

# The Landfill Communities Fund Guidance Manual



December 2014

# **The Environmental Bodies (EB) Guidance Manual**

## **Index**

This manual is divided into the following sections:

- A. [Quick Start Guide to the Landfill Communities Fund \(LCF\)](#)
- B. [Enrolling as an EB – How to enrol as an Environmental Body and the ENTRUST enrolment procedure](#)
- C. [Project approval and spending LCF monies](#)
- D. [Guidance on Object D \(public parks and other public amenities\)](#)
- E. [Guidance on Object DA \(conservation of biodiversity\)](#)
- F. [Guidance on Object E \(buildings which are for religious worship or of architectural or historic interest\)](#)
- G. [The ENTRUST review panel](#)
- H. [The rules governing who can benefit from the LCF and the requirements for a Contributing Third Party](#)
- I. [Accreditation and the Small Grants Scheme](#)

## **How to contact ENTRUST**

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If you have any queries in respect of this manual, please contact the Regulations Department at ENTRUST on [regulations@entrust.org.uk](mailto:regulations@entrust.org.uk) or **01926 488 323/4**.

# **A - Quick Start Guide to the Landfill Communities Fund**

## **An overview of the Landfill Communities Fund**

<b>Contents</b>	<b>Page</b>
1. <a href="#"><u>Background to the Landfill Communities Fund (LCF)</u></a>	4
2. <a href="#"><u>Receiving Money through the LCF</u></a>	4
2.1 <a href="#"><u>Directly from a Landfill Operator (LO)</u></a>	4
2.2 <a href="#"><u>From a distributive Environmental Body</u></a>	4
3. <a href="#"><u>Do I Need to Enrol as an Environmental Body?</u></a>	5
4. <a href="#"><u>Applying to Enrol as an Environmental Body</u></a>	5
5. <a href="#"><u>Projects that can be undertaken with LCF Monies</u></a>	5
5.1 <a href="#"><u>Object A: Remediation of Land</u></a>	5
5.2 <a href="#"><u>Object B: Reduction of Pollution</u></a>	6
5.4 <a href="#"><u>Object D: Public Amenities</u></a>	6
5.5 <a href="#"><u>Object DA: Conservation of Biodiversity</u></a>	7
5.6 <a href="#"><u>Object E: Restoration of Buildings of Religious or Historical Interest</u></a>	7
5.7 <a href="#"><u>Object F: Administrative Services to another EB</u></a>	7
6. <a href="#"><u>Project Approval Process</u></a>	7
7. <a href="#"><u>Project/Enrolment Review Panel</u></a>	8
8. <a href="#"><u>Reporting to ENTRUST</u></a>	8
9. <a href="#"><u>Contributing Third Parties</u></a>	10
10. <a href="#"><u>Compliance and how ENTRUST Manages Breaches in the Regulations</u></a>	11
11. <a href="#"><u>Revocation and Clawback</u></a>	12
12. <a href="#"><u>ENTRUST Enforcement Sanctions</u></a>	13
13. <a href="#"><u>Budget 2011 Challenge – Reducing the level of unspent LCF funds</u></a>	13
14. <a href="#"><u>Further Information</u></a>	16

## **1. Background to the Landfill Communities Fund (“LCF”)**

- 1.1** The LCF (formerly known as the Landfill Tax Credit Scheme) is an innovative tax credit scheme that allows Landfill Operators (“LO”) to use some of their landfill tax to directly fund not-for-profit organisations. The LCF allows LOs to contribute a portion of the monies paid as Landfill Tax directly to projects that improve the lives of communities living in the vicinity of the landfill sites.
- 1.2** The LCF is regulated by ENTRUST and managed by Her Majesty’s Revenue & Customs (“HMRC”). It is ENTRUST’s role to ensure that the LCF monies are received and spent by organisations on projects which satisfy the objects set out in The Landfill Tax Regulations 1996 (the “Regulations”).
- 1.3** ENTRUST regulates the LCF in a number of ways including reviewing and enrolling each environmental body before they receive LCF monies, evaluating each project proposal before expenditure starts and undertaking visits to ensure organisations are acting compliantly within the Regulations.
- 1.4** ENTRUST provides this Guidance Manual to assist organisations and individuals to comply with the Regulations.

## **2. Receiving money through the LCF**

There are two methods for an organisation to receive funding through the LCF: directly from a LO, or from a distributive Environmental Body.

### **2.1 Directly from a Landfill Operator (LO)**

- 2.1.1** You might be able to find LOs who will give landfill tax money directly to your organisation. However, the funding available directly from LOs varies across the country. While many LOs take part in the LCF, not all do. Not all LOs will be potential sources of funding for your project. The only way to find out whether funding will be provided is for you to contact them directly.
- 2.1.2** Lists of applicable landfill sites can be found on the HMRC website ([www.hmrc.gov.uk](http://www.hmrc.gov.uk)) or through the relevant registering authority, e.g. Environment Agency.

### **2.2 From a distributive Environmental Body distributive EB**

- 2.2.1** The most common way for an organisation to receive funding is for it to approach a distributive EB. These bodies distribute funds on behalf of a LO or for more than one LO. Distributive EBs help other organisations to access the LCF monies.
- 2.2.2** Most distributive EBs will require your organisation to meet certain conditions about the way you will spend the LCF money they may give you.
- 2.2.3** Some distributive EBs provides funds only one geographical area or only one type of project. Each distributive EB will have its own policies and application form. There is a list of all the distributive EBs, their funding policies and contact details on the [finding funding](#) section of the ENTRUST website.
- 2.2.4** A distributive EB will want to make sure your project and proposed LCF expenditure complies with the Regulations and ENTRUST guidelines. However, the distributive EB’s criteria for accepting applications may be more stringent than the Regulations because there is a high level of demand for the monies or because the distributive EB wishes to focus on a specific area of the LCF.

### **3. Do I need to enroll as an Environmental Body (“EB”)?**

**3.1** It will depend on who you are approaching for funding.

- If you are approaching a LO directly, you will need to enrol your organisation as an EB with ENTRUST.
- If you are approaching a distributive EB, you may need to enrol with ENTRUST. It will depend on who you are approaching for funding and the value of the project. Enrolling as an EB will allow you to register your own project under your organisation’s enrolment.

**3.2** Due to the enrolment charge and the administrative requirements as outlined below, we recommend you confirm with your proposed funder if you are required to enrol before undergoing the process of becoming an EB yourself.

### **4. Applying to enrol as an Environmental Body (EB)**

**4.1** In order to enrol as an EB, your organisation must comply with the following criteria:

- It must be a not-for-profit organisation;
- It must not be controlled either by a Landfill Operator or a Local Authority (please note that a Parish Council is deemed to be a Local Authority); and
- It must share an aim/objective with the aims/objects of the LCF (as outlined in section 5 - Projects that can be undertaken with LCF monies).

**4.2** To enrol as an EB, it is necessary to complete a Form 1: Applying to enrol as an Environmental Body. In support of the application, ENTRUST require the most up to date version of your governing document, a copy of your accounts and an application fee of £100 made payable to ENTRUST. This application fee covers the cost of enrolling your organisation into the LCF. Please note that this fee is non-refundable

**4.3** For further details on how to enrol as an ‘Environmental Body’ and what is required, please consult the separate ENTRUST guidance note: *B - Enrolling as an EB* (which incorporates *Guidance Note 3.2 - Information required for enrolment as an Environmental Body*).

### **5. Projects that can be undertaken with LCF monies**

#### **5.1 OBJECT A: Remediation of Land**

**5.1.1** The remediation or restoration of land, which cannot now be used because of a ceased activity.

**5.1.2** The work must be on a single site where there was once something that took place that now stops the land being used. The site may have been contaminated in some way. The principle is that the person who polluted the land must not own or operate from the land. LCF monies must not be used to fulfil any statutory orders that the current landowner is under from the Environment Agency, or similar organisation.

**5.1.3** When submitting an application, an organisation will be asked to confirm the following:

- The ceased activity;
- Who carried it out;
- When it stopped;
- How the person who polluted the land will not benefit (financially or through obligations being met); and

- How the ceased activity caused or is causing pollution.

**5.1.4** For further details regarding Object A projects, please contact the ENTRUST Project Registration Department.

## **5.2 OBJECT B: Reduction of Pollution**

**5.2.1** The reduction, prevention or mitigation of effects of pollution that has resulted, or may result, from an activity which has now ceased.

**5.2.2** An organisation must be able to demonstrate that the pollution identified by the project is directly linked to the activity which is intended to help mitigate, prevent or reduce pollution (as opposed to Object A that is concentrating on reclaiming or remediating the land, Object B focuses on the pollution itself).

**5.2.3** When submitting an application, you will be asked to confirm the following:

- The ceased activity;
- Who carried it out;
- When it stopped;
- How the person who polluted the land will not benefit (financially or through obligations being met); and
- How the ceased activity caused or is causing pollution.

**5.2.4** For further details regarding Object B projects, please contact the ENTRUST Project Registration department.

## **5.3 OBJECT D: Public parks and amenities**

**5.3.1** The primary intent of this object is to facilitate the protection of the environment by the provision, maintenance or improvement of a public park or other public amenity. The site where the work takes place must be open and accessible to the general public.

**5.3.2** You will therefore be asked to confirm the following points:

- How the park or amenity that you are providing, maintaining or improving makes the environment more pleasant or comfortable and/or improves the aesthetic qualities of an area for the general public;
- That the park or amenity directly benefits the general public and they have open access to, or use of, it;
- It is somewhere where the general public can go, join or use without any unreasonable limit or restrictions of use (or with “reasonable” access costs) being in place;
- The costs of the project directly relate to the actual improvement, maintenance or provision of the identified park or amenity, rather than its management or its administration;
- How the park or amenity is for the protection of the environment;
- The project site is in the vicinity of a landfill site;
- The works are not a requirement of a relevant condition placed on the Landfill Operator or a Contributing Third Party;
- The park or amenity must be set up on a not-for-profit basis and any income made as a result of the LCF funded works must be handled appropriately as LCF derived income; and
- Each project is a single park, amenity or defined area.

**5.3.3** For further details on public park or amenity projects which can be approved under the LCF, please consult the ENTRUST Guidance Note: *D - Object D (Public Parks and Amenities) Guidance*.

## **5.4 OBJECT DA: Conservation of Biodiversity**

**5.4.1** The primary intent of this objective must be for the conservation of identified species or habitats. It is best practice that the species or habitats in question are detailed in a Biodiversity Action Plan (BAP) or a Local Biodiversity Action Plan (LBAP). If not, ENTRUST will wish to ensure that the proposal will protect a habitat or species that is otherwise deemed significant. The proposed costs of the work must be related to the identified species or habitats and the actual place where it naturally occurs.

**5.4.2** You will be asked to confirm the following:

- Which species or habitats are going to be conserved directly by the project going ahead;
- The costs of the works solely relate to the conservation of the species or habitats; and
- The costs of the works you propose relate to the place where the species or habitat naturally occurs.

**5.4.3** For further details of projects that can be approved under this element of the LCF, please consult the ENTRUST Guidance Note: *E - Object DA (Conservation of Biodiversity) Guidance*.

## **5.5 OBJECT E: Restoration of Religious Buildings or Buildings of Architectural or Historical Interest**

**5.5.1** The primary intent of this object is to maintain, repair or restore a place of worship; or a building or structure that must have listed status (or equivalent), where the general public can access the building. This objective does not allow works to private residences.

**5.5.2** You will be asked to confirm the following:

- The building or structure is open and accessible to the general public;
- The works you propose are to repair, restore or maintain the place of worship or structure of architectural interest (i.e. no new works); and
- All the costs of the works relate to the actual place of worship or structure of architectural interest.

**5.5.3** For further details on the requirements of an Object E project, please consult the ENTRUST Guidance Note: *F - Object E (Restoration of Religious Buildings or Buildings of Architectural or Historical Interest) Guidance*.

## **5.6 OBJECT F: Administrative Services to another EB**

**5.6.1** The provision of financial, administrative or other similar services by one organisation enrolled with ENTRUST to another.

**5.6.2** This objective allows an enrolled EB to provide certain services to other EBs. These services may include core administrative or similar services to assist in the running of the other EB.

**5.6.3** You will be asked to confirm the following:

- That your EB is going to provide a service to another EB, or you are going to pay a contractor to provide a service to another EB; and
- You are not simply transferring money to another EB to cover its administration costs.

**5.6.4** For further details regarding Object F projects, please contact the ENTRUST Registration Department.

## **6. Project approval process**

**6.1** The project approval process is set up by ENTRUST to allow the proposed LCF expenditure to be managed and controlled to ensure compliance with the Regulations. Following the 2007 Landfill Tax

(Amendment) Regulations, project approval is now a regulatory requirement and all works must be registered with ENTRUST before any LCF expenditure is incurred.

- 6.2 Project approval is obtained by completing the Form 2: Applying to Register a Project and the relevant object specific appendix for the LCF object relevant to your project. An enrolled EB is not limited in the number of projects that it can register. There is no fee for project approval.
- 6.3 Within ten working days of Form 2 submission you will receive a response from ENTRUST, either confirming the project has been approved or asking for further details to allow ENTRUST to ensure compliance with the Regulations. If there is a change to the original application after a project has been approved, or the project does not go ahead, ENTRUST must be informed.
- 6.4 For further details on the ENTRUST project approval process, asset management and project management requirements, please consult the Guidance Note *C - Project Approval and Spending LCF Monies*.
- 6.5 All project applicants must provide an estimated project completion date when the project is registered. If a project has not been completed by its estimated project completion date then an extension of time should be sought from ENTRUST. Once a project is complete, the EB holding project approval should fill in and submit Form 9: Project Completion Form to ENTRUST. For further details and guidance please consult Guidance Note *C – Project Approval and Spending LCF monies*.

## **7. Project/Enrolment Review panel**

- 7.1 If, upon review by ENTRUST, the project is considered not to be compliant with The Landfill Tax Regulations, ENTRUST will refuse the project. A refusal to give project approval will automatically be referred to the Review Panel. This panel meets every month to review any project or enrolment application which has been refused and the panel ensures that the correct decision has been made in accordance with the Regulations. The project applicant is invited to attend the review panel to make the case for project approval.
- 7.2 For further details on the workings of the Review Panel, please consult the ENTRUST Guidance Note *G- Review Panel Terms of Reference*.

## **8. Reporting to ENTRUST**

- 8.1 In accordance with the Regulations, all enrolled EBs are required to submit statutory returns to ENTRUST. Regulation 33A provides as follows:

(1) An approved body shall –

...

(e) provide the following information to the regulatory body ... within seven days of the receipt by it of any qualifying contribution—

- (i) the amount of the contribution;
- (ii) the date it was received;
- (iii) the name and registration number of the person making the contribution;
- (iv) the name and address of any contributing third party in relation to the contribution notified to it by virtue of regulation 32(2B) above;
- (f) notify the regulatory body within seven days of any transfer to or by it of qualifying contributions or of income derived therefrom of—



- (i) the date of the transfer;
- (ii) the enrolment number of the approved body by which the transfer was made;
- (iii) the amount transferred;
- (iv) the name and registration number of the person who made the qualifying contribution;
- (v) the name and address of any contributing third party in relation to the contribution; and
- (vi) the approved objects to which the transferred funds are to be applied;

...

(h) submit to the regulatory body ... within 28 days of the end of the relevant period determined in accordance with paragraph (2) below details of—

- (i) qualifying contributions and any other income or profit whatsoever received by it,
- (ii) any expenditure made by it during the period, and
- (iii) any balances held by it at the end of the period;

## 8.2 The ENTRUST forms are as follows:

### **Form 1: Applying to Enrol as an Environmental Body.**

This form is completed when an organisation initially applies to enrol as an EB. This form is to be submitted with a £100 enrolment application fee made payable to 'ENTRUST', the current governing documents of the organisation and, if available, the most recent copy of accounts.

### **Form 2: Applying to Register a Project**

This form is to be completed to register LCF project expenditure with ENTRUST before the expenditure takes place. To the back of each of these forms, the relevant Form 2 Object Specific appendix must be affixed depending on the LCF object that applies to your project proposal.

### **Form 2X: Applying for an extension of time to complete a Project**

This form is for an EB holding project approval for a project to apply to ENTRUST for an extension of time in which to complete that project.

### **Form 3: Contributions from a Landfill Operator (LO)**

This **statutory** return is to be completed and submitted to ENTRUST by the receiving EB within seven days. Upon receipt of the form, ENTRUST will invoice you a proportion of the amount you receive from the LO in accordance with the Regulations.

### **Form 4: Statutory Annual Return**

**Every** enrolled EB must complete this **statutory** return within 28 days of the 31st March, **even if a zero balance is to be reported**. This outlines your organisation's LCF activities in the last year, on an income and expenditure basis. Please note that it is not necessary to change your organisation's financial year-end to correspond with these dates.

### **Form 7: Transfer of LCF monies between EBs**

This **statutory** form has to be completed by the transferring EB and submitted to ENTRUST within seven days of the transfer of monies taking place. The recipient is no longer required to

inform ENTRUST at the time of transfer, however the funds received will be recorded on the relevant Form 4: Annual Return.

**Form 9: Project completion form**

This form is for an EB holding project approval to notify ENTRUST that a LCF project is complete.

**Responsible Officer Update Form/Change of Director/Change of Main Contact Form**

An enrolled EB is required to inform ENTRUST of any changes to the people who sit on the organisation's management committee (or Board of Directors) or of the rules governing that committee (or Board). This notification should occur within seven days of the change taking place. This is required to allow ENTRUST to ensure each organisation is not controlled by a Local Authority, a LO or an individual who has been previously removed from the LCF.

While the responsible officer form is required to be completed for each change to the management committee, it should also be used to advise of changes to the main contact or any other individuals involved with LCF monies.

- 8.3** For further details on the ENTRUST reporting forms and how to complete them, please consult the Guidance Notes on the back of each of the forms or contact ENTRUST directly. Please note that failure to return a form within the statutory timeframe represents non-compliance with the Regulations.

**9. Contributing Third Parties**

- 9.1** The contributing LO does not receive tax relief for all of its contribution to the EB. For every £100 given to the scheme, the LO receives a £90 tax credit, i.e. each contribution made to the LCF costs the LO 10% of the amount given.
- 9.2** In some cases the LO will absorb this loss themselves, aware of the benefits that can be derived from participating in the LCF.
- 9.3** In other cases, the LO will require a third party to pay it the 10% required to make the transaction 'cost neutral'. (For the major contributors to the LCF, the 10% difference can be a significant amount of money.) The third party which pays the required amount to the LO is known as the Contributing Third Party.
- 9.4** If the LO, or the distributive EB providing the LCF monies on behalf of the LO, requires you to arrange a Contributing Third Party who can make payment of the required amount, you should bear in mind the following:
- The Contributing Third Party must be an entity which is entirely separate from the EB which receives the LCF funding;
  - The Contributing Third Party must have the intention of making the payment to the LO in order to secure the LCF qualifying contribution;
  - The Contributing Third Party payment should be made directly to the relevant LO to avoid any confusion between this payment and LCF monies held by the EB;
  - The Contributing Third Party must not receive a unique benefit from the project going ahead or from having made the Contributing Third Party payment;
  - The source of the funds for the Contributing Third Party payment to the LO cannot be LCF monies or derived from LCF monies.

- 9.5** For further details on the definition of unique benefit, who is considered acceptable as a Contributing Third Party and what is considered acceptable as a Contributing Third Party payment, please consult the ENTRUST Guidance Note H - *The Benefit Rules*.

## **10. Compliance and how ENTRUST manages breaches in the Regulations**

- 10.1** ENTRUST ensures that activities undertaken under the LCF comply with the governing Regulations through the following methods:
- 10.1.1** All organisations that apply to ENTRUST for enrolment are reviewed to ensure they meet the required criteria as set out in the Regulations.
- 10.1.2** ENTRUST assesses the work EBs wish to undertake by reviewing individual proposals at the project approval phase (as referred to above), prior to landfill monies being spent.
- 10.1.3** ENTRUST undertakes compliance reviews to verify the project expenditure and the controls in place at the organisation. Before a visit takes place you will be advised of the details that will be required at the visit and upon completion you will receive a report confirming the visit findings; and will be expected to address any findings.
- 10.1.4** Finally, ENTRUST will investigate allegations of breaches of the Regulations.
- 10.2** You must maintain clear records to demonstrate that projects have been carried out in line with their project approval, and that contributions have been spent in compliance with the Regulations. ENTRUST will examine these records during the compliance review. These records may be paper or electronic records but must be in a format so that they are accessible and legible when provided to ENTRUST.

Regulation 33A provides:

- (1) An approved body shall –

...

- (d) make and retain records of the following:

- (i) the name, address and registration number of each registered person making a qualifying contribution to the body;
- (ii) the name and address of any contributing third party in relation to a qualifying contribution received by the body;
- (iii) the amount and date of receipt of each qualifying contribution and the amount and date of receipt of any income derived therefrom;
- (iv) in the case of a transfer of the whole or part of any qualifying contribution or income derived therefrom to or from the body, the date of the transfer, the amount transferred, the name and enrolment number of the body from or, as the case may require, to which it was transferred, the name, address and registration number of the person who made the qualifying contribution and the name and address if any contributing third party in relation to the contribution;

(v) in respect of each qualifying contribution and any income derived therefrom, including any such amount transferred to the body by another approved body, the date of and all other details relating to its expenditure.

- 10.3** EBs are required to keep and maintain a clear audit trail to show a link between all qualifying contributions received and all expenditure from qualifying contributions. All records must clearly indicate which expenditure is funded by which LO contribution. This applies to all expenditure funded by LCF monies, including both project expenditure and the EB's legitimate running costs.
- 10.4** An EB must also record and report all income derived which it receives. The EB's own records of the income derived which it receives should be kept indefinitely.
- 10.4.1** Where a project generates income but the EB which registered the project is not entitled to receive any of that income derived itself, then the EB does not have to report the income derived by another party. However, it is the EB's responsibility to ensure that any income derived which is received by another party is only applied to an approved object. Therefore any EB which registers a project on behalf of another person or organisation must ensure that it has the necessary controls in place to comply with this requirement.
- 10.5** EBs are also required to keep and maintain a record of the name and address of any Contributing Third Party. In respect of each Contributing Third Party an EB must record the qualifying contribution which was secured by that Contributing Third party making payment.
- 10.6** Regulation 34 provides as following:
- (1) The regulatory body:-
- (i) shall satisfy itself, by reference to such records or other documents or information that it thinks fit, that all the qualifying contributions received by the body have been spent by it only in the course or furtherance of its approved objects.

Therefore, EBs will be required to produce their records for inspection by ENTRUST on request. Where information is held electronically, the EB must be able to convert the data into a satisfactory legible format on request.

## **11. Revocation and Clawback**

- 11.1** Where an EB no longer wishes to remain enrolled, it can request voluntary revocation by writing to the Compliance Manager. Once an EB requests revocation, the Compliance Team will make certain checks to ensure that the projects and assets remain in compliant use and continue to benefit communities.
- 11.2** Where a serious breach of Regulations occurs and an EB is found not to have met its obligations as an approved body, HMRC have the power to compulsorily revoke an EB.
- 11.3** Where HMRC are not satisfied that an EB's expenditure is compliant or when an EB breaches a condition HMRC have the power to recover the tax credit claimed by the LO against their qualifying contribution. Re-payment of credit is known as "clawback".
- 11.4** LOs can seek to reclaim their contributions from an EB, for example, if the EB failed to honour a contractual obligation that the contribution was spent on approved objects. It is common for the

funding agreement between a LO and an EB to provide that LCF monies will be repaid if the EB fails to comply with the Regulations.

**11.5** Where an EB transfers a contribution to another EB, the LO is still treated as the contributor. Therefore the LO is still liable to clawback if there is non-compliance, even if that non compliance is by the EB to whom the contribution has been transferred.

**11.6** HMRC have issued comprehensive notes to LOs with respect to clawback and the LCF. In particular HMRC advise LOs that:

*“The precautions you have taken to ensure that money is spent on approved objects will be an important factor in our decision on repayment of tax credits.”*

The HMRC guidance notes for LOs on the LCF are in Section 11 of the General Guide to Landfill tax found on [HMRC’s website](#)

**11.7** For other details on the LCF and the activities of ENTRUST, please either consult the [ENTRUST website](#), contact [ENTRUST](#) or find further information in the following guidance notes as outlined in this document.

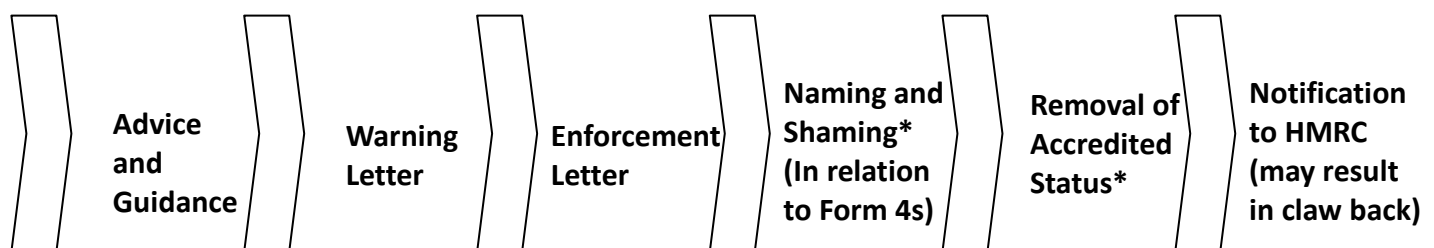
## **12. ENTRUST’s Enforcement Sanctions**

**12.1** The responsibility for managing breaches in Regulations is split between ENTRUST and HMRC.

**12.2** If an EB’s expenditure is found to be non-compliant, HMRC can seek clawback of the mis-spent LCF funds from the LO and/or compulsory revoke an EB.

**12.3** Where ENTRUST considers that a regulatory breach has occurred or there is a risk of a breach by an EB then a series of events will take place, under the general heading of the Enforcement Process. Whilst a diagrammatic representation of the enforcement process is shown below, the Enforcement Process may not be linear as the most appropriate sanction will be applied.

### **Diagrammatic Representation of the Enforcement Process:**



*\*Only if applicable.*

**12.4** ENTRUST has a policy of ‘Naming and Shaming’ EBs who do not return their Statutory Annual Returns (Form 4) in the first instance.

**12.5** The decision to impose sanctions against an EB is a serious step. A fair, transparent and proportionate enforcement framework is essential to the maintenance of stakeholder confidence in the regulation of the LCF. Each case identified by ENTRUST is unique and will be considered on its own facts and merits. However, there are a number of principles that apply in all circumstances and which ENTRUST will adopt:

- ENTRUST must demonstrate that the process applied in arriving at a decision, is fair, independent and objective;

- The person or organisation with legal responsibility must be made accountable for the breach; and
- In assessing the case it is important that the relevant part of the Regulations is applied.

### **13. Budget 2011 Challenge and outcome – reducing the level of unspent LCF funds**

- 13.1** In Budget 2011 the Chancellor of the Exchequer announced an increase, to 6.2%, in the percentage which LOs could contribute to the LCF in 2011/12 so that the value of the LCF could rise to a potential £78.1m, giving an increase in line with inflation. However, the Chancellor also announced that future decisions on the value of the LCF would take into account the success of EBs in reducing the level of unspent funds they hold.
- 13.2** The original Challenge issued to EBs was to reduce the level of unspent funds by 15% by 31 March 2012, with a corresponding increase in project expenditure. The reduction was 15% measured from the 2009/2010 baseline of £152m. In Budget 2012 the Chancellor announced that the Challenge would continue but with an increased target reduction (of 25%) and an extended deadline (31 March 2013). In Budget 2013 the Chancellor further extended the deadline to 31 March 2014 but maintained the target reduction at 25%. The percentage which LOs could contribute to the LCF was increased to 6.8%. In Budget 2014 the Chancellor reduced, to 5.1%, the percentage which LOs could contribute to the LCF. This reduction took into account the progress which EBs had made by that date to address the Government's Challenge.
- 13.3** In September 2014 HM Treasury published the outcome of the Challenge: EBs had achieved a reduction in unspent funds of 17% against the target of 25%. HM Treasury and HMRC set up a working group to discuss options for reform of the LCF in order to increase the flow of funding to communities. The outcomes from the working group are due to be incorporated into a public consultation on the options for reform of the LCF. This consultation is scheduled to be published after the Chancellor's Budget in spring 2015. Any further information and any updates will be published on our website.
- 13.4** While the discussion on reform continues, EBs should continue to work to reduce the level of unspent funds through the delivery of community and environmental projects. EBs will need to take a course of action which is appropriate for their own circumstances while complying with the Regulations and best practice. As the reduction in the level of unspent funds held by EBs should be matched by a corresponding increase in project expenditure, it is not appropriate for there to be an undue increase in the running costs of EBs. Running costs should be reasonable and relevant as set out in *Section C: Spending Landfill Communities Fund Monies*. Compliance visits will continue to include a focus on the level of unspent funds held by EBs and on EBs running costs.
- 13.5 Uncommitted funds**
- 13.5.1** Many EBs do not commit funds until they have received them. EBs who have regular funders could discuss with their funders ways in which they may be able to get an in principle commitment to a minimal level of funds that will be paid, and so the EBs can commit (and hence spend) this minimal level earlier. This may be affected by the levels of waste which are sent to landfill throughout the year.
- 13.5.2** EBs who have contributing LOs who make single contributions on 31 March each year could discuss with the LOs the possibility of phasing in smaller payments during the year. This may not be appropriate for the funding LO in all cases due to the accounting policies and principles under which each operates.
- 13.5.3** EBs' funding policies may be having an impact on the speed at which LCF funds are committed because of the types of projects that are being supported. This is an area of which the EBs should be aware and keep under review in order to meet the Challenge.

**13.5.4** EBs may wish to consider reducing the expected length of time projects will take to complete. Whilst it is a strength of the LCF that it can be a seed funder, this may not be appropriate if the timeframe for achieving funding from those other funders is excessive.

**13.5.5** If EBs do not have sufficient demand for their funds they could consider broadening the scope of the types of project which they fund. This could be done by:

- Increasing the maximum level of funding which they can offer to projects;
- Decreasing the minimum level of funding which they can offer to projects;
- Supporting the full range of LCF objects (if their governing documents would allow for this); and
- Increasing the funding area up to ten miles, as per ENTRUST guidance (if the EB's funding criteria is currently more restricted).

If any of the methods outlined above are implemented, EBs must ensure that both their governing documents and funding agreements with LOs allow for the action to be taken.

**13.5.6** EBs could also consider what practices they could adopt to streamline the time it takes to commit funds and this could include:

- More detailed project application forms to ensure that all relevant details are provided in advance;
- Monthly project approval board meetings;
- Delegation of responsibility for project approval of projects under a de minimus level to a nominated representative of the board; and
- Strategic planning of project approvals to fast track appropriate projects.

**13.5.7** If EBs have endowment funds then they should periodically review the need for these and the reasonableness of the timescales for planned expenditure.

## **13.6 Funds committed to projects which have not yet been approved**

**13.6.1** As set out in Section C: Registering Projects and Spending Landfill Communities Funds, no LCF funds can be spent on any LCF project until that project has first been approved by ENTRUST. Therefore we expect projects to be registered and approval obtained in a timely manner following any initial funding offer.

**13.6.2** In order to reduce the level of funds which are committed to projects that are not yet registered with ENTRUST, EBs could consider what processes can be put in place to speed up the time which it takes for the registration of projects where funds have been committed. If the practices outlined in paragraph 13.7.6 above are adopted, these may also allow for quicker project registration with ENTRUST.

**13.6.3** EBs may also wish to consider becoming Accredited as one of the benefits of Accreditation is that EBs are able to approve their own projects. This process is faster and simpler than submitting projects to ENTRUST for approval. If you would like further information on Accreditation, please contact one of our compliance managers, Mike Holland or Andrew Wood, on 01926 488 309/310.

## **13.7 Funds committed to projects approved by ENTRUST**

**13.7.1** EBS can reduce their level of unspent funds if they regularly chase project managers to submit invoices, so that they are able to make the staged payments at a faster rate.

**13.7.2** Some EBs make staged payments to projects once they have received a copy of the invoices to be paid. This process ensures that projects are completed and Value for Money is obtained. However, there may be instances where an EB works frequently with a project applicant and in such cases it may be possible for the EB to make payment of the full amount of LCF funding to the project applicant if the EB considers that the project applicant is reliable and can hold the funds securely.

**13.7.3** EBs can review the amount of time between funding being agreed for a project and the first payment being made. For example, if the project has not commenced after three months of funding being agreed, the EB may consider re-allocating the funding.

**13.7.4** EBs which regularly extend a funding offer because a project has not commenced may wish to review and restrict this practice.

### **13.8 Funds retained for the winding up of the EB**

**13.8.1** Many EBs retain funds in the event of cessation of the LCF to ensure that they are able to continue to monitor approved projects until those projects are completed. These costs are referred to as “wind up costs”. If EBs hold reserves for wind up costs, these should be reviewed periodically to ensure that an appropriate amount is being held for the likely commitments.

## **14. Further Information**

**Please consult the following guidance notes for further information:**

### **B - Enrolling as an Environmental Body (EB)**

The governing Regulations and detailed guidance on what is required to enrol as an EB.

### **C – Project Approval and Spending LCF Monies**

Guidance on the project approval process as a whole, with project management requirements and asset management guidance.

### **D - Object D Guidance**

How to ensure your Object D: Public Amenities project is compliant.

### **E - Object DA Guidance**

How to ensure your Object DA: Conservation of Biodiversity project is compliant.

### **F - Object E Guidance**

How to ensure your Object E: Restoration of Religious Buildings and Buildings of Architectural Interest project is compliant.

### **G - Review Panel – Terms of Reference**

The Terms of Reference covering the Review Panel.

### **H - The Benefit Rules**

Guidance on the definition of ‘benefit’, and further details about Contributing Third Party payments.

### **I - Accreditation and Small Grants Scheme**

The EB Accreditation process.

## **Useful links and contacts connected to the LCF**

### **The Landfill Tax Regulations (1996)**

- Available from Bookshops or <http://www.legislation.gov.uk/> (please note that the version on the legislation website is the version as originally enacted in 1996 and the updates and changes since 1996 will not be shown as these Regulations are not currently updated on this website)
- A copy of the Regulations (updated each year) is available on the ENTRUST website

### **Landfill Operators registered for tax purposes**



- HMRC website: [www.hmrc.gov.uk](http://www.hmrc.gov.uk)
- Tel: 0845 010 9000

**Landfill Operators in your area**

- Environment Agency (England and Wales) [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)
- Scottish Environmental Protection Agency (Scotland) [www.sepa.gov.uk](http://www.sepa.gov.uk)
- Environment and Heritage Service (N. Ireland) [www.ehnsi.gov.uk](http://www.ehnsi.gov.uk)

**Directory of LCF Funders (distributive Environmental Bodies)**

- Please check the ENTRUST [website](#) or contact the ENTRUST Registrations team on 01926 488 326 / 327 / 328

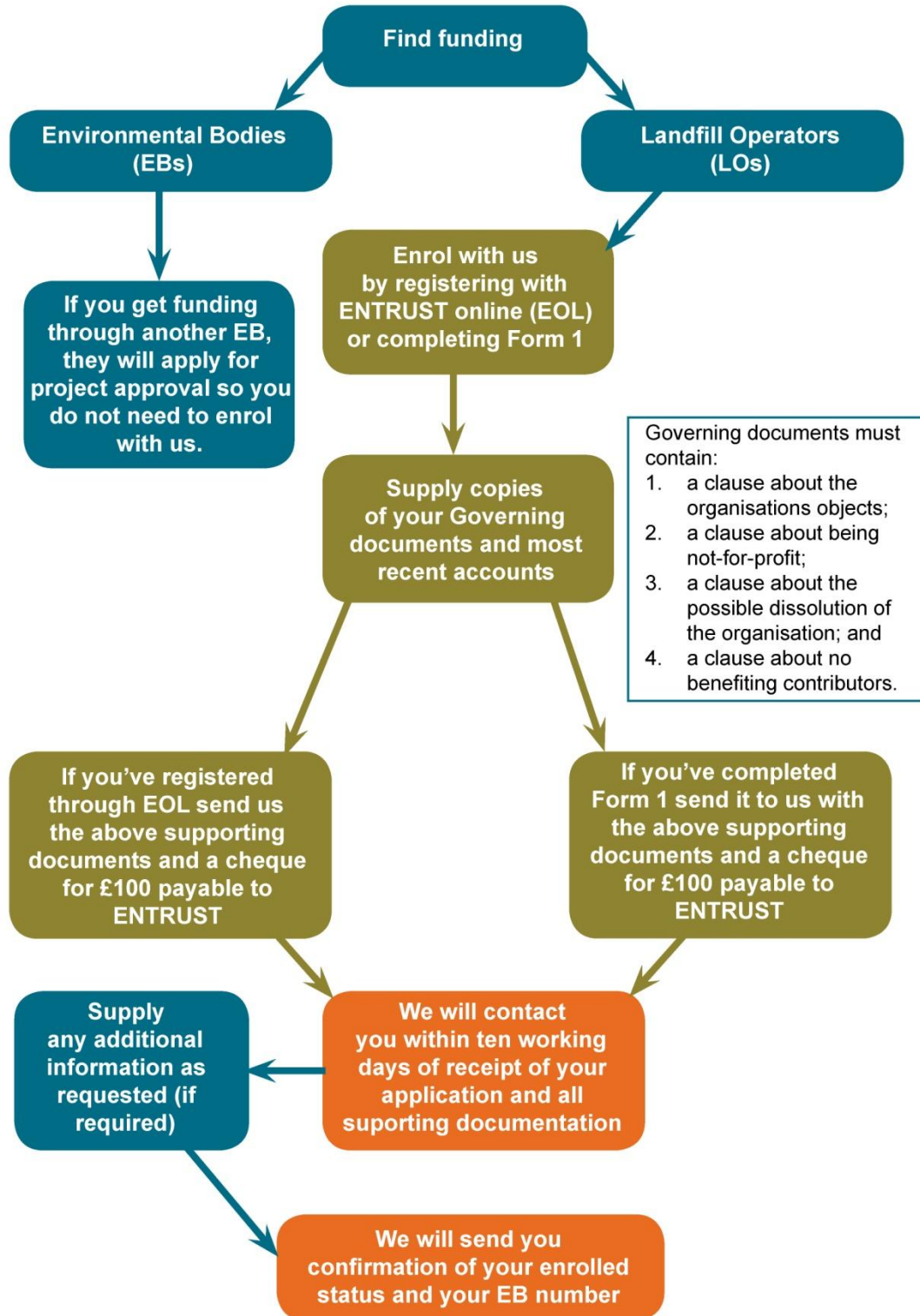
**Application to Enrol**

- Form 1: Applying to Enrol as an EB is available on the [ENTRUST website](#)

## **B - Enrolling as an Environmental Body (EB)**

The Regulations governing which organisations can receive Landfill Communities Fund monies and the ENTRUST enrolment procedure

### **Quick start to the Enrolment Process**



<b>Contents</b>	<b>Page</b>
1. <a href="#"><u>Which organisations can be an Environmental Body</u></a>	20
2. <a href="#"><u>Information required for enrolment as an Environmental Body</u></a>	20
3. <a href="#"><u>Refusal of an enrolment application, and appeal</u></a>	23
4. <a href="#"><u>Retaining your enrolled status</u></a>	23
5. <a href="#"><u>More detail about specific terms used in this section</u></a>	23
6. <a href="#"><u>Model constitution</u></a>	24
7. <a href="#"><u>The relevant Regulations</u></a>	24

## **1. Which organisations can be an Environmental Body**

Both corporate bodies (such as a limited company or a corporation) and unincorporated bodies (such as an association, a club or a trust) can be enrolled by ENTRUST as an Environmental Body. We would expect any organisation applying to be an Environmental Body to have a place of business in the UK.

## **2. Information required for enrolment as an Environmental Body**

### **2.1 Background**

2.1.1 When an organisation wishes to enrol as an Environmental Body (EB) we check that it has an appropriate governance structure which will enable it to receive and spend LCF funds in accordance with the Regulations.

2.1.2 Each organisation which is enrolled with us becomes an EB with a unique enrolment number.

### **2.2 Purpose of this guidance**

2.2.1 This guidance note sets out the information which an organisation must provide to us in order to enrol as an EB. This guidance note also outlines the preliminary steps we recommend a prospective EB should take before enrolment, and sets out the cost of enrolling as an EB.

### **2.3 Action to take before applying to enrol as an EB**

#### **Match the aims of your project to an Object of the LCF**

2.3.1 You should establish whether your proposed project qualifies for LCF funding. It will qualify if it matches one or more of the six areas of work (known as the Objects) which can be funded by LCF monies.

2.3.2 In summary, the Objects of the LCF are:

- **Object A:** The reclamation, remediation or restoration of land which cannot now be used because of an activity which used to take place on that land;
- **Object B:** The prevention, reduction or mitigation of the effects of pollution which has been caused, or be caused, by an activity which has now ceased;
- **Object D:** The provision, maintenance or improvement of a public park or other public amenity;
- **Object DA:** The conservation of a specific species in its natural habitat or a specific habitat;
- **Object E:** The maintenance, repair or restoration of a building or structure which is a place of religious worship or a place of historic or architectural interest; and
- **Object F:** The provision of financial, administrative or other similar services by one EB to one or more other EBs.

Objects D, DA or E are the Objects most likely to apply to your organisation.

#### **Find a funder for your project**

2.3.3 Once you have established that your proposed project matches one or more of the LCF Objects, you should find a funder for your project. You should identify funding before preparing an enrolment application to us as some funders will register your project on your behalf; if this is the case you will not

need to enrol your organisation as an EB. We charge a non-refundable enrolment fee of £100 to cover the administrative cost of enrolling your organisation into the LCF so we recommend an organisation does not enrol as an EB if enrolment is not required.

- 2.3.4 To help you find prospective funders in your area please look at [our website](#). If you have difficulty in identifying fund providers in your area please contact the registrations team for assistance.
- 2.3.5 Contact the funders who fund in your area. They will be able to tell you if they have funding available for your project and also whether they will register a project on your behalf or whether it will be necessary for you to enrol as an EB to register your own project.

### **Make sure your organisation is appropriate to be an EB**

- 2.3.6 Once you have found funding and your funder has confirmed that it requires you to be enrolled as an EB, you should check that your organisation is suitable to be an EB. To enrol as an EB, your organisation must:
- Be a not for profit organisation;
  - Share at least one aim with the Objects of the LCF (as described above); and
  - Not be controlled by:
    - a LO
    - a Local Authority (LA); or
    - a registered person.
- 2.3.7 A registered person is someone who:
- Was concerned in the management of an EB which was compulsorily revoked;
  - Has been convicted of an indictable offence;
  - Is disqualified from being a trustee for a charity;
  - Is connected with a LO, a LA or with any of the persons above; or
  - Is incapable by reason of mental disorder

## **2.4 The application process to enrol as an EB**

### **Applying online or on paper**

- 2.4.1 An application can be made online (which we recommend) or on [paper](#). To make the application online you should register with [ENTRUST online](#). As you progress through the application form (either electronically or on paper) you will need to have certain documents available.

### **The supporting documents required**

- 2.4.2 You will need to have the following documents in support of your organisation's application to enrol as an EB:
- The most recent version of your organisation's governing document (which outlines why the organisation exists and what the organisation intends to do). Examples of a governing document include a constitution, a Trust Deed, or the Memorandum and Articles of Association; and
  - The most recent copy of your organisation's accounts (unless it is newly formed as an organisation).

## **What your governing document must include**

- 2.4.3 To be enrolled as an EB, your organisation must have the following clauses in your governing document:
- A clause confirming that your organisation operates on a not-for-profit basis and will not distribute income or profit to its members (this proof is not required for registered charities);
  - A clause confirming that at least one of your organisation's aims matches at least one of the Objects of the LCF;
  - A clause confirming that all LCF money received by your organisation will be spent on activities that are compliant with the Objects of the LCF;
  - A clause confirming the number of people who constitute a quorum (so we can check that neither a LO nor a LA can form a majority when only the quorum is present to vote);
  - A clause confirming who has the casting vote on any issue relating to the LCF;
  - A clause confirming that LCF funds will not be spent in a way which provides a unique benefit to either a LO which has provided LCF funds to your organisation, or to a Third Party who has made a payment to a LO to enable LCF funds to be provided to your EB (see our guidance on unique benefit and Contributing Third Parties in *Section H: the Benefit Rules*); and
  - A clause confirming that in the event of dissolution, surplus assets will not be distributed amongst the organisation's members and that any remaining LCF money will remain within the LCF.
- 2.4.4 If your organisation's governing document does not already include these clauses then we will require you to alter the governing document to include them.

## **Additional information required with your application**

- 2.4.5 You will also need to provide the following information and confirmation:
- The name, address, occupation and date of birth of every member of your organisation who is entitled to vote to decide how LCF monies will be spent; and
  - Confirmation that you have an offer of funding or that you understand the £100 enrolment fee is non-refundable.

## **Method of payment**

- 2.4.6 You will also be asked how you will pay the non-refundable enrolment fee of £100 to us. Payments can be made either by cheque or electronically. We will need to receive your enrolment fee before we can enrol you as an EB.

## **2.5 After you have submitted your application and payment to enrol as an EB**

- 2.5.1 We will review your application and the supporting documents and will respond within five working days.
- 2.5.2 Once we are satisfied that all the necessary information has been provided, we will approve your application for enrolment. Once your EB has been approved you will receive an enrolment pack by post.
- 2.5.3 The enrolment pack includes a certificate with your EB's unique enrolment number. You will need to use this number in correspondence with us and with your funder.

### **3. Refusal of an enrolment application, and appeal**

- 3.1 If your organisation is not considered to fulfil the requirements to become an Environmental Body then your application will be refused. All applications which have been refused will automatically be referred to the Review Panel. The applicant is invited to attend these meetings to make the case for enrolment. For further details on the workings of the Project/Enrolment Review panel, please consult the ENTRUST *Guidance Note G - Review Panel Terms of Reference*.

### **4. Retaining your enrolled status**

- 4.1 Once your organisation is enrolled, you will remain enrolled until you request in writing that you wish to voluntarily revoke from the scheme or your EB's status is compulsorily revoked as a result of non-compliance with the Regulations.

#### **Continuing to meet the requirements**

- 4.2 An organisation must continue to meet the criteria in the Regulations while it remains as an EB. It must be able to demonstrate that it continues to meet the criteria, if required to do so by ENTRUST.
- 4.3 If you request revocation from the Fund and later decide to re-enrol as an EB you will be required to resubmit all details and pay the standard enrolment fee.

### **5. More detail about specific terms used in this section**

#### **Control by landfill operators and local authorities**

- 5.1 As stated above, the organisation must not be controlled by:
- One or more landfill operators; or
  - One or more local authorities.
- 5.2 Additionally, an EB should not be controlled by one or more local authorities or one or more landfill operators acting through representatives. Representatives of a local authority include its councillors and senior officers, as well as people appointed by a local authority to serve on an EB.
- 5.3 Neither landfill operators as a group, nor local authorities as a group, are allowed to form the majority on an organisation's governing body (its trustees, board of directors or management committee, for example). For the purposes of identifying control:
- Groups of landfill operators are assumed to act separately from groups of local authorities. In an organisation where representatives of both a local authority and a landfill operator are present, they count as representing different interests. The exception would be where the local authority was a landfill operator.
  - Representatives of different local authorities on an organisation's governing body are assumed to act together.
  - Representatives of different landfill operators on an organisation's governing body are assumed to act together.
- 5.4 The casting vote for matters related to LCF must not be conferred on a representative from a landfill operator or from a local authority.

## **The quorum**

- 5.5** The organisation's governing documents must outline what constitutes a quorum. At its meetings an EB should ensure that there are always sufficient 'independent' members present to satisfy itself that neither landfill operator nor local authority representatives can form a majority (and thereby control the organisation) when only a quorum is present.
- 5.6** The governing documents should confer a second or casting vote on the chairperson where there is an equality of votes in relation to LCF matters.

## **6. Model Constitution**

- 6.1** An example of a model constitution can be found in the forms section of the [ENTRUST website](#).

## **7. The Regulations**

- 7.1** Regulation 33 provides:

- (1) A body is eligible to be approved if –
  - (a) it is –
    - (i) a body corporate, or
    - (ii) a trust, partnership or other unincorporated body;
  - (b) its objects are or include any of the objects within paragraph (2) below (approved objects);
  - (c) it is precluded from distributing and does not distribute any profit it makes or other income it receives;
  - (d) it applies any profit or other income to the furtherance of its objects (whether or not approved objects); and
  - (e) it is precluded from applying any of its funds for the benefit of any of the persons –
    - (i) who have made qualifying contributions to it, or
    - (ii) who were a contributing third party in relation to such contributions, except that such persons may benefit where they belong to a class of persons that benefits generally.
  - (f) it is not controlled by one or more, of the persons and bodies listed in paragraphs (1A) and (1B) below;
  - (g) none of the persons or bodies listed in paragraph (1B) below is concerned in its management;
  - (h) it pays to the regulatory body an application fee of £100 or such lesser sum as the regulatory body may require.
- (1A) The persons and bodies mentioned in paragraph (1)(f) above are:
  - (a) a local authority;
  - (b) a body corporate controlled by one or more local authorities;
  - (c) a registered person;
  - (d) a person connected with any of the persons or bodies mentioned in sub-paragraphs (a) to (c) above.



- (1B) The persons and bodies mentioned in paragraph 1(f) and (g) above are:
- (a) a person who controlled or was concerned in the management of a body the approval of which was revoked otherwise than under regulation 34(1)(ee);
  - (b) a person who has been convicted of an indictable offence;
  - (c) a person who is disqualified from being a charity trustee or a trustee for a charity by virtue of section 72 of the Charities Act 1993;
  - (d) a person connected with any of the persons or bodies mentioned in sub-paragraphs (a) to (c) above;
  - (e) a person who is incapable by reason of mental disorder.

(1C) For the purpose of paragraph 1(B)(e) above, a person shall be treated as incapable by reason of mental disorder where –

- (a) in England and Wales, the person lacks capacity within the meaning of the Mental Capacity Act 2005 (c.9) to administer and manage his property and affairs;
- (b) in Scotland, the court has appointed a curator bonis, tutor or judicial factor; or
- (c) in Northern Ireland, the court has exercised any of its powers under Part VIII of the Mental Health (Northern Ireland) Order 1986 (whether or not by virtue of Article 97(2) of that Order), but shall cease to be so treated where the judge or court concerned has made a finding that he is not or is no longer incapable of managing and administering his property and affairs.

...

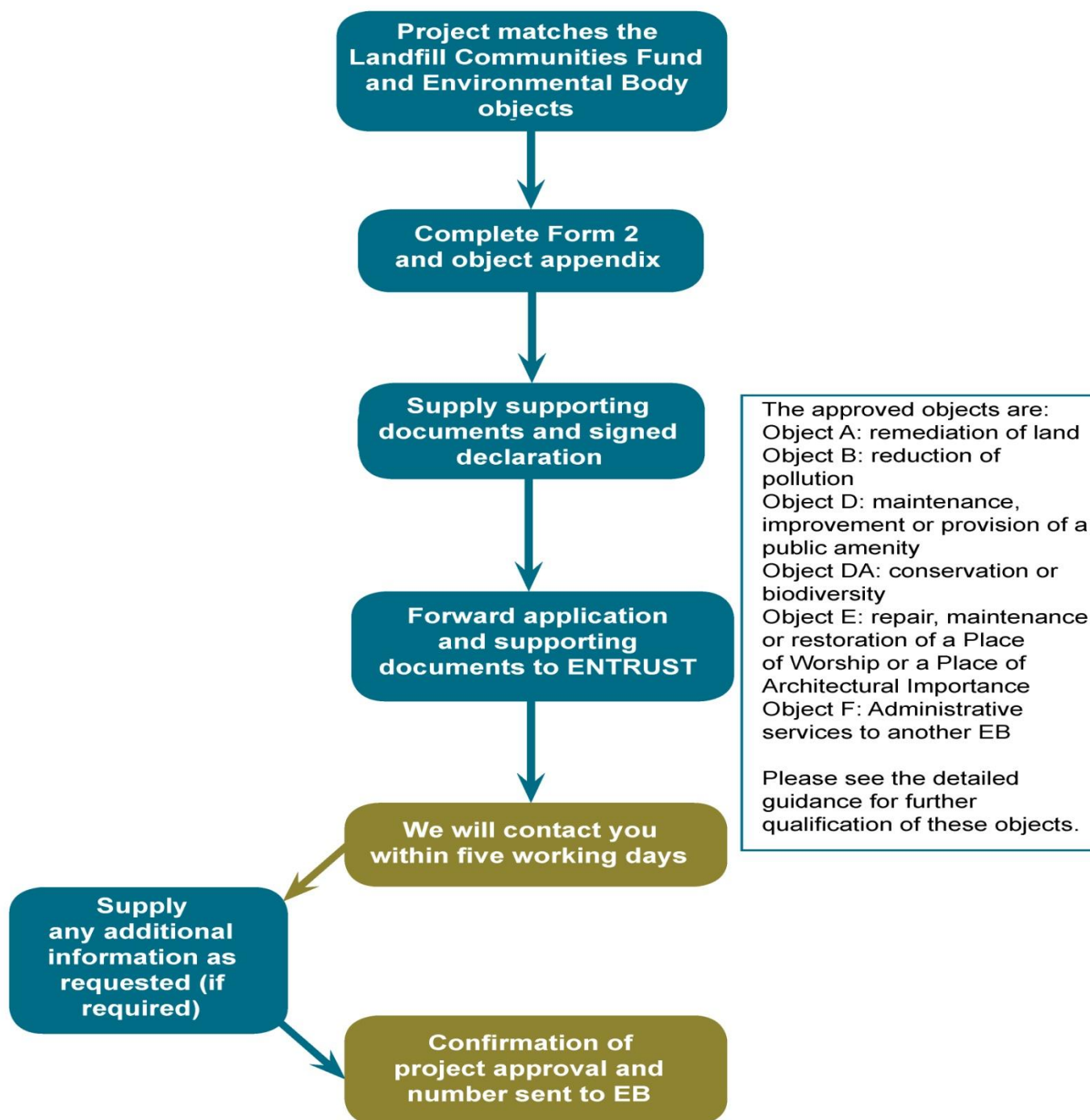
(9) For the purpose of paragraph (1) above a body or person (in either case for the purpose of this paragraph, “the person”) shall be taken to control a body where –

- (a) in the case of a body which is a body corporate, the person is empowered by statute to control that body’s activities or if he is that body’s holding company within the meaning of section 1159 of and schedule 6 to the Companies Act 2006, and an individual shall be taken to control a body corporate if he, were he a company, would be that body’s holding company within the meaning of that Act;
- (b) in the case of a body which is a trust or a partnership, where –
  - (i) the person, taken together with any nominee of his, or
  - (ii) any nominee of the person, taken together with any nominee of that nominee or any other nominee of the person,forms a majority of the total number of trustees or partners, as the case may be;
- (c) in the case of any other body, where the person, whether directly or through any nominee, has the power
  - (i) to appoint or remove any officer of the body;
  - (ii) to determine the objects of the body;
  - (iii) to determine how any of the body’s funds may be applied.

## C- Project Approval and Spending Landfill Communities Fund (LCF) Monies

The regulations governing the expenditure of LCF monies and the approval of projects

### Quick Start to the Project Approval Process



<b>Contents</b>	<b>Page</b>	<b>Page</b>
1. <a href="#"><u>What the Landfill Tax Regulations say</u></a>		28
2. <a href="#"><u>'Qualifying Contributions'</u></a>		28
3. <a href="#"><u>The Relationship between EBs and Landfill Operators</u></a>		29
4. <a href="#"><u>Spend on Approved Objects</u></a>		29
5. <a href="#"><u>Project Approval</u></a>		29
6. <a href="#"><u>Timing</u></a>		31
7. <a href="#"><u>Running Costs of the EB as Compliant Expenditure</u></a>		33
8. <a href="#"><u>What the Regulations Mean in Practice</u></a>		34
9. <a href="#"><u>Paying for Goods and Services</u></a>		34
10. <a href="#"><u>Assets Guidance</u></a>		35
11. <a href="#"><u>Timescales for Asset Management within EBs</u></a>		36
12. <a href="#"><u>Depreciation of Asset Value</u></a>		37
13. <a href="#"><u>Cash Assets</u></a>		37
14. <a href="#"><u>Ownership of Assets</u></a>		38
15. <a href="#"><u>Retention of Records</u></a>		38
16. <a href="#"><u>Completion of LCF projects</u></a>		39
17. <a href="#"><u>Unspent LCF Monies</u></a>		41
18. <a href="#"><u>Retaining Funds for Winding-Up</u></a>		42
19. <a href="#"><u>Winding-Up the EB</u></a>		42

## **Project Approval and Spending Landfill Communities Fund (LCF) Monies**

Landfill Operators (LOs) can only give qualifying contributions to enrolled Environmental Bodies (EBs). The qualifying contributions given by LOs to EBs can only be spent in accordance with the Regulations.

### **1. What the Landfill Tax Regulations say:**

#### **1.1 Regulation 30 provides as follows:**

(2) A body shall only be taken to spend a qualifying contribution in the course or furtherance of its approved objects –

- (a) in a case where the contribution is made subject to a condition that it may only be invested for the purpose of generating income, where the body so spends all of that income;
- (b) in a case not falling within sub-paragraph (a) above, where the body becomes entitled to income, where it so spends both the whole of the qualifying contribution and all of that income;
- (c) in a case not falling within either of sub-paragraphs (a) and (b) above, where the body so spends the whole of the qualifying contribution; or
- (d) where –
  - (i) it transfers any qualifying contribution or income derived therefore to another approved body and
  - (ii) that transfer is subject to a condition that the sum transferred shall be spent only in the course or furtherance of that other body's approved objects.

#### **1.2 This is supplemented by Regulation 33A which provides:**

- (1) An approved body shall –
- (b) apply qualifying contributions and any income derived therefrom only to approved objects;

### **2. 'Qualifying Contributions'**

#### **2.1 A "qualifying contribution" is a payment made**

- by a registered LO to an enrolled EB, and
- subject to a condition that the EB shall only spend the monies and any income derived in the course or furtherance of the EB's approved objects.

#### **2.2 When an EB receives payment of a qualifying contribution from a LO, the EB must use Form 3 to report the receipt of the payment to ENTRUST. Form 3 must be returned within 7 calendar days.**

### **3. The Relationship between Environmental Bodies and Landfill Operators**

- 3.1** HMRC expect a LO to make its contribution to an EB subject to a written condition that the EB spends the payment or any derived income only on approved objects. This condition should be able to be enforced by contract. HMRC also expect the LO to take action to recover their contribution if the EB fails to honour the contractual obligation. Therefore EBs should ensure that they honour their contractual obligations in order to avoid the LO seeking to recover its contribution.

### **4. Spend on Approved Objects**

- 4.1** LCF monies given to an EB must be spent only on the approved objects of the LCF. These are the objects set out in the Landfill Tax Regulations and detailed in the Quick Start Guide to the LCF or on the ENTRUST website.
- 4.2** Any income an EB receives from its LCF monies can also only be spent on the approved objects. This income from LCF monies is referred to as “income derived” and it includes (but is not restricted to):
- all interest earned as a result of investing LCF monies;
  - any other income derived from spending LCF funds (for example, a royalty as a result of project activity, or rental income from hiring out the facilities provided by the public amenity);
  - the sale of assets bought or created with LCF monies; and
  - any LCF funds returned to, or reclaimed by, an EB.
- 4.3** LCF funds can be transferred to another EB for it to spend on the approved objects of the LCF. Where such a transfer is made it must be reported to ENTRUST using a Form 7.

### **5. Project Approval**

- 5.1** Following changes made to the Regulations in 2007, ENTRUST were granted the power under Regulation 34(1) to impose conditions on enrolled EBs. HMRC approve any condition in advance of it being imposed by ENTRUST as a condition imposed under Regulation 34(1) has force of law.

- 5.2** Regulation 34 provides as follows:

(1) The regulatory body

...

(aa) may -

(i) at the time a body is approved, or

(ii) subsequently, by notice delivered to that body,

impose such conditions as it sees fit;

(ab) may, by notice delivered to a body, vary or revoke any condition of the approval;

- 5.3** In exercising that power, and in order to ensure that LCF funds are spent only on approved objects, ENTRUST imposed the following condition on all EBs with effect from 01 January 2012.

*No qualifying contribution or any income derived from it may be spent on a project unless that project has first been approved by ENTRUST.*

- 5.4** This condition supersedes all previous conditions. It means that an EB must have ENTRUST’s approval of a project before it can spend any LCF money on that project. ENTRUST will refuse

approval if it does not consider that the project fulfils an approved object (see *Section G – Review Panel Terms of Reference*). If you have been granted “Accredited” status by ENTRUST then projects which you submit online are automatically approved. (For more information see *Section I – Accreditation and the Small Grants Scheme*.)

- 5.5** If any LCF funds are spent on a project before that project has written approval from ENTRUST then that is a breach of this condition. (It will be a breach even if approval is subsequently granted for the project.) Where there is a breach of this condition, enforcement sanctions will be taken by ENTRUST and/or HMRC as appropriate.
- 5.6** Before approving a project, we will also need to see a cost breakdown that clearly identifies where the LCF monies will be spent. This allows us to establish that LCF monies will be compliantly spent on items allowed under the Regulations.
- 5.7** It is the registering EB’s responsibility to make sure that the project expenditure falls within an approved object under the Regulations.
- 5.8 Transfer of project approval to another EB**
- 5.8.1** In the usual case, once a project has been approved then the EB which registered that project will retain project approval. However, in some cases another EB may become involved in the delivery of the project.
- 5.8.2** Where a funding EB transfers a qualifying contribution to another EB which holds the approval for a project then this constitutes a transfer of funds. Therefore the funding EB must complete and return a Form 7 to ENTRUST within 7 calendar days of transferring the LCF funds to the receiving EB. The receiving EB (which holds project approval) reports its expenditure on the project against the project approval on its Form 4 in the usual way.
- 5.8.3** Where a funding EB makes a payment to a contractor for works which have been carried out on a project then there is no transfer between EBs. The funding EB reports the expenditure on the project against the project approval on its Form 4. This is the case even though the funding EB does not hold project approval.
- 5.8.4** Where the funding EB holds the project approval but the delivery of the project will be by the receiving EB then the funding EB must specify that the project will be allocated to another EB when completing the project application form. The receiving EB’s enrolment number must be included.
- 5.8.5** When the funding EB transfers a qualifying contribution to the receiving EB, then the funding EB must complete and return a Form 7, within 7 calendar days, notifying us of the transfer.
- 5.8.6** Once in receipt of the transferred funds, the receiving EB can make payments for the delivery of the project. The receiving EB should enter its expenditure against the funding EB’s project approval. (The funding EB must ensure that details of the approved project are passed to the receiving EB.)
- 5.8.7** The funding EB will remain responsible for entering the first spend and last spend dates against the project. The funding EB will also be able to enter details of any expenditure it has made directly on the project (such as a payment to contractors).
- 5.8.8** There is a separate project expenditure data entry field on Form 4 to be used where another EB holds the project. EBs who have been allocated project approval by another EB will see these allocated projects listed on an additional project expenditure breakdown sheet on their Form 4. Any receiving EBs entering data into this new field must also complete the second project breakdown sheet.
- 5.8.9** EBs should be aware that they will need to complete separate project expenditure details for projects where they hold the project approval, and for projects allocated by another EB. EBs will need to

ensure that they complete the relevant project expenditure boxes and project breakdown sheets for all relevant projects.

## **6. Timing**

**6.1** Our guidance is that LCF monies should be committed to a specific project within two years of receipt. The only exceptions are projects which are registered under the Small Grants Scheme – these projects must be re-registered and approved every 12 months.

**6.2** The term “committed” means that there is a contractual agreement in place, providing that the funds will be spent on a particular project.

**6.3** EBs should notify ENTRUST of any projects completed each year on their annual return (Form 4). If any project will no longer take place then the registering EB should contact ENTRUST in writing to request that the project be de-approved.

### **6.4 Seeking an extension of time**

**6.4.1** If an EB is unable to complete the spending of LCF monies on its project before the estimated completion date provided to us then the EB should seek an extension of time in which to complete the project.

**6.4.2.** Once a project has been completed, EBs should notify us of the project completion. This applies to all LCF projects completed on or after 1 April 2014.

### **6.5 Who should seek an extension of time in which to complete a project?**

**6.5.1** Any EB who will not be able to complete the LCF spending on their project before the estimated completion date for that project should seek an extension of time.

**6.5.2** If more than one EB is involved with a project then it is the EB holding the project approval who should seek the extension. The EB holding the project approval should keep all other EBs who have an interest in the project notified both as to the original estimated completion date and also of any extensions to the estimated completion date.

### **6.6 How should an EB seek an extension of time?**

**6.6.1** Previously EBs have been able to seek an extension of time through informal contact with our Registrations team. Now, one month before a project is due to complete, a reminder email will be automatically generated and sent to the main contact of the EB holding the project approval. This email will remind the EB of the completion date and ask the EB to seek an extension of time, if more time is required to complete the project, or to notify us that the project has been completed. (No email will be sent if we have already received notification that the project has been completed.)

**6.6.2** An EB may seek a first extension of time by completing Form 2X through ENTRUST online (EOL). Completing Form 2X through EOL will enable an EB to grant its own automatic extension of up to three months if the delay is for one of a number of specified reasons (see below).

**6.6.3** For a first extension in excess of three months, for a further extension, for a reason other than those specified or for a paper copy of Form 2X, please contact our Registrations team.

### **6.7 Form 2X: Applying for an extension of time**

**6.7.1** An EB completing an application for an extension to the estimated project completion date online will find that any relevant project information which has already been provided to us will be pre-populated in the Form 2X: application for an extension of time form for that project.

- 6.7.2** An EB who is online and looking at the relevant Form 2 for a project will be able to see the date originally notified for the completion of that project. The EB will be able to request an extension of up to three months to the original estimated completion date by selecting the relevant button (next to the original project completion date in Form 2). This will extend Form 2 so that a Form 2X appears. The EB can then complete and submit Form 2X to apply for an extension of time.
- 6.7.3** A first request to extend the project completion date by up to three months will be granted automatically if the reason for seeking an extension is one of the following:
- The project works are delayed by bad weather
  - The project works are delayed by other events e.g. sports season or discovery of bats
  - Unplanned additional work is required to the project
  - Specialist contractors for the project are currently unavailable
  - The project is completed but the final LCF payment has not yet been made
  - A funding shortfall for the project
- 6.7.4** Once the extension has been granted the date sought by the extension application will become the new estimated project completion date.
- 6.7.5** Once the extension has been granted the EB can continue to spend LCF monies to complete the project, up until the new estimated project completion date. The EB holding the project approval should notify any other EB which is involved with the project of the new estimated project completion date.
- 6.7.6** For example, Andy realises that his estimated completion date of July 2016 is no longer feasible because the specialist contractor he has chosen to do the final work on his public amenity project will not be able to start work until August 2016. Andy logs into EOL to seek an extension to the project completion date. As the original project completion date is July 2016, Andy can seek an extension until October 2016. Andy decides to extend until September 2016. It is a first extension so the extension is automatically granted. Andy is able to continue spending LCF monies until the end of September 2016.
- 6.8 Contacting Registrations team to apply for an extension of time**
- 6.8.1** If an EB requires an extension in excess of three months, is seeking a further extension, is seeking a first extension for a reason other than those specified (above), wants to have a paper copy of Form 2X or wants register to use EOL, then it should contact our Registrations team.
- 6.8.2** An EB who contacts our Registrations team for an extension should explain in writing:
- The length of extension required
  - The reasons for seeking an extension
- 6.8.3.** Our Registrations team will consider each request on its own merits and will notify the EB within five working days of the request being made.
- 6.8.4** For example, Brenda realises that her estimated completion date of March 2016 is no longer feasible because exceptionally wet weather over the last winter has delayed her biodiversity project by a year. Although the request for an extension is a first request, Brenda seeks an extension of more than three months and so cannot make the request online using Form 2X. Brenda emails the Registrations team with her request to extend the completion date by a year and explains how the weather has affected her project. The Registrations team are satisfied that the request meets the criteria and agree to extend the project until March 2017. The decision to grant the extension of time is emailed to Brenda. As the new project completion date is March 2017, Brenda is able to continue spending LCF monies until the end of March 2017.



## **6.9 Is there a limit to the length of extension I can seek?**

- 6.9.1** If an EB seeks a first extension to the estimated completion date by going online then an extension of up to three months will be granted if the extension is sought for one of the specified reasons. An extension of more than three months cannot be granted by using Form 2X through EOL.
- 6.9.2** If an EB seeks an extension from our Registrations team then each request will be considered on its own merits. However, an extension will not normally be granted if:
- The original project has been completed
  - The project has significantly changed from that originally registered
  - No LCF monies were spent between the original estimated start date and estimated completion date
  - The project is expected to continue for an extraordinarily or unreasonably long length of time
  - The extension sought is for longer than the original length of the project
- 6.9.3** Therefore we encourage EBs to be realistic, at the project registration stage, as to the length of time it will take to complete their project and complete the spending of LCF monies. We would usually expect a project under Objects D, E, or F to be for no longer than two years, and a project under Objects A, B or DA to be for no longer than three years.

## **6.10 What happens after I have been granted an extension of time?**

- 6.10.1** Once the extension has been granted, the date granted by agreeing the application for an extension will become the new estimated project completion date. The EB with project approval should notify any other EB which is involved with the project of the new estimated project completion date.
- 6.10.2** An EB can continue spending LCF monies to complete the project up until the new estimated project completion date.
- 6.10.3** If the project is not completed by the new estimated project completion date then the EB with project approval should seek a further extension. A further extension cannot be granted online and can only be granted by contacting our Registrations team.

## **6.11 What happens if my project is not granted an extension of time?**

- 6.11.1** It may be necessary for our Registrations team to reject an application for an extension of time to complete a project. In those cases, once the condition is in place then the EB must ensure it has ceased spending LCF monies on the project by the estimated completion date.
- 6.11.2** Where an application for an extension of time is rejected, our Registrations team and our Compliance team will discuss with the EB concerned how it can proceed to ensure that the project is completed in a compliant manner or, where appropriate, how a new project can be registered.

## **7. Running Costs of the Environmental Body as Compliant Expenditure**

### **7.1 Regulation 33 provides as follows:**

- (7) Where the objects of a body are or include any of the objects set out in paragraph (2) the following shall also be regarded as objects within that paragraph -
- (a) the use of qualifying contributions in paying the running costs of the body, but this is subject to paragraph (8) below;

(b) the use of qualifying contributions in paying a contribution to the running costs of the regulatory body.

(8) The use of qualifying contributions in paying the running cost of the body shall only be regarded as an approved object if the body determines so to use no more than such proportion of the total of qualifying contributions, together with any income derived from them (or in the case of a contribution within regulation 30(2)(a), only that income) as the proportion of that total forms of the total funds at its disposal and does not in fact use a greater amount.

## **8. What the Regulations Mean in Practice**

- 8.1** The Regulations allow some or all of an EB's running costs to be regarded as an approved object. ENTRUST interpret this to be costs which are reasonable and relevant to the LCF. This means an EB may spend LCF monies on its own administration costs if they are reasonable and relevant.
- 8.2** All costs should be reasonable and comparable to similar organisations, by both sector and size of organisation. EBs who manage no or very few live projects should have minimal EB running costs. Any costs should relate to the EB's level of activity.
- 8.3** Regulation 33(8) restricts an organisation with a number of different types of funding from using LCF monies to pay all the running costs – LCF monies can only pay the proportion of running costs that corresponds to the proportion of the organisation's funding that comes from the LCF. For example, if 40% of an EB's total funding is from the LCF (both contributions and income derived), then no more of 40% of the EB's running costs should be met from LCF monies.
- 8.4** As a matter of good practice, running costs which are in excess of 10% of LCF expenditure per annum will be monitored by the Compliance Team and, where appropriate, a review will be organised. All running costs should be justified financially and should be open to scrutiny by ENTRUST.

## **9. Paying for Goods and Services**

### **9.1 Tendering**

- 9.1.1** This section refers to best practice in evidencing value for money for the LCF. It is the responsibility of the EB to demonstrate that value for money has been achieved.
- 9.1.2** It is recommended that where LCF monies are used to purchase goods and services over £5,000 in value, competitive tendering should be undertaken.
- 9.1.3** Evidence of the competitive tender should be retained on the project file. This should consist of either a summary of tender information or by copies of the tenders submitted.
- 9.1.4** It is not necessary to select the supplier with the cheapest tender if there are good reasons for selecting another supplier. However, where the chosen supplier has not tendered the cheapest quote there must be a written explanation as to why the preferred supplier was selected. This should be retained on the project file as evidence.
- 9.1.5** In some cases, it is not possible to seek quotations or put a supply contract out to tender. For example, there may be only one specialist supplier who could reasonably be used. If so, ENTRUST recommends that evidence is obtained to show that the price agreed with this supplier is not higher than would normally be paid for similar goods or services.

## **9.2 Connected Parties**

- 9.2.1** ENTRUST recommends as a matter of good practice that payment for goods and services is made only to organisations which are independent of people and companies connected to your EB, or the third party contributors to your EB.
- 9.2.2** If any of the suppliers which might be awarded a contract by your EB have employees, directors or consultants who are also directors of your EB or consultants who have an interest in your EB, then an open tender process should be followed to award that contract unless there are exceptional circumstances.
- 9.2.3** A connected party is defined as any individual or organisation, related or linked to the EB. This may include (but not be limited to) any director, partner, shareholder, manager or other employee or employer, company, trustee, advisory panel or committee that has direct or indirect influence on LCF spending. Relations and links can be both through personal or business connections, for example spouse / civil partner / cohabitee (or relative of spouse / civil partner / cohabitee), relative or persons connected to by virtue of their being a trustee. For further guidance on this point, please contact ENTRUST's Compliance Department.

## **9.3 Payment to another EB**

- 9.3.1** Where an EB makes a payment to another EB which is acting in its capacity as a contractor, then the payment should be recorded as expenditure by the first EB on the specific project.
- 9.3.2** Where an EB makes a payment to another EB for that receiving EB to make payments to its suppliers, then the payment from EB to EB is a transfer of qualifying contributions. In this situation the funding EB must submit a Form 7 to ENTRUST within 7 calendar days of transferring the qualifying contribution to the receiving EB.

## **10. Assets Guidance**

### **10.1 The Asset Regulations**

Regulation 32 provides as follows:

- (1) A payment is a qualifying contribution if–
- (a) it is made by a registered person to an approved body;
  - (b) it is made subject to a condition that the body shall spend the sum paid or any income derived from it or both only in the course or furtherance of its approved objects;

LCF monies and income derived from LCF monies can only be spent on approved objects.

### **10.2 What is an asset?**

- 10.2.1** ENTRUST considers an asset to be any item of economic value to an organisation or individual, especially that which could be converted to 'income'. Examples are:

- land, buildings and machinery;
- intellectual property rights; and
- cash, investments and securities.

- 10.2.2** Assets are normally shown on an organisation's balance sheet with a written down value in accordance with generally accepted accounting principles.

### **10.3 Protecting the Asset**

- 10.3.1** All LCF monies spent by an EB which purchase or create an asset (whether funding the purchase outright or merely a proportion of the purchase) should be protected. All EBs should ensure that they can account for all LCF funds held by them or spent on a compliant project or activity.
- 10.3.2** When an EB holds LCF funds, it should ensure that the value of the capital is preserved. Best practice dictates that LCF monies are not held in speculative investments where the principal sum may be diluted. Any loss of capital would normally be deemed to be non-compliant expenditure. Therefore, in the unlikely event that LCF monies are not required for immediate use, they should be placed in a bank account or similar facility, so preserving the capital sum. Any income earned from such an account or facility constitutes “income derived” and therefore must be spent only on LCF approved projects.
- 10.3.3** If your EB does invest LCF monies, it should adopt suitable practices to protect the principal sum. It is not appropriate for ENTRUST to develop guidance on investment practices. EBs may be interested in the Charity Commission document [‘Investment of Charitable Funds: Detailed guidance’](#).
- 10.3.4** EBs should maintain an inventory of all assets purchased in whole or in part with LCF funds. This is in addition to whatever arrangements EBs may have for the recording of asset depreciation, either on its own balance sheet or on records held by the project promoter. EBs must ensure that every project budget is resourced to meet the costs associated with appropriate asset monitoring and asset management while the project’s assets remains on the asset register. Please see section 12.1 below with regard to life/timescales of assets.
- 10.3.5** The EB in whose name a project is approved would be expected to record assets purchased in whole or in part with LCF funds by way of a formal asset register.

### **10.4 Sale or Disposal of an Asset**

- 10.4.1** If an EB contributes LCF funds (in whole or in part) to the purchase, creation or improvement of an asset held by a non-EB, it should make its LCF contribution conditional on repayment where the asset is sold or ceases to comply with the Regulations. The amount to be repaid is the proportion of the sale value equal to the proportion of the LCF contribution made to the purchase / creation / improvement price.
- 10.4.2** Where an EB seeks to dispose of a LCF funded asset, it should consult its original funding agreement to ascertain whether that agreement contains any clauses about disposal of LCF funded assets or the use of derived income from such disposals.
- 10.4.3** The proceeds of sale from the sale of a LCF funded asset are considered to be “income derived”. Where a LCF funded asset is sold, the proportion of the proceeds of sale (equal to the proportion of the LCF funding contribution) should be returned to the EB and used to fund further compliant activity. This applies whatever time might have elapsed between the LCF funding of the asset and its sale, and whether or not the project is active or completed.
- 10.4.4** Where an asset is returned to an EB following the completion of a project, the asset may either be retained for use on other LCF projects or sold. If the LCF funded asset is sold then any proceeds of sale must be used to fund further compliant projects.

## **11. Timescales for Asset Management within EBs**

The following timescale guidance has been drawn up for asset retention depending on the type of the asset or the value. Note: This guidance is retrospective and replaces all previous guidance including that relating to an asset being written down over seven years.

## **11.1 Moveable/Tangible Assets**

### **Assets valued at less than £2,000**

- At project completion, obtain confirmation that the asset is delivering against approved objective

### **Assets valued between £2,000 and £10,000**

- Keep this on an asset register for three years; and
- At project completion, obtain written confirmation that asset is in compliant use. After three years confirm compliance (by inspecting the asset) then delete from the register.

### **Assets valued between £10,000 and £50,000**

- Keep this on an asset register for five years; and
- At project completion obtain written confirmation that the asset is in compliant use. After five years confirm compliance (by inspecting the asset) then delete from the register.

### **Assets valued at over £50,000**

- Keep on an asset register for ten years;
- After five years confirm compliance by inspecting the asset; and
- After ten years make final inspection to confirm compliance then delete from register.

## **11.2 Land and Buildings**

- The EB that has registered the project for approval should keep LCF funded land and buildings on an asset register in perpetuity;
- Where it is cost effective to do so, the asset should be protected through the Land Registry. This could be done by a restriction in favour of the funder (distributive EB or LO). Please note that land law in Scotland and Northern Ireland is slightly different to that in England and Wales and so the equivalent protections can be used instead of a restriction;
- At final payment and annually thereafter, obtain written confirmation that the asset remains in compliant use;
- Inspect every three years to confirm compliance; and
- The EB that has registered the project for approval should be contacted by the owner of the funded land or buildings before a sale can be initiated.

## **12. Depreciation of Asset Value**

- 12.1** If you intend to dispose of an asset within the relevant timescales set out in Section 12 above, our guidance is that the asset should be valued independently if the current value exceeds £10,000. We recommend that the written down value is calculated by applying depreciation on a straight line basis.

## **13. Cash Assets**

- 13.1** EBs must be able to account for the LCF money that they hold at all times. We recommend EBs maintain a separate bank account for LCF money if it is cost effective to do so.

## **14. Ownership of Assets**

- 14.1** When the EB is the project owner then any assets funded by LCF monies should appear on the EB's balance sheet.
- 14.2** Where the EB is not the project owner but any assets funded by LCF monies held by the EB are used in the EB's general operations (i.e. not in a project) then it is acceptable for those assets to be on the EB's balance sheet.
- 14.2** Where the EB is not the project owner but an asset funded by LCF monies is acquired by the EB solely for that project, ENTRUST recommend that the asset does not appear on the EB's balance sheet. Instead we recommend that a legally binding retention of interest is used to ensure that the asset remains within the LCF and within the control of the EB.

## **15. Retention of Records**

- 15.1** Regulation 33A provides:

(1) An approved body shall—

...

(d) make and retain records of the following—

...

(v) in respect of each qualifying contribution and any income derived therefrom, including any such amount transferred to the body by another approved body, the date of and all other details relating to its expenditure;

- 15.2** ENTRUST consider there to be three main types of financial records held by EBs:

- i) Project financing / funding information, which includes records of Contributing Third Party and Landfill Operator contributions. We recommend that these records are kept indefinitely as they are required to determine if the expenditure of LCF funds was compliant.
- ii) Documents which demonstrate how LCF monies were spent, including all invoices and relevant timesheet summaries. We recommend that these records are kept indefinitely as they are required to determine if the expenditure of LCF funds was compliant.
- iii) Other supporting documents, such as tenders and tender documentation, purchase orders, and procedural documentation. These only need to be retained for six years.

- 15.3** Legal records held by EBs should be retained indefinitely. Such records include: funding agreements, ownership records, deeds, Board minutes, declarations of interest and historical records of Directors.

- 15.4** Records of any assets funded by LCF monies should be maintained for the period of time that the asset is owned by the EB. Upon disposal of any LCF funded asset, records relating to the sale should be retained by the EB for a further six years. However, the record of the value received for the asset must be kept indefinitely.

- 15.5** The EB may hold paper or electronic records. Where records are held electronically, the EB must be able to convert the data into a satisfactory, legible form on request. Therefore the onus is on the EB to keep programmes or make appropriate arrangements to enable the reconstruction of historic data if programmes or formats are altered or upgraded.

## **16. Completion of LCF projects**

### **16.1 When is a LCF project complete?**

**16.1.1** A LCF project is complete on the date when the final instalment of LCF monies has been spent. This may be before or after the physical work undertaken on the project is completed.

**16.1.2** If the LCF investment is part of a larger project then the overall project may continue after the LCF completion date.

### **16.2 Who should notify ENTRUST that a project is complete?**

**16.2.1** Where a LCF project is completed by the final instalment of LCF monies being spent, then the EB holding the project approval should notify us that the project is complete.

**16.2.2** One month before a project is due to complete a reminder email will be automatically generated and sent to the main contact of the EB holding the project approval. This email will remind the EB of the completion date and ask the EB to seek an extension of time, if more time is required to complete the project, or to notify us that the project has been completed. (No email will be sent if we have already received notification that the project has been completed.)

### **16.3 When should an EB notify ENTRUST that a project is complete?**

**16.3.1** For all projects which completed on or after 1 April 2014, the EB holding the project approval should notify us that the project is complete as soon as the project has been completed.

**16.3.2.** A project completion form has been reintroduced to address issues with over-running projects and to enable project applicants to inform us as soon as a project has completed (rather than waiting until submission of Form 4: Annual Return, which may be up to 12 months following completion of the project).

### **16.4 How should an EB notify ENTRUST that a project is complete?**

**16.4.1** When the final instalment of LCF monies has been spent on a project, the EB holding the project approval should log into EOL in order to notify us that the project is complete.

### **16.5 Form 4: Annual Return**

**16.5.1** Once in EOL, the EB holding the project approval should open the supplementary pages of its Form 4: Statutory Annual Return. Previously an EB could only notify us of the completion of a project by entering data in the supplementary pages of its Form 4 after the conclusion of the reporting year in which the project was completed. From December 2014 an EB will be able to notify us that a project is complete at any point in the year.

**16.5.2** Although this facility will only be available from December 2014, we are asking EBs to notify us of the completion of all projects which completed on or after 1 April 2014.

**16.5.3** On the supplementary pages of its Form 4, the EB should enter the date of the final LCF expenditure on the project and the amount of the final LCF expenditure on the project. The EB should then mark the project as complete. Where more than one EB is involved with the project and will spend LCF monies on the project, the EB holding the project approval should check that all LCF expenditure on the project by any other EB involved with the project has been reported by that EB (in the supplementary pages of its own Form 4) before the EB holding the project approval marks the project as complete. This is the same process that was previously undertaken when entering project expenditure on a Form 4: Annual Return after the conclusion of the reporting year.

**16.5.4** The data entered in the supplementary pages will feed through to the main pages of the Form 4, making the eventual completion of the Form 4 a more streamlined process. The EB should not reconcile or submit its Form 4 until after the conclusion of the reporting year or when all activity and expenditure for the year is complete.

## **16.6 Form 9: Project Completion form**

**16.6.1** Once the project is marked as complete on an EB's Form 4: Annual Return, a Form 9: Project Completion form will be generated and a link to the new Form 9 will appear on that EB's EOL dashboard. The Form 9 will be pre-populated with any relevant project information which has already been provided to us.

**16.6.2** An EB should complete and submit the Form 9. There is no formal deadline for the submission of a Form 9 but, as the Form 9 contains details about the completed project and any LCF assets which were created or purchased by the project, we will expect all Form 9s to be completed within three months of completion, and this will be reviewed as part of our compliance activity and at inspections. We will keep under review the absence of a formal deadline for Form 9 to be completed and submitted.

**16.6.3** Additionally, EBs who register and complete a large number of projects may wish to fill out and submit their Form 9: Project Completion forms on a monthly or quarterly basis in order to keep on top of their reporting obligations.

## **16.7 EBs who are not registered to use EOL**

**16.7.1** An EB which is not registered on EOL should contact our Registrations team, either to register for EOL or to ask for a paper copy of Form 9: Project Completion form. One Form 9 will be required for each project completed.

**16.7.2** Paper copies of Form 9 should be returned to us once the project has been completed. There is no formal deadline for the submission of a Form 9 but, as the Form 9 contains details about the completed project, we will expect all Form 9s to be completed and this will be reviewed as part of our compliance activity and at inspections.

## **16.8 The Value for Money questions on Form 9**

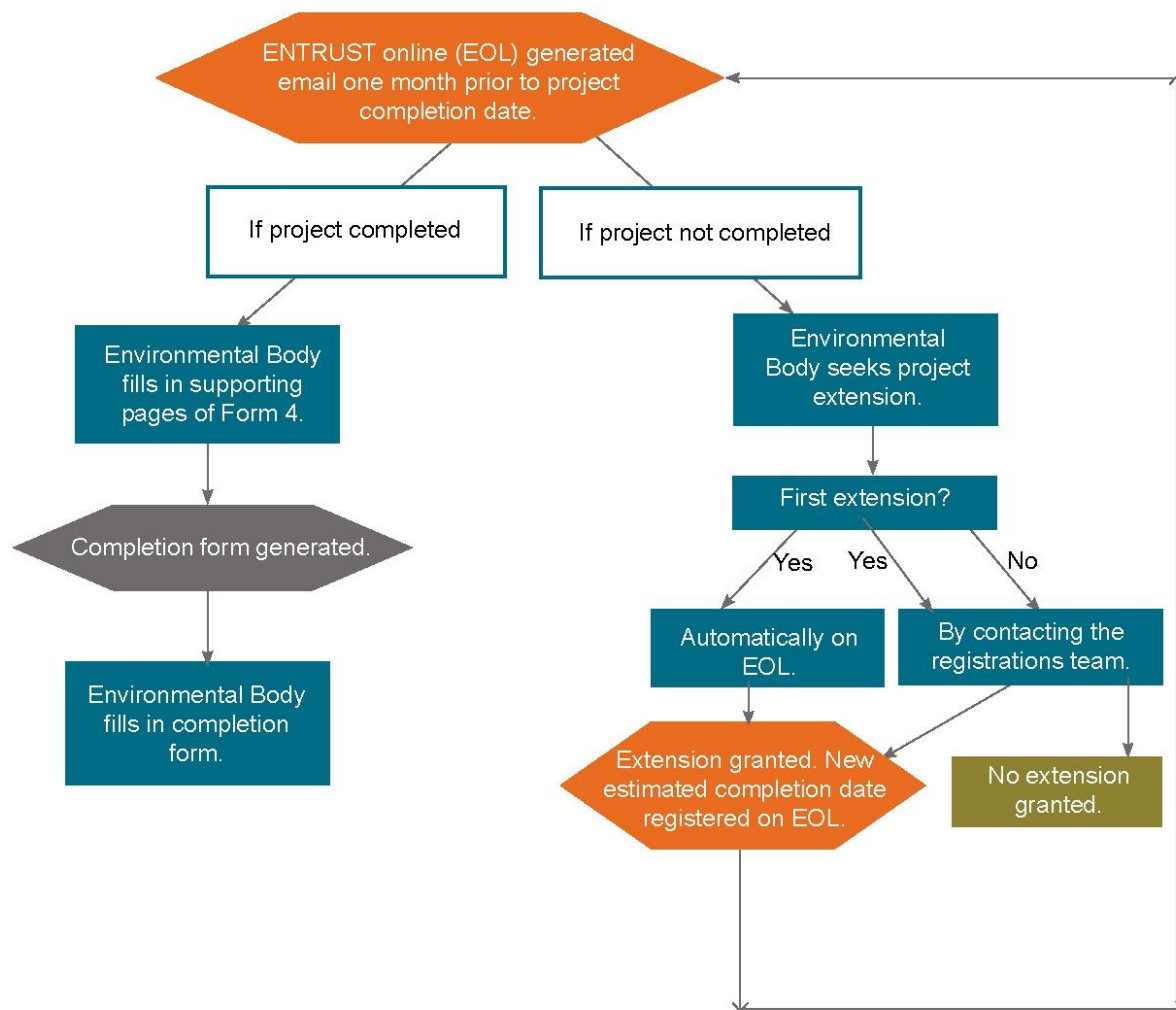
**16.8.1** Previously project applicants were asked Value for Money (VFM) questions on the project registration form (Form 2). The requirement to complete these questions was removed from 1 April 2014. EBs are now asked VFM questions at project completion stage when EBs are likely to have more information about the project and are likely to be in a better position to respond.

**16.8.2** Asking the VFM questions at completion stage is in line with many other third sector assessments of VFM (which are predominantly after completion of the enterprise being considered).

**16.8.3** We will keep the VFM questions which are asked under constant review. Our expectation is that fewer, more targeted, VFM questions will be asked. By asking the VFM questions at project completion stage, we expect that project applicants will be able to provide more accurate data and ensure ENTRUST is able to provide more meaningful reporting on the impact and performance of the Fund.

## **16.9 Summary of the project extension and project completion process**





## **17. Unspent LCF Monies**

**17.1** If there is underspend on a project or the project does not go ahead, then (subject to any agreement in place between the EB and the contributor of the funds) the EB may consider one of the following in order to spend the LCF funds compliantly:

### **17.2 Other projects**

LCF money held may be spent on other approved projects providing they meet one of the objects under the Regulations. Before spending the funds it is advisable to obtain the permission of the LO or distributive EB who allocated the money originally.

### **17.3 Transfer of monies**

LCF money can also be transferred to another EB. It is strongly recommended that the permission of the LO or distributive EB is obtained first. If your EB has received LCF money from another EB and you find that those funds are no longer needed, please discuss how to proceed with the EB which provided your EB with the funds. It is most likely it will want the money to be returned for re-allocation. A transfer of LCF funds between EBs must be reported within 7 calendar days of the transfer on Form 7.

### **17.4 Return of monies**

Ordinarily LCF monies should not be given back to the contributing LO as payments to a LO are no complaint spend. If you are asked to repay a qualifying contribution back to the LO you should contact ENTRUST for advice. The LO must also make arrangements to repay to HMRC any tax credits it has received in respect of its qualifying contribution, as outlined in HMRC's guidance notice LFT1 to LOs.

## **18. Retaining Funds for Winding-Up**

**18.1** In some instances EBs may retain funds for the winding up of their business. Where this is the case, the EB should be able to justify and explain their reserves position and demonstrate why a particular level of reserves is retained at that point in time. Good practice requires an EB to maintain a reserves policy which includes the following:

- The reasons why the EB needs reserves;
- What level of reserves the Directors or Trustees believe the EB needs;
- What steps the EB is going to take to establish or maintain reserves at the agreed level; and
- Arrangements for monitoring and reviewing the policy.

**18.2** LCF funds used for winding up an EB are part of the “running costs” of the EB. “Running costs” are defined (in Regulation 30(1) of the Regulations):

“running costs” includes any cost incurred in connection with the management and administration of a body or its assets.

**18.3** The reasonable and allowable wind-up costs which an EB may incur include:

- The cost of employees who are required to wind down the EB (eventually where an EB is winding up there will be no more LCF funds to allocate – consequently we would expect the funds held for this purpose to be for the cost of only a proportion of current staff)
- Contractual redundancy payments, which we consider should be set at a reasonable level
- Outplacement costs, such as costs relating to support given to individuals who are being made redundant
- Pension liabilities, which we consider should be set a reasonable level
- Office rental payments which are required to the end of a lease period
- Dilapidations due at the end of a lease period
- Costs relating to legal and financial advice which is likely to be required when winding up

**18.4** As set out in Regulation 33(8), where the EB receives funds from other sources, the LCF funds can only pay the proportion of running costs that corresponds to the proportion of the EB’s funding that comes from the LCF (see Section 9 of the guidance). For example, if your organisation’s total income from all sources in a year is £100,000 and your income through the LCF is £20,000 then 20% of your income comes from LCF monies. Therefore you can fund up to 20% of your winding up costs with LCF monies.

**18.5** LCF funding cannot be used to meet any non compliant costs. If you are unsure as to whether a category of your EB’s winding up costs will be compliant, please contact us for advice.

**18.6** LCF funds held for winding up must be reported under the funds held for winding up section of the Statutory Annual Return (form 4). We would also expect these costs to be reported in the EB’s annual accounts.

## **19. Winding-Up the EB**

**19.1** Prior to any decision to dissolve your EB, you should notify ENTRUST of your intentions and discuss with them how you will deal with any outstanding monies and/or assets. ENTRUST would normally expect these to be passed on to another EB with similar objects to ensure that they remain compliant with the Landfill Tax Regulations. However, if you are asked to return any unspent contributions to the

contributing LO, you should contact ENTRUST for advice. The LO must also make arrangements to repay any tax credits to HMRC as outlined in HMRC's guidance notice LFT1 to LOs.

## **D – Object D Guidance**

Ensuring *Public Parks and Amenities projects* are compliant with the Landfill Communities Fund

	<b>Contents</b>	<b>Page</b>
1.	<a href="#"><u>Registering an Object D Project</u></a>	45
2.	<a href="#"><u>The Object D Regulations</u></a>	45
3.	<a href="#"><u>Applying the Regulations</u></a>	45
4.	<a href="#"><u>Approval of Projects</u></a>	47
5.	<a href="#"><u>Project Examples</u></a>	48

## **1. Registering an Object D Project – Public Parks and Amenities**

- 1.1** This document provides guidance on the types of *public park and amenity* projects that can be undertaken under the Landfill Communities Fund scheme. It sets out the relevant parts of the governing Landfill Tax Regulations 1996 (Regulations) and then provides guidance on what these Regulations mean in practice. Examples are then listed to give illustrations of compliant projects.

## **2. The Object D Regulations**

- 2.1** Regulation 33 provides as follows:

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

...

(d) where it is for the protection of the environment, the provision, maintenance or improvement of-

(i) a public park; or

(ii) another public amenity,

in the vicinity of a landfill site, provided the conditions in paragraph (6) below are satisfied;

...

(6) The conditions mentioned in sub-paragraphs (d) and (e) of paragraph (2) above are-

(a) in a case falling within sub-paragraph (d), that the provision of the park or amenity is not required by a relevant condition; and

(b) in a case falling within either of those sub-paragraphs, that the park, amenity, building or structure (as the case may be) is not to be operated with a view to profit.

...

(10) For the purposes of paragraphs 3), (3A) and (6) above a condition is relevant if it is-

(a) a condition of any planning permission or statutory consent or approval granted on the application of any person making a qualifying contribution to the body, or

(b) a term of an agreement made under-

(i) section 106 of the Town and Country Planning Act 1990,

(ii) section 75 of the Town and Country Planning (Scotland) Act 1997, or

(iii) article 40 of the Planning (Northern Ireland) Order 1991,

to which such a person is a party.

## **3. Applying the Regulations**

### **3.1 Is my project related to an amenity?**

- 3.1.1** Projects which do not relate to a park must relate to another amenity. An amenity is something that makes the environment more pleasant or comfortable and/or improves the aesthetic qualities of an area for the general public.

### 3.1.2 Common examples of amenities include:

- Activity Centres;
- Bridleways and cycle paths;
- Community centres;
- Village halls;
- Sporting facilities;
- Museums; and
- Libraries

### 3.2 Is the park or amenity public?

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

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

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

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

### **3.3. The project must demonstrate protection of the environment by *providing, maintaining or improving a park or amenity.***

**3.3.1** The works you propose must be either for provision, maintenance or improvement targeted on a specific park or amenity.

### **3.4 All projects must relate to a park or amenity which protects the environment.**

**3.4.1** All projects falling under this object must relate to a park or amenity which protects either the built, natural or social environment. ENTRUST interprets protection to include preservation. The built environment includes buildings and structures on land.

**3.4.2** Protection can be defined as shielding from danger, injury, destruction or damage, or to keep something safe from harm, damage or bad influences.

**3.4.3** Preservation can be defined as keeping something in its original or existing state or preventing it from being damaged.

**3.4.4** EBs will be required to explain how the park or amenity protects either the built, natural or social environment in their project application.

### **3.5. In the vicinity of a landfill site**

**3.5.1** Object D projects must take place in the vicinity of a licensed landfill site, which we interpret as being within ten miles of a licensed landfill site. (Please note that some funders have their own, more strict, requirements.) Whilst the application form asks for a postcode of the project site, ENTRUST understands that in some instances a grid reference or map showing the ten mile radius may be more

appropriate. If you can provide evidence that your project site is adversely impacted by a licensed landfill site which is further than ten miles away, this can be deemed eligible.

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

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

**3.6 The project proposals must not be required as part of any planning permission granted to the contributing Landfill Operator.**

**3.6.1** The works proposed under the project must not be required as part of a condition (of any planning permission) imposed on either the contributing Landfill Operator or a Contributing Third Party.

**3.6.2** No LCF monies may be spent on works to meet any requirement in an agreement made under:

- Section 106 of the Town and Country Planning Act 1990;
- Section 75 of the Town and Country Planning Act (Scotland) 1997; or
- Article 40 of the Planning (Northern Ireland) Order 1991,

to which either the contributing Landfill Operator or a Contributing Third Party is a party.

**3.7 Is the park or amenity not-for profit?**

**3.7.1** The park or amenity must be run on a not for profit basis to be eligible under Object D. This does not preclude a surplus from being made, but if a surplus is made then it cannot be distributed. Any income derived from the LCF funded part of the project must be spent on an approved object, which includes the EB's running costs (or a relevant percentage). We also allow the income derived to be spent on the maintenance of the project amenity.

#### **4. Approval of Projects**

**4.1** The focus of the project must be to undertake '*direct project works*' on the park or amenity in question. ENTRUST will review applications to ensure that every proposal concentrates on direct project works and has acceptable additional associated costs.

**4.2** "Direct project works" are defined as those that are *solely* attributable to the delivery of the project and include all costs that are necessary for the project to go ahead. This includes all costs that can be directly linked to improvements on site, such as contractors, volunteer management, signage, and interpretative materials that will be kept on site and provide, maintain or improve the park or amenity. It can also include any costs incurred in connection with the acquisition of any land and buildings including relevant legal fees. Direct project costs may be incurred by the EB where their own staff carry out the works.

**4.3** "Additional associated costs" include costs that are not necessary for the physical works. This includes elements such as any head office costs not solely related to the project, publicity material (including leaflets and posters for the park or amenity), an opening ceremony and all other activities that do not *directly* result in physical work being undertaken. ENTRUST is not able to approve projects that have excessive additional associated costs (i.e. more than 10% of total project expenditure).

**4.4** For a number of reasons (including the requirement to maintain an audit trail and statistics provision) a single project application which covers multiple parks or amenities on different sites is not able to be approved as a single project. However, each park or amenity may be approved separately or by project site.

**4.5. Does my project require proportional registration?**

**4.5.1** ENTRUST recognises that some projects classed as public parks or amenities may not be open to the public all the time. Due to the 'public' requirement as stipulated in the Regulations, the LCF can only fund a project to the extent that it is open to the general public. It is possible to make a proportional registration but it is important to note that where projects which are proportionally registered, the amenity must still be available to the public for at least four evenings or two days a week, or 104 days in any one year (see paragraph 3.2.3 above).

**4.5.2** If a project will be used by a restricted group for part of the time it will be open, then the LCF can only fund the same percentage of the project as the proportion of time the park or amenity is open to the general public. The most common example of this is works on school sites, when only the school pupils have access to the amenity (for example, a sports hall) during the day but the amenity is opened up to the general public in the weekday evenings, weekends and during school holidays.

**4.5.3** To ensure the proportion of expenditure charged to the LCF is compliant, ENTRUST require the EB to confirm the days and hours when the park or amenity will be open to the general public and a calculation showing the percentage of the total time the facility will be available to the public. The calculation of the proportion when the amenity will be available for public use must be provided with the application for project approval.

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

The community garden and orchard is available for use by the general public outside of school time and during school holidays. This is confirmed by a public access statement from the school governors. Based on the hours the project is available to the general public, 64% of the total project costs can be funded through the LCF.

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

**Example – Proportional funding for a roof on a community centre**

The community centre has a number of meeting rooms, including 3 meeting rooms which are exclusively leased out to a local business. The area of these 3 meeting rooms is equal to 35% of the total floor space of the community centre; this is confirmed by a floor plan. Based on the percentage of the centre that is available to the general public, 65% of the total cost of the new roof can be funded through the LCF.

**5. Project Examples**

**5.1 Village Hall Refurbishment**

A village hall is regarded as an amenity as it makes both the social and built environment more pleasant by providing a facility for the community. Refurbishment of the existing village hall constitutes preservation of the built environment. The proposed project improves a public amenity by replacing the old kitchen. The amenity is open to the general public on a free and unrestricted basis, making this a compliant project.



## **5.2**     Building a new multi-use gaming area (MUGA)

The MUGA is regarded as an amenity as it makes the social environment more pleasant, allowing the public to use the sporting facility. The provision of the MUGA preserves the social environment by providing a facility which will benefit the general public. Building the MUGA constitutes the provision of a public amenity. The amenity is open to the general public on a free and unrestricted basis, making this a compliant project.

## **5.3**     Outdoor Play Area in a park

The project aims to improve a public park by replacing disused play equipment with varied high quality play equipment in a naturalistic setting. Good play facilities will help to reduce crime and help to build a safer community and can discourage anti-social behaviour, therefore improving the social environment. Additionally, the project provides equipment with a low environmental impact (use of bark, recyclable and long lasting materials) and demonstrates protection of the natural environment by planting more trees and providing better landscaping. Although the play equipment is for children, the park continues to be open to the general public on a free and unrestricted basis, making this a compliant project.

## **5.4**     Renovation of a sports playing field

The project is for the maintenance of surfaces at a sports playing field which is used for many sporting events. This protects the current sporting structure on the land and so can demonstrate protection of the social and natural environment. A sports playing field is considered an amenity as it makes the area more pleasant. The sports playing field is open to the general public on a free and unrestricted basis, making this a compliant project.

## **5.5**     Provision of a boardwalk over reed beds

The project is for the provision of a boardwalk over reed beds to link a footpath with a cycle path. The boardwalk will make the area more accessible and pleasant to the general public (and so is an amenity) and it will protect the natural environment. The amenity is open to the general public on a free and unrestricted basis, making this a compliant project.

## **E – Object DA Guidance**

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

	<b>Contents</b>	<b>Page</b>
1.	<a href="#"><u>Registering an Object DA Project – Conservation or Promotion of Biodiversity</u></a>	51
2.	<a href="#"><u>The Object DA Regulations</u></a>	51
3.	<a href="#"><u>What Is Biological Diversity</u></a>	53
4.	<a href="#"><u>Applying the Regulations</u></a>	53
5.	<a href="#"><u>Other Criteria and Parameters When Registering an Object DA Project</u></a>	55
6.	<a href="#"><u>Project Examples</u></a>	55

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

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

## **2. The Object DA Regulations**

- 2.1** Regulation 33 provides as follows:

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

...

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

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

(ii) the maintenance or recovery of a species in its natural habitat,  
on land or in water situated in the vicinity of a landfill site;"

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

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

- (a) are required to be carried out by a notice or order within paragraph (4) below;
- (b) are required to be carried out in accordance with an agreement made under section 16 of the National Parks and Access to the Countryside Act 1949(iii);
- (c) are required to be carried out in accordance with an agreement made under section 15 of the Countryside Act 1968;
- (d) give effect to any provision of a management scheme under section 28J of the Wildlife and Countryside Act 1981 or are required to be carried out by a notice served under section 28K of that Act;
- (e) are wholly or partly required to be carried out by a relevant condition; or
- (f) are carried out with a view to profit.

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

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

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

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

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

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

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

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

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

- (a) a works notice served under section 46A of the Control of Pollution Act 1974;
- (b) an enforcement notice served under section 13 of the Environmental Protection Act 1990;
- (c) a prohibition notice served under section 14 of the Environmental Protection Act 1990;
- (d) an order under section 26 of the Environmental Protection Act 1990;
- (e) a remediation notice served under section 78E of the Environmental Protection Act 1990;
- (f) an enforcement notice served under section 90B of the Water Resources Act 1991;
- (g) a works notice served under section 161A of the Water Resources Act 1991;
- (h) an enforcement notice served under regulation 55 of the Pollution Prevention and Control (Scotland) Regulations 2012;
- (i) a suspension notice served under regulation 56 of those Regulations;
- (j) an order under regulation 70 of those Regulations; or
- (k) a notice served under regulation 28(2) of the Water Environment (Controlled Activities) (Scotland) Regulations 2005.

### **3. What is 'Biological Diversity'?**

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

### **4. Applying the Regulations**

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

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

#### **4.2 Each project must be for a single, identifiable site**

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

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

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

- 4.3.2** Proposals looking at the conservation of biodiversity in a place other than the natural habitat (i.e. ex situ conservation) are excluded under Object DA as they are not compliant with the Regulations. This

also therefore excludes projects proposing to fund research positions studying a species out of its natural habitat.

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

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

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

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

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

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

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

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

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

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

- 4.5.4** We may inspect your project to gauge compliance. At our inspection we will want to see details of the works which conserve or promote biodiversity so, even if this element is not funded through the LCF, the project applicant must ensure that these works are completed.
- 4.5.5** Any ongoing project management or costs incurred to safeguard the site or habitat (e.g. fences, gates and boundary markers) can also be classed as direct project works. This is in contrast to visitor facilities which do not, in themselves, conserve or promote biodiversity.
- 4.5.6** “Additional associated costs” include costs that are not necessary for the physical works. This includes elements such as any head office costs not solely related to the project, publicity material (including leaflets and posters for the project), an opening ceremony and all other activities that do not *directly* result in physical work being undertaken. ENTRUST is not able to approve projects that have excessive additional associated costs (i.e. more than 10% of total project expenditure).
- 4.5.7** For a number of reasons (including the requirement to maintain an audit trail and statistics provision) a single project application which covers multiple projects on different sites is not able to be approved as a single project. However, each project may be approved separately or by project site.

**4.6 The proposed works must not be required by statute or as a condition of planning permission**

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

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

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

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

**5.1 Biodiversity Action Plans**

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

**5.2 Involvement of the Lead Partner**

- 5.2.1** When the priority species or habitat is part of a BAP or a LBAP there will be a designated lead partner who has been allocated the responsibility of co-coordinating activities in relation to that species or habitat. It is best practice that all proposed projects involving a species which is part of a BAP or LBAP be endorsed by the relevant lead partner.
- 5.2.2** Further information on BAPs and LBAPs can be found on the [UKBAP website](#).

**6. Project Examples**

**6.1 Lapwing breeding near Barnsley**

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

## **6.2 Rush pasture in the Upper Tawe Valley**

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

## **6.3 Norfolk Breck Heath Land Restoration for butterflies and moths**

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



## **F– Object E Guidance**

**Ensuring *Maintenance, Repair or Restoration of Religious or Historical Building* projects are compliant with the Landfill Communities Fund**

	<b>Contents</b>	<b>Page</b>
1.	<a href="#"><u>Registering an Object E Project – Restoration of religious buildings and buildings of historical or architectural interest</u></a>	58
2.	<a href="#"><u>The Object E Regulations</u></a>	58
3.	<a href="#"><u>Applying the Regulations</u></a>	58
4.	<a href="#"><u>Project Examples</u></a>	60

## **1. Registering an Object E Project – Restoration of Religious Buildings and Buildings of Historical or Architectural Interest.**

- 1.1 This section provides guidance on the Regulations governing the types of projects for the relating to places of worship or structures of architectural interest which can be undertaken with the Landfill Communities Fund (LCF). The Regulations are outlined and then we provide guidance on what the Regulations mean in practice. Examples are then provided to give illustrations of compliant projects.

## **2. The Object E Regulations**

- 2.1 Regulation 33 provides:

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

...

(e) where it is for the protection of the environment, the maintenance, repair or restoration of a building or other structure which-

(i) is a place of religious worship or of historic or architectural interest,

(ii) is open to the public, and

(iii) is situated in the vicinity of a landfill site,

provided the conditions in paragraph (6) below are satisfied;

(6) The conditions mentioned in sub-paragraphs (d) and (e) of paragraph (2) above are-

...

(b) in a case falling within either of those sub-paragraphs, that the park, amenity, building or structure (as the case may be) is not to be operated with a view to profit.

## **3. Applying the Regulations**

- 3.1 **Works to protect the environment of, maintain, repair or restore a building or structure.**

- 3.1.1 The works undertaken under Object E must be to protect the environment of the building or structure in question, or to maintain, repair or restore the building or structure in question. It is unlikely (though not impossible) that this will include new works.

- 3.1.2 If your project is for new works or is predominantly new works, for example, if you are seeking LCF funds to add an extension or additional features to a building or structure, then it is unlikely that your project would be compliant under Object E. However, it may be that such a project was compliant under Object D (the provision, maintenance or improvement of a public amenity).

- 3.1.3 If you have any queries about which object is most appropriate for your proposal, please get in touch with ENTRUST directly.

- 3.2 **The building or structure must be a place of worship or be of historical or architectural interest**

- 3.2.1 The building or structure must be confirmed as being of historical or architectural interest or be confirmed to be a place of worship.

- 3.2.2** We interpret a place of worship as a building or structure that is exempt from business rates by virtue of Schedule 5 Case 11 of the Local Government Finance Act 1988 or has a certificate issued under the Places of Religious Worship Act 1855 to confirm it is a place of worship.
- 3.2.3** We interpret a building or structure to be of historical or architectural interest if it has listed status (or equivalent) or if it has county archivist or local historian support.
- 3.3 The project must be open to the public**
- 3.3.1** The project should be open to the general public. In acknowledgment of the varying availability and opening times of buildings restored or maintained under Object E, when considering public access, ENTRUST expects that the building or structure will be open for a similar amount of time as would be expected from similar buildings or structures. For example, a place of religious worship would be expected to be open for religious worship on its primary day of worship.
- 3.2.2** If you have any queries regarding this, please contact the ENTRUST Registrations Department.
- 3.4 The project must be in the vicinity of a landfill site**
- 3.4.1** Object E projects must take place in the vicinity of a licensed landfill site, which we interpret as being within ten miles of a licensed landfill site. (Please note that some funders have their own, more strict, requirements.) Whilst the application form asks for a postcode of the project site, ENTRUST understands that in some instances a grid reference or map showing the ten mile radius may be more appropriate. If you can provide evidence that your project site is adversely impacted by a licensed landfill site which is further than ten miles away, this can be deemed eligible.
- 3.4.2** A 'licensed' landfill site is one where there is a licence, resolution or permit authorising disposals of materials as waste in or on the land. Some inactive landfill sites are still 'licensed'. The details of landfill sites can be accessed either on the [HMRC website](#) or through the relevant authority (e.g. the [Environment Agency](#)). You will need to ensure that the landfill site has a licence in place for the project to be compliant. Please contact ENTRUST if you have any queries on this point.
- 3.4.3** It is important to note that the Regulations do not require the closest applicable landfill site to be owned by the LO contributing to your project (although some funders will require that it is). As long as some part of your project site is within the vicinity of a landfill site, the whole project will be acceptable.
- 3.5 The project must be for the protection of the environment of a building or structure, or to directly maintain, repair or restore a building or structure**
- 3.5.1** The works proposed under Object E must fall under one or more of these headings and be targeted on a specific building or structure.
- 3.5.2** For a number of reasons (including the requirement to maintain an audit trail and statistics provision) a single project application which covers multiple structures on different sites is not able to be approved as a single project. However, each structure may be approved separately or by project site.
- 3.5.3** The focus of the project must be to undertake 'direct project works' on the building or structure in question. ENTRUST will review applications to ensure that every proposal concentrates on direct project works and that any additional associated costs are at an acceptable level.
- 3.5.3** "Direct project works" are defined as those that are solely attributable to the delivery of the project. This would include all costs that can be directly linked to improvements on site, such as a contractor, volunteer management and physical works on site relating to the building or structure. In some instances costs relating to preliminary work may also be included as direct project works.

- 3.5.4** “Additional associated costs” include costs that are not necessary for the physical works. This includes elements such as any head office costs not solely related to the project, publicity material (including leaflets and posters for the project), an opening ceremony and all other activities that do not *directly* result in physical work being undertaken. ENTRUST is not able to approve projects that have excessive additional associated costs (i.e. more than 10% of total project expenditure).

#### **4. Project Examples**

##### **4.1 Restoration of stonework at a church in Carrington**

This church has Grade II listed status and is accessible to the general public. The project is for the restoration of a place of worship and so this is a compliant project.

##### **4.2 Restoration to restore the exterior of a synagogue in London**

The synagogue is a registered place of worship and the project involves physical works to restore the structure of the building. The synagogue is accessible to the general public. Therefore this is a compliant project.

##### **4.3 Repair of historic organ**

The proposed project was the repair of a historic organ which formed part of the structure of a Grade I listed church. The church is open to the public and therefore the project is compliant.

##### **4.4 Provision of a disabled toilet with disabled access within the church**

Although no new works are allowed under Object E, the proposed project was works to the structure of this place of worship in order to maintain the building to current standards so as to enable continued public access. Therefore this is a compliant project.

## **G – Review Panel**

### **Terms of Reference**

	<b>Contents</b>	<b>Page</b>
1.	<a href="#">Introduction</a>	62
2.	<a href="#">Members</a>	62
3.	<a href="#">Attendance</a>	62
4.	<a href="#">Frequency of Meetings</a>	62
5.	<a href="#">Process</a>	62
6.	<a href="#">Changes to Regulation and Guidance</a>	63
7.	<a href="#">Contact</a>	63
8.	<a href="#">Review Panel process as diagram</a>	64

## **1. Introduction**

- 1.1 The Review Panel considers all cases where ENTRUST has rejected an application
- to be enrolled as an EB; or
  - for project approval.
- 1.2 The purpose of the Review Panel is to ensure that ENTRUST applies consistent standards when making decisions about whether to approve or reject enrolment applications and project applications.

## **2. Members**

- 2.1 The Review Panel is drawn from ENTRUST and HM Revenue & Customs (HMRC) staff to ensure that there is a balance of functional skills and experience. The Panel's quorum is three members, drawn from the following:
- ENTRUST's Head of Operations (Chair)
  - ENTRUST's Compliance Manager
  - ENTRUST's Policy and Regulations Manager
  - a compliance Inspector from ENTRUST
  - a representative from HMRC

## **3. Attendance**

- 3.1 ENTRUST's Senior Registrar will not sit on the Review Panel but will attend the meeting in an advisory capacity. A Registrations team member will take minutes of the meeting.
- 3.2 An affected EB is invited to attend the meeting to explain the application in more detail. However, the EB will not take part in the decision making process.

## **4. Frequency of Meetings**

- 4.1 The Review Panel will normally meet every month and will review each application for enrolment or project approval that has been rejected in the preceding month. The Review Panel will not meet if there are no rejections to review.

## **5. Process**

- 5.1 The process will be facilitated through the review of rejected applications. Appendix A below sets out a flowchart setting out the process. In preparation for a meeting of the Review panel the Senior Registrar will provide the Review Panel with details of the application 5 working days in advance of the meeting. These details will include the Senior Registrar's explanation of why the proposed enrolment or project did not comply with the Regulations, and also any material submitted in advance by the affected applicant.
- 5.2 The details will contain the necessary information to enable the Review Panel to assess each application on a case by case basis.
- 5.3 The decision to reject or accept an application on review will be determined by consensus and voting. If necessary the Chair of the Review Panel retains a casting vote. As the Review Panel's decision is final, a full and clear audit trail must be maintained. The trail must fully document the decision making

process and also record any recommendations to change the Regulations and/or guidance as a result of the decision.

- 5.4** The responsibility for the delivery of any actions that may arise at the meeting will rest with the relevant Head of Department. The Senior Registrar will undertake all co-ordination and communication with EBs relating to the establishment and decisions of the Review Panel. EBs will be informed in writing of the Panel's decision within five working days.

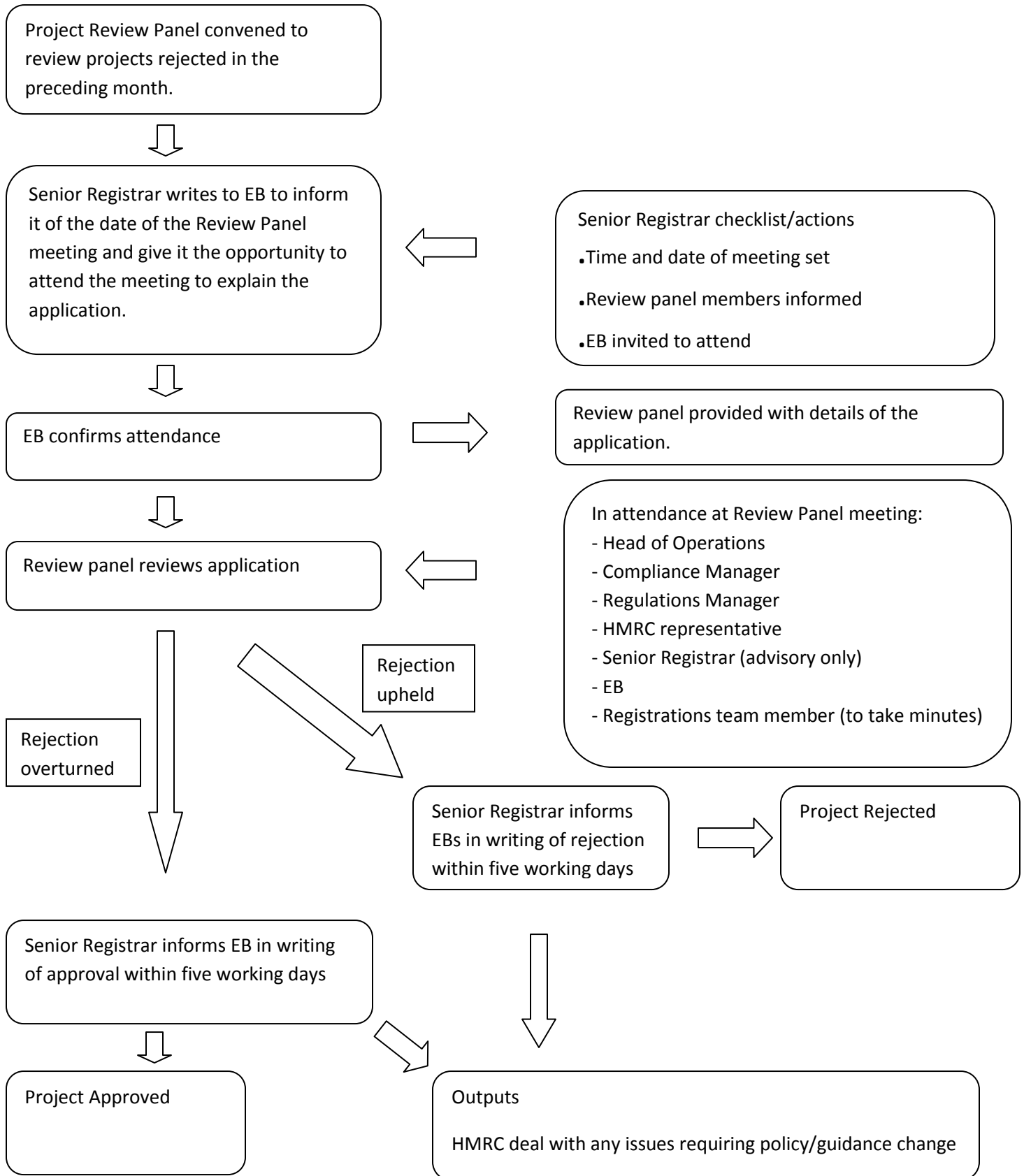
## **6. Changes to Regulation and Guidance**

- 6.1** Where the Review Panel decision leads to a recommendation to amend the Regulations and/or a modification to existing guidance, this will be referred to HMRC for their action.

## **7. Contact**

- 7.1** The responsibility for maintaining and updating this policy rests with the Senior Registrar.

## 8. Review Panel Process





## **H – The Benefit Rules**

### **The Regulations covering the restriction of benefit under the Landfill Communities Fund and Contributing Third Parties**

	<b>Contents</b>	<b>Page</b>
1.	<a href="#"><u>Who Is Prohibited from Benefit Under the LCF?</u></a>	66
2.	<a href="#"><u>The Governing Regulations</u></a>	66
3.	<a href="#"><u>Applying the Regulations</u></a>	66
4.	<a href="#"><u>Indirect Financial Benefit</u></a>	69
5.	<a href="#"><u>Intellectual property</u></a>	69
6.	<a href="#"><u>Benefit from assets</u></a>	70
7.	<a href="#"><u>Income Generated from a Project</u></a>	70
8.	<a href="#"><u>Making Payments to Contributors at Prime Cost</u></a>	70
9.	<a href="#"><u>Transparent Accounting</u></a>	71
10.	<a href="#"><u>Publicity</u></a>	71
11.	<a href="#"><u>Monitoring Unique Benefit to Contributing Third Parties</u></a>	71

## **1. Who is prohibited from benefit under the Landfill Communities Fund (LCF)?**

- 1.1** The Landfill Tax Regulations prevent LCF funds being used for the benefit of either:
- a Landfill Operator (LO) who has made a qualifying contribution to the EB or
  - any Contributing Third Party (CTP) who made a payment to release that qualifying contribution.

It is acceptable for a LO or CTP to benefit if they are in a class of person which would benefit generally, but there must not be a unique benefit to any person who has made a qualifying contribution or CTP payment.

## **2. The Governing Regulations**

- 2.1** Regulation 33 provides:

- (1) A body is eligible to be approved if –
- (e) it is precluded from applying any of its funds for the benefit of any of the persons –
- (i) who have made qualifying contributions to it, or
  - (ii) or who were a contributing third party in relation to such contributions,
- except that such persons may benefit where they belong to a class of persons that benefits generally.

Regulation 33A provides:

- (1) An approved body shall –
- ...
- (c) not apply any of its funds for the benefit of any of the persons who have made qualifying contributions to it or who were contributing third parties in relation to such contributions (except to the extent that they benefit by virtue of belonging to a class of persons that benefits generally);

## **3. Applying the Regulations**

### **3.1 Persons who have made qualifying contributions**

- 3.1.1** The persons who make qualifying contributions to an Environmental Body (EB) are the LOs who contribute LCF monies to that EB, either directly or indirectly. LOs will have made qualifying contributions to an EB if they:

- contribute LCF monies directly to the EB, or
- contribute LCF monies to another EB (including a distributive EB), which subsequently transfers LCF monies to the EB.

- 3.1.2** Once a LO has made a qualifying contribution to an EB, it will be regarded always as having made a qualifying contribution to that EB. Therefore, in relation to every new proposed project which an EB wishes to undertake, that EB must consider whether there is a benefit to any LO which has ever made a qualifying contribution to it, however long ago the qualifying contribution was made.

### **3.2 Persons who were a Contributing Third Party in relation to a qualifying contribution**

- 3.2.1** A person who is a Contributing Third Party (CTP) in relation to a qualifying contribution is any person who pays the LO an amount to secure the payment of the qualifying contribution from the LO to the EB.
- 3.2.2** As explained in paragraph 9 of the Quick Guide to the LCF overview (above), the contributing LO does not receive tax relief for all of its contribution to the EB. For every £100 the LO gives to the scheme, the LO receives a £90 tax credit, i.e. each contribution made to the LCF costs the LO 10% of the amount given. In some cases the LO will absorb this loss themselves, aware of the benefits that can be derived from participating in the LCF. In other cases, the LO will require a third party to pay it the 10% to make the transaction 'cost neutral'. (For the major contributors to the LCF, the 10% difference can be a significant amount of money.) The third party which pays the required amount to the LO is known as the Contributing Third Party.
- 3.2.3** If the LO, or the distributive EB providing the LCF monies on behalf of the LO, requires your EB to arrange a Contributing Third Party (CTP) who can make payment of the required amount, you must ensure that all the rules regarding CTPs are followed. Please contact us for further advice if any part of this guidance is unclear.

**3.2.4** Separate body

The CTP must be a person or entity which is legally separate from the EB which receives the LCF funding. It cannot be a committee of the EB.

Where the project applicant is separate from the EB, it is acceptable for the project applicant to be the CTP for the project, provided it is clear that the CTP payment is not made from LCF monies.

It is acceptable to have a number of persons or entities combining together to make the CTP payment. If this is the case then all of those persons or entities must be legally separate from the EB, and all of those persons will be regarded as being a CTP. The names and addresses of each of those separate CTPs must be recorded.

**3.2.4** Intention to make payment to the LO

The CTP must have the intention of making the payment to the LO in order to secure the LCF qualifying contribution. Where the CTP payment is raised through a fund-raising appeal then the appeal advertising must make it clear that the intention is to use the proceeds of the appeal as the payment to a LO. Every person making a contribution should understand their payment will go to a LO, and is not a donation to the EB. We are happy to review proposed wording – please contact us if you are unsure.

**3.2.5** Unique benefit

A CTP cannot derive a benefit from the project going ahead, except a benefit derived from being one of a class of persons who benefits (see further guidance below).

Once a CTP has made a CTP payment in respect of a project, that person will be regarded always as being a CTP for that EB. Therefore, that EB must consider whether there is any benefit to any CTP who has ever made a CTP payment to secure funding for it, however long ago the CTP payment was made.

“Benefit” can have a wide application and so further information is given below.

**3.2.6** Source of the CTP payment must not be LCF funds

The source of the funds for the CTP payment to the LO cannot be LCF monies or derived from LCF monies.

The CTP must be able to clearly demonstrate that its payment to the LO does not come from LCF monies. LCF monies (including any income derived from the creation of assets with LCF monies or any capital derived from the sale of assets created, or purchased, with LCF monies) cannot be used to provide the CTP payment to the LO.

### **3.2.7 The CTP payment should be made direct from the CTP to the LO**

The CTP payment should be made directly to the relevant LO to avoid any confusion between this payment and LCF monies held by the EB.

In certain circumstances we can allow the EB to act as an intermediary for the CTP payment to the LO. However, this is only acceptable where the EB can demonstrate that it is not feasible for the CTP to make direct payment (for example, because the payment has been raised through a specific fund-raising campaign managed by the EB and there are a large number of CTPs).

If the EB acts as an intermediary for the payment then the EB must ensure that the CTP payment is at all times kept separate from its own funds.

Where it acts as an intermediary, the EB must still comply with its record keeping requirements (recording the names and addresses of each CTP, and identifying the qualifying contribution which the CTP's payment has secured).

## **3.3 What counts as a benefit to a LO or CTP?**

A benefit is any advantage, asset, gain or benefit in kind.

### **3.3.1 The basic 'no benefit' rule**

If an organisation wishes to enrol as an EB, its internal rules must preclude it from using its funds for the benefit of contributors. Once enrolled, EBs must not use any of their funds to uniquely benefit their contributors. ENTRUST interprets the term 'funds' to mean any source for the EB's money, not just LCF monies.

### **3.3.2 Funds can be used to benefit 'a class of persons that benefits generally'**

A class of persons is a group with a common function or classification (for example, all users of a village hall or all users of a public park).

If a CTP or LO which made qualifying contributions derives benefit as part of a class, then that benefit must not be greater than any other member of the class. If the "class of persons" is a small group then it could be considered that the benefits are specific to that group rather than of a general nature. If you are in any doubt please contact us for further guidance.

## **3.4 Benefit Examples**

### **3.4.1 Example 1 – Shared Benefit and the 'village hall principle'**

A village hall is run by a management committee, which is not an enrolled EB. The hall has a number of user groups from the local community. The management committee approach an EB to fund work to repair the hall roof.

In this case the management committee can provide the CTP payment to the LO provided that the benefit of using the village hall is widely and generally shared among the many users of the village

hall. However, if the management committee had use of the village hall on preferential terms (such as access outside normal hours or at a reduced hire rate) then those preferential terms would be regarded as a benefit. This would be contrary to the Regulations.

### **3.4.2 Example 2 – Unique benefit**

A not-for-profit community centre employs a private catering contractor to undertake catering services at the community centre. The community centre wishes to expand its kitchen facilities, and enrolls as an EB in order to seek LCF funding. The catering contractor is willing to be the CTP.

In this case the catering contractor will be considered to receive a unique benefit from the project as it will experience an increase in business due to the kitchen expansion provided by the project.

The catering contractor can be the CTP for this project only if all services provided by the catering contractor to the EB are provided at prime cost (i.e. with no profit element). This applies to the present catering contract and also to all future catering services offered by the catering contractor to the EB.

## **4. Indirect Financial Benefit**

- 4.1** An enrolled EB must not provide a market, commercial or other financial advantage to a LO which provides a qualifying contribution to the EB or a CTP. This includes relieving the LO or CTP of any contractual or statutory obligation, term of planning permission or other duty.

### **Example**

An EB's proposed project is for the restoration of a disused landfill site by planting grass and trees. When the landfill site was originally planned, the local authority placed planning conditions on the LO requiring it to restore that site after use by planting trees and grass.

In this case, if the EB undertakes the planting it will be relieving the LO of its obligation to plant. This is a benefit to the LO. Therefore the LO would be regarded as deriving a unique benefit from the proposed project. This project would not be approved as the proposed expenditure would not be compliant with the Regulations.

## **5. Intellectual Property**

- 5.1** Where an EB supports a project that develops Intellectual Property Rights (IPR) or an innovative methodology, that IPR or methodology must not provide a unique benefit to a LO which made a qualifying contribution or a CTP.

### **Example**

An EB proposes a project under Object A, to allow the pilot testing of a new method of pest control on landfill sites. If the method is a success it will be beneficial in the remediation of land.

If the LO which made the qualifying contribution to the EB was the only LO which could benefit from the new method then that LO would gain a unique benefit. Therefore the proposed expenditure of LCF funds on the pilot study will only be compliant with the Regulations if it is a condition of the project that the results of the pilot study will be disseminated widely and will be available to everybody. This condition would remove any commercial advantage which the LO who makes the qualifying contribution may otherwise gain.

## **6. Benefit from Assets**

- 6.1** Assets acquired or created by an EB may only be used by a CTP or LO who makes a qualifying contribution if the CTP or LO pays the open market rate for use of those assets. Similarly, assets acquired or created by an EB may only pass into the ownership of a CTP or LO who makes a qualifying contribution if the CTP or LO pays the open market rate for them.
- 6.2** If a project involves the provision of an intangible asset or service (for example, staff training) to a CTP or LO who makes a qualifying contribution, the CTP or LO must pay the open market price for what it has received.
- 6.3** Where a project has the effect of increasing the value of adjacent land and that land is owned by a CTP or LO who makes a qualifying contribution, the CTP or LO must pay the EB a sum equal to the increase in value of the land so that there is no benefit.

### **Example**

A LO provides LCF monies to an EB for a project to allow the pilot testing of new composting technology. As part of the project, a new composter is installed on the landfill site. The new composter is found to be successful. At the end of the pilot, the new composter can only pass into the ownership of the LO if it is independently valued and purchased at open market rate. This is to ensure that the LO has not gained a unique benefit from the project going ahead.

## **7. Income Generated from a Project**

- 7.1** When an EB engages a contributor (LO or CTP) to undertake project works (please see below about making payments to contributors), the EB must ensure that any income from the project is returned to the EB. This money must be used on further LCF projects. In no circumstances can the contributor retain the profit itself.
- 7.2** An EB proposing to ask a contributor (LO or CTP) to undertake works on a project is advised to discuss this first with ENTRUST Compliance Department.

## **8. Making Payments to Contributors (LO or CTP) at Prime Cost**

- 8.1** Under certain circumstances, an EB may be able to make payments to its contributors (LO or CTP) without it being construed as a benefit. This is usually only acceptable in very straightforward and transparent cases.
- 8.2** Contributors (LO or CTP) may provide goods or services to EBs in return for payment only when:
- It is clear that payment merely passes through the contributor's hands as reimbursement for additional direct costs incurred solely in providing those goods and services (for example if the contributor incurs expenditure for goods or services, pays the providers, then passes the invoices to the EB for reimbursement); and
  - The payment is at 'prime cost' and there is no possible element of profit or other commercial benefit to the contributor.
- 8.3** **Prime cost = direct material + direct labour + direct expenses**

Prime cost excludes any element of profit. It also excludes any contribution to "fixed costs" i.e. costs incurred whether or not the goods and services were provided to the EB, such as administration and overheads. Fixed costs may also include direct labour, unless the labour was employed exclusively to provide goods or services and would not otherwise have been a cost to the contributor.

- 8.4** ENTRUST strongly recommends that the EB involved agrees a formula for establishing prime cost before funding any project that involves any payment to a contributor. This should be discussed with ENTRUST in advance of any payment being made.

## **9. Transparent Accounting**

- 9.1** Accounting arrangements when the contributor (LO or CTP) is involved in the project must be transparent. ENTRUST will need to see the budget and accounts of the contributor to ensure they do not receive a benefit. In some cases EBs may need to obtain agreements from contributors that they will disclose relevant management accounts to ENTRUST to demonstrate that no improper benefit has arisen.
- 9.2** ENTRUST recognises that arrangements for transparency can occasionally cause practical difficulties when small payments are involved. EBs who face genuine difficulties in meeting the obligations described here should contact ENTRUST's Compliance team as soon as such issues come to light.

## **10. Publicity**

- 10.1** Simply acknowledging the support of your contributors on plaques, in publications and so on is not regarded as a benefit.

## **11. Monitoring Unique Benefit to Contributing Third Parties**

- 11.1** As a benefit can have a very wide application, and an EB can have many CTPs which have contributed to it, assessing unique benefit may be difficult. With this in mind, the following measures can be undertaken by EBs to increase assurance that there is no unique benefit to CTPs:
- A signed declaration from the project applicant that there will be no unique benefit to any CTP;
  - Internal EB checks to determine if there is a direct link between the project and the CTP which could result in a unique benefit;
  - Internal EB checks to cross reference registers of CTPs;
  - Checks of invoices and payment claims against listings of CTPs; and
  - A signed declaration from the CTP stating that they will have no unique benefit.

This list is not exhaustive and there may be other measures which are suitable for the EB to undertake to ensure that a CTP does not receive a benefit from the projects which the EB registers.

## **I – Accreditation and Small Grants Scheme**

	<b>Contents</b>	<b>Page</b>
1	<a href="#"><u>What is Accreditation?</u></a>	73
2	<a href="#"><u>What are the Benefits of Accreditation?</u></a>	73
3	<a href="#"><u>How does my EB become Accredited?</u></a>	73
4	<a href="#"><u>Small Grants Scheme</u></a>	74



## **1. What is Accreditation?**

- 1.1 The EB Accreditation process has been introduced by ENTRUST as a method of identifying EBs who meet certain standards. Achieving Accredited status establishes that the EB is effectively managed and adheres to standards set by ENTRUST.
- 1.2 The EB Accreditation process helps an EB comply with the Regulations and ensure that organisations adopt a best practice framework within which to operate. This process also ensures that EBs retain the flexibility to design and operate appropriate governance processes.
- 1.3 The EB will be subject to an annual Accreditation Review to ensure that the correct processes remain in place for the EB to retain Accredited Status.
- 1.3 All EBs are welcomed to register their interest in the Accreditation process. A list of Accredited EBs can be found on the [Accreditation](#) pages of our website.

## **2. What are the Benefits of Accreditation?**

- 2.1 There are a number of advantages to becoming an Accredited EB. These advantages include:
- automatic approval of projects submitted online using an abbreviated project registration form to reduce administrative burden;
  - a lighter regulatory touch;
  - Landfill Operators and other EBs can provide qualifying contributions with an increased level of confidence and knowledge that the organisation is well run and properly structured; and
  - demonstrating to ENTRUST that LCF funds are managed by a well controlled organisation.
- 2.2 ENTRUST will also continue to develop and build upon the benefits that EB Accreditation provides.

## **3. How does my EB become Accredited?**

- 3.1 The Accreditation process involves a detailed review of how the EB is set up and the systems and procedures in place. The review is performed during an ENTRUST Accreditation Inspection, and is broken down into four main modules as follows:
- Governance and Management;
  - LCF Funding Arrangements;
  - Project Compliance; and
  - EB Systems and Operations.
- 3.2 When the Compliance Manager is satisfied that the EB is at an appropriate standard to gain Accredited status, he or she will submit a report and recommendation to the ENTRUST Board.
- 3.3 If you are interested in becoming an Accredited EB, please complete the Expression of Interest Form which can be located on the Accreditation pages of our website and forward to

The Compliance Manager,  
60 Holly Walk,  
Leamington Spa,  
Warwickshire, CV32 4JE

or by email to [compliance@entrust.org.uk](mailto:compliance@entrust.org.uk)

## **4. Small Grants Scheme**

### **4.1 Registering for the Small Grants Scheme**

- 4.1.1** This guidance provides assistance to EBs who wish to register a Small Grants Scheme (SGS) for a year. The Small Grants Scheme is available to:
- Accredited EBs; and
  - EBs who have been enrolled for 3 years or more.
- 4.1.2** A Small Grants Scheme enables a registered EB to make a number of small grants (up to £5,000 each) under a single, umbrella project, annual registration. A SGS registration is for one year only but eligible EBs may apply for a new SGS project registration each LCF accounting year (1 April to 31 March).
- 4.1.3** The maximum amount of LCF funds which can be allocated by a registered EB each year under a Small Grants Scheme registration is:
- £100,000; or
  - 10% of the EB's total LCF income in the previous LCF accounting year, whichever is the lower amount.

### **4.2 Small Grants Scheme Overview**

- 4.2.1** The SGS allows organisations to apply to an EB with a registered Small Grants Scheme for funding for small grants.
- 4.2.2** Funding provided under the SGS can only be used for projects under Object D.
- 4.2.3** All of the existing conditions and guidelines issued by ENTRUST must also be adhered to for the SGS.
- 4.2.4** An EB must register its Small Grants Scheme in advance of entering into any contract or obligation to provide LCF funding under the SGS. If the SGS registration is not approved then any monies spent prior to the expected approval will have been spent in breach of the Regulations.
- 4.2.5** LCF funding provided under a SGS should be for a discrete scheme which must not form part of a larger venture. For example, installing benches into a park could be funded under the SGS, but if the whole park is being improved and the benches form only part of the improvement, the benches would not be eligible for separate funding under the SGS.
- 4.2.6** The aim of the SGS is to reduce the administrative burden of applying for, and giving, small grants.

### **4.3 Grants that can be applied for under the SGS**

- 4.3.1** Applications can be made for up to £5,000 for ventures which satisfy all Object D project criteria. Please see Part D of the ENTRUST Guidance Manual for further guidance on Object D projects.
- 4.3.2** Grants will only be given for ventures or works which are on a site that is within the vicinity of a registered landfill site.

### **4.4 Ineligible Grants**

- 4.4.1** Grants cannot be provided under the SGS for the following:
- the core costs of an organisation;
  - retrospective funding – work that has already taken place before any grant is awarded;
  - any scheme with a total cost of more than £5,000;
  - any scheme which does not meet all the funding criteria of Object D;

- a grant for a scheme which forms part of a larger project; and
- a scheme which will not be completed before 31 March of the financial year in which the SGS was registered.

## **4.5 Record keeping**

**4.5.1** EBs with a registered SGS will be required to keep records of all aspects of the grants that are required on the registration form. However, in order to reduce the administrative burden placed on EBs, ENTRUST will usually only require information to be provided to them annually by way of the statutory annual return and during the annual accreditation review, unless there are special circumstances.

**4.5.2** The key areas that ENTRUST require information for each grant are as follows:

- A brief description of the project;
- Nearest postcode to the site;
- Nearest landfill site;
- Type of amenity;
- The month/year of expenditure;
- The value of the grant;
- The Value for money questions; and
- The Youth volunteering questions.

We will provide EBs with a template of a spreadsheet which sets out all the information required. This will be sent to EBs upon approval of their SGS.

**4.5.3** An EB who has registered a SGS is responsible for ensuring the grants it awards are for works which are compliant with the Regulations. In order that ENTRUST can be assured that each grant is compliant, EBs should keep on file the following information:

- A photograph of the works once completed;
- All invoices relating to expenditure (including non LCF expenditure as the total costs of the works or venture cannot cost more than £5,000)
- Written assurance from the grant recipient that the works have been completed; and
- Assurance that the EB making the grant has inspected the completed works to ensure compliance.

## **4.6 Record inspection**

**4.6.1** It should be noted that ENTRUST can also request to see these records at any time. For this reason, it is recommended that EBs keep these records up to date. This should also reduce the administrative burden on them at year end.

## **Glossary**

<b>Name</b>	<b>Abbreviation</b>	<b>Concept</b>
Accredited EB		Accreditation is a status awarded by the ENTRUST Board of Directors to EBs that demonstrate the highest levels of governance, best practice and compliance. Accredited EBs can approve their own projects and have lighter touch Regulation.
Additional associated cost		Costs not solely related to the project such as head office costs, project publicity, an opening ceremony and other activities that do not directly result in physical work being undertaken.
Asset		ENTRUST considers an asset to be any LCF funded item of economic value, especially any asset which could be converted to income. Examples are: <ul style="list-style-type: none"> <li>• land, buildings, machinery and infrastructure assets;</li> <li>• Intellectual Property Rights; and</li> <li>• liquid assets (e.g. cash, investments and securities).</li> </ul>
Asset Register		An asset register is a record that contains detailed information about assets acquired using LCF monies. This can be as simple as an excel spreadsheet.
Association of Distributive and Environmental Bodies	ADEB	ADEB is the representative body for practitioners within the LCF and has two levels of membership - full members are distributive EBs that pay the ENTRUST levy and associate members are other EBs.
Benefit		A benefit is any material or financial advantage, asset, gain or benefit in kind. Neither the contributing LO nor the CTP may receive a benefit from having made a contribution. On a project level the recipient of a benefit can be an individual or group, and can include contractors or landowners who may gain from a project going ahead.
Building or structure of historical or architectural importance		A building or structure which can be demonstrated to have historical or architectural importance, for example, listed status or support from a County architect.
Clawback		In certain circumstances (such as an EB's expenditure being non-compliant, an EB breaching a condition or when an EB is revoked) HMRC have the power to recover from the funding LO the tax credit claimed by the LO in respect of the qualifying contribution it made to the EB. This recovery from the LO is known as clawback.
Compliant expenditure		Expenditure that has been made in accordance with the Regulations.
Connected person/party		Any person, organisation or group which is related or linked to the EB. This can include any director, partner, shareholder, manager or other employee or employer. Relations and links can be through personal or business connections, for example a spouse, a civil partner, a relative or a person connected by virtue of being a fellow trustee.
Contributing Third Party	CTP	Any person, organisation or group who makes a payment to the LO in order that the LO makes a qualifying contribution to the EB.
Derived income		See Income Derived.
Direct project works		Works which are solely attributable to the delivery of the project (such as contractor costs, legal fees, volunteer management, signage and other materials that will be kept on site). Direct project works are works which are necessary for the physical delivery of the project.
Distributive EB		An EB who distributes funds for projects on behalf of an LO or

		multiple LOs. All distributive EBs are also EBs and must comply with all the requirements placed upon EBs. The Regulations do not recognise distributive EBs as a separate category of EB.
Enforcement sanctions		Where ENTRUST considers that an EB's actions or responses suggest regulatory breaches or imminent breaches, a series of events will take place under the general heading of the Enforcement Process.
Enrolment		The process by which an organisation can become an EB with ENTRUST, thereby enabling it to receive and spend LCF monies on approved projects that are compliant with the Regulations.
ENTRUST		The Regulator of the LCF.
Environmental Body	EB	An organisation enrolled by ENTRUST. Once an organisation is an Environmental Body (EB), it is allowed to receive, distribute and spend LCF monies.
Expenditure		LCF monies spent by an EB. For an EB's expenditure to be compliant it must be spent on either an approved object or its running costs.
Form 1		The form for an organisation to apply to enrol as an Environmental Body with ENTRUST.
Form 2		The form for an EB to register a project with ENTRUST.
Form 2 - Appendix		The object specific appendix which is required to be appended to Form 2 from an EB who is registering a project.
Form 2X		The form for an EB to extend the deadline for it to complete a project.
Form 3		The form for an EB to report it has received LCF monies direct from a LO – it is a statutory requirement that this information is sent to ENTRUST within seven days of the LO receiving the monies.
Form 4		The form to make a statutory annual return required from every EB. The annual return is required even where there is nil balance or there has been nil project activity during the year.
Form 7		The form for an EB to report it has transferred LCF monies to another EB – it is a statutory requirement that this information is sent to ENTRUST by the transferring LO within seven days of the transfer of the monies.
Form 9		The form for an EB to report the completion of a project.
Funding agreement		The legal contract under which the project EB can receive LCF monies from another EB (often a distributive EB) or the LO.
Her Majesty's Revenue & Customs	HMRC	HMRC collect Landfill Tax and allow an LO's claims for tax credit in respect of the qualifying contributions made. HMRC are also responsible for overseeing ENTRUST and for taking final enforcement sanctions where there is non compliance by an EB.
Income derived		Any income generated by LCF monies or by an asset funded with LCF monies, or by the sale of LCF funded assets. Income derived includes bank interest, royalties, rent, admission charges or proceeds from the sale of LCF asset.
In the vicinity of a landfill site		Projects under Objects D, DA and E and the Small Grants Scheme must be in the vicinity of a licensed landfill site. ENTRUST interprets this to mean within a 10 mile radius of a licensed landfill site. However, if evidence can be provided that a site further than 10 miles away from a licensed landfill site is adversely affected by the operation of the landfill site, then this may be compliant.
Intellectual Property Rights	IPR	Right to intellectual property, such as copyright, patents and designs. This includes any intellectual output or associated skills which have an economic value.
Landfill Communities	LCF	A scheme which enables LOs to contribute a portion of the monies which would otherwise be paid as Landfill Tax to enrolled EBs for

Fund		the purpose of those EBs carrying out projects (in accordance with The Landfill Tax Regulations 1996) which benefit the communities in the vicinity of landfill sites.
Landfill Operator	LO	A registered person, responsible for the operation of one or more licensed landfill sites, and (for the purposes of the LCF) responsible for the payment of Landfill Tax to HMRC in respect of waste deposited at their landfill sites.
Landfill site		Land is a landfill site if at any given time there is in force a licence, resolution or permit described in section 66 of the Finance Act 1996. For the purposes of LCF, such a site must be owned or operated by a person registered to pay Landfill Tax.
Landfill tax		The tax paid by LOs on waste deposited at their landfill sites.
Landfill Tax Credit Scheme	LTCS	The old name for the Landfill Communities Fund.
Landfill Tax Regulations (1996)		The Regulations governing the LCF.
LCF monies		The sums held and spent by an EB under the LCF scheme.
Local authority		Local government administrative body, such as a local council, district council or parish council.
Main contact		A person nominated by the EB to act as the main contact for LCF purposes. Generally, ENTRUST will contact the main contact in the first instance with any query we may have.
Object A		An approved object of the LCF which involves the reclamation, remediation or restoration of land, the use of which has been prevented by some previous activity.
Object B		An approved object of the LCF which involves either: <ul style="list-style-type: none"> <li>• the reduction or prevention of any potential for pollution; or</li> <li>• remediation or mitigation of the effects of pollution on land where that pollution has been caused by an activity that has now ceased.</li> </ul>
Object D		An approved object under the LCF which involves the provision, maintenance or improvement of public parks or other public amenities in the vicinity of a landfill site.
Object DA		An approved object under the LCF which involves the conservation or promotion of biodiversity.
Object E		An approved object under the LCF which involves the maintenance, repair or restoration of buildings or structures which are either places of worship or demonstrated to be places of architectural or historical interest.
Object F		An approved object under the LCF which involves the provision of administrative, financial or other similar services supplied to other EBs.
Place of worship		A building or structure that is exempt from business rates by virtue of Schedule 5, Case 11 of the Local Government Finance Act 1988 or has a certificate issued under the Places of Religious Worship Act 1855 to confirm it is a place of worship.
Project		Works funded by LCF monies under an approved object.
Project applicant		A person or organisation who wishes to undertake a project and who seeks LCF money to fund the project works. It is not necessary to be an EB in order to seek an offer of LCF funding from a distributive EB or LO but only an enrolled EB can apply to ENTRUST for project approval.
Project application		The process by which an EB submits details of a project to ENTRUST for approval. Once a project has been submitted by an EB then ENTRUST will decide whether the proposed project complies with the Regulations. If the project is compliant then

		ENTRUST will give project approval.
Project approval		The approval of a project application by ENTRUST, confirming that the project meets the criteria of one or more of the approved objects under the Regulations.
Project promoter		Project promoters enter the scheme as project applicants. Successful project promoters may become EBs in their own right, while others work under a contract to an EB (or distributive EB), which retains responsibility for compliance.
Public access		<p>Projects under Objects D or E must be available to the public.</p> <p>Object D: generally, a park or public amenity must be available for more than four evenings or two days a week - if it was available for fewer than 104 days in any one year it would not be considered sufficiently open to the general public to qualify.</p> <p>Object E: a religious building or structure must be open for an appropriate amount of time as would be expected from similar buildings or structures, otherwise it would not be sufficiently open to the general public to qualify.</p>
Qualifying contribution		The sum given by a LO to an EB under the LCF scheme, together with any income derived from such a qualifying contribution. When an EB receives a qualifying contribution from a LO, it must complete and return a Form 3 to ENTRUST within seven days of the receipt of the qualifying contribution.
Regulations		The Landfill Tax Regulations 1996 (S.I. 1996/1527), as amended
Regulatory body		The regulatory body is ENTRUST.
Review Panel		The Review Panel, whose purpose is to ensure that ENTRUST applies consistent standards when deciding to reject enrolment and project registration applications.
Revocation		Voluntary revocation is the process by which an EB chooses to cease its registration as an EB from the ENTRUST roll of EBs. Compulsory revocation is when HMRC exercises the enforcement sanction of removing an EB from ENTRUST's roll of EBs for one or more serious breaches, or a number of less serious breaches, of the Regulations.
Small Grants Scheme	SGS	Under this scheme, qualifying EBs can register a single umbrella project under which they can then award grants (not exceeding £5,000 per project) with total project expenditure under the registered EB's SGS each year not exceeding £100,000 or 10% of the registered EB's LCF income in the previous year.
Tax credit		An amount of money that the LO is able to claim by way of deduction to its Landfill Tax liability due to making qualifying contributions to an EB.
Transfer		The transfer of LCF monies between EBs, typically a payment from a distributive EB to another EB. A transfer of LCF funds must be reported to ENTRUST, on Form 7, by the transferring EB within seven calendar days of the transfer being made.
Vicinity of a landfill site		Projects under Objects D, DA and E must take place in the vicinity of a landfill site. We interpret "in the vicinity" as being within ten miles of a site (although some distributive EBs and LOs have more stringent requirements). However, this ten mile requirement can be relaxed if evidence can be provided that the project site has been adversely affected by the landfill site.