H – The Benefit Rules

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

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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 <u>Separate body</u>

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 <u>Intention to make payment to the LO</u>

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 <u>Unique benefit</u>

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 enrols 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.