

‘Regulatory Burdens’ Consultation Analysis

Consultation dates: 21st November 06 – 15th December 06

Number of consultation documents distributed: 2734

Number of responses received: 322

Response percentage: 12%

Executive Summary

As the Government appointed regulatory body for the Landfill Communities Fund (LCF), ENTRUST is committed to continually reviewing, developing and improving the services provided to stakeholders.

HM Revenue & Customs and ENTRUST consulted in November and December 2006 with documents being distributed to over 2700 stakeholders. 322 responses were received which translates into a 12% response rate.

The consultation questionnaire was split into three sections, the first one focused on the monies held by EBs that were derived before April 2003 with the second on the regulatory obligations of EBs. The third section focused on the EB Manual and identifying areas EBs would like to be consulted upon in the future.

Stakeholders outlined that monies derived before April 2003 was being held but was not committed in whole, to the waste reduction objects that were removed in April 2003.

Stakeholder respondents overwhelmingly recommended that regulatory burdens should be lifted and changes made to the ongoing reporting obligations. All proposals were commented on by respondents not only in terms of lifting burdens but also in improvements that could be made to the reporting forms and also the guidance.

ENTRUST will now make recommendations to HM Revenue & Customs to reduce regulatory burdens in the following areas:

- Removal of the 6 monthly financial reporting requirement for EBs whose income is over £100,000. This will remove approximately 100 returns being made per year;
- Extend the time periods for submission on annual financial returns;
- Remove the requirement for changes in an EBs management to be notified ad hoc and standardise the reporting to once per year which will remove over 1000 returns per year;
- Remove the requirement for recipient of transferred funds to notify the regulator which will remove around 1000 forms per annum;
- Remove the requirement for EBs to formally submit their annual accounts to the regulator which will remove over 2500 submissions

Further to the above, non-regulatory reporting requirements will also be removed. Areas have also been identified for future areas of consultation and stakeholders made over 500 suggestions for improvement to reporting forms, guidance and processes adopted by the regulator.

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1. Introduction

- 1.1 Following the recommendations of the Better Regulation Executive (BRE) and the Hampton Review (<http://www.hm-treasury.gov.uk/index.cfm>), ENTRUST as the regulator of the Landfill Communities Fund (LCF), has been working closely with HM Revenue & Customs (HMRC) to review the operation of the Landfill Tax Regulations (LTRs). The aim of this exercise was to consider ways in which the LTRs can be simplified and the regulatory administrative burden on Environmental Bodies (EBs) reduced.
- 1.2 The Regulator and HMRC considered that the Regulations could be simplified and amended to reduce the administrative burden on EBs. The consultation document put forward a number of areas for consideration. The areas consulted upon were:
- How monies derived before April 2003 are used and the basis of apportionment on Objects C/CC;
 - What improvements could be made to the ENTRUST financial reporting forms (Forms 3, 4 and 7);
 - The annual financial return that EBs must submit and the length of time for submission;
 - The necessity for six monthly reporting of income and expenditure by EBs;
 - A proposal to have a single date to submit financial information to the Regulator;
 - The removal of the necessity for EBs to notify ENTRUST of a project start and its completion;
 - The necessity to report a change in director of the EBs Board within 7 days; The necessity for EBs to submit annual accounts to the Regulator; and
 - The EB Manual and the principles and guidance within it were also consulted upon.

2. Methodology

- 2.1 ENTRUST aims to reduce the administrative burden on EBs in line with the Government's regulatory reform agenda. This will be helped by reviewing, reducing and removing burdens wherever they exist, either through merging regulations into a more manageable form or removing inconsistency within or between regulations.
- 2.2 The anticipated benefits of this approach are believed to be threefold:
- Lower administrative cost e.g. the time taken to fill in forms or the time taken to meet requests for information from the regulator;
 - Simpler and more user friendly guidance; and
 - Fewer deadlines and legal requirements.
- 2.3 To reduce the administrative burden on stakeholders the majority of the questions, within this consultation, were developed using a 'tick box' response. However, after each question there was space for individuals to make any specific comments or suggestions.
- 2.4 Additionally, at the end of each section there was also the opportunity for respondents to submit any general comments or specific suggestions that they consider had not been covered in the main consultation document proposals.

3. Findings

3.1 Summary of findings relating to Object C & CC and 'old scheme' monies

3.2 Funds currently held by Environmental Bodies

3.2.1 EBs were asked to outline the value of contributions (and the income derived from them) that are currently held, which were made by the contributing Landfill Site Operators (LSO) (directly or by transfer from another EBs) expressly donated for C & CC registered projects and held by EBs. This figure is: £6,445,489.71

3.3 The funds that have been committed by EBs to objects C & CC

3.3.1 EBs were then asked to outline the total value of the above funds that are either committed to existing C & CC projects or formally earmarked for an identified C & CC project registered with ENTRUST, which had not yet started. This figure is: £6,539,975.68

3.4 The difference between the figures in 3.2.1 and 3.3.1

3.4.1 EBs identified the difference in the amounts held by them (3.2.1) and the amount committed to projects (3.3.1) (which stands at £94,485.97) is being accounted for by those whom have an active and ongoing project that is awaiting a payment of funds (expectant income) for their registered project.

3.5 The obligations EBs are under to spend this money

3.5.1 EBs were then asked to indicate, if it was possible, whether the contributing LSO or transferring EBs would not object to the contribution that was originally made and allocated to object C & CC, now being used on the current approved objects (i.e. not waste reduction projects under object C/CC).

- Four EBs stated that the LSO would object (though projects were ongoing with legal agreements in place to protect these concerns);
- Twenty one EBs stated that the LSO would not object; and
- Two hundred and ninety five EBs suggested that this was not applicable to them.

3.5.2 Comments on the above can be found in 3.6 along with any impacts envisaged by the EBs of a decision to prohibit the use of the contributions that have not been committed under questions 1 and 2 above.

3.6 EBs and stakeholders also raised the following areas to be considered by HMRC:

- The asset retention by an EBs for an ongoing project not now LCF funded;
- The realisation of asset values upon completion of a project and on what this money could be spent;
- Intellectual Property Rights and the income generated from it and on what this money could be spent;

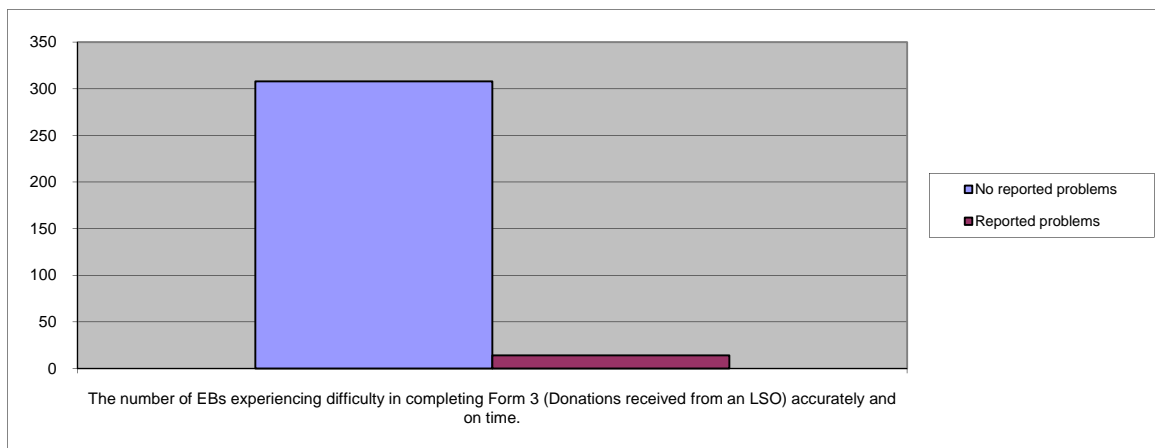
3.7 Comments on ENTRUST Reporting Forms

3.7.1 ENTRUST aims to reduce the administrative burden of the forms its uses to collect information from EBs. This will be achieved by reviewing, reducing and removing burdens wherever they exist, either through merging regulations into a more manageable form or removing inconsistency within or between regulations.

3.8 Form 3 – EBs notification to ENTRUST of receipt of a contribution from an LSO

3.8.1 ENTRUST asked if EBs had experienced any difficulties that EBs may have had in completing Form 3 (Donations received from an LSO) accurately and on time, and sought suggestions on how it could be improved.

Figure 1 – Details the respondents perception of problems in reporting a notification of receipt of a contribution from an LSO via Form 3



3.8.2 Respondents further (summarised) comments on the notification of a contribution process.

Stakeholder Comments

- No difficulties in completing Form 3. Object C & CC projects should be removed as the form only relates to new scheme money;
- Contributing Third Party (CTP) information isn't available at the time the donation is received;
- Collecting information & completing forms in time & accountability is a burden. The time limit (7 days) is unreasonable. The deadline should be extended; and
- Sometimes EBs are not informed of a LSO donation paid by BAC's and they do not know the donation has been made until the Bank Statement comes in 1 month later. The deadline should be extended.

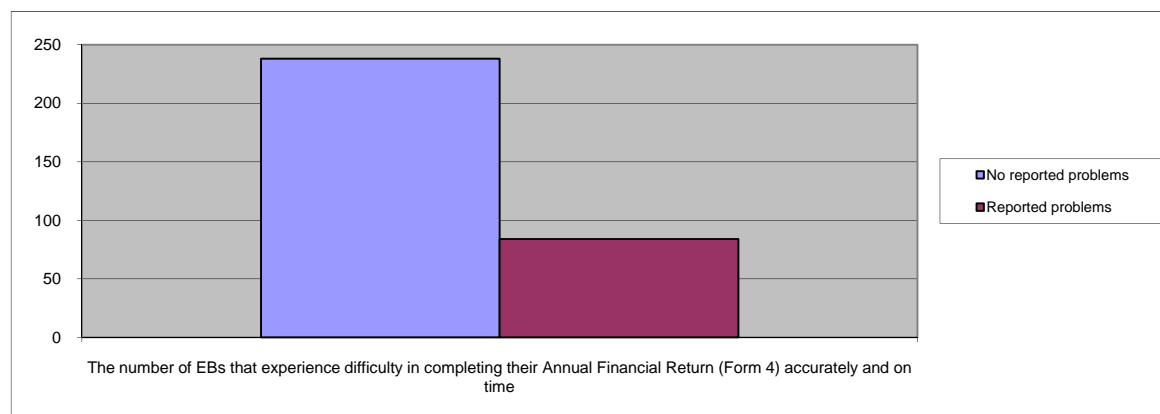
ENTRUST Response:

'Form 3 – Notification of a contribution from a landfill operator' causes few problems except in the time taken to report, and some information not being available at the time of submission. There is no intent to change this form at present.

3.9 Form 4 – EB Return of Income and Expenditure

3.9.1 ENTRUST asked EBs about the difficulties they may have in completing Form 4 (Annual Financial Return) accurately and on time and sought suggestions on how the reporting regime could be improved.

Figure 2 – Details the respondents perception of problems in reporting the EBs annual income and expenditure



3.9.2 Respondents further (summarised) comments on reporting income and expenditure

Stakeholder Comments

- We require a longer return period. We are a small charity using paper accounting and it is difficult to get the returns back quickly;
- Our annual accounts are prepared on an 'actual basis' and therefore the current time slot for submission is too short to ensure that the return Form 4 agrees to examined charity accounts;
- The situation will be improved when the ('old' and 'new') funds are combined/merged
- Difficulties are experienced in splitting some categories of income and expenditure (e.g. EBs admin costs, interest received and corporation tax paid) between old and new monies; and
- Much easier now we can file via ENTRUST on-line.

ENTRUST Response:

The difficulties experienced in compiling and then submitting 'Form 4 – Financial Return' are noted. ENTRUST will request that the deadline for submission be extended from 14 days to 1 month. The form will also be reviewed for ease of use and guidance content.

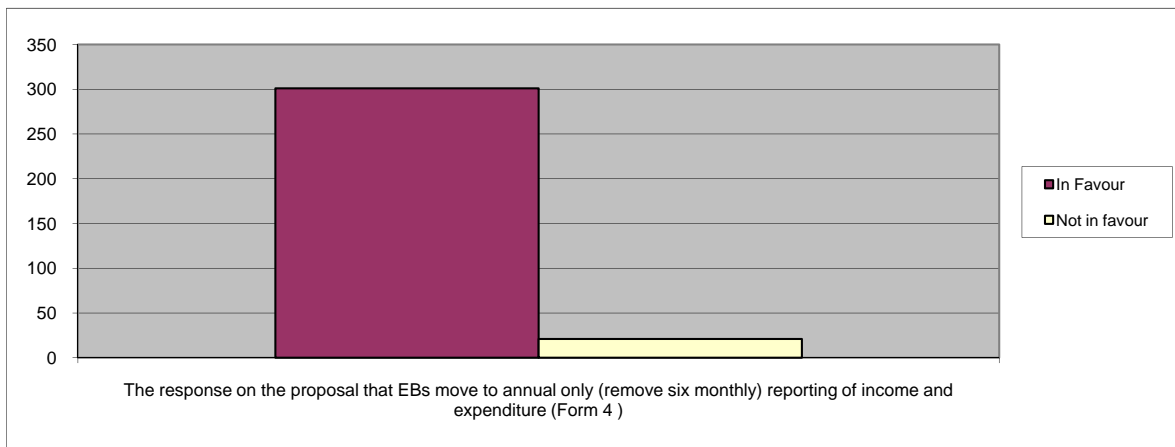
3.10 Consultation results on the removal or reduction in reporting requirements

3.11 Form 4 – Six Monthly Reporting of Income and Expenditure

3.11.1 Currently all EBs submit one annual financial return to ENTRUST each year. ENTRUST Online can be used to create the records ready for submission and can be updated at any time within that financial period and before submission.

3.11.2 ENTRUST proposed to remove the six monthly reporting requirements on EBs whose income is over £100,000 in the preceding six months.

Figure 3 – Details the responses to the proposal to lift this burden



3.11.3 Details the comments on the proposal to reduce this burden

- We feel the 6 monthly return is unnecessary and a duplication of effort;
- Organisations that are spending over £100,000 should have sufficient financial controls in place to readily meet this request;
- We don't really see that there will be much of reduction (never mind a significant one) in the administrative burden on EB's who currently submit six monthly (Form 4);
- This is a sensible reduction in administration;
- Very welcome, especially to our finance staff who shoulder the burden of making sure the information is accurate;
- It will make the April Form 4 submission worse by increasing the amount of information to be reported at that time; and
- A significant reduction in the administrative burden to the Trust is anticipated.

ENTRUST Response:

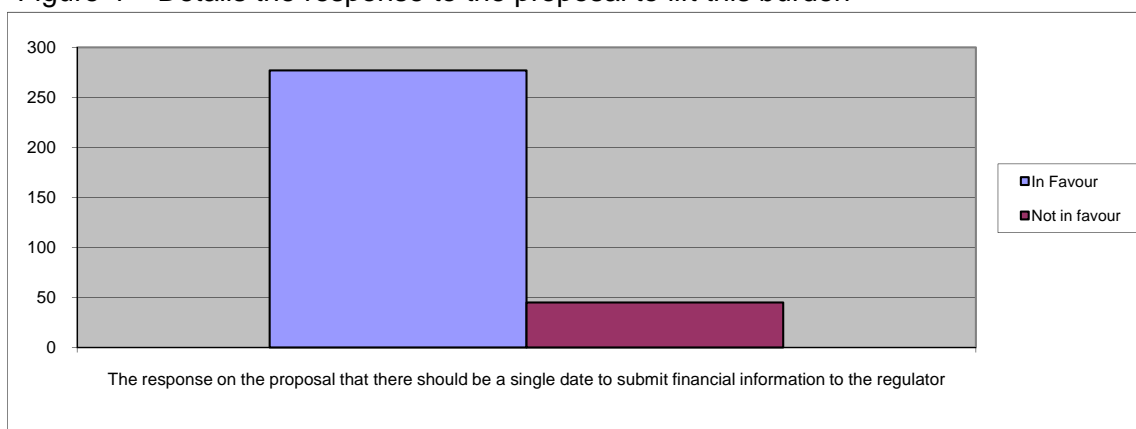
ENTRUST will recommend that this burden is removed

3.12 Form 4 – A Single date to submit financial information to the regulator.

3.12.1 EBs year-end dates are different with many falling outside a common year-end (say March 31st). In April 2005 HMRC introduced a common year end for all Landfill Operators of March 31st and this creates issues within reconciling income and expenditure against an EBs where the year-end dates are different.

3.12.2 ENTRUST proposed that there could be an introduction of one common reporting year-end of March 31st for all EBs across the LCF.

Figure 4 – Details the response to the proposal to lift this burden



3.12.3 Respondents further comments on the proposal to reduce this burden:

- For EB's & DEB's to change their existing year ends to March would entail unnecessary costs and make annual comparisons difficult for them to make. If records are properly maintained by ENTRUST there should not be any difficulties encountered with reconciliation of figures;
- It would add to our accountancy costs and cause potential confusion;
- Having a common year end for LCF reporting numbers to ENTRUST probably makes sense;
- Seems a sensible proposal in general but would make things slightly more awkward where our year end is 30th September;
- Transition period will be difficult but we understand the need for a common approach; and
- As long as we are given sufficient notice for any change to be able to implement it without causing undue work load, and accepting that the EBs may still have a different financial year.

ENTRUST Response:

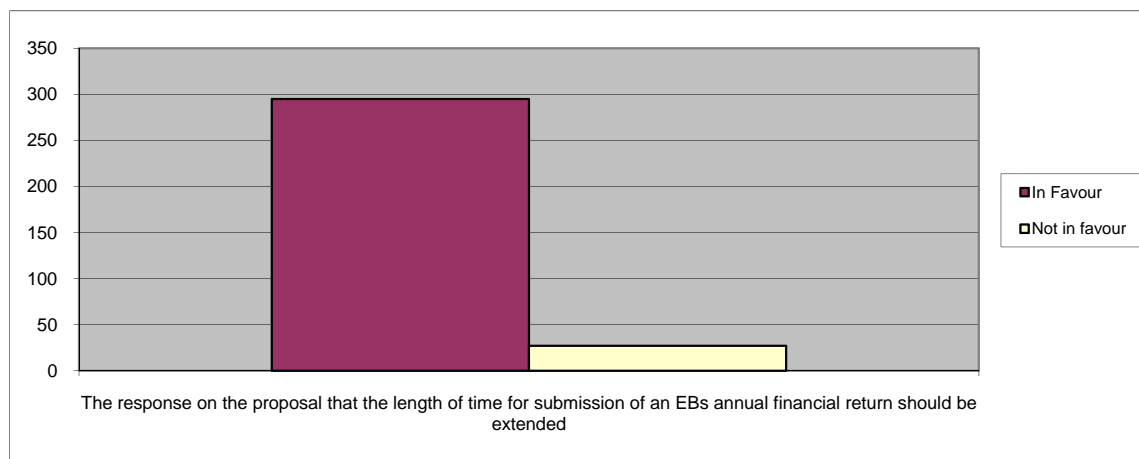
There are many benefits of this change to reporting and collating information across the LCF. Financial returns (via Form 4) are income and expenditure accounts with spending details for projects added. Their production at a single point in time will be proposed to HM Revenue & Customs so as reporting aligns with that undertaken by landfill operators.

3.13 Form 4 – The length of time for submission to ENTRUST

3.13.1 All EBs are legally obligated to submit a financial annual return (Form 4) to the Regulator within 14 days of their financial year-end. Many EBs find this time constraint difficult to achieve causing recorded compliance issues and raising their risk profile.

3.13.2 ENTRUST proposed that there could be an introduction for EBs to be legally obligated to submit a financial annual return (Form 4) to ENTRUST by 30th April each year.

Figure 5 – Details the response to the proposal



3.13.3 Respondents further comments on the proposal to reduce this burden:

- Agree with the extended reporting period but this should not be linked to 31st April;
- Still needs to be longer - 31st May would be better;
- Some invoices are still not in at the 30th of April even if they are related to the previous financial year;
- The 14 day limit is ridiculous and a 3 month period might be appropriate for larger EB's;
- This is ok provided transactions by 3rd parties that are not complete by 30th April roll over. Or audited accruals are allowed;
- Given that some invoices may not be paid etc a more reasonable time frame would be 31st May; and
- Some EB's are small and the added pressure to compile annual accounts may not be possible to staffing levels.

ENTRUST Response:

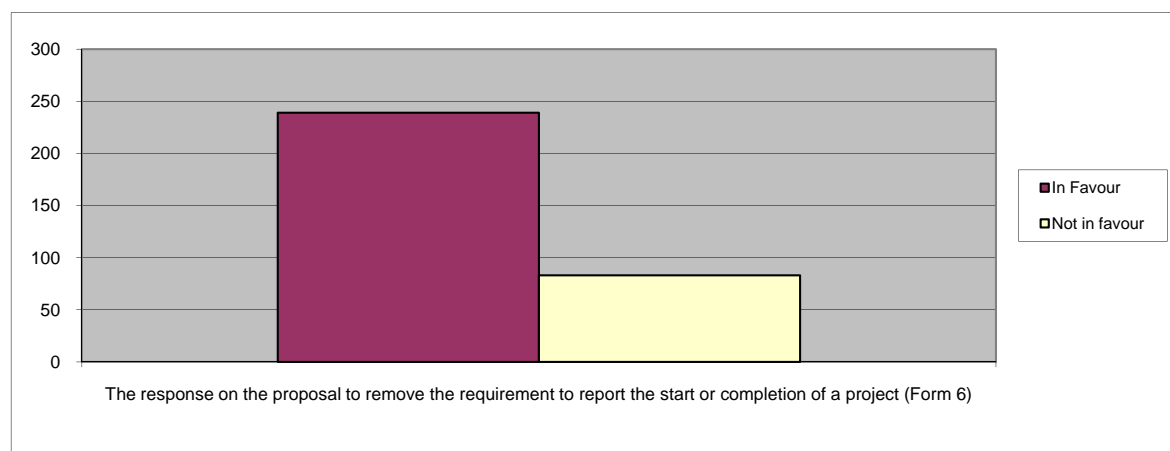
ENTRUST will request that the deadline for submission should be extended from 14 days to either 30th April each year or within 25 working days.

3.14 Form 6 – Project Start & Complete

3.14.1 So that projects can be monitored and inspected, EBs are asked to inform ENTRUST when expenditure on their projects starts and finishes. Form 6 *Project starts and completions* is used to notify ENTRUST within 7 days of (a) landfill tax money starting to be spent, and (b) the last payment being made.

3.14.2 ENTRUST proposed that there could be an introduction for the records of projects starting and completing should be submitted once a year via the 'Form 4 – EBs Return of Income & Expenditure'. EBs would keep and maintain a constant and accurate record of the start and completion of LCF expenditure that is available to ENTRUST upon request at intermittent periods.

Figure 6 – Details the response to the proposal to lift this burden



3.14.3 Respondents further comments on the proposal to reduce this burden:

- I do not feel that the Form 6's are a particular administrative burden, by completing them at the time there is no risk that reporting on a completed project is accidentally overlooked as may occur if left to end of year;
- It is felt that project starts and completions of projects should be reported at the time - If a project begins or ends say in May then it is nearly a year before reports are completed - too long;
- If the information may be requested at intermittent periods would be happy to keep to the discipline of the Form 6 reporting; and
- Form 6 is quick and easy to submit. I think it would take longer to sort this information at the end of the year.

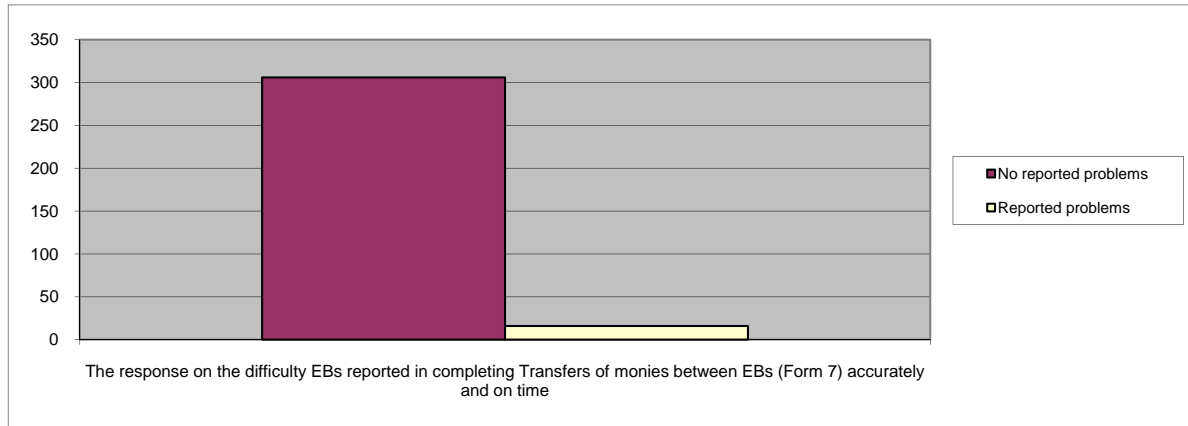
ENTRUST Response:

This burden will be removed and annual submissions by EBs will contain 'project start & project complete' information.

3.15 Form 7 – Transferring Monies Generally

3.15.1 ENTRUST sought views from EBs on any difficulties they experience in completing Form 7 (Transfers of monies between EBs) accurately and on time. If so, an explanation was sought, along with suggestions on how Form 7 might be improved.

Figure 7 – Details the response to the proposal to lift this burden



3.15.2 Respondents further comments on the proposal to reduce this burden

- The seven day dead line is very short particularly for small EB's who may not have any paid staff;
- Seven days is an absurd requirement;
- Seven days is absurd necessitating special reference to the bank. It is also quite contrary to normal commercial practice;
- It can be difficult to meet the seven day deadline. There is insufficient time with our manpower levels; and
- This is one of the main administrative burdens at present and the reporting period should be extended.

ENTRUST Response:

ENTRUST will seek that the 7 day time frame currently in operation is extended to 25 working days.

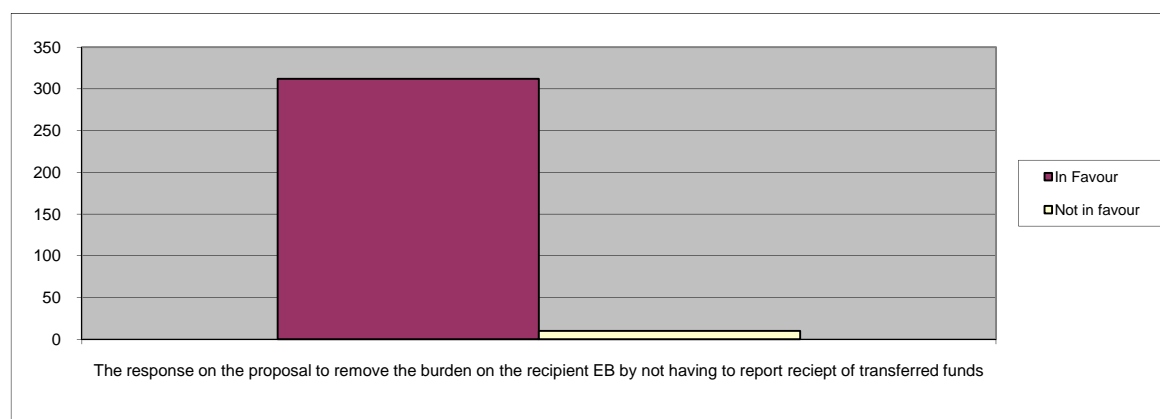
3.16 Form 7 – Transferring Monies and the obligations on EBs in doing so

3.16.1 When landfill tax money is transferred, both EBs involved must record the date the money was transferred or received, the enrolment number of the environmental body to whom the transfer was made, or from whom the transfer was received. The amount transferred, the name and registration number of the landfill operator from whom the money was originally received and the name and address of any contributing third party involved.

3.16.2 Both EBs must report this information to ENTRUST within 7 days using Form 7 *Transfers of money between EBs*.

3.16.3 ENTRUST proposed to remove the obligation on the recipient EB to notify ENTRUST of the receipt of the transferred funds. The obligation for reporting a transfer would rest solely on donating/sending EB to notify via Form 7. The recipient may still acknowledge receipt via ENTRUST Online if they wish and recipient EBs will still need to account for transferred funds via its annual financial return.

Figure 8 - Details the response to the proposal to lift this burden



3.16.4 Respondents further comments on the proposal to reduce this burden

- Agree but it should be the recipient that reports to ENTRUST;
- I disagree with this proposal. The current system has a compliance obligation for both and this needs to remain;
- I am sure this will be welcomed by the many EB's we transfer funds, but there is a slight concern that if the information on the form transferring money is inaccurate then there needs to be a mechanism to correct the situation; and
- Seven days is too short a window. Extension to 28 days would be better.

ENTRUST Response:

The burden on the recipient EB to report receipt of the monies will also be recommended for removal.

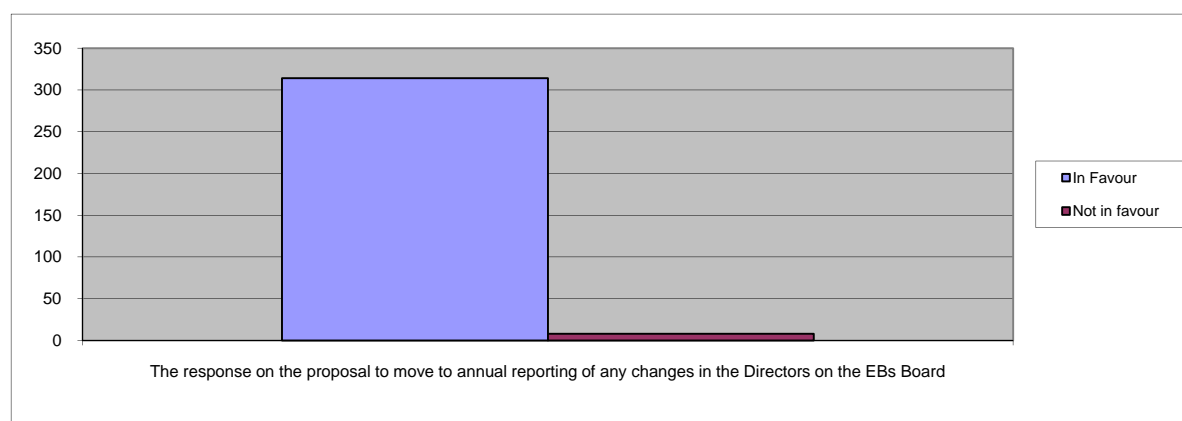
3.17 Reporting a Change in Director on the EBs Board

3.17.1 ENTRUST is tasked with ensuring certain persons can not control, or be concerned in the management of an EBs. An EBs should write to tell ENTRUST of any changes in their management and control within 7 days. This includes changes in the membership, shareholders, guarantors, directors, partners or trustees.

3.17.2 When notifying ENTRUST of new board members, their names, addresses, occupations, employers, date of birth and indication of whether they are elected councillors or officers of a local authority, and of which one, should also be included.

3.17.3 ENTRUST proposed that an EBs should provide a full list of Directors at the financial year-end. An up to date record of directors must also be maintained by the EBs and be available to ENTRUST upon request within 10 days of the request being made.

Figure 9 - Shows the respondents response to the proposal to lift this burden



3.17.4 Respondents further comments on the proposal to reduce this burden:

- Maybe the time limit for reporting to ENTRUST could be lengthened to say 21 or 28 days;
- There is no reduction in EBs administration as previously no return was necessary if there was no change in directors. Now a full list of directors is proposed to be provided annually;
- Can it be included on the form 4 Annual Return so all "paperwork" done at same time;
- Directors are extremely influential on companies it is important that ENTRUST are aware of any changes as they occur;

ENTRUST Response:

The burden on the EB to report changes in directors will be required only once in any one year and this will be at the same time as the annual financial return.

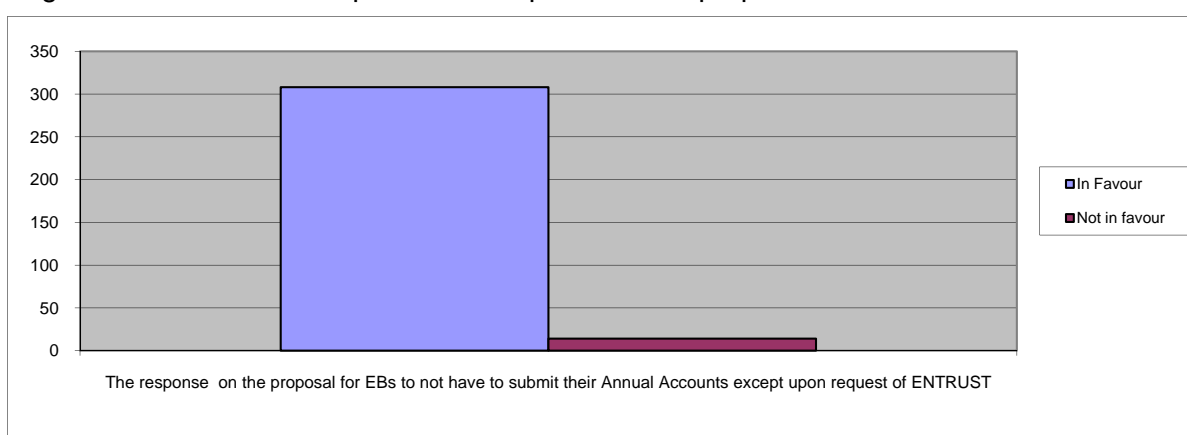
3.18 Submission of Annual Accounts by EBs

3.18.1 An EBs should submit Annual Accounts to ENTRUST within 9 months of its year-end. Incorporated EBs must submit accounts to ENTRUST that have been completed in line with the Companies Act 2006 ?. They must send in a full set of accounts, not the abbreviated version accepted by Companies House.

3.18.2 In practice, accounts may be submitted within ten months of an EBs' year-end. ENTRUST has agreed this with HMRC to harmonise with the period a limited company is allowed to submit its accounts to Companies House.

3.18.3 ENTRUST proposed that an EBs will only need to submit its Annual Accounts to ENTRUST where ENTRUST request them to do so in writing.

Figure 10 - Shows the respondent's response to the proposal to lift this burden



3.18.4 Respondents further comments on the proposal to reduce this burden:

- I disagree with this proposal. The preparation of these accounts and submission to regulatory bodies ensures the highest level of transparency, and this should be retained within the Landfill Communities fund;
- It is a small burden to send a copy of the accounts to ENTRUST. This can be done at the same time a copy is sent to other bodies (Companies House, Charity Commission etc);
- I would have thought a copy of an EBs Annual Accounts would be useful background information for ENTRUST; and
- Annual Accounts have to be done anyway so sending a copy to ENTRUST is no problem.

ENTRUST Response:

ENTRUST will recommend a change in the regulations to not obligate EBs to send Annual Accounts to ENTRUST as a matter of course, but only where the regulator requests them in writing.

3.18 Further Areas for Improvements - The EB Manual

3.18.1 ENTRUST sought views on the guidance contained in the EB Manual. Stakeholders were asked if the guidance was easy to understand, and whether it was clear i.e. the principles that it follows. Respondents comments have been classified into five main areas:

2.18.2 General Comments:

- Not always clear. A more concise user friendly Manual would be welcomed;
- Too long winded and overly technical, referring to the legislation too much. The manual should consist of broad principles and some clear "no go's". In an ideal world the manual should be On-Line searchable;
- Reasonably easy for large EBs' to understand but not so for smaller organisations. However, the Manual is vastly out of date (1 Jan 03) and as far as I am aware no updates have ever been issued although changes of interpretation have been advised through other channels which are sometimes inconsistent and lead to confusion;
- The principles are understood, although some of the wording is considered ambiguous and left open to misinterpretation. The manual is also outdated in terms of current objects. It would be beneficial if any changes can be updated into the manual rather than as appendices to it;
- The layout of the Object section could benefit from a restructure as there is a lot of duplicated information and the layout makes it a difficult read. It is not considered to serve the average EB with clear and understandable format and language;
- As someone new to the work I find it difficult to understand because of the detail which presumably is there to cover every eventuality. Principles followed understood but need teasing out of the minutia; and
- It would be helpful to have a search function on the website for key words to avoid having to trawl through all the data.

ENTRUST Response:

The EB Manual will be fully reviewed and reissued between April 2007 and April 2008.

2.18.3 The Guidance on Assets

- Definition of assets and how they should be preserved is still poor. No longer would accept that responsibilities should last Ad infinitum. When a trust liquidates it is impossible to transfer responsibilities to another EB.

ENTRUST Response:

Asset guidance will be consulted upon between April 2007 and April 2008.

3.19 What the EB Manual does not cover that it should

3.19.1 ENTRUST sought stakeholders views on whether the EBs Manual did not cover any areas which should be covered and if there was too much detail or too little.

Responses were as follows:

- The relationship between ENTRUST and the various contributing bodies is not obvious when one comes to apply for grants;
- There is nothing covering geo conservation and landscape. Geoconservation & geo-diversity is the biggest loser from landfill;
- Project management fees - this area needs looking at and much clearer guidance given for what is allowable or otherwise;
- 3rd party contribution and additional fee – an online calculator would be very helpful;
- Confusion over the role of Local Authorities as third party contributors and project sponsors; and
- 3rd Party contribution information could be more extensive, as applicants to my D EB find it a difficult concept to grasp.

ENTRUST Response:

These areas will be taken account of in the re-drafting of the revised EB Manual.

3.20 Stakeholders views on the project examples used within the EB Manual

3.20.1 ENTRUST then sought stakeholders views on whether the examples of the qualifying and non-qualifying projects were helpful:

- Not helpful as some appear to be incorrectly or poorly reasoned;
- Not particularly helpful as it appears more and more that projects are being viewed on an individual basis rather than for their generic compliance with the approved purposes;
- Yes but could be expanded to include more examples for such areas as pre-school groups/clubs; scout/guide huts;
- Definitely. However the examples of qualifying projects are too obvious, so more examples on the "borderline" would be useful;
- It is useful to have examples, particularly perhaps on points where it is known that there has been registration/compliance difficulties in the past. It should not be seen as a restrictive exclusive list however, and stifle good projects; and

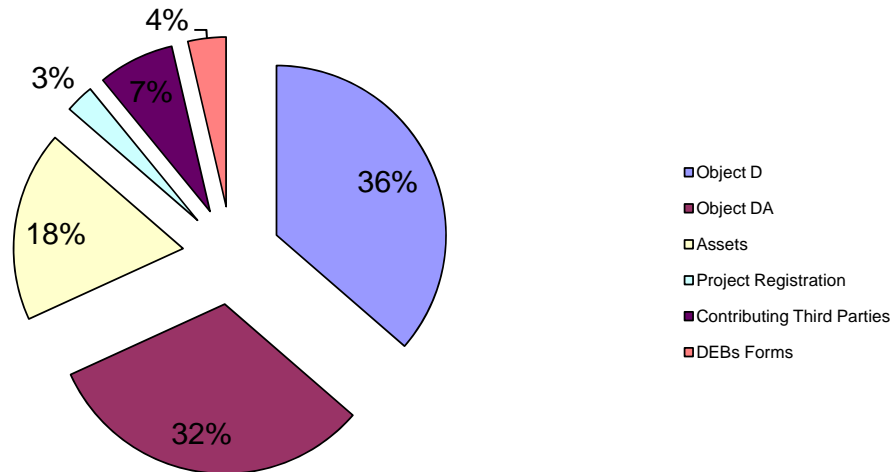
ENTRUST Response:

These areas will be taken account of in the re-drafting of the revised EB Manual.

3.21 Other areas for comments, future consultations or for review

3.21.1 ENTRUST then sought stakeholders views on whether there are any other operational areas that ENTRUST should review or should be included in future consultations. The results were as follows:

Figure 11. Graph to show areas for future consultation as requested by stakeholders:



3.21.1 Summary of comments made by stakeholders around areas of future consultation

- School projects, proportionality and definitions of amenity under object D would be useful;
- More examples and clearer guidance on what constitutes a public amenity under object D;
- Object Da needs reviewing as the current methods don't work in relation to several BAP species on one site;
- The guidance for Object Da says one thing about species and habitats but the legislation says that they must be natural;
- Asset guidance as there needs to be clear direction for EBs whom have a responsibility for land or buildings;
- Contributing third party's as different funders ask for different amounts. Is it 10% of what we are seeking with or without ENTRUST's fee included?; and
- The funders forms are all different and all have their own timescales and forms to fill in. Surely there must be a common set of questions.

ENTRUST Response:

ENTRUST will notify all stakeholders of consultations in advance of them taking place including the diary proposal.

4. Results

4.1. Summary of recommendations that will be made to HM Revenue & Customs for regulatory changes to take place

Table 1 – Summary table of proposed changes to the regulations

	Current Situation	Regulatory change proposed
1.	EBs whose income is over £100,000 must complete a financial return to the regulator every six months.	Remove the six monthly reporting requirements on EBs whose income is over £100,000 in the preceding six months.
2.	EBs submit their financial returns to ENTRUST in line with their own year ends.	Introduce one common reporting year-end of March 31 st for all EBs across the LCF for submission of an EBs (LCF only) annual financial return.
3.	The current obligation is upon the EB to submit the Financial return within 14 days of their own year end.	Introduce the obligation for EBs to submit a financial annual return (Form 4) to ENTRUST by 30 th April each year.
4.	Both sending and recipient EBs must notify the regulator of any transfer made between them.	Remove the obligation on the recipient EB to notify ENTRUST of the receipt of the transferred funds. The obligation for reporting a transfer would rest solely on donating/sending EB to notify via Form 7.
5.	A transfer notification must be made within 7 days of a transfer taking place.	Extend the deadline for an EB to submit the a notification of transfer from 7 days to 28 days.
6.	An EB should write to tell ENTRUST of any changes in their management and control within 7 days.	EBs would notify at the year end when submitting their annual financial return.
7.	An EB should submit Annual Accounts to ENTRUST within 9 months of its year-end.	An EB will only need to submit its Annual Accounts to ENTRUST where ENTRUST request them to do so in writing.