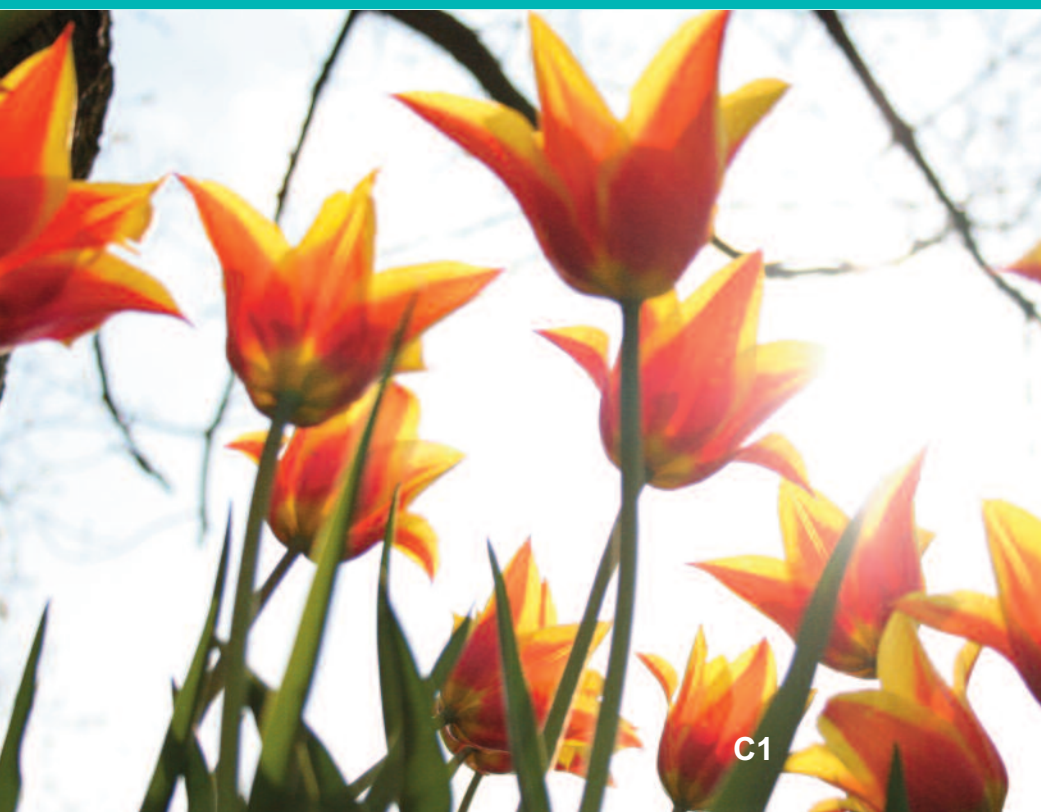




C - Project Approval and Spending Landfill Communities Fund (LCF) Monies

The regulations governing the expenditure of LCF monies and the approval of projects



January 2012

Quick Start to the Project Approval Process

All projects **MUST** be approved by ENTRUST before any spend of LCF monies

The approved objects are as follows:

Object A: Remediation of land

Object B: Reduction of Pollution

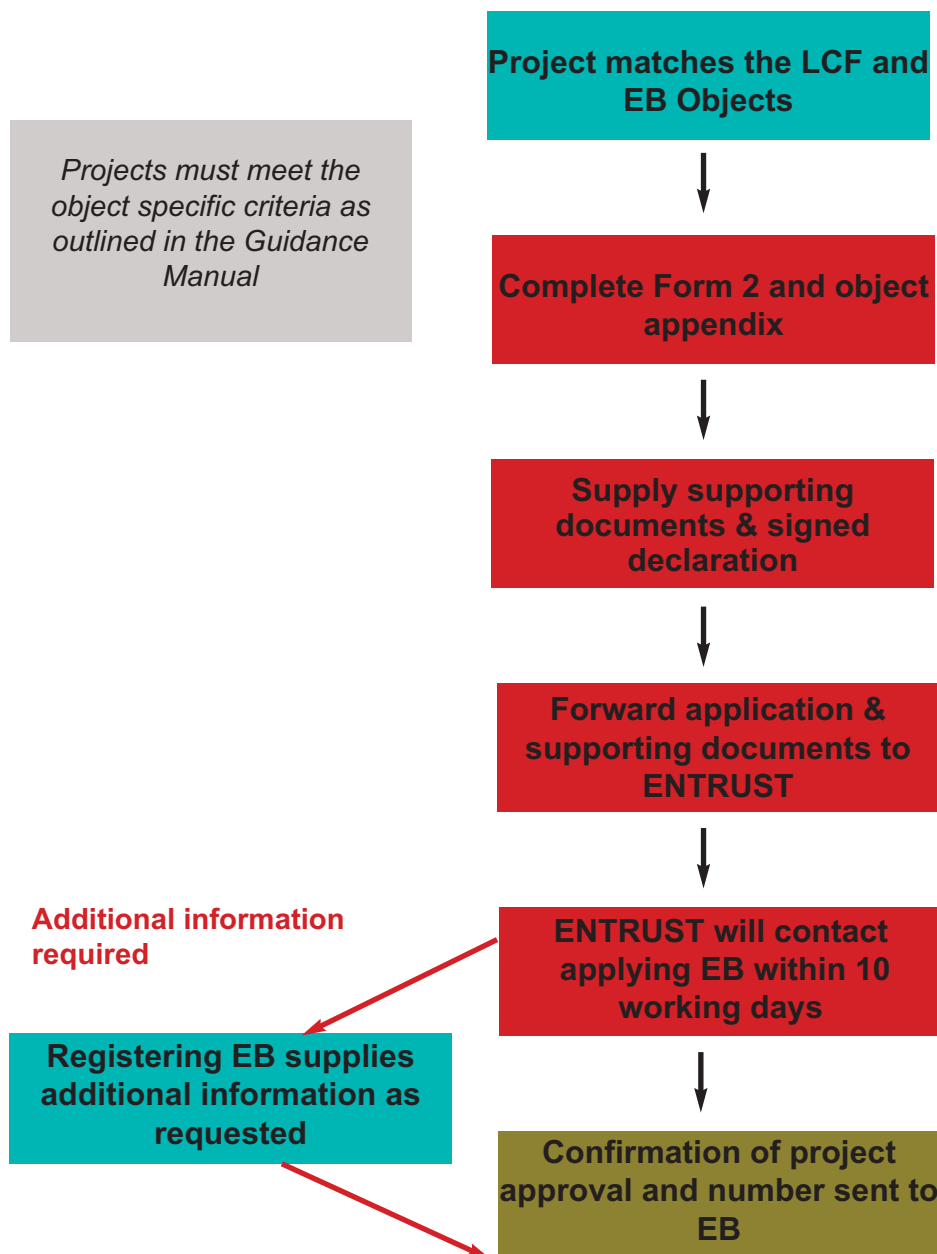
Object D: Maintenance, improvement or provision of a public amenity

Object DA: Conservation of Biodiversity

Object E: Restoration of Religious buildings or buildings of architectural or historic interest

Object F: Administrative services to another EB

PLEASE SEE DETAILED GUIDANCE FOR FURTHER QUALIFICATIONS OF THESE SUMMARY OBJECTS.



Where an application is not approved, it will be referred to the review panel and you do have the opportunity to appeal the decision.

Glossary:

LCF - Landfill Communities Fund

LO - Landfill Operator

EB - Environmental Body

CTP - Contributing Third Party

C) Project Approval and Spending LCF Monies

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Landfill Operators (LOs) can only give contributions to enrolled Environmental Bodies (EBs), and these funds have to be spent in accordance with the Landfill Tax Regulations.

1 What the Landfill Tax Regulations say:

1.1 The governing Regulations are as follows:

33A (1) An approved body shall –

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

30 (2) A body shall only be taken to spend a qualifying contribution in the course or furtherance of its approved objects –

(a) in a case where the contribution is made subject to a condition that it may only be invested for the purpose of generating income, where the body so spends all of that income;

(b) in a case not falling within sub-paragraph (a) above, where the body becomes entitled to income, where it so spends both the whole of the qualifying contribution and all of that income;

(c) in a case not falling within either of sub-paragraphs (a) and (b) above, where the body so spends the whole of the qualifying contribution; or

(d) where –

(i) it transfers any qualifying contribution or income derived therefore to another approved body and

(ii) that transfer is subject to a condition that the sum transferred shall be spent only in the course or furtherance of that other body's approved objects.



2 'Qualifying contributions'

- 2.1 A 'qualifying contribution' is a payment made to an enrolled EB by an LO under the Regulations.

3 The removal of objects C/CC – waste projects

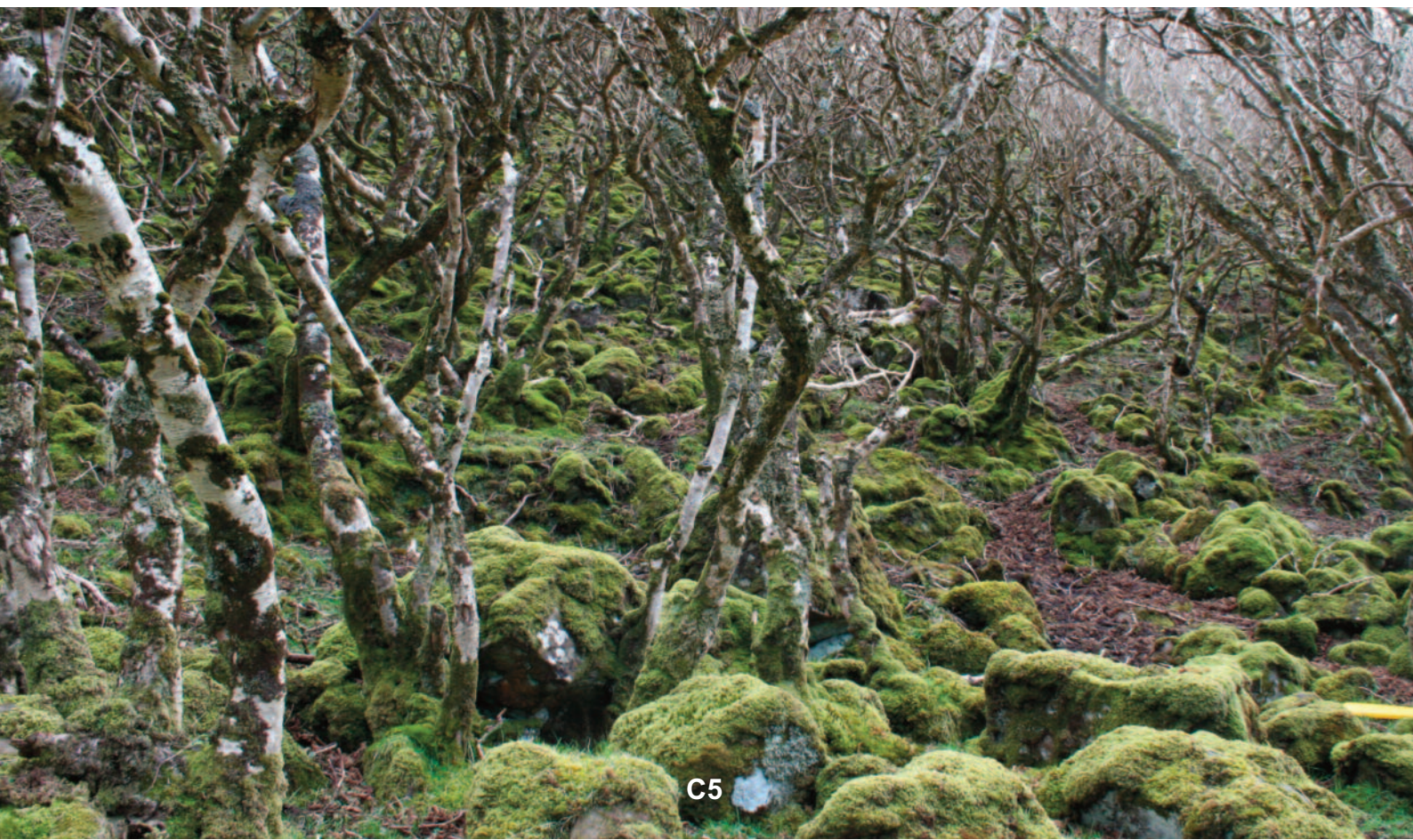
- 3.1 In his 2003 Budget Report, the Chancellor removed object C and CC (relating to sustainable waste management) from the Regulations. In the Chancellor's budget announcement of April 2007, the ability to fund these objects was removed. No further funding can be spent, or allocated to these objects unless there was a legal agreement in place before April 1st 2007. You should contact ENTRUST immediately if you have any questions regarding object C/CC projects.

4 The Relationship between Environmental Bodies and Landfill Operators

- 4.1 HMRC expect a LO to make their contribution subject to a written condition that the EB spends the payment or any derived income on approved objects. Such conditions should create a contractual obligation between the LO and the EB. HMRC also expect the LO to take action to recover their contribution if the EB fails to honour the contractual obligation. Therefore EBs should ensure that they honour their contractual obligations.

5 Spend on approved objects

- 5.1 LCF monies donated to an EB must be spent only on the approved objects of the LCF that appear within the Landfill Tax Regulations. These objects are detailed in the Quick Start Guide or on the ENTRUST website. Any income an EB receives from its LCF monies must also be spent on the approved objects. This includes:



- all interest as a result of investing LCF monies;
- any other derived income resulting from LCF project expenditure (for example, a royalty as a result of project activity, or from the sale of assets bought with LCF monies, or from rental income from hiring out the facilities provided by the public amenity; and
- Any funds returned to, or reclaimed by, an EB.

6 Project Approval

6.1 Following changes made to the Regulations in 2007, ENTRUST were granted the power under Regulation 34(1) to impose conditions on enrolled EBs, each condition requiring separate approval by HMRC.

6.2 The Regulation governing these conditions is as follows:

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”.
(ab) may, by notice delivered to a body, vary or revoke any condition of the approval.

6.3 In exercising that power, and in order to ensure that LCF funds are spent only on approved objects, ENTRUST imposed the following condition on all EBs with effect from 01 January 2012.

No qualifying contribution or any income derived from it may be spent on a project unless that project has first been approved by ENTRUST.

6.4 This condition supersedes all previous conditions and means that an EB must have ENTRUSTs approval of the project before it may spend any LCF money on that project. ENTRUST will refuse approval if it does not consider that the project fulfils an approved object (see Section G – Review Panel Terms of Reference). If you have been granted ‘Accredited’ status by ENTRUST then projects which you submit online are automatically approved.

6.5 Any spend which is made on a project which has not been approved in writing by ENTRUST will result in a direct breach of this condition and enforcement sanctions will be taken by ENTRUST and/or HMRC as appropriate.

6.6 Before approving a project, we will also need to see a cost breakdown that clearly identifies the parts of the project that LCF monies will go towards. This allows us to establish that the items identified are compliant spend.

6.7 It is the registering EB’s responsibility to make sure that the project expenditure falls within the Landfill Tax Regulations.

7 Timing

7.1 It is ENTRUST guidance that LCF monies are committed to a specific project within two years of receipt with the exception of projects that are registered under the Small Grants Scheme which must be re-registered and approved every 12 months.

- 7.2** The term committed means that there is a contractual agreement that the funds will be spent on a particular project.
- 7.3** EBs should notify ENTRUST when projects are complete via the Form 4. If no funding has been received and the project will no longer take place EBs should contact ENTRUST by email or in writing and request that the project is de-approved.

8 Running costs of the Environmental Body as compliant expenditure

8.1 What the Regulations provide:

33 (7) Where the objects of a body are or include any of the objects set out in paragraph 33(2) the following shall also be regarded as objects within that paragraph:

- (a) the use of qualifying contributions in paying the running costs of the body, but this is subject to paragraph 8 below;
 - (b) where the regulatory body has made the approval of the body subject to a condition to that effect, the use of qualifying contributions in paying a contribution to the running costs of the regulatory body.
- (8) The use of qualifying contributions in paying the running cost of the body shall only be regarded as an approved object if the body determines so to use no more than such proportion of the total of qualifying contributions, together with any income derived from them (or in the case of a contribution within regulation 30(2)(a), only that income) as the proportion of that total forms of the total funds at its disposal and does not in fact use a greater amount.

9 What the Regulations mean in practice

- 9.1** The Regulations allow some or all of an EBs running costs to be regarded as an approved object. ENTRUST interpret this to be costs which are reasonable and relevant to the LCF. This means an EB may spend LCF monies on its own administration costs if they are reasonable and relevant.
- 9.2** All costs should be reasonable and comparable to similar organisations, by both sector and size of organisation. EBs who are managing no or very few live projects should have minimal EB running costs, which should relate to their level of activity.
- 9.3** Regulation 33(8) restricts an organisation with a number of different types of funding from using LCF monies to pay all the running costs – LCF monies can only pay the proportion of running costs that corresponds to the proportion of the organisation's funding that comes from the LCF.

Example

Your organisation's total income from all sources in a year is £100,000, and your income through the LCF is £20,000. As 20% of your total income comes from LCF monies, under the regulations you can pay up to 20% of your running costs with LCF monies.

- 9.4** As a matter of good practice, running costs which are in excess of 10% of LCF expenditure per annum will be monitored by the Compliance Team and, where appropriate, a review will be organised. Therefore all running costs should be financially justified and open to scrutiny by ENTRUST.

10 Paying for goods and services

10.1 Tendering

- 10.1.1** This section refers to best practice in evidencing value for money for the LCF. It is the responsibility of the EB to evidence that value for money has been achieved.
- 10.1.2** It is recommended that where LCF monies are used to purchase goods and services over £5,000 in value, competitive tendering should be evidenced.
- 10.1.3** Competitive tenders should be evidenced on the project file as either a summary of tender information or by copies of three competitive quotes issued.
- 10.1.4** Where the chosen supplier has not tendered the cheapest quote there should be a logical explanation as to why the preferred supplier was selected. This should be evidenced in writing on the project file with the relevant authority.
- 10.1.5** In some cases, it is not possible to seek competitive tenders, for example, if there is only one specialist supplier who could reasonably be used. If so, ENTRUST recommends that evidence is obtained to show that the price agreed is not higher than that normally paid for similar goods and services.

10.2 Connected Parties

- 10.2.1** ENTRUST recommends as a matter of good practice that payment for goods and services is made only to organisations which are independent of people and companies involved with your EB or the contributors to your EB.
- 10.2.2** If a contract is awarded to directors of your EB, or consultants who have an interest in it, an open tender process should be followed for the appointment of professional firms for each project, unless there are exceptional circumstances.
- 10.2.3** A connected party is defined as any individual or organisation, related or linked to the EB. This may include (but not be limited to) any director, partner, shareholder, manager or other employee or employer, company, trustee, advisory panel or committee that has direct or indirect influence on LCF spending. Relations and links can be both through personal or business connections, for example spouse/civil partner/cohabitee (or relative of spouse/civil partner/cohabitee), relative or persons connected to by virtue of their being a trustee. For further guidance on this point, please contact ENTRUST's Compliance Department.



11 Assets Guidance

11.1 The Asset Regulations

With regard to asset requirements, Regulation 32 (1) (b) provides as follows:

Regulation 32. (1): A payment is a qualifying contribution if –

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

LCF monies and income derived from LCF monies can only be spent on approved objects.

11.2 What is an asset?

11.2.1 ENTRUST considers an asset to be 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; and
- Current Assets e.g. cash, investments and securities.

11.2.2 Assets are normally shown on an organisation's balance sheet with a written down value in accordance with generally accepted accounting principles.

11.3 Protecting the Asset

- 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.
- 11.3.2** With regard to current assets, the value of the capital should be preserved. Please note that best practice would dictate that LCF monies are not held in speculative investments where the principle sum may be diluted. Any loss of capital would normally be deemed to be non-compliant expenditure. Therefore, in the unlikely event that LCF monies are not required for immediate use, they should be placed in a bank account or similar facility, preserving the capital sum. Any income earned has to be treated as a qualifying contribution and must therefore be reinvested into LCF approved projects.
- 11.3.3** If your EB does invest LCF monies, it should adopt practices to protect the principle sum which are suitable for the organisation. It is not appropriate for ENTRUST to develop guidance on investment practices. EBs may be interested in the Charity Commission document “Investment of Charitable Funds: Detailed guidance” which can be found at:

http://www.charity-commission.gov.uk/charity_requirements_guidance/charity_governance/managing_resources/cc14full.aspx

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

11.4 Sale or Disposal of an Asset

- 11.4.1** If an EB contributes (in whole or in part) to the purchase or improvement of an asset held by a non-EB, it should make its contribution conditional on a repayment of a proportion of any sale value equal to the proportion of its contribution to the purchase price where the asset is sold or ceases to comply with the Regulations as outlined above.
- 11.4.2** Where an EB seeks to dispose of an asset, it should consult the original funding agreement to ascertain whether it contains any clauses about disposal of assets or use of derived income from such disposals.
- 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 completed.

- 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.

12 Timescales for Asset management within EBs

The following timescale guidance has been drawn up for asset retention depending on the type of the asset or the value. Note: This guidance is retrospective and replaces all previous guidance including that relating to an asset being written down over seven years.

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 the 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 the 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 ten years;
- 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

- The EB that has registered the project for approval should keep LCF funded land and buildings on an asset register in perpetuity;
- Where it is cost effective to do so, the asset should be protected through the Land Registry. This could be done by a restriction in favour of the funder (DEB or LO). Please note that land law in Scotland and Northern Ireland is slightly different to that in England and Wales and so the equivalent protections can be used instead of a restriction;
- At final payment and annually thereafter, obtain written confirmation that the asset remains in compliant use;
- Inspect every three years to confirm compliance; and
- The EB that has registered the project for approval should be contacted by the owner of the funded land or buildings before a sale can be initiated.

13 Depreciation of Asset Value

- 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.

14 Cash Assets

- 14.1** EBs should always be able to account for the LCF money that they hold. EBs may wish to maintain a separate bank account for LCF money if they consider it cost effective to do so.

15 Ownership of Assets

- 15.1** Where the assets are used in the EB's general operations (i.e. not in a project) then it is acceptable to be in the EB's balance sheet.
- 15.2** Where an asset is acquired solely for a project, ENTRUST recommend the asset does not appear in the EB's balance sheet, rather a legally binding retention of interest is adopted to ensure that the asset still remains within the LCF. The exception to this is when the EB is the project owner and thus, the project asset will appear in the EB's balance sheet.

16 Retention of Records

- 16.1** The Regulations state:

Regulation 33A (1) An approved body shall—

(d) make and retain records of the following—

(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;**

- 16.2** ENTRUST has identified that there are three main types of financial records held by EBs:
- i) Project financing/funding information, which include CTP and LO contributions. We consider that these records are kept indefinitely as they are required to determine if the expenditure was compliant.
 - ii) Documents which demonstrate how LCF monies were spent. We consider that these records are kept indefinitely as they are required to determine if the expenditure was compliant. These records will include all invoices and relevant timesheet summaries.
 - iii) Other supporting documents. These would include items such as tenders and tender documentation, purchase orders, and procedural documentation. These only need to be retained for six years.
- 16.3** Legal records held by EBs should be retained indefinitely. Such records would include; funding agreements, ownership records, deeds, Board minutes, declarations of interest and historical records of Directors.
- 16.4** Records of LCF funded assets should be maintained for the period of time that they are owned by the EB. Upon disposal of any asset, records of sale should be retained for a further six years, but the record of the value received for the asset needs to be retained indefinitely.

17 Unspent LCF monies

- 17.1** If there is underspend on a project or it does not go ahead, the following routes can be considered. Although this will be subject to any agreement you have in place with the contributor of the funds.
- 17.2 Other projects**
The money can be spent on other projects providing they meet the approved objects. Before doing so, it is advisable to obtain the permission of the LO or DEB who allocated the money originally.
- 17.3 Transfer of monies**
The money can also be transferred to another EB. It is strongly recommended that the LO's agreement is obtained first. If money has been received from another EB which is no longer needed, please discuss it with the body concerned. It is most likely they will want the money to be returned to them for re-allocation.

17.4 Return of monies

Ordinarily LCF monies should not be given back to the contributing LO as this would not be considered to be spending the money on approved objects. However, if you are asked to repay a qualifying contribution back to the LO you should contact ENTRUST for advice. The LO must also make arrangements to repay any tax credits to HMRC as outlined in HMRCs guidance notice LFT1 to LOs.

18 Retaining funds for winding-up

18.1 In some instances EBs may retain funds for the winding-up of their business. Where this is the case, the EB should be able to justify and explain their reserves position and demonstrate why a particular level of reserves are retained at that point in time. Good practice would require an EB to maintain a reserves policy which would include the following:

- The reasons why the EB needs reserves;
- What level of reserves the Directors or Trustees believe the EB needs;
- What steps the EB is going to take to establish or maintain reserves at the agreed level; and
- Arrangements for monitoring and reviewing the policy.

18.2 LCF funds used for winding-up an EB are running costs of the EB. As set out in regulation 33(8), these can only be used proportionately when the EB also receives funds from other sources (see Section 9 of the guidance).

19 Winding-up the EB

19.1 Prior to any decision to dissolve your EB, you should notify ENTRUST of your intentions and discuss with them how you will deal with any outstanding monies and/or assets. ENTRUST would normally expect these to be passed on to another EB with similar objects to ensure that they remain compliant with the Landfill Tax Regulations. However, if you are asked to return any unspent contributions to the contributing LO, you should contact ENTRUST for advice. The LO must also make arrangements to repay any tax credits to HMRC as outlined in HMRCs guidance notice LFT1 to LOs.