



Reform of the Landfill Communities Fund (LCF)

Draft Guidance

Background

In March 2015 a consultation was opened by HM Revenue and Customs (HMRC) on how the Landfill Communities Fund (LCF) could be reformed. The consultation sought views on proposals developed by a government-industry working group established to identify ways of reforming the LCF to improve the flow of money to communities.

The consultation closed in June 2015 and in November 2015 Government outlined its intention to reform the following elements of the LCF:

- Limiting the record keeping requirement for Environmental Bodies (EBs) to six years;
- Reducing the asset monitoring requirement for EBs to end the requirement to monitor land and buildings in perpetuity;
- Removing Object F – provision of financial and administration services to another EB;
- Removing the provision allowing the investment of LCF funds;
- Limiting EB running costs to 7.5%; and
- Removing the Contributing Third Party (CTP) element and requiring Landfill Operators (LOs) to contribute all of the 10% shortfall between their contribution and the tax credit entitlement. Since the publication of the consultation response Government outlined their intention to require LOs to contribute more of the 10% shortfall than they have historically rather than abolishing the provision outright.

The changes to record keeping requirements and the removal of Object F and the investment provision are being implemented via an amendment to the Landfill Tax Regulations 1996. The other areas will be addressed solely by guidance. The changes apply in England, Northern Ireland and Wales.

ENTRUST's proposed guidance covering the relevant sections of our record keeping, asset monitoring, running costs and CTP guidance are set out below. Please note that there is no guidance on the removal of Object F and the investment provision as these elements are simply being removed from the scheme.

The guidance below is currently in draft form. The final text will be incorporated into our guidance manual and will be published prior to 1 April 2016 when the requirements come into force.

ENTRUST's guidance covers all aspects of the LCF including the statutory obligations with which EBs must comply. Within the guidance statutory obligations are highlighted in **bold type**.

Record Keeping

In accordance with Regulation 33A an enrolled EB must make and retain records relating to each qualifying contribution it receives and any income derived from that contribution. An EB must also keep records of any amount transferred from another EB. The records must include all accompanying dates and all other details relating to the LCF expenditure.

Types of records

ENTRUST consider there to be three main types of financial records held by EBs:

- i) Project financing and funding information. This includes records of CTP payments, LO contributions and transfers.
- ii) Documents which demonstrate how LCF monies were spent. This includes all invoices and relevant timesheet summaries.
- iii) Other supporting documents, such as tender documentation, purchase orders and procedural documentation.

These records must be kept for 6 years as they are required to determine whether the expenditure of LCF funds was compliant. The 6 year retention period commences on the day the record is made. For convenience, if EBs wish to group records together (such as all records relating to a particular project) then the EB could consider the record retention period as starting on the day the last record relating to that project was made. This is at the discretion of EBs as it would involve keeping some records for longer than 6 years.

For information regarding record keeping requirements for any assets funded by LCF monies, please see the section on assets in the guidance manual.

EBs should ensure that they adhere to any other record keeping responsibilities that may apply to their organisation. Such requirements may originate from other legislation such as charity or company law and can relate to ownership records, deeds, board minutes, declarations of interest and historical records of directors, amongst others.

How records are kept

The EB may hold paper or electronic records. Where records are held electronically, the EB must be able to convert the data into a satisfactory, legible form on request. Therefore, the onus is on the EB to keep programmes or make appropriate arrangements to enable the reconstruction of historic data if programmes or formats are altered or upgraded. EBs must ensure that the documents held can provide a full audit trail of how funds have been spent.

Timescales for asset monitoring by EBs

Definition of an asset

Assets are fixed or tangible assets created or purchased using LCF funding. Land, plant, machinery and whole buildings must be recorded on an asset register by the EB that registered the project for approval. Other assets do not need to be entered onto an asset register but must be reported to ENTRUST. If a project has improved an existing asset, for example through repairs and refurbishments, no asset has been created therefore this section of guidance does not apply but the project is still subject to the general post completion monitoring requirements as defined in section 5.

Timescales

The following timeframes apply retrospectively to prevent the administrative burden on EBs that may have arisen if assets purchased before this guidance came into effect were subject to previous monitoring requirements.

Land

Land should be kept on an asset register for 20 years.

Funding EBs should at project completion and annually thereafter whilst the asset remains on the register obtain written confirmation that the land remains in compliant use.

Plant, machinery and whole buildings

Plant, machinery and whole buildings should be kept on an asset register for a period based on their value as below.

Funding EBs should at project completion and annually thereafter whilst the asset remains on the asset register obtain written confirmation that the asset remains in compliant use.

Value	Asset monitoring period
Less than £10,000	Confirmation at project completion
Between £10,000 and £100,000	3 years
Between £100,000 and £200,000	5 years
Between £200,000 and £300,000	7 years
Over £300,000	10 years

Other types of assets

For other types of assets EBs should record confirmation that the asset is delivering against the approved objective at project completion. All capital assets purchased with LCF funding are reported to ENTRUST via the Form 9: Project Completion Form.

Asset monitoring

EBs should inspect assets at an appropriate frequency to confirm the asset is in compliant use. The frequency of the inspection regime is at the discretion of the EB and should take into account the value of the asset using a risk-based approach. An inspection should entail a physical visit. If a visit

isn't cost effective other evidence may be deemed appropriate if the EB is satisfied that other evidence provides the assurances needed that the asset is in compliant use. Other evidence could be photographic, for example. At the end of the asset monitoring period a final inspection should be made to confirm compliance and then the asset can be deleted from the register.

Asset monitoring record retention

The record keeping period for assets commences at the end of the asset monitoring period as this is the last day a record is made relating to that asset. See our guidance on record keeping for further information.

Form 9: Project Completion form

EBs should record all capital assets purchased with LCF monies on the project's Form 9: Project Completion.

Protection of land and buildings

The land or building should be protected through the Land Registry if necessary. This could be done by a restriction in favour of the funder (distributive EB or LO). Restrictions or other such protections should be sought when the land or buildings aren't already suitably protected by the nature of the land ownership (e.g. held in trust) or by the funding contract. Please note that land law in Scotland and Northern Ireland is slightly different to that in England and Wales and equivalent protections can be used instead of a restriction.

The asset monitoring periods detailed above are the minimum periods land and buildings should be protected. If EBs have restrictions in place for longer periods based on their funding policies or as result of historic agreements then there is no need to amend these. This may be relevant when there are costs associated with removing the protection and the EB wishes to avoid these costs.

Sale or disposal of an asset

If an asset is sold by an EB within the asset's monitoring period then the proportion of the proceeds of sale (equal to the proportion of the LCF funding contribution) is considered income derived and must be used to fund further compliant activity. See our guidance on income derived for further information. Where an EB seeks to dispose of a LCF funded asset, it should consult its original funding agreement (with the LO) to ascertain whether that agreement contains any clauses about disposal of LCF funded assets or the use of derived income from such disposals.

If an EB provides LCF funds (in whole or in part) to the purchase, creation or improvement of an asset owned by a non-EB, it should make its LCF contribution conditional on repayment where the asset is sold or ceases to comply with the Regulations within the asset's monitoring period. The amount to be repaid is the proportion of the sale value equal to the proportion made towards the purchase, creation or improvement price. **Funds returned to an EB are considered income derived and should be used to fund further compliant activity.**

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. **If the LCF funded asset is sold then any proceeds of sale are income derived must be used to fund further compliant activity.** Assets should be valued independently if the current value is thought to exceed £10,000.

Running costs

Regulation 33(7) allows some or all of an EB's running costs to be regarded as an approved object. Regulation 30(1) defines running costs as those "incurred in connection with the management and administration of an EB or its assets". Running costs are reported to ENTRUST via the Statutory Annual Return (Form 4) and are reported as LCF Expenditure for the reporting period.

The running costs of EBs cannot be included as the costs of administering or running a project. See Section 4 of our guidance for object specific advice on allowable project expenditure. The ENTRUST levy is not part of an EB running cost or project expenditure.

Running costs should be reasonable and relevant to the administration of the LCF and not exceed 7.5% of the organisation's actual funding spent during the year on LCF expenditure. LCF expenditure includes funds spent via three methods:

1. An EB's compliant expenditure of LCF monies on projects for which they hold approval;
2. An EB's compliant expenditure of LCF monies on projects where another EB holds the approval;
3. An EB's compliant expenditure in transferring LCF monies to other EBs.

All costs should be reasonable, relevant and comparable to similar organisations, by both sector and size of organisation. EBs who manage no or very few live projects should have minimal or zero running costs.

It is important to note that Regulation 33(8) restricts an organisation with a number of different types of funding from using LCF monies to pay all the organisation's 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. For example, if 40% of an EB's total funding is from the LCF (both contributions and income derived), no more of 40% of the EB's running costs should be met from LCF monies.

What are considered running costs?

Running costs include routine costs plus the provision of, and the use of, any funds for winding up. See our guidance on winding-up for more information on this element of running costs.

Routine running costs should comprise the normal business expenses and include the following:

- Salaries and remuneration
- Office rental
- Utilities
- Travel costs
- Telephone
- Insurance
- Bank charges
- Accountancy
- Legal
- IT

- Directors' fees and remuneration
- Other - Operations (Plaques & meetings)
- Other - Governance (e.g. Meetings, AGM)

Running costs should not exceed 7.5% of LCF expenditure per annum. Running costs will be monitored for all EBs by ENTRUST. All running costs must be justified and open to scrutiny by ENTRUST and may be subject to inspection. **Under Regulation 33A (1)(d) of the Landfill Tax Regulations 1996, EBs are required to keep records detailing how all LCF funds have been spent.** See Section 3 of our Guidance Manual for more information on record keeping.

ENTRUST routinely report running costs to HMRC. HMRC will monitor the level of running costs and the reported level will influence future reform of the LCF including any changes to the size of the fund.

Retaining funds for winding-up

In some instances EBs may retain funds for the winding up of their business. The funds put aside each year for winding-up must be within the 7.5% running costs cap. An EB should be able to justify and explain their reserves position and demonstrate why a particular level of reserve is retained at that point in time. We recommend that an EB maintains a reserve policy which includes the following:

- The legal 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.

LCF funds held for winding up must be reported under the 'funds held for winding up' section of the Statutory Annual Return (form 4). We expect these costs to be reported in the EB's annual accounts.

Winding-Up the EB

LCF funds used for the winding-up of an organisation when it is closing are classed as the running costs of an EB.

The allowable wind-up costs which an EB may incur include:

- The cost of employees undertaking tasks that are not part of the day running of the EB, but are required to wind down the EB;
- Contractual redundancy payments;
- 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 which are required to the end of a lease period;
- Dilapidations due at the end of a lease period;
- Costs relating to legal and financial advice which is likely to be required when winding up.

Where the EB receives funds from other sources, the LCF funds can only pay the proportion of winding-up costs that corresponds to the proportion of the EB's funding that comes from the LCF. For example, if your organisation's total income from all sources in a year is £100,000 and your income through the LCF is £20,000 then 20% of your income comes from LCF monies. Therefore you can fund up to 20% of your winding up costs with LCF monies.

Prior to any decision to leave the scheme or if your organisation is dissolving, you should notify ENTRUST of your intentions and discuss with us how you will deal with any outstanding monies and/or assets. We 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 1996. 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 HMRC's guidance notice LFT1 to LOs.

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Landfill Operators and Contributing Third Parties

When a LO makes a contribution to an EB it can only claim a tax credit from HMRC on 90% of this contribution and is therefore left with a 10% shortfall. Some LOs will absorb this cost, or a portion of it, themselves. In some cases LOs will require EBs to find a separate third party, termed a CTP to provide the 10% shortfall, or a portion of it, to limit the cost to them of participating in the scheme.

It is now expected that all LOs will absorb some or all of the 10% shortfall. EBs will be expected to report to ENTRUST how much of the shortfall is being met by their contributing LO. This information will be monitored by HMRC and the relevant data may be published.

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