Guidance Note - Holding Landfill Communities Fund Monies For Winding Up Environmental Bodies (EBs)

1. Introduction

1.1 For a number of different reasons, an Environmental Body (EB) may decide to close its business and wind up its organisation. Paragraph 19 of Section C of the ENTRUST guidance manual – *Project Approval and Spending Landfill Communities Fund (LCF) Monies* requires EBs to inform ENTRUST of their intention to wind up their business. This allows ENTRUST to work with the EB to ensure that it accounts for all of its unspent funds and has appropriate processes in place to ensure that all of its assets purchased using LCF monies remain compliant with the Landfill Tax Regulations 1996 (Regulations).

1.2 Where an EB considers it is appropriate to hold LCF monies to wind up its business this funding should only relate to the close down costs of the business and not any other expenditure.

1.3 ENTRUST guidance sets out at paragraph 18 of Section C of our guidance manual – *Project Approval and Spending LCF Monies* advises that 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. The Charities Commission in their guidance states it is good practice for a charity to maintain a reserves policy. ENTRUST considers it is appropriate for EBs to adopt this practice, 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.

1.4 Over the last five years, we have seen a steady increase in the amount of funding that EBs are retaining for winding up their business (although we did see a slight decrease over the last two years). Consequently, we have reviewed this matter with a number of EBs and consider that it is necessary to provide guidance on reasonable and allowable winding up costs in relation to the LCF.

2. Regulations

2.1 Regulation 30(1) defines running costs as any cost incurred in connection with the management and administration of an EB, or its assets. The costs of winding up an EB are capable of falling within the definition of 'running costs' for the purpose of the Regulations.

2.2 However, the proportion of qualifying contributions or income derived that can be applied to the running costs of an EB is capped by Regulation 33(8). This sets out that EBs can only pay the proportion of running costs that corresponds to the proportion of the EBs total funding that comes from the LCF.

2.3 The relevant Regulations can be found at Appendix A.

3. Defining Wind Up Costs

3.1 The aim of this guidance note is to therefore provide EBs with information relating to reasonable and allowable wind up costs that they may incur using LCF monies, including:

- The cost of employees that 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 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;
- Reasonable payments required for pension liabilities;
- Any office rental payments that are required to the end of a lease period;
- Any dilapidations due at the end of a lease period; and
- Costs relating to legal and financial advice that is likely to be required when winding up.

3.2 Where an organisation has income from LCF and non LCF sources, the allocation of wind up costs should be apportioned on the basis of the income received. 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, 20% of your total income comes from LCF monies. Therefore, you can fund up to 20% of your winding up costs with LCF monies.

3.3 It is important to note that LCF funding **cannot** be used to meet any non compliant costs.

3.4 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 organisations annual accounts.

4. Further Advice

4.1 For further advice relating to winding up costs, or if you are considering winding up your EB, you should contact the Compliance Team on 01926 488 300.

ENTRUST
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Appendix A

RELEVANT REGULATIONS

Regulation 30 – Interpretation and general provisions

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

Regulation 33 – Bodies eligible for approval

(7) *Where the objects of a body are or include any of the objects set out in paragraph (2) above, 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.

Regulation 33 – Bodies eligible for approval

(8) *The use of qualifying contributions in paying the running costs 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.*