



## 7 Devolution

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

This guidance should be read by all EBs as it affects all EBs based in Wales or with projects in Wales. The sections below apply to all EBs (whether based in Wales or not) unless otherwise specifically stated. If you are unsure how the guidance applies to your EB please contact us.

**Responsibility for the collection and administration of Landfill Tax in Wales will be devolved to the Welsh Government from 1 April 2018 with the Landfill Communities Fund (LCF) ceasing operation in Wales on 1 April 2018.**

**There will be a two year transitional period to enable LCF projects in Wales to be completed and for all remaining LCF funds in Wales to be spent. The transitional period will run from 1 April 2018 to 31 March 2020.**

The Welsh Government will implement a new scheme operating only in Wales. For the avoidance of doubt, when we refer to the LCF we are referring to the scheme which will close in Wales on 31 March 2018 (with a two year transitional period) and then operate only in England and Northern Ireland. We refer to the scheme which will commence in Wales on 1 April 2018 as the Welsh Landfill Disposals Tax Communities Scheme (LDT CS).

### 7.2 Enrolments and projects

To allow for the efficient closure of the scheme, enrolment of organisations as Environmental Bodies (EBs) and project registrations will cease in Wales on 30 September 2019, 6 months prior to the end of the transitional period.

**All project expenditure must be completed by 31 March 2020;** however we recommend that projects should have end dates of no later than February 2020.

### 7.3 Contributions and transfers 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 Landfill Operators (LOs) in relation to waste put into landfill sites on or before 31 March 2018.

**'Old' monies can be spent in England, Northern Ireland and Wales, during the transitional period. After the transitional period (ending 31 March 2020) old monies can only be spent in England and 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 and Northern Ireland after 1 April 2018.

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

### **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.

After 1 April 2018 it will also be necessary for all EBs to identify whether the contributions they receive during the transitional period are ‘old’ monies or ‘new’ monies.

We will assume that any contributions received on or after 1 April 2018 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 and wish the contribution to be recognised as ‘old monies’. This could occur in the case where a LO makes a contribution after 31 March 2018 during the first quarter of 2017/2018 in relation to waste put into landfill up to 31 March 2018.

### **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 EB’s 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.

## **7.4 Expenditure of LCF monies during the transitional period, and from 1 April 2020**

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 in England, Northern Ireland and Wales.**

During the transitional period, an EB may continue to meet its reasonable and relevant running costs, up to a maximum of 7.5% of LCF project 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 Wales then only 'old' monies can be used to meet those running costs.**

Up to 31 March 2020, LCF 'old' monies can also be transferred to another EB or returned to the original contributing LO. (If returned to the 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 and Northern Ireland during the transitional period. No 'new' monies can be spent on projects in Wales 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 LCF project expenditure, where the running costs are attributable to the management of approved LCF projects in England and 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 Wales.** 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.

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

We recommend that EBs in Wales holding money should ensure that any money is spent or transferred before the end of February 2020 to allow sufficient time for closure activity before the end of the transitional period.

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

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

Some Welsh EBs may be holding funds for the winding up of their business following the closure of the Fund in Wales. 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 2020 and all LCF funds need to be spent by this date. 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. See below for more information on this.

**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 EB's Form 4-Statutory Annual Return.** We also expect these costs to be reported in the EB's annual accounts.

#### **LCF expenditure after 31 March 2020**

**No LCF monies can be spent on projects in Wales, or on running costs attributable to the management of them, after 31 March 2020.** However, in some circumstances Welsh

EBs may be allowed to carry forward a reasonable and relevant amount of winding up costs after 31 March 2020 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 in writing by 30 September 2019 and each request will be reviewed with HMRC on a case by case basis.

## 7.6 The end of enrolment for Welsh EBs

In order to limit the administrative burden on Welsh EBs their enrolment in the LCF will cease, automatically, at the end of the transitional period unless they notify ENTRUST that they wish to retain their enrolment. This automatic process will only apply to those EBs with all their funds accounted for. This will be deemed voluntary revocation.

If EBs based in Wales wish their enrolment in the LCF to continue they must notify ENTRUST by 30 September 2019. An EB would only wish to continue their enrolment if they intend to continue operating with projects in England or Northern Ireland.

An EB, at any time, can decide that they do not wish to remain enrolled in the LCF by requesting voluntary revocation, the forms required to do so are available on our [website](#). Revocation can be requested once all projects and associated reporting have been completed and all monies spent.

## 7.7 Additional reporting requirements for Welsh EBs

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

- Will hold a balance of LCF monies on 31 March 2018; or
- Receive a transfer of “old” monies during the transitional period.

**All EBs, including EBs in Wales, must continue to submit a statutory Annual Return by 28 April each year. Those EBs choosing to stay in the scheme must do so even after the end of the transitional period.**

### Additional reporting in relation to LCF monies held

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

We will send a reminder to all EBs who will need to report to us before the reporting deadline and advise how the reporting will be completed. The additional reporting should be undertaken by EBs on the following dates:

Date report required	Period covered by report
14 October 2018	1 April to 30 September 2018
14 October 2019	1 April 2019 to 30 September 2019
14 November 2019	1 October 2019 to 31 October 2019
14 December 2019	1 November 2019 to 30 November 2019
14 January 2020	1 December 2019 to 31 December 2019

14 February 2020	1 January 2020 to 31 January 2020
14 March 2020	1 February 2020 to 28 February 2020
31 March 2020	1 April 2019 to 31 March 2020

### Project reporting

All EBs holding projects in Wales, whether a Welsh EB or an EB outside of Wales running projects in Wales, will be required to provide monthly updates on the status of their projects from October 2019 until all project activity is completed.

## 7.8 Reporting requirements from 1 April 2020

**Welsh EBs retaining their enrolment in the LCF post 31 March 2020 must continue to submit annual returns after the transitional period. For EBs not operating in England or Northern Ireland no LCF monies may be spent on preparing or submitting the return after 1 April 2020.**

## 7.9 Monitoring and protection of assets in Wales

### Monitoring and protection for projects and assets 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 Wales and the EB is likely to spend LCF monies during the transitional period in protecting or monitoring an LCF funded asset based in Wales, 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 Wales from 1 April 2020

From 1 April 2020, there is no obligation for monitoring or protection of LCF funded projects or assets in Wales and **no LCF monies may be spent on the protection or monitoring of any LCF funded projects or assets in Wales.**

## 7.10 Record keeping responsibilities from 1 April 2020

**All EBs with projects in Wales which remain enrolled with ENTRUST after 31 March 2020 should continue to follow the requirements set out in our section 3 on the retention of records.**

## 7.11 Landfill Disposals Tax Communities Scheme (LDT CS)

The LCF will be replaced in Wales by the Wales LDT CS. Operating as a grant scheme funded by the Welsh landfill tax rather than a tax credit system the LDT CS will be administered by a single distributive body. The Welsh government is set to announce the distributive body by the end of 2017.

## 7.12 Further information

We will provide further updates to our guidance during the closure period when necessary. There is also an overview on the [Wales](#) page of our website. For more information on the LDT CS please see the [Welsh Government website](#)

### 7.13 The LCF in Scotland

Responsibility for Landfill Tax in Scotland was transferred to the Scottish Government on 1 April 2015. The LCF in Scotland also ceased after 31 March 2015 and following a two year transitional phase to spend any outstanding monies, the LCF in Scotland concluded on 31 March 2017.

Any EB enrolled in Scotland who is not continuing to operate in England, Northern Ireland or Wales should [voluntarily revoke](#) to remove their statutory obligations.

For enquiries about the new Scottish Landfill Communities Fund (SLCF) or more information on the SLCF please contact the [Scottish Environment Protection Agency](#).

**November 2017**