

Guidance note 9.3	Guidance for all EBs on the closure of the LCF in Scotland and arrangements in place for the transitional period.
What this guidance covers	This guidance note outlines the background to the changes which will be made as a result of the closure of the LCF in Scotland. It provides guidance on the record-keeping, reporting and other obligations of EBs throughout the transitional period.
Date of issue	31 March 2015
Date this guidance comes into effect:	1 April 2015
Any guidance now superseded:	None

For further information please see [our website](#) or contact our Registrations team on 01926 488300.

9.3 Guidance for all EBs on the closure of the LCF in Scotland and arrangements in place for the transitional period

9.3.1 Background

- i. ENTRUST is the Regulator of the Landfill Communities Fund (LCF), an innovative tax credit scheme, governed by the Landfill Tax Regulations 1996 (the Regulations). The LCF enables Landfill Operators (LO) to contribute money to organisations enrolled with us as Environmental Bodies (EBs) to carry out approved community and environmental projects.
- ii. By virtue of provisions in The Scotland Act 2012, responsibility for the collection and administration of Landfill Tax in Scotland is devolved to the Scottish Government from 1 April 2015. This affects the LCF which ceases in Scotland from 1 April 2015.
- iii. 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.

9.3.2 Purpose of this guidance note

- i. This guidance note outlines the background to the changes which are made as a result of the closure of the LCF in Scotland. It provides guidance on the record-keeping, reporting and other obligations of EBs throughout the transitional period.
- ii. In this guidance we cover:
 - The definition of terms used in this guidance;
 - Contributions received by EBs;
 - Responsibilities when making a transfer to another EB during the transitional period;
 - Expenditure of LCF monies in the transitional period, and from 1 April 2017; and
 - The protection and monitoring of LCF assets and projects in Scotland.
- iii. This guidance note should be read by all EBs as it affects EBs throughout the UK. We will provide separate guidance on additional issues raised by the closure of the LCF in Scotland which only affect EBs in Scotland.

9.3.3 The definition of terms used in this guidance

- i. In this section we set out some words and phrases which are used throughout this guidance note and explain what we mean by those terms.

Contributions in the transitional period

- ii. 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. The terms “old” and “new” monies, and the difference between them, are explained below.

“Old” monies

- iii. “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.
- iv. “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

- v. “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 on or 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 on or after 1 April 2015, will be paid into the new Scottish scheme and are not part of the LCF.)
- vi. “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.

LCF and Scottish Landfill Communities Fund (SLCF)

- vii. For the avoidance of doubt, when we refer to the LCF we are referring to the scheme which closes in Scotland after 31 March 2015 and which will then operate in England, Wales and Northern Ireland. We refer to the scheme which will commence in Scotland on 1 April 2015 as the Scottish Landfill Communities Fund or SLCF.

9.3.4 Contributions received by EBs

- i. In this section we set out the additional information which will be requested from EBs reporting a contribution received from a LO in May or June 2015.

Additional background

- ii. It is already a regulatory requirement that EBs make records in respect of the contributions which they receive, and that they report the receipt of contributions to us. (See paragraph 8 of Section A of our Guidance Manual.)
- iii. As a result of the closure of the LCF in Scotland, from 1 April 2015 it is also necessary for all EBs to identify whether the contributions they receive during the transitional period are “old” monies or “new” monies. This additional identification is required in order for EBs to understand where those contributions may be spent.

Assumptions to be applied to contributions received

- iv. We have agreed with HMRC that we will apply certain assumptions as to whether the contributions received by EBs during the transitional period will constitute “old” monies or “new” monies. These assumptions will apply to all LCF contributions received by all EBs, wherever based, during the transitional period.

First assumption

- v. All contributions received by EBs in April 2015 are assumed to be “old” monies. As set out above, this means that these monies can be spent throughout the UK, including in Scotland, until 31 March 2017, and in England, Wales and Northern Ireland thereafter. (This assumption is on the basis that LOs make payment to EBs when they submit their Landfill Tax return, and this is one month after the period to which the return relates. Therefore a contribution received in April 2015 will derive from Landfill tax credits claimed by LOs in relation to waste which was put into landfill on or before 31 March 2015.)

Second assumption

- vi. All contributions received by EBs on or after 1 May 2015 are assumed to be “new” monies. This means that these monies cannot be spent on projects in Scotland from 1 April 2015.
- vii. For EBs who are not based in Scotland or do not have projects in Scotland, this second assumption does not affect their day to day operations. However, EBs based in Scotland or with projects in Scotland may wish to correct our assumption in order that a contribution received on or after 1 May 2015 which, in fact, was derived from Landfill tax credits claimed by LOs in relation to waste put into landfill on or before 31 March 2015 can be regarded as “old” monies and be available to be spent in Scotland during the transitional period.

How to correct our assumption that a contribution in May or June 2015 is “new” money

- viii. Our assumption that any contribution received on or after 1 May 2015 is “new” monies is based upon what is most likely to be the position. However, our assumption may be incorrect in some cases. EBs can correct our assumption in respect of a contribution received in the transitional period by sending us a completed Form 3A with accompanying evidence (see further below). This documentation should be sent to our [Compliance team](#).
- ix. If you do not need to correct our assumption because you are content that the contributions are regarded as “new” monies then you do not need to return Form 3A to us.

The evidence which should accompany Form 3A

- x. The evidence which should accompany your Form 3A is any written material which will demonstrate that, contrary to our assumption, the contribution received by your EB is derived from Landfill tax credits claimed by LOs in relation to waste which went into landfill on or before 31 March 2015. It is likely that a letter or other evidence from your contributing LO will be the best evidence of this.

Obtaining a copy of Form 3A

- xi. Form 3A will only be available in hard copy; it will not be available via EOL. We will send a copy of Form 3A when we email our invoice for the levy due on the contribution received to any EB whose contribution was received in May or June 2015.
- xii. We will not send Form 3A when a contribution has been received after 30 June 2015 but it will be available upon request for the duration of the transitional period. Please contact a member of our Finance team on 01926 438300 if you need a copy of Form 3A after 30 June 2015.

Reviewing Form 3A

- xiii. We will review your Form 3A and the supporting documentation and will acknowledge receipt within five working days.
- xiv. Once we are satisfied that all of the necessary information has been provided to us, we will accept or reject your evidence. If you are unhappy with our response you can ask for it to be considered by our next Review Panel.

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

- i. This section of the guidance sets out the responsibilities of an EB when it makes a transfer of LCF monies to another EB during the transitional period.

Additional background

- ii. It is already a regulatory requirement that an EB must make and retain a record of any transfers which it makes (see paragraph 10.3 of Section A of our Guidance Manual).

Responsibility of transferring EB to notify recipient where there is a transfer of LCF monies

- iii. As 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.
- iv. 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 mixed funds and notify the recipient EB how much of the transfer constitutes “old” monies and how much constitutes “new” monies.
- v. The transferring EB must notify the recipient EB no later than the time at which the LCF monies are transferred. This notification must be in writing. The notification may form part of a funding agreement or may be made separately.
- vi. It is 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.

No changes to Form 7

- vii. We will not make any changes to **Form 7: transfer of monies between Environmental Bodies** as a result of the closure of the LCF in Scotland. Transfers should be reported to us in the usual way.
- viii. We will not ask for any additional information from the reporting EB at the time at which the transfer of LCF monies is reported to us but may require records to be available on request or for review at inspection.

9.3.6 Expenditure of LCF monies during the transitional period, and from 1 April 2017

- i. During the transitional period, 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

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

Projects

- iii. “Old” monies may be spent on approved LCF projects throughout the UK. All LCF projects in Scotland must be completed by 31 March 2017.

LCF running costs

- iv. During the transitional period, an EB may continue to meet its reasonable and relevant running costs attributable to its LCF activities from the LCF “old” monies which it holds, in accordance with the proportion of total funds principle set out in Regulation 33(8) of the Landfill Tax Regulations 1996 (Regulations). Please see Section C of our Guidance manual for further guidance on what constitutes reasonable and relevant running costs.
- v. 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.

Other expenditure

- vi. 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).
- vii. 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

Projects

- viii. “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.

LCF running costs

- ix. “New” monies may be spent on the reasonable and relevant running costs of an EB (wherever based) which are attributable to the management of approved LCF projects in England, Wales or Northern Ireland, in accordance with the proportion of total funds principle set out in Regulation 33(8) of the Regulations.
- x. Please see Section C of our Guidance manual for further guidance on what constitutes reasonable and relevant running costs.
- xi. “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.

Other expenditure

- xii. 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.
- xiii. “New” monies may also be returned to the original contributing LO (HMRC will clawback the relevant tax credit).

LCF expenditure after 31 March 2017

- xiv. From 1 April 2017 it will no longer be necessary for EBs to distinguish between “old” and “new” monies as no LCF monies (“old” or “new”) will be able to be spent on projects in Scotland or on running costs attributable to the management of projects in Scotland.
- xv. From 1 April 2017 it will be non compliant for LCF monies to be spent on projects in Scotland or on EB running costs which are attributable to the management of LCF projects in Scotland.
- xvi. From 1 April 2017 an EB (wherever based) will be able to meet its reasonable and relevant running costs from LCF monies only if it is running one or more LCF projects in England, Wales or Northern Ireland. The proportion of LCF monies which can be used to meet an EB’s running costs must not exceed the proportion of that EB’s total running costs which are attributable to its carrying out of LCF projects in England, Wales or Northern Ireland.

9.3.7 The protection and monitoring of LCF assets and projects in Scotland

- i. This section of the guidance sets out the responsibilities of an EB to monitor and protect LCF assets and projects in Scotland during the transitional period and from 1 April 2017.

Additional background

- ii. We already require EBs to monitor and protect LCF assets according to the type of assets and its value. Our guidance is set out in paragraphs 11 to 14 of Section C of our Guidance Manual.

During the transitional period

- iii. During the transitional period all LCF assets and projects should continue to be monitored and protected in accordance with our current guidance. This includes all LCF assets and projects in Scotland.

From 1 April 2017

- iv. From 1 April 2017 EBs will no longer be required to monitor and protect LCF assets and projects in Scotland.
- v. As it will be non compliant for any LCF monies to be spent on the management of projects in Scotland from 1 April 2017, it will not be possible for any EB to use LCF monies to monitor or protect LCF assets or projects in Scotland from 1 April 2017. Therefore, any EB which currently has an arrangement in place which will require the use of LCF monies to monitor or protect any LCF asset or project in Scotland after 31 March 2017, must take the necessary steps to revise that arrangement so that no LCF monies are used to protect or monitor any LCF asset or project in Scotland after 31 March 2017.