



## 7 Devolution

### 7.1 Guidance for all EBs on the closure of the LCF in Scotland and the transitional period

This guidance should be read by all EBs as it affects EBs throughout the UK.

Responsibility for the collection and administration of Landfill Tax in Scotland was devolved to the Scottish Government from 1 April 2015 and the LCF ceased in Scotland on 1 April 2015.

**There is a two year transitional period to enable LCF projects in Scotland to be completed and for all remaining LCF funds in Scotland to be spent. The transitional period runs from 1 April 2015 to 31 March 2017. EBs can continue to register projects in Scotland with us during the transitional period but all projects must be completed by 31 March 2017.**

For the avoidance of doubt, when we refer to the LCF we are referring to the scheme which closed in Scotland on 31 March 2015 and now operates in England, Wales and Northern Ireland. We refer to the scheme which commenced in Scotland on 1 April 2015 as the Scottish Landfill Communities Fund (SLCF).

#### Contributions in the transitional period

For the duration of the transitional period, contributions into the LCF will be divided into 'old' monies and 'new' monies. Old and new monies must be accounted for separately and clear audit trails maintained to ensure the monies are distinguishable.

#### 'Old' monies

'Old' monies are LCF contributions arising from Landfill Tax credits claimed by LOs in relation to waste put into landfill sites anywhere in the UK on or before 31 March 2015.

**'Old' monies can be spent throughout the UK, including in Scotland, during the transitional period. After the transitional period (ending 31 March 2017) old monies can only be spent in England, Wales or Northern Ireland.**

#### 'New' monies

'New' monies are LCF contributions arising from Landfill Tax credits claimed by LOs in relation to waste put into landfill sites in England, Wales or Northern Ireland after 1 April 2015. Any contributions arising from Landfill Tax credits claimed by LOs registered for Scottish Landfill Tax, which relates to waste put into landfill sites in Scotland after 1 April 2015, will be paid into the new Scottish scheme and are not part of the LCF.

**‘New’ monies can be spent throughout England, Wales and Northern Ireland during the transitional period but cannot be spent on projects in Scotland during the transitional period.**

### **Contributions received by EBs**

**It is already a regulatory requirement that EBs make records in respect of the contributions they receive and report the receipt of contributions to us.** For further information please see our guidance Section 3: Now you are enrolled as an EB.

Since 1 April 2015 it has also been necessary for all EBs to identify whether the contributions they receive during the transitional period are ‘old’ monies or ‘new’ monies.

We assume that any contributions received on or after 1 May 2015 are ‘new’ monies. However, our assumption may be incorrect in some cases and we request that you contact us if you believe this to be the case.

### **Responsibilities when making a transfer to another EB during the transitional period**

All EBs must be able to identify the contributions they hold so that they can identify where those contributions may be spent. It is the responsibility of the transferring EB to additionally inform the recipient EB whether the LCF monies transferred are ‘old’ monies or ‘new’ monies.

Where the transfer is partly of ‘old’ monies and partly of ‘new’ monies, the transferring EB must notify the recipient EB that the transfer is of mixed funds and notify the recipient EB how much of the transfer constitutes “old” monies and how much constitutes ‘new’ monies.

The transferring EB must notify the recipient EB in writing at the time in which the LCF monies are transferred. The notification may form part of a funding agreement or may be made separately. It is the EBs responsibility to ensure they have the necessary systems in place to identify the contributions they hold, and to inform any EB to whom LCF monies are transferred.

## **7.2 Expenditure of LCF monies during the transitional period, and from 1 April 2017**

EBs throughout the UK may hold ‘old’ monies, ‘new’ monies or a mixture of both. This section of the guidance sets out the different rules on how these monies can be spent.

### **Expenditure of ‘old’ monies**

During the transitional period, ‘old’ monies can be spent throughout the UK, including in Scotland, on LCF approved Objects, namely projects and running costs.

‘Old’ monies may be spent on approved LCF projects throughout the UK. **All LCF projects in Scotland must be completed by 31 March 2017.**

During the transitional period, an EB may continue to meet its reasonable and relevant running costs, up to a maximum of 7.5% of total LCF expenditure, where the running costs

are attributable to its LCF activities from the LCF 'old' monies which it holds. Please see Section 3: Now you are enrolled as an EB for further information on running costs.

Where an EB has running costs which are attributable to managing LCF projects in Scotland then only 'old' monies can be used to meet those running costs.

Up to 31 March 2017, LCF 'old' monies can also be transferred to another EB or returned to the original contributing LO. (HMRC will clawback the relevant tax credit.)

Where a transfer is made to another EB, the transferring EB must follow our guidance on transfers in the transitional period.

### **Expenditure of "new" monies**

'New' monies can be spent on projects throughout England, Wales and Northern Ireland during the transitional period. No 'new' monies can be spent on projects in Scotland at any time.

'New' monies may be spent on the reasonable and relevant running costs of an EB (wherever based), up to a maximum of 7.5% of total LCF expenditure, where the running costs are attributable to the management of approved LCF projects in England, Wales or Northern Ireland.

'New' monies cannot be spent on the running costs of an EB (wherever based) which are attributable to the management of LCF projects in Scotland. Please see Section 3: Now you are enrolled as an EB for further information on running costs.

During the transitional period, LCF 'new' monies can also be transferred to another EB. Where a transfer is made to another EB, the transferring EB must follow our guidance on transfers in the transitional period.

'New' monies may also be returned to the original contributing LO (HMRC will clawback the relevant tax credit).

### **Last date for spending or transferring funds**

We recommend that EBs in Scotland holding money should ensure that any money is spent or transferred before the end of February 2017 to allow sufficient time for closure activity before the end of the transitional period.

## **7.3 Funds retained for the winding up of Scottish EBs within, and following, the transitional period.**

### **Funds retained for the winding up of Scottish EBs within the transitional period.**

Some Scottish EBs may be holding funds for the winding up of their business following the closure of the Fund in Scotland. Any reserves for winding up costs should be reviewed periodically to ensure that appropriate funding is held to meet any contractual liabilities.

EBs must be able to justify their winding up reserves position in respect of funds retained for winding up. A reserves policy should include the following:

- The legal or other justification why the EB needs to provide for the liability in its reserves;
- The level of reserves the Directors, or Trustees, consider is appropriate for an organisation of its size;
- The process that the EB is taking to establish, or maintain reserves at the agreed level; and
- Arrangements for monitoring and reviewing the policy.

**Regulation 30(1) sets out that running costs include any cost incurred in connection with the management and administration of a body or its assets. Therefore, LCF funds used for winding up are part of the running costs of an EB.** More on running costs can be found in section 3.

Reasonable and allowable winding up costs may include:

- The cost of employees not involved in the day-to-day running of the EB required to wind up the EB;
- Contractual redundancy payments set at a reasonable level;
- Outplacement costs, such as costs relating to support given to individuals who are being made redundant;
- Pension liabilities set at a reasonable level;
- Office rental payments required to the end of a lease period;
- Dilapidations due at the end of a lease period; and
- Costs relating to any legal and financial advice required when winding up the organisation.

If the organisation is not carrying on business after the transitional period then winding up must be completed by 31 March 2017. If the organisation does not intend to close down, then they cannot carry any unspent LCF funding forward, other than that agreed specifically for winding up.

**Where an EB receives funds from other sources, LCF funds can only pay the proportion of running costs that correspond to the proportion of LCF funding.** If you are unsure whether a category of your winding up costs may be compliant, please contact us for advice.

**LCF funds held for winding up must be reported on an EBs Form 4-Statutory Annual Return.** We also expect these costs to be reported in the EB's annual accounts.

#### **LCF expenditure after 31 March 2017**

**No LCF monies can be spent on projects in Scotland, or on running costs attributable to the management of them, after 31 March 2017.** However, in some circumstances Scottish EBs may be allowed to carry forward a reasonable and relevant amount of winding up costs after 31 March 2017 to address any statutory and contractual obligations, such as redundancy costs, that may exist. Should an EB propose to carry forward such costs they

must submit a request to ENTRUST by 30 September 2016 and each request will be reviewed on a case by case basis.

### 7.3 Additional reporting requirements for Scottish EBs

Please note that this part of the guidance only applies to EBs based in Scotland which:

- Held a balance of LCF monies as at 31 March 2015; or
- Received a contribution of “old” monies during the transitional period; or
- Received a transfer of “old” monies during the transitional period.

All EBs, including EBs in Scotland, must continue to submit a statutory Annual Return by 28 April each year, even after the end of the transitional period. EBs which do not wish to retain this obligation should seek voluntary revocation from the LCF.

#### Additional reporting in relation to LCF monies held

In order to oversee the orderly and effective closure of the scheme in Scotland we have introduced additional reporting requirements for EBs based in Scotland who hold LCF balances during the transitional period.

In order to minimise the administrative burden on EBs, the additional reporting is based on the existing Annual Return procedure via EOL. EBs should submit an interim Form 4 annual return via EOL in the same manner as the statutory Annual Return. We will send a reminder to all EBs who will need to report to us before the reporting deadline.

Once EBs who need to make an interim return have submitted their interim returns, we will collect the data and then the interim Form 4 returns will be un-reconciled to enable EBs to continue to report project completions until the next interim reporting deadline. EBs should ensure they meet the reporting deadlines set out below to minimise the period when Annual Return forms will be unavailable.

The additional reporting should be undertaken by EBs on the following dates:

Date report required	Period covered by report
14 October 2016	1 April 2016 to 30 September 2016
14 December 2016	1 April 2016 to 30 November 2016
14 January 2017	1 April 2016 to 31 December 2016
14 March 2017	1 April 2016 to 28 February 2017

These reports are in addition to the statutory Annual Return which EBs must continue to submit by 28 April each year.

### 7.4 EBs in Scotland which hold LCF monies from 1 April 2017

This part of our guidance only applies to EBs based in Scotland.

### **EBs based in Scotland which have approved LCF projects in England, Wales or Northern Ireland**

From 1 April 2017, a Scottish EB which continues to operate in the remainder of the UK may hold LCF monies to spend on LCF projects in England, Wales or Northern Ireland.

### **EBs based in Scotland which do not have approved LCF projects in England, Wales or Northern Ireland**

An EB based in Scotland which does not have an approved LCF project in England, Wales or Northern Ireland in place on 31 March 2017 will be assumed not to continue to operate under the LCF. A Scottish EB which is assumed not to be continuing will not be able to hold LCF monies after 31 March 2017.

From 1 April 2017, where an EB in Scotland which does not have one or more approved LCF projects in England, Wales or Northern Ireland holds LCF monies, HMRC will clawback the relevant amount from the LO which funded that EB.

### **Revocation of EBs based in Scotland**

All EBs will continue to be enrolled with ENTRUST unless they seek voluntary revocation from the LCF.

EBs in Scotland which will not manage projects in England, Wales or Northern Ireland will not be able to hold LCF monies from 1 April 2017 and so will not be able to use LCF monies to meet the costs of preparing or submitting a LCF Annual Return.

Forms to request voluntary revocation are available on the [revocation](#) page on our website.

## **7.5 Monitoring and protection of assets in Scotland**

### **Monitoring and protection for projects and assets throughout the UK during the transitional period**

All EBs should continue to follow the guidance set out in Section 6 on the monitoring and protection of LCF funded projects and assets for the duration of the transitional period.

Where a project is based in Scotland and the EB is likely to spend LCF monies during the transitional period in protecting or monitoring an LCF funded asset based in Scotland, the EB should refer to us for advice on a case by case basis as to whether it is appropriate to continue monitoring or protecting that asset for the remainder of the transitional period.

### **Monitoring and protection for projects and assets in Scotland from 1 April 2017**

From 1 April 2017, no LCF monies may be spent on the protection or monitoring of any LCF funded projects or assets in Scotland.

## **7.6 Steps towards closure of the LCF in Wales**

The LCF in Wales will cease on 31 March 2018 and responsibility for the new Welsh Landfill Tax will be transferred to the Welsh Government on 1 April 2018. The Welsh Government has yet to announce the successor to the LCF in Wales.

As more information becomes available regarding the arrangements for closure we will provide an overview on the [Wales](#) page of our website and update our guidance.