



Retention of LCF Monies



**REGULATING THE LANDFILL COMMUNITIES FUND
BENEFITING PEOPLE AND THE ENVIRONMENT**

Consultation Paper

October 2009

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Project: Beulah Baptist Chapel.

Description: To renew the ceiling and covings of the Baptist Chapel. This also included pointing and refurbishment. The aim was for the Chapel to once again become a safe and welcoming environment.

Supported through: Beulah Baptist Chapel.



Subject of this Consultation:	Retention of LCF Monies
Scope of this Consultation:	<p>This paper considers and seeks information of the arrangements operating in Environmental Bodies (EBs) with respect to retention of LCF monies. The key areas of focus are:</p> <ul style="list-style-type: none"> • Reasonable time constraints for EBs to retain LCF monies after receipt from a Landfill Operator (LO) • Under what circumstances EBs invest monies; and • Investment strategies and vehicles adopted by EBs.
Who should read this:	Environmental Bodies and Landfill Operators
Duration:	The consultation will run for 12 weeks. The closing date for responses is 04 January 2010.
Enquiries:	For general enquiries relating to this consultation, please contact Hannah Williams, Regulations Manager on 01926 488 324.
How to respond:	<p>Responses to this consultation should be sent online to:</p> <p>Online Survey</p> <p>http://www.surveygalaaxy.com/surPublishes.asp?k=OW9DDGPPVEAG</p> <p>or email: regulations@entrust.org.uk with 'LCF Monies' in the email subject.</p> <p>or by post to:</p> <p>Pardeep Bansi ENTRUST 60 Holly Walk Royal Leamington Spa Warwickshire CV32 4JE</p>
Additional ways to become involved:	A focus group will be held to discuss this topic further. The location and date will depend on those expressing an interest in attending. If you wish to attend the Retention of LCF Monies focus group, please express your interest to Pardeep Bansi on: pardeepbansi@entrust.org.uk , by 20 November 2009.
After the consultation:	After reviewing the responses to this consultation, ENTRUST will issue a report of the findings to the Board and then make recommendations to HMRC. These recommendations will be published on the ENTRUST website.

1 Executive Summary

- 1.1** ENTRUST is fully committed to engaging stakeholders wherever possible to ensure that the regulation of the Landfill Communities Fund (LCF) complies with best regulatory practice. As part of this process, ENTRUST will be running a number of stakeholder consultation exercises during 2009/2010, relating to the regulation of the Fund.
- 1.2** The second consultation exercise will focus on the retention of LCF monies and will investigate the circumstances where retention may be permitted and the investment strategies adopted by Environmental Bodies (EBs).
- 1.3** Stakeholder feedback will be used to understand the current position in order to gauge the possible impact of proposals and provide input into the development of more effective regulations surrounding the retention of LCF monies.
- 1.4** This paper puts forward a background and asks for confirmation on the arrangements operating with respect to the investment of LCF monies. The key areas of focus are:
- Reasonable time constraints for EBs to retain LCF monies after receipt;
 - Under what circumstances EBs invest monies; and
 - Investment strategies and vehicles adopted by EBs.
- 1.5** ENTRUST is committed to listening to all feedback from all of our stakeholders.

Project: Jubilee Leisure Garden, Horsham.

Description: LCF funding was used to install an artificial 'verditurf' surface in the Jubilee Leisure Garden so that the outdoor play areas can be used throughout the year in all weathers.

Supported through: from Biffaward to the Springboard Project.



2 Gathering Evidence

2.1 ENTRUST will be seeking stakeholder feedback through the following methods:

- Written responses to this consultation document, which outlines the issues themselves;
- Responses submitted through a dedicated internet survey; and
- Focus group(s) that will be held to discuss the questions posed and the topic generally.

3 Background

3.1 Under the Landfill Tax Regulations 1996 (Regulations), an EB may invest a qualifying contribution for the purposes of generating income. The Landfill Operator (LO) may make their contribution subject to a condition that the amount is only to be invested for the purpose of generating income as explained in Para 4.2 below.

3.2 ENTRUST need to understand the circumstances surrounding the investment and retention of LCF monies. The Regulations make some provision for a number of the matters discussed within this paper, but require further interpretation. ENTRUST wish to understand the issues involved and promote better regulation in this area.

3.3 In total at the end of 2008/2009, there was circa £159.5 million unspent funds held by EBs.

3.4 An exercise carried out in August 2009 showed that the unspent funds fall into the following categories:

- Funds committed (allocated and contractually committed) to projects currently registered with ENTRUST = **£100.86 million**;
- Funds committed (allocated and contractually committed) to projects approved by EBs not registered with ENTRUST = **£11.67 million**;
- Funds retained for winding up EBs in the event of cessation of the LCF = **£4.26 million**; and
- Uncommitted funds = **£42.69 million**.

3.5 It is important to note that ENTRUST has also identified that there have been instances where unspent monies held in speculative funds have resulted in a significant loss to the LCF.

4 The Regulations

4.1 Where an LO places a condition on qualifying contributions, under the Regulations EBs may invest LCF monies and spend the interest on the furtherance of its objects.

4.2 Regulation 30(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 a 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 so spends both the whole of the qualifying contribution and all of that income.*

4.3 Regulation 32(1) -

A payment is a qualifying contribution if –

- (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.*

4.4 Regulation 30(1) - confirms that “income” includes interest.

4.5 Approved objects are set about in Regulation 33(2) and are namely:

Object A: Remediation of land

Object B: Reduction of pollution

Object D: Provision, maintenance or improvement of a public amenity

Object DA: Conservation or promotion of biological diversity

Object E: Maintenance, repair or restoration of religious building or buildings or architectural or historical interest.

Object F: Administrative services to another EB

4.6 In addition to these objects, Regulation 33(7) states that a proportion of the EBs running costs can be classed as an approved object, the proportion of which is capped by Regulation 33(8).

5 ENTRUST Guidance

- 5.1 ENTRUST's Guidance surrounding the retention of monies can be found at 2) Spending Landfill Communities Fund Monies (LCF Monies) and Registering Projects at section 6.1 and states:

6.1 *It is ENTRUST guidance that LCF monies are committed to a specific project within two years of receipt.*

6 Reasons for Consultation

- 6.1 This consultation will focus on investigating current procedures and obtaining information relating to the following areas:

- Reasonable time constraints for EBs to retain LCF monies after receipt;
- Circumstances in which EBs invest monies; and
- Investment strategies and vehicles adopted by EBs.

- 6.2 LCF monies are given to benefit communities who suffer detriment from landfill sites and this consultation will consider if limits should be placed on the amount of time that an EB can hold monies before investing them in a community in which those benefits are provided. If investments of LCF Funds result in losses, then communities have lost a potential benefit, so consideration needs to be given to investment strategies.

6.3 Reasonable timeframes for EBs to spend LCF monies received

- 6.3.1 ENTRUST has considered the amount of time in which EBs should hold LCF monies prior to spending them on projects. Figure one below sets out a possible timeframe for general projects, excluding biodiversity projects and building projects. ENTRUST is asking if these timeframes are sufficient in which to complete projects.

Project: Improvements to Rugby Town Junior Football Club.

Description: The club has committed itself to providing a comprehensive set of facilities to enable young people in the Rugby area to enjoy sport in a safe and supportive environment.

Supported through: Warwickshire Environmental Trust.



Figure One: Elapsed time at each stage of a project

Element of Project	Max time (months) for non-biodiversity projects where no new building works are undertaken	Max time (months) for project where new building works are undertaken
1. Funds allocated to project	6	6
2. Project Registration	3	3
3. Contractual Commitment	3	6
4. Commencement of project and spend of LCF monies	12	24
5. Retention of monies	0	9
TOTAL TIME ELAPSED	24 months	48 months

6.3.2 Stage One: Funds allocated to project

6.3.2.1 Funds are ear marked or allocated by the EB for a particular project. The project may not be registered with ENTRUST at this time. This allocation of funds should not take longer than six months from the initial receipt of the contribution. Whilst some EBs distribute monies to other EB's this should happen within six months of the original receipt of funds from the Landfill Operator.

6.3.3 Stage Two: Project Registration

6.3.3.1 As ENTRUST turns around correctly completed and compliant project applications within 10 days, the maximum that should be allowed for drawing up the finer detail of a project for submission is a further three months.

Project: The Westwood Project, Southampton.
 Description: The aim of the project was to reduce anti social behaviour, protect areas of high value biodiversity and to encourage a wider use of the wood.
 Supported through: Groundwork Solent.



6.3.4 Stage. Three: Major Contractual Commitment

6.3.4.1 More detailed work may need to be done before a project is contractually committed (there has been a contractual agreement that the funds will be spent on a particular project). It would be expected that for projects that do not include new building works to be undertaken, this stage should be completed within three months. For those projects which do include new building works to be undertaken, this stage should be completed within six months.

6.3.4.2 No contractual commitment should take place before the project is registered to ensure that the commitment relates to a compliant project.

6.3.5 Stage Four: Commencement of Project and Spend of LCF Monies

6.3.5.1 Once the project commences it could take up to two years to complete building works, but other than biodiversity projects this might be the maximum expected timescale to complete project works. Only 8.6% of projects that completed during 2007/2008 and 2008/2009 took longer than two years.

6.3.6 Stage Five: Retention monies (not applicable where no new building works are required)

6.3.6.1 With building works a retention would normally be held for a further six months, and paid after the end of the defects period. So allowing nine months for this would seem appropriate.

6.4 Projects/funds held for long timeframes

6.4.1 There may be exceptional circumstances in which the timeframes above are too short. ENTRUST would like more information on these. Respondents are asked to advise of these circumstances.

6.4.2 ENTRUST has identified that some EBs may retain funds for their eventual winding up. It would seem reasonable that funds for the windup of an EB should be agreed, justified, quantified, and recorded in an EBs Board minutes.

6.4.3 ENTRUST understands that some EBs hold monies for long periods in circumstances such as for the maintenance of assets, or to build up funds for a future project.

6.5 Investment of LCF monies

- 6.5.1** Any funds which are invested upon a funding condition by the LO would be deemed compliant spend if the monies are invested for the purpose of generating income, where all of the income is spent on approved objects, in accordance with Regulation 30(2)(a). The Regulations do not specify a time period for the spend of such income. ENTRUST is seeking information on EBs who invest LCF funds, primarily using the interest to fund projects.
- 6.5.2** The Regulations allow two outcomes for the principle sum (i.e. the original qualifying contribution), these are:
1. Both the principle sum and any interest generated should be spent on approved objects; and
 2. The principle sum may revert back to the LO (who in turn is required to repay the tax credit to HMRC).

6.6 Investment Strategies and Vehicles

- 6.6.1** It is good practice when investing money to have a Treasury Management Strategy, setting out the appetite for risk, and any restrictions on investments.
- 6.6.2** ENTRUST is interested to know if EBs have investment strategies and if there are any conditions placed upon investments by the LO.
- 6.6.3** ENTRUST believe that is it best practice for EBs to protect the principal sum. Should this be reduced though loss of monies in a speculative account, ENTRUST would deem this to be non-compliant spend as it has not been spent on the furtherance of the approved objects. However, a loss one day can be turned into a gain the next. Consequently ENTRUST is interested to know EBs views as to how this should be measured in practice.

7. Consultation Questions

7.1 Questions for EBs

7.1.1 Reasonable timeframes for EBs to spend LCF monies received

Question One: Do you currently hold any LCF monies? If so, what is the total value of these funds?

Question Two: If your EB currently holds LCF monies, for what reason are these funds retained?

Question Three: How do you calculate the amount of funds that should be retained for the reasons stated at question two?

Question Four: Do you agree with the timescales set about in Figure one in Para 6.1.1? If the answer is no, can you please outline where you disagree, referring to the steps in Figure one if possible?

Question Five: What problems would a condition that LCF funds received should be spent within a certain period of time cause your EB?

7.1.2 EB investment of LCF monies

Question Six: Does or has your EB ever invested LCF monies? If so, why?

Question Seven: If you have invested LCF monies, was this upon condition of the LO? If so, could you please provide an example of such a condition?

Question Eight: Do you invest monies with a view to spend any income on approved objects? If yes what arrangements do you intend to make regarding the principle sum?



Project: Biomass Boiler at the Sustainability Centre.

Description: Energy efficiency was one of the main aims for improvement at the Sustainability Centre. The 120kw fully automatic woodfuelled boiler was commissioned to provide heat to the visitor centre, offices and the Wetherdown hostel for the Sustainability Centre near East Meon in Hampshire.

Supported through: Earthworks Trust.

7.1.3 Investment Strategies and Vehicles

Question Nine: Does your EB have an investment strategy?

Question Ten: What investment vehicles have you used (eg bank accounts, cash funds)?

Question Eleven: Do you take special measures to protect the principal sum, if so what?

Question Twelve: Do you agree that the reduction of the principal sum through investment should be deemed non compliant spend?

Question Thirteen: If yes, do you agree that the measurement of return should be taken one year at a time annually at 31 March? If not, how would you propose that this is measured?

Question Fourteen: Please outline any further points that you wish to add regarding this consultation.

7.2 Questions for LOs

Question One: Have you ever made a qualifying contribution to an EB with the condition that it was to be invested and the interest spent on furtherance of the EBs approved objects?

Question Two: If so, was there any timescales in place with respect to the length of the investment?

Question Three: Did you place any further condition on the contribution about how it should be invested?

Project: Haulfre Woods - Enhancing Biodiversity.

Description: The project was begun to enhance and increase biodiversity in Haulfre Woods, Powys.

Supported through: Coed Cymru.



Question Four: Under what circumstances would you make a qualifying contribution to an EB with the condition that it was to be invested and the interest spent on furtherance of the EBs approved objects?

Question Five: In your opinion, when qualifying contributions are invested, should the principle sum be returned to you (for you to repay the tax credit to HMRC), or should the principle sum be spent on furtherance of the approved objects?

Question Six: Please outline any further points that you wish to add regarding this consultation.

8. Contact Details – How to Respond

8.1 The consultation is open to all stakeholders of the LCF. Any feedback submitted will be treated in strictest confidence and will be considered anonymous unless you state otherwise. Responses can be returned through the following methods:

Email: Regulations (regulations@entrust.org.uk) with 'Retention of LCF Monies' in the email subject.

Post to: Pardeep Bansi
ENTRUST
60 Holly Walk
Royal Leamington Spa
Warwickshire
CV32 4JE

Online: <http://www.surveymalaxy.com/surPublishes.asp?k=OW9DDGPPVEAG>

8.2 A focus group will be held to discuss this topic further. The location and date will depend on those expressing an interest in attending. If you wish to attend the Retention of LCF Monies Focus Group, please express your interest to Pardeep Bansi on: pardeepbansi@entrust.org.uk by 20 November 2009.

8.3 The closing date for responses is 04 January 2010.

9. Publication of Response

- 9.1 A paper summarising the responses to this consultation will be published together with any report to HMRC after approval by the ENTRUST Board and in consultation with HMRC.
- 9.2 The outcomes of the consultation will be reviewed and any proposals will be subject to an impact assessment and publicised to stakeholders appropriately.



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