



Interpretation of “Public” for Objects D and E

March 2015

1. Introduction

- 1.1 This report details the outcome of our consultation exercise on the interpretation of “public” for projects carried out under Objects D and E.
- 1.2 This consultation sought stakeholders’ views upon:
 - Our interpretation of “public” for each of Objects D and E;
 - Opening hours and access for projects under these Objects;
 - Specific user groups;
 - Proportional registration; and
 - Access statements.
- 1.3 The questions we asked of stakeholders in our consultation are attached at Appendix A.
- 1.4 The consultation paper was published on 18 June 2014 and the consultation closed on 26 September 2014.
- 1.5 We held a focus group (with nine attendees) on 10 September 2014 and received 28 responses.

2. Summary of issue, conclusions and recommendations

Issues

- 2.1 In compiling this report we note the following issue:
 - 2.1.1. There is evidence that our guidance on proportional registration is not being consistently applied by funding Environmental Bodies (EBs) and that some EBs have not understood our guidance in this area.
- 2.2 This issue first came to our attention at our focus group. At that time, we reinforced our current guidance on proportional registration and explained how this would apply through the use of examples. Furthermore, following the analysis of the responses to our consultation exercise, we identified that other EBs had also misunderstood our guidance. Amongst the responses which have highlighted our concerns were:
 - Proportional registration was “very subjective”;
 - Proportional registration was not required if an amenity, which was not available to the public for all of the time it was open could demonstrate a wider community benefit; and
 - Proportional registration was not required if an amenity, which was not available to the public for all of the time it was open was still available to the public for 104 days per year.

- 2.3 In response to these findings, we have revisited our guidance which is set out in paragraph 4.5 of Section D of our guidance manual. While we consider that the text is clear, we consider that more detail could be provided to the examples which accompany the text and that this would help EBs understand how proportional registration works. We will therefore update our guidance to expand these examples and this is set out in our recommendations (below). We also encourage any EB uncertain on how any part of our guidance should be interpreted to contact us for clarification.

Conclusions

- 2.4 The majority of EBs who responded to our consultation agreed with our current interpretation of public. The minority who did not agree, raised their concern that our current interpretation might inadvertently discriminate against certain user groups. We do not agree that this is the case. However, in light of the consensus from EBs regarding projects for the benefit of specific user groups, we consider it is important to refer this issue to HMRC for their review. In the interim, therefore, we do not propose making any changes to our interpretation of “public”.
- 2.5 The majority of those who responded to our questions on admission fees did not agree that where admission fees for an amenity were higher than the average for an amenity of that type in that area then that would prevent that amenity from being sufficiently accessible to the public as a whole. However, those who responded on the point considered that admission fees (and hire charges) were a relevant consideration in considering whether an amenity was accessible to the public. Those EBs who responded considered funders should continue to include admission fees and hire charges in the factors they considered as part of the project funding application process. There was unanimity amongst EBs that we should not attempt to provide guidelines on levels of admission fees and, given the practical difficulties in setting guidelines levels and keeping those levels up to date, we do not intend to introduce guidelines on the level of admission fees or hire charges.
- 2.6 A variety of views were expressed in relation to opening hours and access for projects under Objects D and E. In relation to projects under Object D, the majority of EBs who responded considered that making an amenity available to the public for 104 days each year was an acceptable minimum standard. Several respondents considered this to be a generous minimum standard and we understand that in practice many amenities are available to the public for considerably longer periods than the 104 days. There was very limited support for changing to a like-for-like standard (as required for the public access to buildings and structures under Object E) with the majority of respondents considering this would result in an additional administration burden being placed on project delivers.
- 2.7 There was also limited support amongst respondents for the minimum number of days on which an amenity should be available to the public to be reduced for seasonal projects. The majority of EBs who responded to this question expressed the view that EBs who wished to undertake seasonal projects could and should, be more creative in order to meet the requirement of being available for at least 104

days each year. A few EBs raised concerns over specific projects where they had not been able to make an amenity available to the public for 104 days each year. However, we conclude that as part of the purpose of the Landfill Community Fund (LCF) is to make amenities available to communities and there is widespread support for the minimum requirement of 104 days, it would not be appropriate to lower this minimum standard.

- 2.8 A majority of EBs who responded to our consultation were also in favour of retaining the current like-for-like guidance on opening hours and access for buildings and structures under Object E. There was limited agreement with the suggestion that buildings and structures under Object E should be available for a minimum of 104 days each year. Respondents who disagreed with this suggestion noted that some buildings and structures maintained under Object E were often too fragile to be exposed to increased levels of public access but that these were often those most in need of funding. Given the lack of support for an increase in levels of public access, we do not recommend a move to a minimum standard at this time.
- 2.9 All EBs who responded indicated that they would like to see a change to our guidance on user groups. The current guidance was considered to be too restrictive and insufficiently flexible. The majority of EBs who responded preferred the second option proposed in our consultation document, which was that projects which were for the benefit of a user group which was a cross section of the public would be considered to meet the public access. This would enable projects for the benefit of children, young people and the elderly to proceed even if the amenity was not available to other members of the public. A minority of EBs who responded preferred the third option proposed, which was an amenity which was for the sole use of any user group would be considered to be for the public if wider community benefit could be demonstrated. However, it was noted that while the third option apparently gave the most scope and flexibility to support community based projects, it could also place an increased administration burden on a project applicant to demonstrate community benefit in each case where there was not full public access. We concluded that this would add a layer of complexity for the funder in assessing applications that would always be subjective and might deter some funders from funding specific user group projects due to compliance concerns. We therefore concluded that the second option, which also had the most support from EBs, was the option which was most likely to increase the number of projects delivered under Object D. However, given the wider changes which are due to be considered by HMRC in its consultation on reform of the LCF (published on 18 March 2015) we do not consider it appropriate to make any recommendations which would have the effect of usurping that consultation process by widening the scope of the (already over-subscribed) LCF. Therefore, as noted in paragraph 2.4 above, we will report our findings on user groups to HMRC for them to take forward as they consider appropriate.
- 2.10 As noted about under Issues (in paragraphs 2.1 to 2.3 above) we are concerned that there may be widespread inconsistency in the application of the rules on proportional project registration. Having reviewed the explanation in our guidance manual, we

believe that the text in the guidance is clear. However, we consider that it would be helpful for the examples to be updated and expanded to provide further clarity.

- 2.11 EBs who responded to our consultation paper were evenly divided in their responses to the suggestion that an access statement should be provided for every project registered under Object D or Object E. Those who supported the proposal considered that a blanket approach would be simplest to administer and that a project applicant should not object to explaining the level of public access which would be available. Those EBs who opposed the suggestion considered it was unnecessary for many common types of amenity (such as parks and nature reserves) to explain how the amenity would be available to the public. As EBs were divided on the provision of access statements, we consider that the case for access statements to be provided to us for every project under Object D or E has not yet been made. However, we will continue to monitor the level of detail which is provided to us in relation to public access. We also noted that several funders remarked that they already sought such a statement from project applicants as part of their project assessment process. As an access statement is already sought by a funder, we do not consider there would be a significant increase in administration if the access statement which has been provided to the funder is also provided to us when the project application is submitted to us for approval.

Recommendations

- 2.12 As a result of the responses to this consultation exercise we recommend the following:
- 2.12.1 We will report to HMRC our findings in respect of user groups including that it is the preference of EBs is for a change to our guidance on user groups so that projects which were for the benefit of user groups which are a cross section of society (children, young people, the elderly and the disabled) would be considered to meet the public access requirement;
 - 2.12.2 We will update to our guidance to expand the examples cited to support the explanation of proportional project registration; and
 - 2.12.3 The remainder of our guidance on “public” will remain unchanged.

3. Next steps

- 3.1 We will report to HMRC our findings in respect of EBs’ preferred change to our guidance on the interpretation on public in order to ensure that projects which are for the benefits of user groups which are a cross section of society will be considered to meet the public access requirement. This report will be made to HMRC prior to the closing date for responses to HMRC’s consultation (published on 18 March 2015) on reform of the LCF following the deliberations of the LCF Reform Working Group to enable HMRC to decide whether it would be appropriate to incorporate any changes as a result of our findings into more major changes (either to the Regulations or guidance) proposed as a result of HMRC’s consultation.

- 3.2 We will also update our guidance to expand the examples cited to support the explanation of proportional project registration. We consider it important that this guidance is consistently applied across the LCF
- 3.3 Once the changes to our guidance are underway we will develop an information session for EBs on the changes to be introduced. This training session will be open to all EBs and will be delivered shortly before the implementation of changes to allow an opportunity for EBs to give feedback on the revised guidance we plan to issue.

ENTRUST
March 2015

Appendix A

The questions asked in the consultation

	Question	Paragraph of consultation paper
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: <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? 	7.1.6
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.	When thinking about user groups, please indicate which of the three interpretations below you support, and give reasons for your choice:	8.1.6

	<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. 	
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

Appendix B

The responses to questions asked

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?

- 1.1 A large majority of respondents agreed with our current interpretation of the word public.
- 1.2 A minority of respondents did not agree with our interpretation. Most of these disagreed on the basis that our interpretation could be considered to exclude certain user groups from participation (a subject we consider in questions 13 to 15 below). One respondent considered that there should be no distinction between the interpretation of public used for projects under Object D and under Object E.

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?

- 2.1 The respondents to our consultation were evenly divided in their responses to this question with approximately half considering that an amenity was available to the public if the admission was higher than similar amenities in the area. However, almost all of those who provided further detail in their response clarified that the question of whether high admission fees (or hire charges) made an amenity unavailable to the public was a question of degree. It was relevant to consider, amongst other things, the availability of similar amenities in the area, the demographics of the area, the availability of state funding for comparators and any relevant local factors.
- 2.2 All the respondents who expressed an opinion on the point considered that the issue of whether admission fees (and hire charges) were too high to make a building or amenity available, should remain a matter for the funders to consider at the funding allocation stage. There was unanimity that this subject should not be covered further in ENTRUST guidance or in the Regulations.
- 2.3 All those who expressed an opinion on the point noted the subjectivity of “higher than similar amenities in the area” and also noted the difficulties of setting a figure for an area and keeping any guidelines figures up to date.

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?

- 3.1 This question was primarily aimed at funding EBs. All of the respondents to this question which revealed themselves to be in this category confirmed that an assessment of admission fees and hire charges was part of their funding allocation

process. There was reference to the local knowledge of a grant manager or decision making panel (when available) to assist in this deliberation.

- 3.2 The EBs which did not distribute funding but which responded to this question stated that they accepted that the onus was upon them, at funding allocation stage, to justify the value of the facilities which would be made available in return for the admission fee or hire charge levied.

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

- 4.1 The majority of respondents did not consider that any change was required to our current guidance on admission fees. These respondents described our current guidance as “sensible”, “appropriate” and “working well”.

- 4.2 A minority considered that further clarification would be appropriate, either if a new approach was taken or to include a table (renewed annually) of appropriate admission fees/hire charges for public amenities.

- 4.3 One respondent was unaware that we had guidance on admission fees.

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.

- 5.1 Approximately two-thirds of those who responded considered that our current guidance works well and the current basis should be retained. One respondent commented that a move to opening hours would be unhelpful for amenities which were opened upon request when required (for example, by a visiting group) rather than open for specified hours each week.

- 5.2 Approximately one third of those who responded considered that a change might be helpful. One respondent commented that this might simplify matters when taking account of block bookings or fixed bookings at popular amenities.

6. 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.

- 6.1 All but one of the respondents considered that our current guidance of 104 days was sensible and helpful. Some funders remarked that this restriction was, if anything, too generous and that they looked to see greater access where possible.

- 6.2 A few respondents stated that it would be helpful for our guidance to make it clear that when amenity was open for a day we expected that amenity to be open for at least seven hours.

6.3 The only respondent who considered that our guidance of 104 days per year for public amenities was not reasonable gave an example of a bat roost which was not accessible to the public and therefore ineligible for funding. (As this response was anonymous we have not been able to follow up with the EB to understand why this potential project was not undertaken under an alternative Object.)

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 The overwhelming majority of those who responded reported that no difficulties had been caused by the 104 day access requirement. Some of the funders who responded commented that the requirement had encouraged project applicants to be more creative in making their amenity accessible to the public.

7.2 The minority who reported difficulties commented upon issues such as the need for proportional registration when the amenity was for the exclusive use of a specific user group. One funder mentioned certain seasonable amenities which had not been eligible (seasonal amenities are covered in more depth in questions 9 to 10 below). Another EB commented upon the fragility of some amenities which could not bear anything other than controlled access.

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.

8.1 The majority of those who responded did not support the removal of the 104 day annual access requirement for projects under Object D in favour of a like for like public access requirement. Such a move was considered to be likely to cause more administrative work for the funders and could potentially decrease the amount of time an amenity was available to the public.

8.2 Some respondents were in favour of a move but did not explain why. One respondent was not against a move to a like-for-like access requirement but considered there should still be a minimum annual access requirement (fewer than 104 days each year) for projects under Object D. One respondent was concerned that if our guidance was changed then it was possible that the funders would apply their own minimum access requirements and that would make it more confusing to apply for funding under the LCF.

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?

9.1 Most of those who responded did not consider that there was a case for approving seasonal projects which did not meet the 104 days access requirement. Some EBs commented that it was usually possible for seasonal projects to be open for 104 days each year and that agreeing a reduction in access could set a precedent for other

projects. One EB commented that an amenity which could not be available for 104 days each year was not in the spirit of the LCF.

- 9.2 A small minority of those who responded considered that there was a case for allowing a reduction in the access requirement for some seasonal projects on a case by case basis, for example those where there was a clear need for seasonal opening (such as an unheated open air swimming pool). It was acknowledged that a case by case basis could be difficult to administer fairly.
- 9.3 One EB suggested that if the amenity was unable to be available to the public for 104 days each year then it should be able to have a proportional registration.

10. If you answered yes to question nine, what do you think should be:

- **The minimum number of days per year at the amenity is accessible?**

- 10.1 In decreasing order, the number of days suggested in response to this question ranged from 180 days each year, through 150, 104, 90 and 60 days each year, to five days per week in each week that the amenity was available, or two days per week in each week in which the amenity was available.
- 10.2 One respondent suggested that an amenity would be sufficiently accessible to the public if it was open one day each month, rising to two days in any month in which the amenity was considered to be “in season”.

- **The minimum number of hours per days the amenity is accessible?**

- 10.3 Most of the respondents to this question considered that an amenity should be accessible for at least five hours a day. Several respondents suggested a minimum requirement of six, seven or eight hours each day.

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.

- 11.1 The majority of those who responded considered our guidance on like for like opening hours of projects under Object E to be acceptable, suitably flexible and “working well”. These respondents did not have any changes to suggest.
- 11.2 One EB considered that the like-for-like basis of access could be used to justify a very limited level of public access. This respondent suggested a change in order to encourage more public access to Object E buildings and structures.
- 11.3 One EB suggested that the like-for like access requirement could operate too harshly if a comparison was made between a building or structure operated by employees and another building or structure run by volunteers.

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.

12.1 Two EBs were in favour of a 104 day requirement to bring Object E projects in line with Object D. These two pointed to maximisation of public access in support of their opinion.

12.2 The remainder of those who responded were against a change to the current system. These EBs commented on the difficulties they could experience with some more fragile buildings or unusual structures.

13. 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.**

13.1 The majority of those who responded preferred the second option of the three options above. The reasons given for preferring this option included that it would be simple to understand, that it was considered to strike the right balance between being flexible, and ensuring an acceptable level of the population would have access to the amenity and that it would be much easier to evidence and monitor than the third option.

13.2 All of the remaining respondents preferred the third option. The reasons given for this preference included that it gave funders the most flexibility when considering funding applications. One respondent selecting this option stated that the reason for doing so was that amenities should be open to all.

13.3 No respondents stated that the first option – of an amenity being eligible only if it was for the benefit of all and not restricted to a specific user group - was their preferred option. This option sets out the current position.

14. Do you agree with our current approach to proportional registration? If you answered 'no', why do you disagree?

14.1 Almost of those who expressed a preference stated that they agreed with our current approach to proportional registration. One respondent disagreed with our current approach on the basis that it was not being consistently applied and required simplification.

14.2 However, despite the apparent consensus, it became clear during the course of the focus group that some EBs were not applying our guidance in this area correctly. It is therefore unclear whether the respondents who agree with our current approach are agreeing with the correct understanding of our current approach. We have addressed this point in the Issues section of the main body of this report.

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.

15.1 Unsurprisingly, given the responses to question 14 above, we received few responses giving examples of difficulties which had been experienced with proportional registration. Funders who responded suggested that proportional registrations were the exception rather than the norm (some avoided them if possible) and some difficulties could be caused in calculating the appropriate percentage and in post completion monitoring. Some of those who responded requested further clarity in the guidance.

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.

16.1 Respondents were evenly divided in their response to this question with approximately half considering that an access statement should be required for all project registrations. Those who took this view suggested that it was the simplest approach.

16.2 Those who did not consider that an access statement should be sought for all projects under Objects D and E objected to a blanket approach. These respondents considered that access statements should be required for some amenities, buildings and structures but that it should not be a requirement for amenities such as parks and nature reserves.

16.3 Some of the funders who responded stated that they already requested access statements from all project applicants but that it would be too much additional administration to upload those statements on the ENTRUST project registration form.

17. Under what circumstances would an access statement help to evidence the compliance of projects when considering restricted age or user groups?

17.1 Those who responded to this question considered that an access statement was helpful when considering applications which appeared complex or where there were doubts about eligibility or the intent of the project applicant. Examples given included projects at schools where a proportional registration might be required, and an amenity which was used by a single user for a significant proportion of the time.

17.2 One respondent suggested that an access statement should be sought by ENTRUST when the project registration with ENTRUST was made directly by the project applicant or the project funder.

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.

18.1 The majority of respondents considered that requesting an access statement with the details in paragraph 9.2 would be useful and sufficient to ensure an amenity was open to the public.

18.2 Some funders responded that they already sought the details in paragraph 9.2 and usually sought additional information of their project applicants (such as a timetable of use or lettings policy) to ensure public access.

18.3 One respondent suggested this information should only be sought where there were doubts over eligibility.

18.4 One respondent suggested that an access statement should also include a statement on how the community will benefit from the project going ahead.