



Management of Landfill Communities Fund Assets

A Consultation Document for Environmental Bodies and Landfill Operators



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

Consultation Paper

December 2010

Subject of this Consultation:	Management of Landfill Community Fund (LCF) Assets
Scope of this Consultation:	The key area of focus for this consultation is the protection of LCF funded assets whilst an EB is in existence and after an EB has been revoked.
Who should read this:	Environmental Bodies and Landfill Operators
Duration:	The consultation will run for nine weeks. The closing date for responses is 25 February 2011.
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 submitted by email to:</p> <p>regulations@entrust.org.uk with 'Asset Management' in the email subject.</p> <p>or online at:</p> <p>http://www.surveygalaaxy.com/surPublishes.asp?k=0MS7FA4BU2VP</p> <p>or by post to:</p> <p>Pardeep Bansil ENTRUST 60 Holly Walk Royal Leamington Spa Warwickshire CV32 4JE</p>
Additional way 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 Management of LCF Assets focus group, please express your interest to Pardeep Bansil on: pardeepbansil@entrust.org.uk by 21 January 2011.
After the consultation:	After reviewing the responses to this document, we will publish the outcome and what we consider to be the way forward on our 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 2010/2011, relating to the regulation of the fund.
- 1.2 Communications from our stakeholders are a key component in considering any recommendations for change made to HMRC. Stakeholder feedback will be used to gauge the impact of the proposals and provide input into the development of more effective Regulations and guidance on asset management and protection.
- 1.3 This consultation exercise will consider how assets acquired with LCF monies can be protected. The key aim is to ensure that LCF monies continue to benefit local communities.
- 1.4 This paper explains the problems we face, and sets out proposals for consultation. The key areas of focus for this consultation is the protection of LCF funded assets whilst an EB is in existence and after an EB has been revoked.

2. GATHERING EVIDENCE

- 2.1 ENTRUST will be seeking stakeholder feedback through the following methods:
- Written responses to this consultation document;
 - Responses submitted through a dedicated internet survey; and
 - A focus group that will be held to discuss the questions posed and the topic generally.

3. ISSUES RAISED BY STAKEHOLDERS

We are aware of the following issues that EBs and Landfill Operators (LOs) have with assets.

3.1 EBs and LOs can be unaware of the mechanisms that can be used to protect assets

- 3.1.1 EBs are aware of different forms of protection offered through the Land Registry and project monitoring, but are uncertain which type of protection is appropriate for different types of asset. They question what difference in protection there should be between land and buildings and other assets such as equipment.
- 3.1.2 A number of LOs have expressed concerns about the appropriate mechanism that should be used to protect assets purchased using LCF monies, as they are at risk of clawback when expenditure on assets is found to be non-compliant.

3.2 EBs are not always aware what constitutes an asset under the Landfill Tax Regulations 1996 as the guidance manual does not contain an exhaustive list of types of asset

- 3.2.1 The Landfill Tax Regulations 1996 (Regulations) apply a wide, general definition to the term assets, being *“land, goods or services and any interest in any of these”*.



3.2.2 Our project registration form asks EBs to confirm what capital assets are being purchased and the declaration seeks confirmation that any assets or proportion of assets purchased with LCF monies will be protected. EBs do not always recognise that they are purchasing assets and the project application form (Form 2 – *Applying to register a project*) can be completed incorrectly as a result. The types of assets that are not recognised include items such as infrastructure assets (e.g. piping for heating), some smaller items of equipment, assets part funded by the LCF, and enhancements to improve or extend an existing structure. In these instances, the Registrations Team will contact the EB for further information.

3.2.3 The question on the Form 4 – *Statutory Annual Return* relating to the amount of LCF monies used during the year for the purchase of assets is often left blank when the project description would suggest assets have been purchased. This leaves us with inaccurate records of the value of assets which are purchased using LCF monies.

3.3 EBs can be unsure of the detail of records to be kept in asset registers

3.3.1 Current ENTRUST good practice guidance states that an EB should make records of all assets acquired or improved with LCF monies, whether used for projects or for the running of the EB (where they are part of EB running costs). The guidance states that an asset register should be kept for all assets with a purchase price over £2,000. However, the information which we recommend should be recorded is different to that which might be found in a financial ‘asset register’.

3.4 When EBs register projects that include the purchase of assets but they are owned by another organisation, EBs do not always recognise the need to protect those assets

3.4.1 EBs can be confused about their responsibilities when LCF monies are used to purchase, or enhance an asset which is not owned by the EB that registers the project which contains the asset.

3.4.2 In these circumstances, some EBs do not record these assets on their asset register as they do not own them. This is an example of the difference between an asset register for LCF purposes and one for accounting purposes.

3.5 EBs do not always understand that the Regulations apply to all LCF funded assets, regardless of the proportion of funding from the LCF

3.5.1 Some EBs think they only need to follow the rules of the major funder of a project. However, the Regulations apply to the LCF element of multi-funded assets.

3.6 EBs question the need for protection of land and buildings in perpetuity

3.6.1 Our current good practice guidance states that land and buildings should be kept on an asset register in perpetuity.

3.6.2 Some EBs consider that the LCF scheme will not last forever and have concerns that the EB will not be in existence to monitor LCF funded assets in perpetuity. The Perpetuities and Accumulations Act 1964, which relates to the law on leaving property in trust, states that perpetuity is equal to 125 years (increased from 80 years from April 2010). We have been asked to consider if a similar rule should apply for LCF funded land and buildings.



3.7 Funding for Land and Buildings

3.7.1 Some Distributive Environmental Bodies (DEBs) have ceased funding the purchase of land and buildings, as they consider that the regulatory framework does not give sufficient guidance on how the risk of clawback (which is explained in paragraph 7.4) can be minimised.

3.8 Gift Aid

3.8.1 In some instances, EBs make donations by Gift Aid in order to minimise their tax liabilities. EBs have highlighted that Gift Aid payments have to be treated differently to qualifying contributions and transfers of LCF monies.

3.8.2 Gift Aid payments must be made to a registered charity and the contribution must be free and unfettered, so the contributing EB cannot dictate what the money is spent on.

3.8.3 We do not consider this to be a special case which needs to be addressed in addition to the issues in this consultation document. EBs can give the money to other EBs, or organisations who only have compliant objects in their constitutions; which means that they are under an obligation to spend the Gift Aid compliantly.

4. REGULATORY PROBLEMS

4.1 The protection of assets post revocation

4.1.1 Our analysis of ENTRUST on-line (EOL) indicates there are at least £2 million of assets purchased by EBs that have now been revoked. As the scheme grows, we should consider what security might be appropriate to ensure that assets of revoked EBs continue to benefit local communities.

4.1.2 Voluntary revocation is not granted until the ENTRUST Board is satisfied that arrangements are in place for projects and assets to remain in compliant use.

4.2 The value of assets when sold or disposed of

4.2.1 There is no regulatory requirement for EBs to ensure that the best price is obtained from assets that are sold or disposed of, other than when a LO is the recipient of the asset. In cases when a fair price is not obtained, ENTRUST can only use procedures for EBs who bring the scheme into disrepute, as opposed to those for breaches of Regulation which are stronger.

4.3 EBs in administration

4.3.1 There have been instances where EBs that have multiple funders have entered into administration or insolvency proceedings and there is difficulty in determining the LCF funds that are held.

4.3.2 It is necessary to know the percentage of LCF funds that the EB holds as the Regulations state that running costs of an EB can be regarded as an approved object, but expenditure funded by the LCF is capped at the of percentage LCF income as a proportion of total income.



4.4 EBs that have dissolved

4.4.1 When an EB has dissolved, it does not exist and is therefore not subject to the current ENTRUST enforcement procedures. However, in some instances HMRC may still exercise clawback against the funding LO.

4.4.2 One example of this is when LCF funded projects are not completed prior to dissolution. In these instances the uncompleted projects are non-compliant if they do not enable the project to operate in accordance with the object under which it was registered.

5. REASONS FOR CONSULTATION

5.1 We are undertaking this consultation with the primary aim of investigating the methods of protection that are adequate to protect the LCF interest in assets and ensuring that they remain in compliant use for the benefit of local communities throughout their lifetime. In order to do this, we will discuss various methods of protection and any changes to the Regulations or guidance which may be necessary. Respondents are asked a series of questions at the end of this consultation to seek their views on the impact of any change.

6. BACKGROUND INFORMATION

6.1 Estimated value of assets purchased by LCF monies

6.1.1 We estimate the value of assets purchased using LCF funds prior to 2009, at between £47 and £83 million for currently registered EBs, using data input by EBs to ENTRUST on-line (EOL) on their project registration forms. We consider this to be an underestimate because we do not think all EBs have stated the full value of assets purchased with LCF monies.

6.1.2 We have estimated this value of assets by:

- Assuming projects where asset values are £0 - £5,000, have an average value of £1,000 as many will already have depreciated, giving a figure of £10,790,000;
- Taking the midpoint value of £12,500 for assets in the £5,000 - £20,000 range and multiplying by the number of projects to get a figure of £12,950,000; and
- Where assets are greater than £20,000, taking £20,000 and multiplying by the number of projects gives £23,580,000. However if the figure of £50,000 were used as the average then this sum would rise to £58,950,000.

6.1.3 We also contacted the ten largest EBs to determine the value of assets that they hold, and the total value is estimated at just over £52 million. The EBs contacted confirmed that this figure mainly relates to land and buildings.

6.1.4 Of all of the projects registered in 2009/2010, only 13% were expected to be fully funded through the LCF, showing a high percentage of multi-funded projects.

6.2 Management of LCF Monies

6.2.1 Cash is also regarded as an asset. ENTRUST undertook a consultation exercise in 2009/2010, entitled "Retention of LCF Monies" which considered measures that should be in place to protect LCF monies. The next steps report can be found on the 'Feedback on Consultations' pages of our website, which highlights the need for ENTRUST to issue best practice guidance on holding funds for the winding up of the EB and to signpost EBs to good investment practices. This information will be developed in our guidance manual.



7. REGULATIONS

7.1 The Regulations define assets as follows:

Regulation 36(8) (a) *“asset” includes land, goods or services and any interest in any of these*

7.2 Following the High Court and Court of Appeal judgements, the interpretation of income for the purposes of the LCF was open to doubt. The Regulations have been amended to provide clarity by specifying that income includes interest and also a proportion of the income derived from the sale or disposal of an asset that is equal to the proportion of LCF monies that were used to purchase the asset.

Regulation 33(1) *In this part –*

“income” includes interest; or

(a) the proportion of any proceeds attributable to the initial acquisition and disposal of an asset (or part of an asset) purchased with a qualifying contribution (or part of a qualifying contribution), or

(b) the proportion of any proceeds attributable to any subsequent acquisition and disposal of an asset (or part of an asset) purchased with the proceeds (or part of the proceeds) of—

(i) the initial acquisition and disposal representing the original qualifying contributions, or

(ii) any subsequent acquisition and disposal representing the original qualifying contributions,

through any number of transactions.

7.3 The Regulations state that qualifying contributions, known as LCF money, or any income derived from the LCF monies must be used in the course or furtherance of approved objects. We consider that the intention of the Regulations is that expenditure remains compliant.

Regulation 32 (1): *A payment is a qualifying contribution if -*

(b) It is made subject to a condition that the body [EB] shall spend the sum paid or any income derived from it or both only in the course or furtherance of its approved objects.

Regulation 33A (1): *An approved body [EB] shall –*

(b) apply qualifying contribution and any income derived therefrom only to approved objects;

7.4 HMRC can administer clawback when a qualifying contribution, or income derived from a qualifying contribution has not been spent compliantly.

Regulation 36(1): *Where a person [LO] has benefited from an amount of credit which he was entitled under this part and the Commissioners [HMRC] serve upon him a notice in relation to a qualifying contribution paid to an approved body [EB] -*

(a) specifying that –

(i) they are not satisfied that the contribution has been spent by the body [EB] only in the course or furtherance of its approved objects; or

(ii) they are not satisfied that any income derived from the contribution has been so spent by the body



he **[LO]** shall repay to the Commissioners **[HMRC]** the credit claimed in respect of a qualifying contribution.

- 7.5 Where an LO purchases or acquires an asset from an EB to which they have made a qualifying contribution for no consideration, or for less than the open market value, the LO must repay HMRC 90% of the difference between the purchase price and the open market value, subject to the qualification in the next paragraph.

Regulation 36(6): Where –

(b) he **[LO]** acquires an asset from a body **[EB]** to which he has made a qualifying contribution for –

- (i) no consideration, or
- (ii) a consideration which is less than the open market value of the asset.

he **[LO]** shall pay to the Commissioners **[HMRC]** an amount equal to 90 per cent of the amount by which the open market value exceeds the consideration; but this is subject to paragraph (7) below.

- 7.6 In the circumstances in paragraph 7.5, the LOs repayment is limited to the tax credit which they received. In addition, the LO can then make no further qualifying contributions to the EB from whom they purchased the asset.

Regulation 36(7): A person **[LO]** required to pay an amount to the Commissioners **[HMRC]** by paragraph (6) above –

- (a) shall not be required to pay more than the total amount of relevant credit;
- (b) shall not be entitled to claim any further amounts of credit in respect of qualifying contributions made by him **[LO]** to the body **[EB]** in question on or after the date on which he acquired the asset.

- 7.7 Open market value is defined as follows:

Regulation 36(8): For the purposes of paragraphs (6) and (7) above –

(b) the **open market value** of an asset is the amount of the consideration in money that would be payable for the asset by a person standing in no such relationship with any person as would affect that consideration.

- 7.8 There are regulatory requirements for EBs to retain records of derived income and details of expenditure of both qualifying contributions and derived income.

Regulation 33A(1): An approved body **[EB]** shall -

(d) make and retain records of the following-

- (iii) the amount and date of receipt of each qualifying contribution and the amount and date of receipt of any income derived therefrom;
- (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.

- 7.9 ENTRUST (with the consent of HMRC) can place conditions on EBs.

Regulation 34(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.

8. GUIDANCE

8.1 ENTRUST Guidance for EBs

8.1.1 The current guidance interprets an asset in Section C) Registering Projects and Spending Landfill Communities Fund (LCF) Monies, paragraph 11.2.1 as:

11.2.1 any item of economic value to an organisation or individual, especially that which could be converted to 'income'. Examples are:

- *Tangible Fixed Assets e.g. land, buildings and machinery*
- *Intangible Fixed Assets e.g. Intellectual Property Rights*
- *Current Assets e.g. cash, investments and securities*

8.1.2 Paragraphs 11.4.3 and 11.4.4 of Section C) Registering Projects and Spending Landfill Communities Fund (LCF) Monies, state that any income derived from the sale, or disposal of an LCF funded asset must be retained within the LCF. If an asset is returned to an EB following the completion of a project, it must remain within the LCF, or if it is sold, the proceeds of that sale must be used on approved objects.

11.4.3 *Sale of an LCF purchased asset must result in the LCF derived income (equal to the proportion of the contribution from LCF funds) being paid back to an EB and used to fund compliant activity. This applies whatever time might have elapsed between the acquisition of the asset and its disposal and whether or not the project is active or closed.*

11.4.4 *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, any proceeds being used on LCF approved projects.*

8.1.3 Paragraph 11.3.1 of C) Registering Projects and Spending Landfill Communities Fund (LCF) Monies, gives guidance on the Regulations relating to protection of assets.

11.3.1 *As outlined above, all LCF monies spent by an EB, which create an asset (whether funding the purchase outright or merely a proportion of the purchase), should be protected. All EBs should ensure that LCF funds held by them or spent on a compliant project or activity can be accounted for.*

8.1.4 Paragraph 11.3.3 and 11.3.4 of C) Registering Projects and Spending Landfill Communities Fund (LCF) Monies, outlines best practice on how protection of assets can be achieved.

11.3.3 *Whatever arrangements EBs have for the recording and depreciation of assets either on their balance sheet or held by the project promoter, EBs should maintain an inventory of all assets purchased in whole or in part with LCF funds. EBs must ensure that project budgets are resourced to meet costs associated with asset management while the asset remains on the asset register. Please see section 12.1 below with regard to life/timescales of assets.*

11.3.4 *The EB in whose name a project is registered would be expected to record assets purchased in whole or in part with LCF funds by way of a formal asset register.*

8.1.5 Paragraph 12 of Section C) Registering Projects and Spending Landfill Communities Fund (LCF) Monies, sets out good practice on timescales for monitoring assets.



12 Timescales for Asset management within EBs

12.1 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 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 10 years, and*
- *After five years confirm compliance by inspecting the asset; and*
- *After ten years make final inspection to confirm compliance then delete from register.*

12.2 Land and Buildings

- *Keep on asset register in perpetuity; Your EB's and the LCF interest must be recorded on title deed;*
- *At final payment and annually thereafter, obtain written confirmation that asset remains in compliant use; and*
- *Inspect every three years to confirm compliance.*

- 8.1.6 Paragraph 13 of C) Registering Projects and Spending Landfill Communities Fund (LCF) Monies, sets out good practice on calculating depreciation of assets.

13.1 *If you dispose of an asset within the relevant time period outlined above, it is ENTRUST guidance that the asset is independently valued if the current written down value exceeds £10,000. To ensure equitability we would recommend that the written down value is calculated by applying depreciation on a straight line basis.*

- 8.1.7 The guidance manual advises the following should the EB wish to wind up.

17.1 *Upon the dissolution of an EB, any surplus LCF monies or assets held should be transferred to another EB with similar objects or returned to the LO(s) who donated the money – thereby protecting the LCF investment as required in the Regulations as outlined above. It is necessary to inform ENTRUST before dissolution to confirm the remaining LCF assets and liabilities.*

- 8.1.8 The current ENTRUST guidance does not offer any advice to EBs on non compliance where an LO purchases an asset from an EB for less than the open market value, or about the records that must be maintained by EBs under Regulation 33A(1)(d) (paragraphs 7.5 – 7.8).



8.2 HMRC Guidance for LOs

- 8.2.1 HMRC issues guidance to LOs on aspects of the LCF. The Notice LFT1 – A general guide to landfill tax, paragraph 11.2 states that all contributions are made subject to a condition that the EB spends the qualifying contribution, or income derived therefrom only on approved objects:

Further information: *We would expect such conditions to create a contractual obligation between the enrolled body and yourself.*

We would also expect you to take action to recover your contribution(s) if you became aware that an EB had failed to honour the contractual obligation that contributions are spent only on approved objects.

You must repay to us 90% of qualifying contributions which you recover by such action.

- 8.2.2 Paragraph 11.8.4 explains that HMRC may administer clawback when an asset becomes non-compliant or when income derived from a qualifying contribution is not applied to approved objects.

11.8.4 Environmental body does not spend contribution on an approved object

We can recover all or part of a tax credit where we are not satisfied that the relevant contribution was spent on approved objects. ENTRUST inform us of all irregularities and we consider each case on its merits when deciding whether the repayment of credit ('claw back') is appropriate.

Important: *Although the scheme provides for a tax credit of 90% of your contribution, the whole amount of the contribution itself is your money. It is in your own interest that you take reasonable precautions to ensure that your contributions are spent on approved objects. 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.*

- 8.2.3 HMRC guidance advises that all qualifying contributions must be spent on approved objects, but makes no specific reference to assets or that LCF expenditure must continue to be compliant, although it is our view that this is implied by the Regulations.

9. ASSETS

- 9.1 The Oxford Dictionary gives the following definition of assets:

noun 1 *a useful or valuable thing or person. 2 (assets)* *property owned by a person or company.*

- 9.2 The International Finance Reporting Standard Framework defines an asset as:

"An asset is a resource controlled by the enterprise as a result of past events and from which future economic benefits are expected to flow to the enterprise."

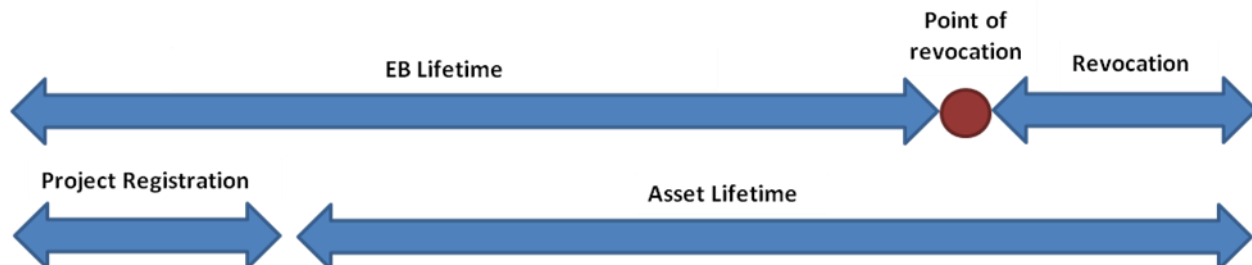
- 9.3 Most assets wear out over a period of time, and the reduction in value of an asset when recognised in the financial accounts is called depreciation. The guidance on timescales for which assets should be kept on an asset register in paragraph 8.1.5 is our measure of the estimated useful life of an asset. We would not expect EBs to recognise assets and apply the principles of this paper in excess of these timescales.



9.4 Land and buildings are by their nature significant assets, and the case for specific proposals for them is made in this paper. We also regard extensions to, and construction of, buildings as acquisition of assets.

10. SUMMARY OF CURRENT OPTIONS AVAILABLE

We have identified the lead option within this consultation document, and have investigated a number of further options for guidance and/or regulatory change which could be implemented to ensure that the regulatory requirements of the lead option are achieved. We have used the following timeline to consider how issues relating to the protection of assets may change over time:-



We consider that a number of the options might be taken together, so the options set out below are not mutually exclusive. They are summarised in the paragraphs below, so that stakeholders can assess which parts of this consultation document are relevant to them. We also considered a number of alternative options, which after investigation, were deemed inappropriate for the LCF. The reasoning behind this is contained in paragraph 16.

10.1 LEAD OPTION: The Regulations are amended to prescribe that LCF expenditure remains in compliant use (paragraph 11)

This option would require a regulatory change to ensure that LCF expenditure remains compliant. This would also offer protection to assets after revocation, and LOs would need to be satisfied that they have arrangements for compliance in such circumstances.

10.2 Option available to enable asset protection at project registration

10.2.1 OPTION TWO: Terms and conditions placed on project registration (paragraph 12.1)

This option would require a regulatory change to allow ENTRUST to place a number of conditions on EBs registering projects where assets are purchased. These conditions would ensure that assets remain in compliant use.

10.3 Options available to enable asset protection whilst an EB is in existence

10.3.1 OPTION THREE: Land and buildings are protected to recognise LCF funding (paragraph 13.1)

This option considers guidance for both EBs and LOs surrounding legal protection to land and buildings purchased using LCF monies. This will ensure that they remain in compliant use and that any income derived from the sale or disposal will remain within the scheme.

10.3.2 OPTION FOUR: The Regulations are amended to require market value is obtained on any disposal (paragraph 13.2)

This option would require a regulatory change to ensure that assets are not sold or disposed of for less than the open market value (unless they are transferred to



another EB) and that the maximum amount of derived income remains within the scheme.

10.3.3 OPTION FIVE: Separate bank accounts for cash assets (paragraph 13.3)

This option would require a change to the current guidance stating that all EBs should maintain a separate bank account for LCF monies which would make clear the LCF funds available when an EB enters administration.

10.3.4 OPTION SIX: The Regulations require an LCF funded asset register to be maintained and/or further guidance is given on the record keeping obligations of EBs surrounding assets (paragraph 13.4)

This option would require a regulatory change to state that LCF asset registers must be maintained and/or provide guidance on the current record keeping obligations of EBs to protect assets and ensure that EBs undertake effective project monitoring and good management practices, so that assets remain in compliant use.

10.4 Option for LOs to ensure asset protection

In addition to the guidance which would be issued to EBs and LOs regarding legal protection of land and buildings (paragraph 13.1), there are other methods which the LO could put in place to monitor the ongoing compliance of assets both pre and post revocation.

10.4.1 OPTION SEVEN: Asset monitoring by LOs both pre and post revocation (paragraph 14.1)

This option considers the role that LOs have in monitoring the compliance of assets purchased with their qualifying contributions.

10.5 OPTION EIGHT: Do nothing (paragraph 15)

This option is to make no change to the current framework.

11. LEAD OPTION - OPTION ONE: The Regulations are amended to prescribe that LCF expenditure remains in compliant use

11.1 This option would amend the current Regulations to state that LCF expenditure must remain compliant and hence assets should remain in compliant use throughout their lifetime. The lifetime of an asset would be in accordance with the guidance in paragraphs 8.1.5 and 9.3.

11.2 This option has been chosen as the lead option because it would ensure that all LCF expenditure would remain compliant. If this option was implemented, ENTRUST and HMRC would be in a position to issue guidance to both EBs and LOs on how to achieve this. There are a number of options discussed below, which set out potential guidance should the lead option be taken forward.

11.3 Regulation 32(1)(b) (paragraph 7.3) requires all qualifying contributions made from an LO to be given with a condition stating that the EB “*shall spend the sum paid or any income derived from it only in the course or furtherance of its objects*”.

11.4 The Regulations could be extended to specify that assets purchased with LCF monies must continue to be used for the purposes of the objects in Regulation. This would provide absolute clarity that the provisions of clawback could be used if assets became non-compliant after purchase.

11.5 There would also be the requirement to extend the obligations of an approved body under Regulation 33A(1)(b) to state that qualifying contributions must continue to be applied to approved objects. Regulation 36(1) would need to be amended in the same



manner to make clear that HMRC can administer clawback if LCF expenditure became non-compliant.

11.6 Paragraph 14.1.3 below considers LO monitoring of assets post revocation, to ensure that assets remain in compliant use throughout their lifetime, even when the EB ceases to exist.

12. OPTIONS TO ENABLE ASSET PROTECTION AT PROJECT REGISTRATION

12.1 OPTION TWO: Terms and conditions of project registration

12.1.1 This option considers placing conditions on EBs to protect assets purchased or enhanced with LCF monies. Under Regulation 34(1)(aa), ENTRUST may impose conditions on EBs with the agreement of HMRC. The current conditions that are placed on EBs ensure that LCF expenditure is not incurred on projects before they are registered with ENTRUST. This option would add additional conditions at the point of project registration.

12.1.2 We could place the following conditions on EBs to protect assets:

- The EB will ensure that assets valued at over £100,000 (or some other sum) are not sold or given away without receiving prior written consent from the LCF funder of the asset (i.e. the funding DEB or LO);
- The EB will submit an asset management plan for assets purchased with more than £10,000 of LCF monies (see paragraph 12.1.4);
- Land and buildings will be suitably protected (see paragraph 13.1 for further information); and
- If the asset is sold, it will be at open market value (see paragraph 13.2 for further information).

12.1.3 These terms and conditions would also apply when the assets are partly funded by the LCF, when LCF monies in excess of £10,000 were used to purchase the asset.

12.1.4 The asset management plan would demonstrate how the asset will be monitored and kept in good condition once it has been purchased to ensure that it remains in compliant use throughout its lifetime. This option would encourage EBs to consider the lifetime compliance of assets at the start of each project. Asset management plans include details of how the EB will ensure that the LCF interest in the asset is protected, details of how the asset will be maintained and assessed for compliance and how often the asset will be inspected. We could issue guidance to accompany any regulatory change on the types of asset management plans that might be appropriate for different types and values of assets.

12.1.5 We will discuss suitable protection for land and buildings in option three below (paragraph 13), and the requirement for assets to be sold at open market value is explored further in option four below (paragraph 13.2).

12.1.6 Where an EB is found to be in breach of conditions placed upon them, both ENTRUST and HMRC would be in a position to apply enforcement sanctions which are proportional to the breach.

13. ASSET PROTECTION DURING THE LIFETIME OF THE EB

13.1 OPTION THREE: Land and buildings are legally protected to recognise LCF funding

13.1.1 This section considers actions that EBs could take to protect land and buildings in a way that is recognised by the legal system. This option outlines guidance which would accompany the lead option as set out at paragraph 11 above.



- 13.1.2 On certain occasions, EBs may be funding buildings on land which is unregistered. In these instances, we would expect EBs to procure registration of the land where possible, and have satisfactory evidence of ownership where this is not possible.
- 13.1.3 Restrictions can be registered on land and buildings in England and Wales (please see paragraph 13.1.10 for information relating to Northern Ireland and Scotland). They offer protection to registered land and buildings by requiring express pre-conditions to be satisfied before certain types of transactions can be registered at the Land Registry. There is normally a supporting document sitting behind the restriction which will specify what type of transactions will be caught by the restriction (e.g. sales, leases, charges, etc) and also, where a type of transaction is caught by the restriction, what conditions must be satisfied before that transaction can be registered at the Land Registry. If the terms of the restriction are not complied with, the Land Registry will not register that transaction. A restriction could be used to protect all forms of land and property providing it has been registered at the Land Registry.
- 13.1.4 As stated above, where the landowner/project applicant proposes to enter into a transaction caught by a restriction, then they would need to take steps to ensure compliance with the terms of that restriction. Depending on the nature of the restriction, this may require the funding LO or DEB to be contacted. They would then be able to ensure that anyone acquiring an interest in the LCF funded asset complies with any arrangements already in place, before the transaction is completed. Such arrangements could include ensuring that the asset was left in compliant use, or that any income generated from the transaction was returned to the LCF as derived income or alternatively spent on another approved object. The drawback of this option is that solicitors are likely to be involved to negotiate the specific conditions which require compliance before a specified transaction can be registered. However, where these conditions form part a standard supporting document the solicitor's costs may be reduced. We would recommend that a standard form of funding agreement be developed for use by EBs which would enable them to specify the obligations to be placed on landowners/project applicants; as well as the conditions that would need to be satisfied prior to a transaction being capable of registration at the Land Registry. This could include a condition that a landowner/project applicant ensures that the person acquiring an interest in the land (e.g. a purchaser, tenant, etc) enter into a deed of covenant with the EB such that the recipient is bound by the same conditions (and the same restriction) as that agreed by the original landowner/project applicant.
- 13.1.5 Restrictions could be placed on land and buildings naming either the LO or the funding EB as the party with the benefit of the restriction. If the LO was the benefitting party under the restriction, this would place an additional administrative burden for LOs to specify the parameters of the restrictions and the conditions that would need to be satisfied before a proposed transaction could be registered. As EBs have experience of the operational processes concerned with land and buildings purchased with LCF monies, it may be more beneficial that the funding EB is named as the benefitting party under the restriction whenever applicable. However, this cannot be done when the LCF monies were received direct from a LO for a project where the EB owns the asset as the LO would be the funder of the asset and would therefore, be named as the benefitting party under the restriction.
- 13.1.6 Land Registry costs are relatively low; where a standard restriction is used the Land Registry's fee is £50 whereas if a non-standard restriction is required (for wording unique to the EB) then the Land Registry's fee will be £100. However, associated solicitors' fees for creating the supporting documents are likely to be much higher. A number of EBs have contacted ENTRUST for guidance on wording for a restriction and we will consider developing a library of documentation for this and the supporting documents that EBs would be happy to share, which could reduce solicitors fees.

- 13.1.7 Restrictions can also be used where land and buildings are only part funded by LCF monies and when the asset is owned by a third party (e.g. a Local Authority) who has agreed that a project can be undertaken on their land or building using LCF monies. The restriction could accompany a contractual obligation between the third party and the EB who has registered the project, which would state that the third party cannot enter into any specified transaction without the written consent of the EB or LO which funded the project.
- 13.1.8 A further advantage of utilising restrictions is that where a restriction has been placed on a LCF funded asset owned by an EB or other organisation but subsequently that EB or other organisation enters into administration, administrative receivership, receivership or liquidation, then the insolvency practitioner appointed to deal with that asset would be obliged to honour the restriction.
- 13.1.9 It may not be possible to use a restriction where there is an existing charge over the land or building in place. This is due to mortgage lenders preferring not to be placed under onerous conditions in the event that they seek to exercise their powers under the charge. Consequently, this could affect the types of project that might be undertaken. We are aware that some other funders also require a charge to be registered against any assets which have been purchased with grants which they have made.
- 13.1.10 Land law is slightly different in Northern Ireland and Scotland and so a restriction would not be an appropriate method of protection in these regions. However, an Inhibition can be registered with Land Registers in Northern Ireland at a cost of £60 (reduced to £40 for on-line submissions) which would achieve the same outcome as a restriction. In Scotland, a Deed of Conditions can be used. We welcome any other suggestions from EBs in Northern Ireland and Scotland on how to legally protect land and buildings.
- 13.2 OPTION FOUR: The Regulations are amended to require that market value is obtained on any disposal of an LCF funded asset**
- 13.2.1 This proposal considers regulatory change to the obligations of an EB under Regulation 33A(1) which would be amended to state that LCF funded assets must not be transferred for less than full consideration, unless they are transferred to another EB.
- 13.2.2 The Regulations do not allow LOs to obtain an asset or an interest in an asset from an EB to which they have made a qualifying contribution for less than the open market value of the asset. This ensures that there is no benefit to the LOs. As these restrictions are already placed on LOs, the Regulations are also making provision for the protection of the value of the asset within the LCF. It would seem appropriate to extend this requirement to the sale of any asset to ensure a fair price is always obtained. The only instance where an asset could be sold or disposed of for less than the open market value is when the asset is transferred to another EB.
- 13.2.3 The overarching principle of the LCF is to benefit local communities and so by ensuring that market value is obtained from any sale of assets, we can ensure that the maximum amount of LCF money is used to benefit such communities.
- 13.2.4 Where the asset cannot be placed on the open market, a professional valuation of the asset could be undertaken prior to its sale or disposal to determine the open market value. Although this might place an additional cost on EBs and increase the time taken to dispose of an asset, it would provide for a transparent process.

13.2.5 The advantages of this option are that there would be a regulatory requirement for receipts from the sale of assets purchased with LCF monies to be maximised.

13.3 OPTION FIVE: Separate bank accounts for cash assets

13.3.1 This option considers if guidance could be issued to state that all EBs should maintain a separate bank account for LCF monies.

13.3.2 Paragraph 4.3 outlines the problems faced when LCF monies are mixed with other funds when an EB enters administration or insolvency proceedings. In these circumstances, it is difficult to determine the amount of LCF monies that can be spent on EB running costs. We are currently aware of 27 EBs which have entered administration, dissolved or liquidated. The total LCF funds that these EBs hold is £604,449 and 23 of these bodies have received non-LCF funds.

13.3.3 This option seeks stakeholder views on the impact of requiring EBs to maintain separate bank accounts for all LCF monies.

13.4 OPTION SIX: The Regulations require an LCF funded asset register to be maintained and/or further guidance is given on the record keeping obligations of EBs surrounding assets

13.4.1 This option would either make it a regulatory requirement that EBs keep records of LCF funded assets and make them available to ENTRUST within 14 days of a request being made, or make this good practice guidance. This is complimentary to the requirements of Regulation 33A(1)(d) that EBs have to keep records.

13.4.2 Our current guidance sets out that it is best practice for EBs to maintain a register of all assets purchased or part purchased using LCF monies (see paragraph 8.1.4). The register is for EBs to keep a record of all assets that have been purchased by the EB or for projects that they have registered. The value of assets that should be included in the asset register should be proportionate and we suggest that any asset which is purchased for £10,000, or over is recorded on the asset register.

13.4.3 The details of the asset register as set out in our guidance is different in a number of respects to a register for accounting purposes. Our current guidance states that an LCF asset register should include details of the asset and the purchase value when funded by the EB even if the EB will not own the asset, along with the date of purchase, depreciation method, inspection monitoring, evidence of review and any income derived from the asset. Where an asset is sold or disposed of, the asset register should be updated to include details of the sale or disposal. These records are also required for assets which are part financed by LCF monies.

13.4.4 The table below reviews why the records outlined in the paragraph above are necessary.

Table One: Requirements of a register of LCF funded assets

Information	Reason
Purchase value	To ensure that the asset remains on the register for its expected lifetime.
Date of purchase	To identify the asset to an invoice.
Depreciation method	To ensure that the method of calculating the value of the asset after a given period of time is clear.
Inspection and/or monitoring	Records of monitoring and/or dates on which the asset was inspected.
Income derived	To ensure that clear records are kept of income derived
Details of sale/disposal	To ensure there is a compliant disposal and the value of the receipt is known

13.4.5 Consequently, we consider that it should either be a regulatory requirement or good practice guidance that when EBs purchase or fund assets with more than £10,000 of LCF monies, they should record:

- (i) Name of asset;
- (ii) Owner of asset;
- (iii) Purchase value;
- (iv) Date of purchase;
- (v) Date of sale/disposal; and
- (vi) Details of inspection **and/or** monitoring.

13.4.6 To avoid confusion with asset registers used by accountants it might be better to describe the records as “LCF funded asset records”.

13.4.7 Whilst it is envisaged that this proposal would place a minimal impact on EBs who currently maintain an asset register, there may be some additional administrative burden for those EBs that do not, or that do not record all of the information specified above.

14. OPTIONS FOR LOS TO ENSURE ASSET PROTECTION

14.1 OPTION SEVEN: Asset monitoring by LOs both pre-and post revocation

14.1.2 LOs monitor the compliance of assets (pre-revocation)

14.1.2.1 This option considers extending the role for LOs in monitoring compliance. HMRC issue guidance on reasonable precautions that may be taken to ensure compliance, to all LOs participating in the LCF, although as outlined in paragraph 8.2.3, there is no specific reference to assets. If the option to increase the role of LOs in monitoring the compliance of assets were implemented, the guidance issued by HMRC may be strengthened to form examples of reasonable precautions. Examples of reasonable precautions are expanded upon in the following paragraphs.

14.1.2.2 The guidance issued to LOs would state that they should monitor the ongoing compliance of all assets purchased, extended or constructed with qualifying contributions for £10,000 or over that they have given to EBs.

14.1.2.3 Guidance issued by HMRC would set about best practice and could include procedures such as maintaining a record of LCF funded assets purchased for £10,000 or over and site inspections, however, this option may be burdensome to some LOs and so comments are welcomed on this point. The finer detail of this guidance would have to be discussed with HMRC as they are responsible for issuing guidance to LOs. Where non-compliance is identified, the LO should inform ENTRUST who would begin the enforcement process. HMRC would take into account the precautions taken by the LO to ensure that the assets remained in compliant use when considering if clawback is appropriate where non compliance was identified.

14.1.2.4 A problem identified with this approach is that LOs make their qualifying contributions to EBs with conditions that they are spent on approved objects. Some of the larger LOs then ‘step away’ from the detail of how their qualifying contributions are spent and therefore may not be in a position to monitor compliance of LCF funded assets purchased for £10,000 or over. However, it is believed that in these circumstances, the LO and the DEB could have an arrangement where the DEB provides the details to the LO for review.

14.1.2.5 This option could have a very high administrative impact on LOs if all assets were included under this proposal. Therefore we would also welcome stakeholder feedback if this option was limited to land and buildings, which pose the greatest risk to the LCF.

14.1.3 LOs monitor the compliance of assets (post-revocation)

14.1.3.1 This option considers if HMRC guidance should go further than monitoring assets while an EB exists, and extend this to assets purchased with the LOs qualifying contributions by an EB that has revoked from the scheme. Records of this activity could be made available to HMRC at their request. However, whilst this could be done for a former EB where the organisation still exists, if the EB has ceased to exist this could prove very difficult.

14.1.3.2 Given the scale of assets and the administrative burden in considering depreciation it may be more appropriate to restrict this option to land and buildings and comments are welcomed on this point.

14.1.3.3 This option would place additional burdens on LOs to monitor the compliance of assets and maintain records of the same. We welcome comments from LOs, particularly on the issue of how compliance should be assured once an EB has revoked, and what the implications of these proposals might be.

15. OPTION EIGHT: Do nothing

15.3.1 Both EBs and LOs have commented that further guidance and clarity is required on asset protection. The consultation document highlights many areas of concern in paragraphs two and three which need to be addressed.

15.3.2 For this reason, it is not deemed appropriate to do nothing.

16. OPTIONS CONSIDERED BUT NOT PURSUED

As part of the initial scoping exercises that informed this consultation document, a number of options were considered, but upon investigation were deemed inappropriate for implementation within the LCF. For completeness, these options are discussed below, and we welcome stakeholder comments on them.

16.1 Land Registry Legal Charges (England and Wales)

16.1.1 A high degree of protection can be offered by a legal charge (coupled with a restriction) registered against land and property at the Land Registry. A legal charge (when coupled with a restriction) would allow for the same protections as the restriction alone but with the additional benefit of allowing funding EBs to take control of an asset if the owner of the asset used the asset in a manner that is non-compliant. However, the legal and practical implications of taking control of an asset are complex, and if used as an empty threat, is not an effective tool. We consider that in practice this is an unworkable solution for EBs.

16.2 Land Registry Agreed Notices (England and Wales)

16.2.1 Agreed notices are another type of legal protection for land and buildings. They are similar to restrictions and entered in the charges register of the land or buildings which they relate to by the Land Registry. Although the Land Registry fees are low, agreed notices do not offer the same level of security as charges and restrictions, as they do not restrict the registration of transactions which would otherwise be caught by restrictions. For this reason, agreed notices are not considered further.



16.3 Land and buildings are held in Charitable Trusts

16.3.1 We have considered if it is an option for the Regulations to specify that land and buildings must be held in Charitable Trusts. This option is only viable to EBs that are also registered Charities and so regulatory change would either require all EBs to be registered charities which is not a legitimate approach, or would only apply to EBs who are charities.

16.3.2 Charitable Trusts generally just hand over funds and are not responsible for the compliance of grants against legislation. It is not advisable for Charitable Trusts to be set up if assets such as land and buildings are being purchased as the risk involved for the individual Trustees is too high because they would have unlimited liability. Consequently, this option is not considered further.

16.4 There is a limit to the value of the asset which can be purchased using LCF monies.

16.4.1 The risk of asset loss would be mitigated if a limit was placed on all assets that were purchased with LCF funds as assets would be of a lower monetary value.

16.4.2 We do not believe that limiting the value of assets that can be purchased using LCF monies in this manner is a viable option. The objects contained within the Regulations primarily focus on physical outputs and by implementing such a rule, the fundamental objectives of the scheme would not be achieved.

16.4.3 However, should we receive evidence from the consultation responses that LOs and EBs are discouraged from funding assets as the monitoring requirements are too great, this option may be considered further.

16.5 EBs must own all assets that they purchase for projects that they register

16.5.1 Where EBs fund assets but do not own them, funding EBs are 'once removed' from both ownership and control of the asset. In these instances some EBs do not record details of the asset on their asset register. This occurs because of the differences between an accounting asset register and one which is required for LCF purposes.

16.5.2 One option to overcome this problem and to reinforce the need for EBs to take responsibility for the assets purchased is to require that any assets purchased with LCF monies are owned by the EB that had registered the project.

16.5.3 This would exclude works on Local Authority community facilities, as Local Authorities cannot become EBs. Consequently, this option is not pursued further.

16.6 Seizure of land and buildings that fall into non-compliant use

16.6.1 This option considers if land and buildings which fall into non-compliant use over time can be seized by either the funding LOs, ENTRUST or HMRC. Following seizure of an EBs assets, they could be given to another EB as a qualifying contribution or they could be sold and the proceeds of the sale returned to the LCF as derived income. If either of these options were not followed clawback could operate in the usual way.

16.6.2 After taking legal advice surrounding the practicalities of this option and the impact that it would have on other legislation, we are informed that the process would have to mirror the Proceeds of Crime Act, and that any seizure would have to follow a

criminal investigation and Court Sanctions. This would therefore be a very costly option.

16.6.3 Another alternative would be for all parties who have an interest in the asset to sign an agreement allowing an Order of Sale to be administered should the asset fall into non-compliant use. Such parties could include any person or organisation which has funded the asset and/or has any other interest in it. An Order of Sale would allow the sale of the asset and the proceeds to be distributed between funders. It is unlikely that multi-funded assets could be protected in this manner as all parties may not wish to sign up to such an agreement.

16.6.4 Of all of the projects registered in 2009/2010, only 13% were expected to be fully funded through the LCF and so where assets were purchased, there will be many instances where the assets were only part purchased using LCF monies. For these reasons, the option of seizure is not pursued further.

16.7 Annual returns for LCF assets after revocation

16.7.1 We also considered the option that all EBs granted voluntary revocation should provide annual returns for LCF assets, but as many revoked EBs are no longer in existence this cannot be undertaken and so we have not considered this option further.

17. IMPACT ASSESSMENT

17.1 Cost of familiarisation with revised guidance

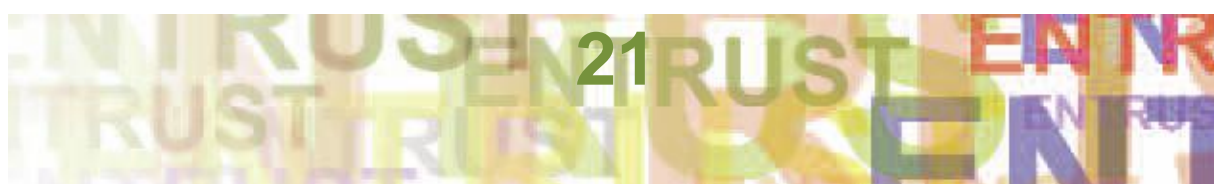
17.1.1 This consultation document considers a number of options which could be implemented to protect assets within the LCF. The following options have been discussed and subsequently dismissed are not included in this assessment:

- Registration of charges and agreed notices;
- The requirement that assets are held in Charitable Trusts;
- That there is a limit to the value of assets which can be purchased with LCF monies;
- That EBs must own all assets that it has funded;
- That seizure of non-compliant assets can be administered; and
- Annual returns for LCF assets after revocation.

17.1.2 Any regulatory change which may occur as a result of this consultation would be accompanied with revised guidance. All EBs would have to familiarise themselves with this guidance which may be quite extensive. The time spent on familiarisation with guidance would be dependent on whether the EB was currently active or not.

17.1.3 Throughout the past three years, 1,097 EBs have reported some level of funding or expenditure activity on their Form 4. We would deem these EBs to be 'active' which means that of the 2,824 EBs that are currently enrolled, 1,727 are inactive. Inactive EBs are considered within this analysis as they are required to adhere to the Regulations and so would have to ensure that they are familiar with any regulatory change or revised guidance.

17.1.4 Active EBs may have a team of two spending up to two days familiarising themselves with the revised guidance and assessing how to incorporate this into their daily operations, where as inactive EBs may only spend two hours doing the same. Using this information, we can estimate the annual administrative cost of familiarisation, where the minimum wage is £5.93 per hour.



Inactive EBs

(Minimum wage x two hours) x number of inactive EBs = **£20,482**

Active EBs

(Minimum wage x sixteen hours x two people) x number of active EBs = **£208,167**

17.2 LEAD OPTION: Cost of ensuring that LCF expenditure remains in compliant use

17.2.1 Our current guidance assumes assets remain in compliant use throughout their lifetime. To implement this option, EBs must be mindful of depreciation methods, but this is already best practice as part of the requirements of the asset register. Therefore, this option would have minimal impact to EBs that are currently adhering to best practice guidance.

17.3 OPTION TWO: Cost of terms and conditions placed on project registration

17.3.1 We have suggested three conditions that could be placed on EBs when projects are registered, each of these have different costs associated with them.

17.3.2 Where an EB or project applicant seeks to dispose of an asset, we have suggested that they should seek the consent of the funding DEBs or LOs; this will have an administrative impact on both the EB and LOs. It is estimated that for the EB to write up a letter of intent for the LOs, it will take an hour, and the LOs may take up to an hour to construct a response. Therefore the cost of an hour's administration, based on minimum wage is £5.93 to both the LOs and EB.

17.3.3 From the information that we currently have available, we cannot determine the amount of assets which are sold or transferred annually. However, we will assume that this equates to no more than 20 buildings or pieces of land annually, and therefore the yearly cost of this would be equal to:

Minimum wage x two hours x number of assets = **£237 annually.**

17.3.4 The condition requesting that land and buildings are protected would have the same costs as outlined in paragraphs 17.4 below.

17.3.5 The final condition states that where an asset is sold, open market value must be obtained. This may require a valuation to be undertaken. The on-line flat rate fees for these vary between £399.00 and £1,125.00 although many organisations prefer to be contacted for a tailored quote. If in total 10 valuations were required in a year, the cost can be calculated as follows:

Cost of valuation (highest fee) x number of assets = **£11,250 annually.**

17.3.6 The option also considers EBs submitting asset management plans with project registrations that purchase assets. 2007/2008, was the last period for which we collected detailed costs of assets purchased on the Form 2 – *Project registration*.

From the inception of the scheme to that date, we had registered 30,035 projects, 2,215 of these declared that they were purchasing assets valued at over £10,000 (7% of projects registered). During 2009/2010, we registered 3,635 projects, and 7% is equal to 254 projects. EBs will be able to use a standard template which they have devised for asset management plans and so it is expected that this will take no more than 30 minutes to complete per project. Therefore the administrative cost of this option can be calculated as follows:



(Minimum wage x 30 minutes) x number of projects = **£753 annually**

17.4 OPTION THREE: Cost of registering legal protection

17.4.1 The cost of registering a restriction with the Land Registry is £100. As we have suggested that restrictions should be placed on all land and buildings, we will consider all projects that have purchased assets over £10,000. We have identified in paragraph 17.3.6 that we expect 254 projects with assets valued over £10,000 to be registered annually. If we assume that no more than 50% of these projects purchase land and buildings this would indicate 127 projects would require a restriction per year.

17.4.2 Feedback from a small number of EBs has suggested that the average solicitor's fees which relate to entering a restriction with the Land Registry is approximately £500.

(Cost of restriction + Solicitors fees) x number of projects = **£76,200 annually**

17.4.3 There are a small number of administrative costs which should also be considered, these are the cost of completion of the forms, liaison with solicitors and postage. The associated forms are 5 pages in total and with experience, it should take no more than 60 minutes per asset to complete, liaison with solicitors is also estimated to be 60 minutes, the production of the supporting documents is estimated to take no more than 120 minutes and postage would be 66p per application.

(Minimum wage x 4 hours + postage) x number of assets = **£3,096 annually**

17.4.4 We have not considered the costs of Inhibitions (Northern Ireland) and Deeds of Conditions (Scotland) as it is estimated that, overall, the costs are equal to those of registering restrictions.

17.4.5 Unfortunately, we are also unable to account for the time taken to resolve any problems or discrepancies with other funders which may arise when placing a restriction.

17.5 OPTION FOUR: Cost of obtaining open market value for land and building

17.5.1 This option may require a valuation to be undertaken. The on-line flat rate fees for these vary between £399 and £1,125 although many organisations prefer to be contacted for a tailored quote.

17.5.2 The costs of this option are outlined in paragraph 17.3.5 above as £11,250 annually.

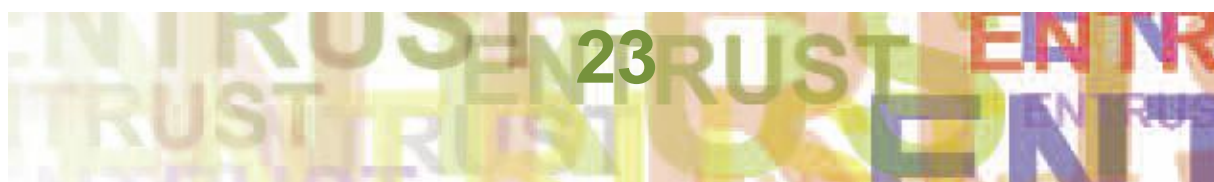
17.6 OPTION FIVE: Cost of requiring EBs to maintain a separate bank account for LCF monies

17.6.1 We do not have information to determine the amount of EBs who receive funds from multiple sources, or those which have a separate bank account for LCF funds. This analysis will therefore reflect the cost of all EBs maintaining a separate bank account for LCF funds.

17.6.2 It is estimated that it will take an EB a day to change their banking systems including locating an account provider, setting up an account and transferring all LCF funds and standing orders to the account. The administrative cost of this can be calculated as:

Number of EBs x minimum wage x 8 hours = **£133,971 one off cost**

17.6.3 Whilst some banks offer accounts with no ongoing administration fees for Charities, clubs and associations, some business accounts do have fees associated with



transactions. These can be in the region of 50p per transaction, although CHAPS payments can cost up to £25 each. These ongoing fees would vary dramatically dependant on the size of the EB and the value of LCF funding that it was managing.

17.7 OPTION SIX: Cost of record keeping to protect assets

17.7.1 We have considered if asset protection could be undertaken via administrative procedures, such as a register of LCF funded assets.

17.7.2 It is anticipated that EBs would spend up to two hours annually inspecting each asset and maintaining records. Given that we have identified that 7% of projects have assets valued at over £10,000, and we currently have 32,851 projects registered, we can assume that there are currently 2,299 projects which have purchased assets. We will not take into consideration depreciation, as new projects are registered annually and so we can assume that this figure will remain constant. Therefore the administrative cost of this option can be calculated as follows:

(Minimum wage x two hours) x number of projects = **£27,266 annually**

17.8 OPTION SEVEN: Cost of asset monitoring by LOs

17.8.1 Where the LO has responsibility for maintaining a register of LCF assets, the cost highlighted in paragraph 17.7.2 would be transferred to them.

17.8.2 The final administrative protection which we have considered was that LOs would be required to monitor assets. This would involve some element of liaison with the EB and so the cost would be to both the LOs and EBs and it is considered that the cost would mirror those set out above in paragraph 17.7.2.

18. CONSULTATION QUESTIONS

18.1 Questions for Environmental Bodies

18.1.1 The Regulations are amended to prescribe that assets remain in compliant use throughout their lifetime (option one, paragraph 11)

Question 1: Do you agree that assets should remain in compliant use throughout their lifetime?

Question 2: Would this option place any additional burden on your EB?

Question 3: How do you ensure that the assets that your EB funds remain compliant throughout their lifetime?

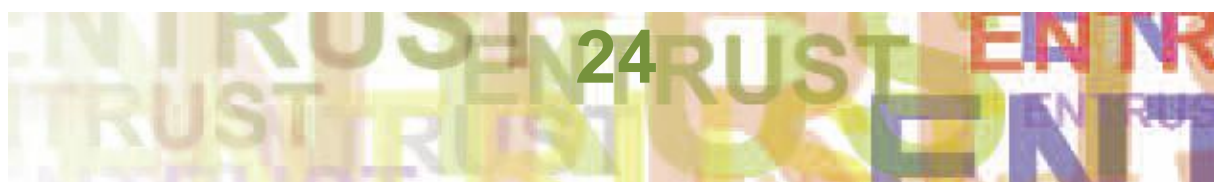
Question 4: Have you ever encountered any problems where LCF expenditure has become non-compliant over time? If so, can you please outline the situation and the steps which were taken to address the problem?

18.1.2 Terms and conditions placed on project registration (option two, paragraph 12.1)

Question 5: What conditions similar to those proposed does your contributing LO or transferring EB put on the LCF funding that you receive?

Question 6: Do you support the option of terms and conditions on project registration?

Question 7: Are the proposed conditions reasonable? If your answer is 'no' could you please explain why?



Question 8: Do you agree that £100,000 is an appropriate value for which assets cannot be sold or given away without prior consent of the funder? If no, please explain why and suggest another value.

Question 9: Are there any other conditions which may be appropriate to add onto project registration?

18.1.3 Land and buildings are protected to recognise LCF funding (option three, paragraph 13.1)

Question 10: How do you currently protect the LCF interest in land and buildings?

Question 11: Have you ever encountered problems where land and buildings are not adequately protected? If so, can you please outline the situation and the steps which were taken to address the problem?

Question 12: What comments do you have on the option of protection of land and buildings through the Land Registry?

Question 13: Do you think that it is reasonable that restrictions/inhibitions/Deed of Conditions should be placed on all land and buildings?

Question 14: Does your EB currently place restrictions/inhibitions/Deed of Conditions on land and buildings purchased with LCF monies? If so could you please confirm the following:

- i) Would you be happy to contribute to a library of wording?
- ii) Could you please send us an example of the wording used?
- iii) What are the associated solicitor's fees on average per application?
- iv) Are there any common problems faced with this method in practice?

Question 15: Do you agree that all land and buildings which are purchased, extended or constructed using LCF monies should be protected in perpetuity? If not, could you suggest alternative timescales giving your reasons?

18.1.4 The Regulations are amended to require certain conditions are met to ensure proper value is obtained on any disposal (option four, paragraph 13.2)

Question 16: Do you agree that the open market value should be obtained for any sale or disposal of assets (unless they are being transferred to another EB)?

Question 17: Has your EB ever sold or disposed of an LCF funded asset? If so, what precautions (if any) did you take to ensure that receipts were maximised?

18.1.5 Separate bank accounts for cash assets (option five, paragraph 13.3)

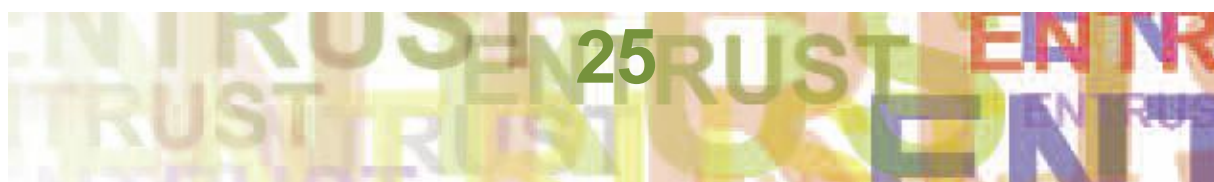
Question 18: Do you receive any money from sources other than the LCF?

Question 19: If yes, do you currently maintain a separate bank account for LCF monies?

Question 20: If you do not have separate bank accounts for LCF monies, what additional administrative burden would this have on your EB?

18.1.6 The Regulations require an LCF funded asset register to be maintained and/or further guidance is given on the record keeping obligations of EBs surrounding assets (option six, paragraph 13.4)

Question 21: Does your EB currently maintain an asset register?



Question 22: If yes, is this for both your own assets and those others whose projects you register?

Question 23: If it was a regulatory requirement that EBs should maintain an LCF asset register, would this have any adverse affect on your EB? If so, please explain.

Question 24: Current guidance suggests that assets valued at over £2,000 should be recorded on an asset register. In this paper we have proposed that assets with a value of £10,000 should be maintained on a record of assets. Would this reduce any administrative burden on your EB?

Question 25: Is the value of £10,000 appropriate for the submission of asset management plans? If your answer is 'no' could you please explain why and suggest an alternative value?

18.1.7 Asset protection by LOs both pre- and post-revocation (option seven, paragraph 14)

Question 26: What processes are in place for monitoring compliance of assets should your EB cease to exist?

Question 27: Do you agree that assets should be monitored post revocation? If so, who should have this responsibility?

Question 28: Does your funding LO(s) concern itself with compliance? If so, how?

Question 29: Do you believe that LOs should be involved in the ongoing compliance of all assets purchased for £10,000 or over, or should this be limited to land and buildings?

18.1.8 General

Question 30: Of the options outlined in this paper, which is/are your preferred?

Question 31: Are there any additional methods of asset protection which are not considered in this paper?

Question 32: Do you have any comments in the impact assessment of the options, which is set out in paragraph 17?

Question 33: Please outline any further points that you wish to add regarding this consultation.

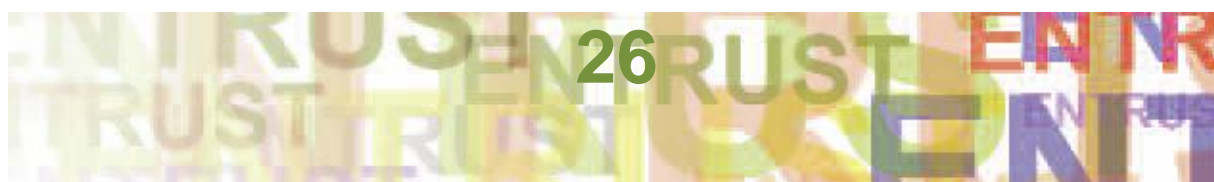
18.2 Questions for Landfill Operators

Question 1: Do any of your funding agreements with EBs make reference to continued compliance of assets? If so, could you please provide an example of the wording?

Question 2: Do any of your funding agreements with EBs make specific reference to assets? If so, could you please provide an example of the wording?

Question 3: Do you agree that assets should remain in compliant use throughout their lifetime (option one, paragraph 11)?

Question 4: What reasonable precautions do you currently have in place to ensure compliance of LCF expenditure?



- Question 5:** What processes are currently in place for the sale or disposal of any assets which you have funded?
- Question 6:** What would the impact be on your organisation if EBs to which you had made a qualifying contribution sought your approval to transfer or dispose of land and buildings and/or assets valued at over £10,000 (option two, paragraph 12.1 and option three, paragraph 13.1)?
- Question 7:** What would the implications be if you were named on a restriction inhibitions/Deed of Conditions placed on land or buildings (option three, paragraph 13.1)?
- Question 8:** What additional burden would be placed on you if you monitored the ongoing compliance of all assets purchased for £10,000 or over (option seven, paragraph 14.1.2)?
- Question 9:** What additional burden would be placed on you if you monitored the ongoing compliance of land and buildings only (option seven, paragraph 14.1.2)?
- Question 10:** Do you have any processes in place to monitor assets should an EB that you have funded has revoked?
- Question 11:** What additional burden would be placed on you if it was a requirement that you monitor assets where an EB has revoked (option seven, paragraph 14.1.3)?
- Question 12:** What additional burden would be placed on you if it was a requirement that you should maintain an asset register for only land and buildings where an EB has revoked (option seven, paragraph 14.1.3)?
- Question 13:** Of the options outlined in this paper, which is/are your preferred?
- Question 14:** Are there any additional methods of asset protection which are not considered in this paper?
- Question 15:** Please outline any further points that you wish to add regarding this consultation.

19. CONTACT DETAILS – HOW TO RESPOND

- 19.1 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 'Asset Management' in the email subject.

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

Online: <http://www.surveygalaxy.com/surPublishes.asp?k=0MS7FA4BU2VP>

- 19.2 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 Asset Management Focus Group, please express your interest to Pardeep Bansi by **21 January 2011**.



19.3 The closing date for responses is **25 February 2011**.

20. PUBLICATION OF RESPONSE

20.1 A next steps report summarising the responses to this consultation will be published.

20.2 The outcomes of the consultation will be reviewed and any proposals will be subject to an impact assessment and publicised to stakeholders appropriately.

