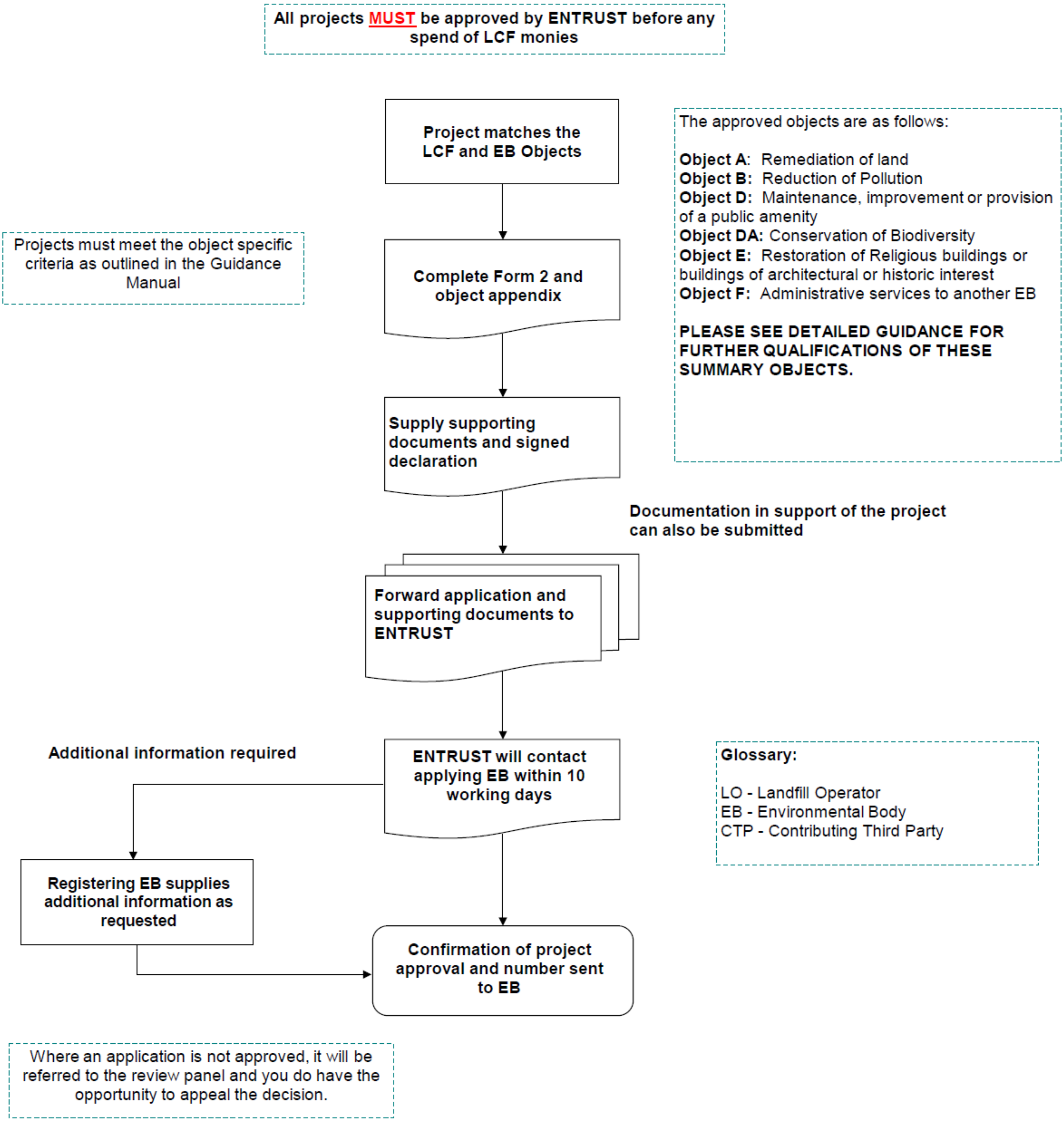
# C- Project Approval and Spending Landfill Communities Fund (LCF) Monies

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

### Quick Start to the Project Approval Process



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**Project Approval and Spending Landfill Communities Fund (LCF) Monies**

Landfill Operators (LOs) can only give qualifying contributions to enrolled Environmental Bodies (EBs). The qualifying contributions given by LOs to EBs can only be spent in accordance with the Regulations.

## 1. What the Landfill Tax Regulations say:

**1.1** Regulation 30 provides as follows:

> (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.

**1.2** This is supplemented by Regulation 33A which provides:

> (1) An approved body shall –
>
> (b) apply qualifying contributions and any income derived therefrom only to approved objects;

## 2. 'Qualifying Contributions'

**2.1** A "qualifying contribution" is a payment made

- by a registered LO to an enrolled EB, and
- subject to a condition that the EB shall only spend the monies and any income derived in the course or furtherance of the EB's approved objects.

2.2 When an EB receives payment of a qualifying contribution from a LO, the EB must use Form 3 to report the receipt of the payment to ENTRUST. Form 3 must be returned within 7 calendar days.

## 3. The Relationship between Environmental Bodies and Landfill Operators

**3.1** HMRC expect a LO to make its contribution to an EB subject to a written condition that the EB spends the payment or any derived income only on approved objects. This condition should be able to be enforced by contract. 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 in order to avoid the LO seeking to recover its contribution.

## 4. Spend on Approved Objects

**4.1** LCF monies given to an EB must be spent only on the approved objects of the LCF. These are the objects set out in the Landfill Tax Regulations and detailed in the Quick Start Guide to the LCF or on the ENTRUST website.

**4.2** Any income an EB receives from its LCF monies can also only be spent on the approved objects. This income from LCF monies is referred to as "income derived" and it includes (but is not restricted to):

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

**4.3** LCF funds can be transferred to another EB for it to spend on the approved objects of the LCF. Where such a transfer is made it must be reported to ENTRUST using a Form 7.

## 5. Project Approval

**5.1** Following changes made to the Regulations in 2007, ENTRUST were granted the power under Regulation 34(1) to impose conditions on enrolled EBs. HMRC approve any condition in advance of it being imposed by ENTRUST as a condition imposed under Regulation 34(1) has force of law.

**5.2** Regulation 34 provides as follows:

> (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;

**5.3** 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.*

**5.4** This condition supersedes all previous conditions. It means that an EB must have ENTRUST's approval of a project before it can 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. (For more information see Section I – Accreditation and the Small Grants Scheme.)

**5.5** If any LCF funds are spent on a project before that project has written approval from ENTRUST then that is a breach of this condition. (It will be a breach even if approval is subsequently granted for the project.) Where there is a breach of this condition, enforcement sanctions will be taken by ENTRUST and/or HMRC as appropriate.

**5.6** Before approving a project, we will also need to see a cost breakdown that clearly identifies where the LCF monies will be spent. This allows us to establish that LCF monies will be compliantly spent on items allowed under the Regulations.

**5.7** It is the registering EB's responsibility to make sure that the project expenditure falls within an approved object under the Regulations.

**5.8 Transfer of project approval to another EB**

**5.8.1** In the usual case, once a project has been approved then the EB which registered that project will retain project approval. However, in some cases another EB may become involved in the delivery of the project.

**5.8.2** Where a funding EB transfers a qualifying contribution to another EB which holds the approval for a project then this constitutes a transfer of funds. Therefore the funding EB must complete and return a Form 7 to ENTRUST within 7 calendar days of transferring the LCF funds to the receiving EB. The receiving EB (which holds project approval) reports its expenditure on the project against the project approval on its Form 4 in the usual way.

**5.8.3** Where a funding EB makes a payment to a contractor for works which have been carried out on a project then there is no transfer between EBs. The funding EB reports the expenditure on the project against the project approval on its Form 4. This is the case even though the funding EB does not hold project approval.

**5.8.4** Where the funding EB holds the project approval but the delivery of the project will be by the receiving EB then the funding EB must specify that the project will be allocated to another EB when completing the project application form. The receiving EB's enrolment number must be included.

**5.8.5** When the funding EB transfers a qualifying contribution to the receiving EB, then the funding EB must complete and return a Form 7, within 7 calendar days, notifying us of the transfer.

**5.8.6** Once in receipt of the transferred funds, the receiving EB can make payments for the delivery of the project. The receiving EB should enter its expenditure against the funding EB's project approval. (The funding EB must ensure that details of the approved project are passed to the receiving EB.)

**5.8.7** The funding EB will remain responsible for entering the first spend and last spend dates against the project. The funding EB will also be able to enter details of any expenditure it has made directly on the project (such as a payment to contractors).

**5.8.8** There is a separate project expenditure data entry field on Form 4 to be used where another EB holds the project. EBs who have been allocated project approval by another EB will see these allocated projects listed on an additional project expenditure breakdown sheet on their Form 4.

Any receiving EBs entering data into this new field must also complete the second project breakdown sheet.

**5.8.9** EBs should be aware that they will need to complete separate project expenditure details for projects where they hold the project approval, and for projects allocated by another EB. EBs will need to ensure that they complete the relevant project expenditure boxes and project breakdown sheets for all relevant projects.

## 6. Timing

**6.1** Our guidance is that LCF monies should be committed to a specific project within two years of receipt. The only exceptions are projects which are registered under the Small Grants Scheme – these projects must be re-registered and approved every 12 months.

**6.2** The term "committed" means that there is a contractual agreement in place, providing that the funds will be spent on a particular project.

**6.3** EBs should notify ENTRUST of any projects completed each year on their annual return (Form 4). If any project will no longer take place then the registering EB should contact ENTRUST in writing to request that the project be de-approved.

## 7. Running Costs of the Environmental Body as Compliant Expenditure

**7.1** Regulation 33 provides as follows:

> (7) Where the objects of a body are or include any of the objects set out in paragraph (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) 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.

## 8. What the Regulations Mean in Practice

**8.1** The Regulations allow some or all of an EB's 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.

**8.2** All costs should be reasonable and comparable to similar organisations, by both sector and size of organisation. EBs who manage no or very few live projects should have minimal EB running costs. Any costs should relate to the EB's level of activity.

**8.3** 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. For example, if 40% of an EB's total funding is from the LCF (both contributions and income derived), then no more of 40% of the EB's running costs should be met from LCF monies.

**8.4** 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. All running costs should be justified financially and should be open to scrutiny by ENTRUST.

## 9. Paying for Goods and Services

### 9.1 Tendering

**9.1.1** This section refers to best practice in evidencing value for money for the LCF. It is the responsibility of the EB to demonstrate that value for money has been achieved.

**9.1.2** It is recommended that where LCF monies are used to purchase goods and services over £5,000 in value, competitive tendering should be undertaken.

**9.1.3** Evidence of the competitive tender should be retained on the project file. This should consist of either a summary of tender information or by copies of the tenders submitted.

**9.1.4** It is not necessary to select the supplier with the cheapest tender if there are good reasons for selecting another supplier. However, where the chosen supplier has not tendered the cheapest quote there must be a written explanation as to why the preferred supplier was selected. This should be retained on the project file as evidence.

**9.1.5** In some cases, it is not possible to seek quotations or put a supply contract out to tender. For example, there may be only one specialist supplier who could reasonably be used. If so, ENTRUST recommends that evidence is obtained to show that the price agreed with this supplier is not higher than would normally be paid for similar goods or services.

### 9.2 Connected Parties

**9.2.1** 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 connected to your EB, or the third party contributors to your EB.

**9.2.2** If any of the suppliers which might be awarded a contract by your EB have employees, directors or consultants who are also directors of your EB or consultants who have an interest in your EB, then an open tender process should be followed to award that contract unless there are exceptional circumstances.

**9.2.3** 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.

**9.3 Payment to another EB**

**9.3.1** Where an EB makes a payment to another EB which is acting in its capacity as a contractor, then the payment should be recorded as expenditure by the first EB on the specific project.

**9.3.2** Where an EB makes a payment to another EB for that receiving EB to make payments to its suppliers, then the payment from EB to EB is a transfer of qualifying contributions. In this situation the funding EB must submit a Form 7 to ENTRUST within 7 calendar days of transferring the qualifying contribution to the receiving EB.

## 10. Assets Guidance

### 10.1 The Asset Regulations

Regulation 32 provides as follows:

(1) A payment is a qualifying contribution if–

(a) it is made by a registered person to an approved body;

(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.

### 10.2 What is an asset?

**10.2.1** 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:

- land, buildings and machinery;
- intellectual property rights; and
- cash, investments and securities.

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

### 10.3 Protecting the Asset

**10.3.1** All LCF monies spent by an EB which purchase or create an asset (whether funding the purchase outright or merely a proportion of the purchase) should be protected. All EBs should ensure that they can account for all LCF funds held by them or spent on a compliant project or activity.

**10.3.2** When an EB holds LCF funds, it should ensure that the value of the capital is preserved. Best practice dictates that LCF monies are not held in speculative investments where the principal 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, so preserving the capital sum. Any income earned from such an account or facility constitutes "income derived" and therefore must be spent only on LCF approved projects.

**10.3.3** If your EB does invest LCF monies, it should adopt suitable practices to protect the principal sum. 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’].

**10.3.4** EBs should maintain an inventory of all assets purchased in whole or in part with LCF funds. This is in addition to whatever arrangements EBs may have for the recording of asset depreciation, either on its own balance sheet or on records held by the project promoter. EBs must ensure that every project budget is resourced to meet the costs associated with appropriate asset monitoring and asset management while the project’s assets remains on the asset register. Please see section 12.1 below with regard to life/timescales of assets.

**10.3.5** 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.

### 10.4 Sale or Disposal of an Asset

**10.4.1** If an EB contributes LCF funds (in whole or in part) to the purchase, creation or improvement of an asset held 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. The amount to be repaid is the proportion of the sale value equal to the proportion of the LCF contribution made to the purchase / creation / improvement price.

**10.4.2** Where an EB seeks to dispose of a LCF funded asset, it should consult its original funding agreement to ascertain whether that agreement contains any clauses about disposal of LCF funded assets or the use of derived income from such disposals.

**10.4.3** The proceeds of sale from the sale of a LCF funded asset are considered to be “income derived”. Where a LCF funded asset is sold, the proportion of the proceeds of sale (equal to the proportion of the LCF funding contribution) should be returned to the EB and used to fund further compliant activity. This applies whatever time might have elapsed between the LCF funding of the asset and its sale, and whether or not the project is active or completed.

**10.4.4** 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. If the LCF funded asset is sold then any proceeds of sale must be used to fund further compliant projects.

## 11. 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.

### 11.1 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 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.

**11.2 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 though the Land Registry. This could be done by a restriction in favour of the funder (distributive EB 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.

## 12. Depreciation of Asset Value

**12.1** If you intend to dispose of an asset within the relevant timescales set out in Section 12 above, our guidance is that the asset should be valued independently if the current value exceeds £10,000. We recommend that the written down value is calculated by applying deprecation on a straight line basis.

## 13. Cash Assets

**13.1** EBs must be able to account for the LCF money that they hold at all times. We recommend EBs maintain a separate bank account for LCF money if it is cost effective to do so.

## 14. Ownership of Assets

**14.1** When the EB is the project owner then any assets funded by LCF monies should appear on the EB's balance sheet.

**14.2** Where the EB is not the project owner but any assets funded by LCF monies held by the EB are used in the EB's general operations (i.e. not in a project) then it is acceptable for those assets to be on the EB's balance sheet.

**14.2** Where the EB is not the project owner but an asset funded by LCF monies is acquired by the EB solely for that project, ENTRUST recommend that the asset does not appear on the EB's balance sheet. Instead we recommend that a legally binding retention of interest is used to ensure that the asset remains within the LCF and within the control of the EB.

## 15. Retention of Records

**15.1** Regulation 33A provides:

(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;

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

i) Project financing / funding information, which includes records of Contributing Third Party and Landfill Operator contributions. We recommend that these records are kept indefinitely as they are required to determine if the expenditure of LCF funds was compliant.
ii) Documents which demonstrate how LCF monies were spent, including all invoices and relevant timesheet summaries. We recommend that these records are kept indefinitely as they are required to determine if the expenditure of LCF funds was compliant.
iii) Other supporting documents, such as tenders and tender documentation, purchase orders, and procedural documentation. These only need to be retained for six years.

**15.3** Legal records held by EBs should be retained indefinitely. Such records include: funding agreements, ownership records, deeds, Board minutes, declarations of interest and historical records of Directors.

**15.4** Records of any assets funded by LCF monies should be maintained for the period of time that the asset is owned by the EB. Upon disposal of any LCF funded asset, records relating to the sale should be retained by the EB for a further six years. However, the record of the value received for the asset must be kept indefinitely.

**15.5** 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.

## 16. Unspent LCF Monies

**16.1** If there is underspend on a project or the project does not go ahead, then (subject to any agreement in place between the EB and the contributor of the funds) the EB may consider one of the following in order to spend the LCF funds compliantly:

**16.2 Other projects**
LCF money held may be spent on other approved projects providing they meet one of the objects under the Regulations. Before spending the funds it is advisable to obtain the permission of the LO or distributive EB who allocated the money originally.

**16.3 Transfer of monies**
LCF money can also be transferred to another EB. It is strongly recommended that the permission of the LO or distributive EB is obtained first. If your EB has received LCF money from another EB

and you find that those funds are no longer needed, please discuss how to proceed with the EB which provided your EB with the funds. It is most likely it will want the money to be returned for re-allocation. A transfer of LCF funds between EBs must be reported within 7 calendar days of the transfer on Form 7.

**16.4 Return of monies**

Ordinarily LCF monies should not be given back to the contributing LO as payments to a LO are no complaint spend. 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 to HMRC any tax credits it has received in respect of its qualifying contribution, as outlined in HMRC's guidance notice LFT1 to LOs.

## 17. Retaining Funds for Winding-Up

**17.1** 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 is retained at that point in time. Good practice requires an EB to maintain a reserves policy which includes 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.

**17.2** LCF funds used for winding up an EB are part of the "running costs" of the EB. "Running costs" are defined (in Regulation 30(1) of the Regulations):

> "running costs" includes any cost incurred in connection with the management and administration of a body or its assets.

**17.3** The reasonable and allowable wind-up costs which an EB may incur include:

- The cost of employees who are required to wind down the EB (eventually where an EB is winding up there will be no more LCF funds to allocate – consequently we would expect the funds held for this purpose to be for the cost of only a proportion of current staff)
- Contractual redundancy payments, which we consider should be set at a reasonable level
- Outplacement costs, such as costs relating to support given to individuals who are being made redundant
- Pension liabilities, which we consider should be set 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

**17.4** As set out in Regulation 33(8), where the EB receives funds from other sources, the LCF funds can only pay the proportion of running costs that corresponds to the proportion of the EB's funding that comes from the LCF (see Section 9 of the guidance). 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.

**17.5** LCF funding cannot be used to meet any non compliant costs. If you are unsure as to whether a category of your EB's winding up costs will be compliant, please contact us for advice.

**17.6** 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 would also expect these costs to be reported in the EB's annual accounts.

## 18. Winding-Up the EB

**18.1** 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 HMRC's guidance notice LFT1 to LOs.