



The provision of support services to Landfill Operators

April 2019

1. Summary

- 1.1 The Landfill Communities Fund (LCF) enables Landfill Operators (LOs) in England and Northern Ireland to contribute a proportion of their landfill tax liability to community and environmental organisations to 'offset' some of the negative impacts of living in the vicinity of a landfill site.
- 1.2 LOs are required to ensure they only make contributions to an enrolled EB and that they do not receive any Unique Benefit as a result of their contribution. They also have a wide range of reporting and record keeping obligations under the Landfill Tax Regulations 1996 (Regulations).
- 1.3 If LCF monies are found to have been spent non-compliantly, HMRC may seek to recover the non-compliant expenditure from the contributing LO through clawback. However, there are a number of measures LOs can adopt to mitigate the risk of clawback (see Appendix A).
- 1.4 ENTRUST provides HMRC with independent assurance that LCF monies are being spent compliantly in accordance with the Regulations. As a direct consequence of carrying out this function, ENTRUST is also able to support LOs in mitigating their potential risk of clawback of the tax credit. (Clawback can arise when HMRC considers that LCF funds are found to have been spent non-compliantly and involves HMRC recovering from the funding LO the tax credit it claimed against the misspent LCF funds.)
- 1.5 LOs should also look to ensure that the maximum benefit is derived through their contributions to the LCF fund by requiring that the projects they fund represent good value for money (VfM). This can be done by asking for reports from their EBs outlining the wider benefits of their projects.
- 1.6 ENTRUST can provide a range of services to LOs to help them fulfil their obligations under the LCF scheme. This help ranges from overviews detailing the operation of the scheme, through to general advice on good practice. If LOs require any further assistance they are welcome to contact ENTRUST, who will help as far as possible. ENTRUST can be contacted through our helpline by phone 01926 488 300 or [email](#)
- 1.7 For further background on the operation of the LCF and LO's responsibilities see Appendix A.

2. ENTRUST support to Landfill Operators

2.1 Introduction

- 2.1.1 Following agreement with HMRC in 2016, ENTRUST has implemented a stakeholder engagement programme with larger LOs to ensure that they are provided with regular information on the operation of the LCF. The following paragraphs set out some of the ways ENTRUST formally engages/works with LOs to maximize the benefit the LCF delivers and mitigates LOs' financial exposure.

2.2 Landfill Operator annual briefing note

2.2.1 We issue a briefing note annually to those LOs who have contributed to the fund in the last three financial years. The briefing note provides information on the following areas:

- Key statistics from the LCF and ENTRUST's Annual Reports;
- Relevant guidance for LOs following the Government's reform of the LCF;
- General information about EB non-compliance and the risk to LOs of 'claw-back' by HMRC; and
- Outline details of the closure of the LCF in Wales.

2.2.2 The latest LO briefing note can be accessed [here](#).

2.3 Advice and guidance

2.3.1 ENTRUST recommend that LOs take appropriate action in relation to the EBs they fund to mitigate their financial exposure (see Appendix A), and can provide help and guidance on this. For example:

- ENTRUST operates a dedicated helpline service, which is available via phone (01926 488 300) or [email](#), where we are able to offer advice and guidance on the eligibility of projects for LCF funding and organisations for enrolment with the scheme. LOs are welcome to contact us for assurance on whether the projects and organisations they are looking to provide LCF monies to are eligible under the scheme;
- An EB search function is available on ENTRUST's website. LOs can use this facility to check the EB numbers of those organisations who apply to them for funding, in order to ensure that the organisations they provide LCF monies to are enrolled as EBs with ENTRUST. [The search facility can be accessed here](#);
- ENTRUST also publishes a list of frozen EBs, which are not eligible to receive LCF monies ([available here](#)); and
- If an LO has any doubt regarding the suitability of an EB's operational framework to ensure that the LCF monies they provide to an EB will be spent on projects which comply with the Regulations they can contact ENTRUST for independent advice as to an appropriate framework for an EB.

2.4 Quarterly notification of transfers

2.4.1 Each quarter we already provide LOs with a report identifying whether any of their funds have been transferred to another EB (See Appendix B). This allows LOs to have a better oversight of where their contributions are sent and which EBs are ultimately responsible for its expenditure.

APPENDICES

Appendix A - Operation of the LCF and LO responsibilities

Appendix B – Quarterly Notification to LO of EBs transfers

1. Operation of the Landfill Communities Fund and Landfill Operator responsibilities

- 1.1 The Landfill Communities Fund (LCF) is an innovative tax credit scheme enabling Landfill Operators (LOs) in England and Northern Ireland to contribute a proportion of their landfill tax liability to community and environmental organisations to 'offset' some of the negative impacts of living in the vicinity of a landfill site.
- 1.2 ENTRUST was appointed as the Regulator of the LCF, under Terms of Approval (TOA) by HMRC on 1 October 1996. In accordance with the TOA, ENTRUST provides HMRC with independent assurance that LCF monies are being spent compliantly in accordance with the Landfill Tax Regulations 1996 (Regulations). As a direct consequence of carrying out this function, ENTRUST is also able to support LOs in mitigating their potential risk of clawback of the tax credit if LCF monies are not spent compliantly. Clawback can arise when HMRC considers that LCF funds are found to have been spent non-compliantly and involves HMRC recovering from the funding LO the tax credit it claimed against the misspent LCF funds.
- 1.3 Contributing to the scheme can complement an LO's Corporate Social Responsibility (CSR) strategy by enabling LOs to financially 'give something back' to the local community by supporting community and environmental projects. LOs contributing to the LCF are able to claim a tax credit against a proportion of their landfill tax liability (up to 5.3% in 2019/2020). The percentage is called the diversion rate and is set each year by Government. The credit which LOs are entitled to claim is 90% of the contribution LOs make to Environmental Bodies (EBs). LOs then either bear the remaining 10% shortfall themselves, or can ask an independent third party (described as the Contributing Third Party (CTP)) to make up some, or all, of the difference.
- 1.4 HMRC's Excise Notice LFT1 provides LOs with advice on meeting their obligations under the Regulations. This appendix incorporates a summary of the information provided in section 15 of LFT1, which deals specifically with the LCF. This document does not provide guidance on the calculation and claiming of Landfill Tax credit, for more information LOs should refer to the [guide](#) itself. This paper incorporates HMRC's and ENTRUST's advice to LOs as well as outlining how ENTRUST can help LOs.

2. Landfill Operator responsibilities

2.1 Introduction

- 2.1.1 The Regulations place a number of responsibilities on those LOs who decide to voluntarily contribute to the LCF, including:
- LOs must make their contributions to an enrolled EB;
 - LOs must ensure any payment is made subject to a condition that the money is spent only on approved objects;
 - A contribution must not be repaid to the LO, or to a third-party contributor in the same Landfill Tax accounting period in which it was paid to the EB;

- LOs must record the amount and date of each payment and the name and enrolment number of the EB receiving it;
- LOs must record the name and address of any third-party contributor, amount that person gives, or is expected to give, and the actual or expected date of receipt of these amounts;
- If an LO receives third party funds they must keep and provide to ENTRUST on request: all the details listed in the point above, and the enrolment number of the EB receiving the qualifying contribution; and
- LOs must also inform the EB of the name and address of any third-party contributor.

2.1.2 To ensure that the monies that LOs contribute to the LCF are spent compliantly and to mitigate the risk of clawback, the following paragraphs set out some of the actions/issues LOs may wish to consider to achieve these objectives.

2.2 Environmental Bodies

2.2.1 LOs need to ensure that the organisations they provide LCF monies to are enrolled as EBs with ENTRUST. All EBs have a unique EB number and they therefore should be able to provide this on applying for LCF funds. If an organisation is not registered as an EB they will need to enroll as one, which can be done via the ENTRUST website. An EB search function is available on ENTRUST's website, LOs can use this facility to check the EB numbers of those organisation who apply to them for funding, [the search facility can be accessed here](#).

2.2.2 There are two main types of EB enrolled with ENTRUST, funding EBs and project EBs. Funding EBs distribute LCF monies on behalf of one, or more LOs and may either register projects on behalf of the organisations who apply to them for funding (project applicants) or require that the organisation enroll with ENTRUST such that they can register projects and report expenditure themselves. Project EBs are organisations which enroll with ENTRUST and receive funds (either from an LO or funding EB) for a project they are undertaking.

2.2.2 All EBs are required to submit a Statutory Annual Return to ENTRUST by 28 April each year, this details their activities relating to their LCF monies for the previous financial reporting period. In instances where an EB fails to submit an Annual Return they are frozen from the scheme. Frozen EBs are not eligible to receive LCF monies. LOs should therefore check whether or not an EB has been frozen prior to providing them with funding, this can be done by checking the list of frozen EBs published by ENTRUST on a monthly basis ([available here](#)).

2.3 Projects

2.3.1 LOs need to ensure that the LCF monies they provide to an EB will be spent on projects which comply with the Regulations. (ENTRUST also recommends that projects should deliver Value for Money (VfM)). ENTRUST considers that for funding EBs this can be achieved by the EB demonstrating to the LO that it has a robust risk-based assessment process in operation. If an LO has any doubt regarding an EB's operational framework they can contact ENTRUST for independent advice as to an appropriate framework for an EB. As a reminder, the Regulations prescribe that LCF monies can be spent on the following activities:

- The reclamation, remediation or restoration of land which cannot currently be used;
- The prevention of potential for pollution or the remediation of the effects of pollution;

- The provision, maintenance or improvement of a public park or amenity;
- The conservation of biodiversity; and
- The restoration of a place of religious worship or of historic or architectural interest.

It is important to note that LCF monies **cannot** be used to fund a requirement under a statutory notice, order, or agreement, or under the terms of a planning permission, or consent. There are also several further object specific requirements. For further detail please see the [projects section of the ENTRUST website](#).

2.4 Project monitoring

- 2.4.1 ENTRUST believes it is important that an LO is informed that an EB intends to fund a particular project. ENTRUST also believes that LOs should also ensure that an EB's operational framework facilitates an appropriate level of project monitoring during project works (see the section on governance of funding recipients below) and also for post project completion in accordance with [ENTRUST guidance](#). An EB's operational framework will vary depending on whether it is a funding EB or project EB. Again, if an LO is in doubt they can seek further advice from ENTRUST

2.5 Landfill Operator financial recording obligations

- 2.5.1 The Regulations require LOs to keep records of the amount and date of each contribution of LCF monies and the name and enrolment number of the EB receiving it.
- 2.5.2 If an LO requests a CTP payment they must also keep records of the name and address of the third party, the amount requested and the date of receipt. The Regulations require that this information is provided to ENTRUST if requested.
- 2.5.3 EBs are also required to notify ENTRUST each time they transfer LCF monies to another EB and ENTRUST in turn notifies the contributing LO of transfers of their contributions (through quarterly notifications of all transfers). It is important to note that LOs should also ensure that EBs notify them of any funding transfers, because the risk of clawback still remains with the contributing LO.

2.6 The impact of the no benefit rule on Landfill Operators

- 2.6.1 The Regulations prohibit LCF monies from being used for the unique benefit of an LO which has made a contribution to an EB, or a CTP in relation to that contribution. A "Unique Benefit" is any benefit, or reward which the LO or CTP gain that is greater than the benefit which would be gained by the LO, or CTP belonging to a general class of persons who may visit, use or enjoy a project, or being involved with the EB. Some examples of Unique Benefit would include, an LO, or CTP acting as a supplier and gaining an element of profit from the EB's project expenditure, the LO or CTP being granted preferential access to a project site or other amenity managed by the EB, or the improvement of an LO owned site.
- 2.6.2 It is important to note that once a LO has made a qualifying contribution to an EB, it will be regarded always as having made a qualifying contribution to that EB. Therefore, in relation to any project which an EB wishes to undertake, the LO should assess if there is a benefit to them, however long ago the original qualifying contribution was made.

2.7 Governance of funding recipients

2.7.1 The ultimate sanction that HMRC can apply if LCF monies are spent non-compliantly is to seek clawback for the value of the non-compliant monies from the contributing LO. In order to manage this risk, ENTRUST would recommend that LOs take appropriate action to mitigate their financial exposure in a number of ways, including:

- Having representatives, or observers on a funding EB's Board to keep track of the expenditure of LCF monies and avoid it being spent non-compliantly. However, it is important to note that these representatives must not be able to form a majority on the EB's Board, or have a casting vote;
- LOs may also require an EB to implement a robust and transparent performance management framework, which requires the EB to provide regular updates on the progress of a project including invoices, as proof that a project is going ahead as planned;
- Another control that a LO could require is to ensure that a joint signatory bank account for contributions requiring a LO representative signature before funds can be drawn; and
- Ensuring that appropriate funding agreements are in operation to potentially mitigate any financial losses. These agreements can be between the LO and the EB and also the EB and the project recipient. The funding agreement should represent a contractual obligation between the LO and the EB to which it is contributing LCF monies and should also include provisions for what would happen to LCF monies if the EB were to revoke from the scheme.

2.7.2 Additionally to the precautions above, LOs may also consider spreading their contributions among a number of EBs, which would further mitigate the risk of having to recover LCF monies following non-compliant expenditure.

2.8 Value for Money

2.8.1 EBs are required to report to ENTRUST on the VfM of each project they deliver. (It should be noted that ENTRUST uses this consolidated information to provide HMRC and HM Treasury with an annual report on the VfM that the LCF delivers.) The VfM questions on the form cover the long-term sustainability of projects, whether they have achieved their intended aims, whether they have improved the lives of people in the community, or delivered environmental benefits and finally whether they have brought together people from different backgrounds.

2.8.2 The project report also requires EBs to detail the total amount spent on a project and the total LCF monies spent. By obtaining LCF grants, EBs are able to leverage funds from other sources in order to undertake larger projects, which are of greater value to the community, or environment. Similarly, this can also demonstrate how the funds LOs provide helps EBs to leverage funding from other sources by requesting information on how much total funding projects received. LOs can request VfM information from the EBs they contribute to.

2.8.3 The information discussed above can also be used to evaluate the wider economic, social and environmental value that an LO's contribution to the LCF delivers. To this end ENTRUST have published an economic [impact assessment framework](#) which EBs and LOs can use to demonstrate the wider benefits of their LCF activities. The framework incorporates a range of

mechanisms including indices to calculate to economic benefits delivered per £1 of LCF monies and the use of key statistics and case studies.

Appendix B

QUARTERLY NOTIFICATION TO LO OF EBS TRANSFERS

Address first line
Address second line
Town
Country
Country
Postcode

22 February 2019

Dear Sirs

Transfer of Landfill Operator Qualifying Contributions under the Landfill Tax Regulations (1996) (the Regulations)

In accordance with Regulation 34.1.(k) of the Landfill Tax Regulations (1996):

34.—(1) The regulatory body -

(k) shall, when notified by an approved body of the transfer to or by it of the whole or part of a qualifying contribution or of income derived therefrom, notify the registered person who made the qualifying contribution, and any contributing third party in relation to it

Please find below details of the transfers of qualifying contributions made by XXX - LO Name - XXX which have been reported to ENTRUST in the quarter XXX – Date Range – XXX.

From EB Number	EB Name	To EB Number	EB Name	Transfer Amount (£)	Date of Transfer

Please do not hesitate to contact me on 01926 488300 if you have any questions regarding this letter.

Yours sincerely



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