



## **Compliance and Enforcement update**

**April 2020 to March 2021**

**April 2021**

## Introduction

ENTRUST is required under the Landfill Tax Regulations 1996 (Regulations), Regulation 34 (1) (i) to satisfy ourselves, by reference to records, or other documents, or information held by Environmental Bodies (EBs), that the qualifying contributions received by an EB have been spent by it only in the course, or furtherance of the Regulations and the EB's approved objects. Fundamental to our approach in delivering this statutory requirement is inspecting and visiting EBs to review their governance arrangements, operating systems and project spend to ensure that they comply with best practice and the Regulations.

At the conclusion of each compliance review we issue a report which details our findings and where appropriate, makes recommendations for corrective actions. A summary of these findings for April 2020 to March 2021 is detailed below.

Furthermore, breaches of the Regulations by EBs are managed in accordance with our [Enforcement Framework](#), which we have agreed with HMRC and which complies with best regulatory practice, for example, repeated breaches of the Regulations are escalated to a higher stage of the intervention and enforcement framework.

Please contact our Helpline on 01926 488 300 or by emailing [helpline@entrust.org.uk](mailto:helpline@entrust.org.uk) for more information on our compliance or enforcement processes or see [our website](#).

## Compliance

### Failure to comply with the Landfill Tax Regulations 1996 (Regulations)

Non-compliant recommendations are raised when an EB has failed to correctly apply the Regulations. EBs must address issues of non-compliance and where appropriate, introduce procedural changes to prevent further breaches. Failure to address non-compliance will result in enforcement actions being instigated against the EB.

During 2020-2021, 193 draft Compliance reports were issued. A total of 213 recommendations were raised of which 59 (28%) were made to correct issues of non-compliance.

The most common non-compliant issues identified included:

- Statutory reporting - Form 4;
- Failure to maintain records of expenditure;
- Project expenditure outside of the prescribed period;
- CTP compliance;
- Project non-compliance;
- Failure to maintain records of LCF income.

Non-compliant recommendations are categorised and ranked in order of frequency as detailed in the following table:

| Non-compliant issue                                  | Number of recommendations |           |           |           |           | % of non-compliant recommendations |
|--|---------------------------|-----------|-----------|-----------|-----------|------------------------------------|
|  | Q1                        | Q2        | Q3        | Q4        | Total     |                                    |
| Statutory reporting - Form 4                         | 1                         | 6         | 6         | 3         | <b>16</b> | 27%                                |
| Failure to maintain records of LCF expenditure       | 6                         | 1         | 3         | 3         | <b>13</b> | 22%                                |
| Project expenditure outside of the prescribed period | 1                         | 3         | 3         | 1         | <b>8</b>  | 14%                                |
| CTP compliance                                       | 0                         | 0         | 4         | 1         | <b>5</b>  | 8%                                 |
| Project non-compliance                               | 2                         | 0         | 0         | 1         | <b>3</b>  | 5%                                 |
| Failure to maintain records of LCF income            | 0                         | 2         | 0         | 1         | <b>3</b>  | 5%                                 |
| Non-compliant use of LCF funds                       | 2                         | 0         | 0         | 0         | <b>2</b>  | 3%                                 |
| Failure to maintain records of LCF income derived    | 1                         | 1         | 0         | 0         | <b>2</b>  | 3%                                 |
| Failure to meet criteria for enrolment               | 1                         | 0         | 1         | 0         | <b>2</b>  | 3%                                 |
| Unapproved project expenditure                       | 0                         | 0         | 1         | 1         | <b>2</b>  | 3%                                 |
| Failure to maintain CTP records                      | 0                         | 0         | 1         | 0         | <b>1</b>  | 2%                                 |
| Statutory reporting - Form 7                         | 0                         | 0         | 1         | 0         | <b>1</b>  | 2%                                 |
| Other - Non compliant                                | 0                         | 1         | 0         | 0         | <b>1</b>  | 2%                                 |
| <b>Totals</b>  | <b>14</b>                 | <b>14</b> | <b>20</b> | <b>11</b> | <b>59</b> | <b>100%</b>                        |

## Guidance recommendations

Guidance recommendations are made when an EB has failed to follow ENTRUST guidance. These issues do not breach the Regulations but, as we expect EBs to fully comply with our guidance requirements, these issues are raised with EBs in our Compliance reports.

During 2020/2021, 154 (72% of all findings) guidance recommendations were raised. The most frequently identified guidance issue (38 (25%)) identified continues to be a failure by EBs to maintain accurate records with ENTRUST. It is important that EBs advise ENTRUST when changes are made to EB Main Contacts, Trustees or office addresses, to ensure continued communication with ENTRUST.

We are also finding an increasing number of EBs (34 (22%)) are reliant on single individuals with knowledge of the LCF obligations and for access to our reporting database, ENTRUST Online (EOL). Reliance on an individual is a risk to the EB that they may not be able to fulfil their statutory obligations should the individual be absent from, or leave the EB. EBs are advised to ensure they have procedures in place which ensure continuity of LCF knowledge.

A smaller number of recommendations (21 (14%)) have been made in relation to EBs' procedures, these covered a range of requirements including a procedure to ensure directors are not excluded individuals and maintaining Contributing Third Party records.

Guidance recommendations raised during 2020/2021 are categorised and ranked in order of frequency as detailed in the following table:

| Guidance issue                              | Number of recommendations |           |           |           |            | % of guidance recommendations |
|---|---------------------------|-----------|-----------|-----------|------------|-------------------------------|
|   | Q1                        | Q2        | Q3        | Q4        | Total      |                               |
| Failure to maintain EB records with ENTRUST | 7                         | 14        | 13        | 4         | <b>38</b>  | 25%                           |
| Business continuity                         | 5                         | 3         | 15        | 11        | <b>34</b>  | 22%                           |
| Guidance required - EB procedures           | 4                         | 7         | 6         | 4         | <b>21</b>  | 14%                           |
| Guidance required - Projects                | 1                         | 3         | 4         | 5         | <b>13</b>  | 8%                            |
| Project file documentation                  | 3                         | 4         | 3         | 0         | <b>10</b>  | 6%                            |
| Governance                                  | 1                         | 2         | 2         | 5         | <b>10</b>  | 6%                            |
| Unspent funds                               | 2                         | 1         | 4         | 2         | <b>9</b>   | 6%                            |
| Administration costs                        | 3                         | 1         | 1         | 0         | <b>5</b>   | 3%                            |
| Guidance required - Other                   | 0                         | 2         | 3         | 0         | <b>5</b>   | 3%                            |
| Project completion reporting - Form 9       | 0                         | 3         | 0         | 2         | <b>5</b>   | 3%                            |
| Asset monitoring                            | 0                         | 1         | 1         | 0         | <b>2</b>   | 1%                            |
| Project completion reporting - Form 4       | 0                         | 0         | 0         | 1         | <b>1</b>   | 1%                            |
| Guidance required - Funding Agreement       | 0                         | 0         | 0         | 1         | <b>1</b>   | 1%                            |
| Guidance required - Voluntary revocation    | 0                         | 0         | 0         | 0         | <b>0</b>   | 0%                            |
| <b>Totals</b>                               | <b>26</b>                 | <b>41</b> | <b>52</b> | <b>35</b> | <b>154</b> | <b>100%</b>                   |

## Analysis of Issues

### Non-compliant issues

The most frequently identified issues of non-compliance identified through Compliance reviews were concerned with errors and omissions on Statutory Annual returns which have been raised in 16 (27%) of Compliance reports. Annual Returns must be accurate because the data is the main source of information on EB activity and is key to the accurate and timely reporting by ENTRUST of the performance of the LCF to HMRC and other stakeholders. Guidance on statutory reporting can be found in [Section 3 of the EB Guidance Manual](#). For further details on the ENTRUST reporting forms and how to complete them, please refer to our '[How To](#)' guides on our website or contact ENTRUST directly.

Failure to maintain records of expenditure is also a frequently identified issue with 13 (22%) instances being identified. EBs are required to maintain adequate audit trails of all LCF activity and ensure that activity is accurately reported to ENTRUST via statutory returns as this information is used to report on the performance of the Fund to HMRC and could influence decisions on the future strategic direction of the Fund. Guidance on reporting and record keeping can be found in [Section 3 of the EB Guidance Manual](#).

Incurring expenditure outside of the prescribed period was raised in eight (14%) of Compliance reports. EBs must ensure that expenditure is only incurred between the approved start and end dates of projects and adequately monitor the delivery of projects so that extensions can be requested for any delays to works or the claiming of grants. Guidance on the correct management of projects can be found in [Section 5 of the EB Guidance Manual](#).

Failure to correctly source CTP funds has become an issue identified at reviews during the year, with five (8%) instances of EBs using their own funds to make CTP donations or raising funds without advising donors that their donations will be paid to a Landfill Operator (LO). Wherever possible, CTP donors should make their payments directly to the LO. CTP monies should only be passed via an EB in exceptional circumstances. Guidance on the correct sourcing and payment of CTP monies can be found in [Section 3 of the EB Guidance Manual](#).

A small number of instances have been identified where EBs have spent LCF monies on elements of projects which have not been covered by the project approval or have delivered projects without the prior approval of ENTRUST. EBs are reminded that LCF funds must only be spent on approved works which have the prior approval of ENTRUST and are itemised in the approved cost breakdown. Changes to the scope of works or to the value of LCF funds to be spent on a project should be notified to the ENTRUST Registrations team for approval and to ensure project details are updated prior to project completion. Guidance on running a project can be found in [Section 5 of the EB Guidance Manual](#).

A small number of cases of non-compliant use of LCF funds have been identified and EBs need to be aware that LCF funds must never be used by organisations as general or unrestricted funds and should only be spent on items covered by the Objects within the Regulations and where project approval has been given or on reasonable and relevant running costs of an EB. Guidance on compliant use of LCF funds can be found in [Section 4 of the EB Guidance Manual](#).

## Guidance issues

A wide range of guidance issues were raised with EBs during 2020/2021, which are intended to improve internal procedures and controls. There are a number of on-going obligations on EBs once they are enrolled and these obligations are detailed within [Section 3 of the EB Guidance Manual](#).

EBs are expected to demonstrate adequate governance arrangements are in operation within their organisations and a number of recommendations have been made to improve EB procedures. The most frequently raised governance issues included a failure to maintain accurate records with ENTRUST by not reporting changes to the organisations' management teams or main contacts and a lack of adequate business continuity procedures due to a reliance on single individuals for knowledge of the LCF and access to EOL.

Administration costs and unspent funds remain high priority issues for HMRC and are the subject of separate sector-wide information and reporting exercises outside of the compliance process which are set out in the [administration costs and unspent funds framework](#). However, we also continue to raise issues with individual EBs as and when they are identified through compliance reviews and this would include EBs which, although are operating within guidance levels, may still be using LCF funds inappropriately, for example for unrelated administration costs.

We would recommend that EBs ensure they are familiar with the [EB Guidance](#) published on the ENTRUST website and refer to the guidance as part of their day-to-day LCF operations. We have recently made some clarifications to our guidance which can be found [here](#).

## ENTRUST's recommended corrective actions

ENTRUST's recommended corrective actions to the most frequently raised Compliance findings are detailed below for EBs to consider:

| Recommendation type  | ENTRUST recommended action   |
|--|--|
| Non-compliant expenditure – spend outside of prescribed period (Non-compliant) | <ul style="list-style-type: none"> <li>• EBs reminded to monitor the completion of projects and request extensions to projects approaching their completion date</li> <li>• EBs reminded to obtain project approval before spending LCF monies</li> <li>• EBs to ensure LCF monies are only spent on the areas detailed in the project cost breakdown approved at registration of a project</li> </ul>                         |
| Form 4 – inaccurate, non-reconciled or late (Non-compliant)                    | <ul style="list-style-type: none"> <li>• EBs must review their financial records and re-submit an updated and accurate Form 4 if required</li> <li>• EBs must provide start and end dates for projects</li> <li>• EBs reminded they can make adjustments and corrections to their own Form 4 on EOL</li> <li>• Deadline for submitting the annual return should be recorded on EB management team calendars/agendas</li> </ul> |
| Failure to maintain records of expenditure (Non-compliant)                     | <ul style="list-style-type: none"> <li>• EBs should retain documentary evidence or financial systems to evidence all financial transactions and expenditure of LCF monies</li> <li>• EBs must be able to provide documentary evidence that LCF balances are held securely and are available on an 'instant access' basis, i.e. not committed to long-term investments or savings</li> </ul>                                    |
| Governance - lack of checks on excluded individuals (Guidance)                 | <ul style="list-style-type: none"> <li>• EBs' governance procedures should include a declaration by new appointees that they are not an excluded individual</li> <li>• EBs' recruitment processes to include a check for excluded individuals</li> </ul>   |
| Director/Main Contact updates (Guidance)                                       | <ul style="list-style-type: none"> <li>• EBs' governance procedures should note requirement to notify ENTRUST of retiring Trustees and new appointments at the same time as Companies House and/or Charities Commission are notified (where applicable)</li> <li>• Main Contacts to carry out regular review of EB and personal data held on EOL</li> </ul>  |

## Enforcement

EBs which breach the Regulations are issued with an enforcement letter if the breach has not already been addressed through the Compliance process. The letters are issued as per our [Enforcement framework](#) with repeated breaches escalated to a higher stage of the enforcement process. For the first breach an EB will usually receive an Advice and Guidance letter; subsequent breaches of any type in a rolling 12-month period are addressed by higher stages of the Framework. The letter informs the EB of the breach and requires the EB to take steps to prevent the breach occurring again.

The table below provides the number of letters addressing regulatory breaches sent during April 2020 to March 2021. If an EB has had multiple breaches in a month then they receive one letter covering all breaches; to minimise any additional administrative burden. In the table we have also included some actions that EBs should take to avoid these issues arising. For more detailed information as to the obligations of EBs please see our [Guidance Manual](#).

| Regulatory breach   | Enforcement stage          | No. of letters |          |          |          |           | Action EBs should take  |
|---|----------------------------|----------------|----------|----------|----------|-----------|---|
|   |                            | Q1             | Q2       | Q3       | Q4       | Total     |   |
| Late Statutory reporting – Form 3 (notification of contribution from Landfill Operator)             | Advice and Guidance letter | 1              | 1        |          | 1        | 3         | EBs should monitor bank accounts to ensure that they are aware of when money has been received from a LO  |
|   | Warning letter             | 2              |          |          |          | 2         |   |
|   | Enforcement letter         |                |          |          |          |           |   |
| Late Statutory reporting – Form 7 (notification of transfer of monies between Environmental Bodies) | Advice and Guidance letter | 3              |          | 4        | 1        | 8         | EBs should ensure they have a process established to report all transfers in the appropriate timeframe. This must include identifying if an organisation they are funding is an EB or not |
|   | Warning letter             |                |          |          | 1        | 1         |   |
|   | Enforcement letter         |                |          |          |          |           |   |
| Late levy payment   | Advice and Guidance letter |                |          |          |          |           | EBs should have a process established to pay the levy in the appropriate timeframe on receipt of invoice  |
|   | Warning letter             |                |          |          |          |           |   |
|   | Enforcement letter         |                |          |          |          |           |   |
| Project expenditure outside of the prescribed period  | Advice and Guidance letter | 1              | 2        | 1        | 3        | 7         | EBs should monitor the completion of projects and request extensions to projects approaching their completion date  |
|   | Warning letter             |                |          |          |          |           |   |
|   | Enforcement letter         | 3              |          | 1        |          | 4         |   |
| <b>Total</b>  | <b>All letters</b>         | <b>10</b>      | <b>3</b> | <b>6</b> | <b>6</b> | <b>25</b> |   |

## Enforcement cases

If we believe that there has been a potential serious breach of the Regulations, we will open an enforcement case. Cases will either be closed where the issue has been resolved to our satisfaction or the case will be considered by the ENTRUST Board for referral to HMRC for consideration of forcible revocation of the EB and/or claw back of the tax credit claimed by the Landfill Operator. We address enforcement cases using letters, meetings and other tools available to us, in order to ensure a satisfactory outcome. At all times our focus is to ensure Landfill Communities Fund (LCF) monies are spent compliantly and fulfil our obligation to provide independent assurance to HMRC of that spend.

During April 2020 to March 2021 there were 12 open cases; the reasons for these cases being opened are explained in the table below.

In the table we have also included some actions that EBs should take to avoid these issues arising. For more detailed information as to the obligations of EBs please see our [Guidance Manual](#).

| Period    | Regulatory breaches  | Action EBs should take   |
|-----------|--|--|
| 2020/2021 | Non-compliant spend of LCF funds including spending on non-LCF activity                          | EBs must ensure LCF monies are ring-fenced and only spent on LCF objects and approved projects               |
|           | EB not able to provide proof of LCF monies held  | EBs must be able to provide proof of LCF monies held at all times: bank statements or online banking records |
|           | Project expenditure not being supported by invoices or other appropriate evidence of expenditure | EBs must retain documentary evidence to evidence all LCF financial transactions                              |
|           | EBs not responding to ENTRUST regulatory requests for information                                | EBs are required to respond to our requests for information within the timescales provided                   |

## Non return of Statutory Annual Return (Form 4)

At the end of March 2021 there remained [10 EBs frozen](#) for not returning their Statutory Annual Return (Form 4) for 2019/2020.