spent considerable time on the paper and wanted to commend the aim to achieve clarity around guidance on Object D. The other EB stated that the consultation document has encouraged it to make a project application.
- 2.15.8 Forty-eight EBs (including fifteen DEBs) offered no comment on this part of the consultation.