



## LANDFILL OPERATOR ANNUAL BRIEFING: LANDFILL COMMUNITIES FUND (LCF)

### 1. Government's Reform of the LCF: Contributing Third Party (CTP) payments

- 1.1 When a Landfill Operator (LO) makes a contribution to an Environmental Body (EB) it can only claim a tax credit from HM Revenue & Customs (HMRC) on 90 per cent of this contribution and is therefore left with a 10 per cent 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 payment to provide the 10 per cent shortfall, or a portion of it, to limit the cost to the LO of participating in the scheme.
- 1.2 LOs are reminded that it is expected that they will absorb some or all of the 10 per cent shortfall. EBs are required to report to ENTRUST how much of the shortfall is being met by their contributing LO, and for the sector the overall figure is currently that LOs are requesting an average of 8 per cent of their own shortfall. This information will be monitored by HMRC and the relevant data may be published.

### 2. Levels of administration costs and unspent funds held by EBs

- 2.1 For 2018/2019, HMRC has continued to set as two of its strategic priorities for the LCF:
  - The level of administration costs incurred by EBs should be at or below the guidance level of 7.5 per cent of project expenditure; and
  - The value of unspent funds held by EBs should be reducing year on year.
- 2.2 Overall unspent funds held have reduced from £70m at 31 March 2017 to £63m at 31 March 2018. Administration costs continue to fall and are at 7.3 per cent of project expenditure for all EBs. However, following our analysis of EBs' Statutory Annual Returns for 2017/2018, we have still identified a number of EBs with administration costs in excess of the 7.5 per cent guidance level and also a number of EBs who do not appear to have made any progress in reducing the level of unspent funds they hold. In considering the future size and continuation of the LCF, HMRC/HMT will be assessing the behaviour of all EBs in ensuring that these objectives are being delivered.
- 2.3 ENTRUST has requested additional information from EBs which continue to exceed the guidance levels in these areas and we will be working with those organisations who fall into these categories to facilitate their compliance with the Government's requirements. As part of this process, we are recommending that all EBs carefully review the forecast level of their administration costs and the value of unspent funds they expect to be hold at 31 March 2019 and if necessary take any appropriate action now to continue to meet the Government's targets. Furthermore ENTRUST will also be contacting those LOs which are making contributions to EBs which are exceeding these guidance levels, in order to ensure that LOs are fully aware of these matters and may wish to discuss them with the EB.

### 3. EB Compliance – risk to LOs of ‘claw-back’ of funds by HMRC

- 3.1 As the Regulator of the LCF, we are required under the Landfill Tax Regulations 1996 (Regulations) paragraph 33 (1) (i) to satisfy ourselves, by reference to records, or other documents, or information held by EBs, that the qualifying contributions received by the EB have been spent by it only in the course, or furtherance of the Regulations and the EB’s approved objects. Additionally, under the ENTRUST/HMRC Terms of Approval (TOA), we are required to provide HMRC with assurance that LCF monies are spent compliantly.
- 3.2 HMRC has the power to reclaim tax credits (claw-back) from the LOs where qualifying contributions have not been spent compliantly. This repayment of the tax credit claimed by the LO is under Regulation 36. (Repayment of Credit). Where ENTRUST identifies serious issues of non-compliance, we will recommend to HMRC an appropriate course of action for their consideration. HMRC may, on the basis of ENTRUST’s recommendation, determine that it is appropriate to seek the ‘claw-back’ of the tax credit claimed from the contributing LO. Issues or failures of EBs to comply with the Regulations which can result in ‘claw-back’ include:
- Non-compliant spend of LCF funds, which can include spending LCF funds on non-LCF activity;
  - Non-compliant project expenditure; and
  - Recovery of funds following forcible revocation of an EB who has failed to comply with the Regulations.
- 3.3 Where an EB has become non-compliant and there is a potential risk of ‘claw-back’, we have agreed with HMRC that we may contact the contributing LO to discuss our concerns and inform them of any potential liability they may face. This enables the LO to interact directly with the EB and to help resolve the issue of non-compliance, thus hopefully mitigating the risk to the LO of ‘claw-back’.

### 4. Operational Information

- 4.1 Since the LCF was created in 1996, LOs have contributed more than £1.62bn to the fund and EBs have spent more than £1.47bn on projects that benefit local communities who suffer the disamenity of living within 10 miles of a landfill site. The following table shows the money spent, across the life of the fund\*, on each of the LCF ‘Object’ types:

LCF Objects	Total spent*
The remediation of land (Object A)	£25,856,623
The prevention of pollution (Object B)	£2,151,746
The reduction of waste (Object C) <sup>1</sup>	£240,973,390
The recycling of waste (Object CC) <sup>1</sup>	£4,707,622
Public parks and public amenities (Object D)	£971,725,035
Biodiversity conservation (Object DA)	£119,500,220
The restoration of places of worship and historic buildings (Object E)	£107,262,595
The provision of services to other EBs (Object F) <sup>2</sup>	£2,540,032

\* as at 20 July 2018

<sup>1</sup> Objects C and CC were removed from the Regulations in April 2003

<sup>2</sup> Object F was removed from the Regulations in April 2016

- 4.2 There are currently 2,145 EBs enrolled with ENTRUST. During 2017/2018 we enrolled 62 new EBs and registered 1,640 projects.
- 4.3 In October 2017 ENTRUST published our second Value for Money (VfM) report on the operation of the LCF. The report provides a summary of data collected from the Form 9 Project Completion Form between April 2014 and March 2017, which can be read on our website at: <https://www.entrust.org.uk/news/lcf-value-for-money-vfm-2016-2017-report/>

## **5. Annual Report 2017/2018**

- 5.1 ENTRUST published its 2017/2018 Annual Report on 5 July 2018. This details our performance against the targets set in our 2017-2020 Corporate Plan by HMRC, which we fully met and delivered. The full Annual Report, or a short summary of the documents can be accessed using the following link:

<https://www.entrust.org.uk/news/entrust-annual-report-2017-2018>

## **6. Closure of the LCF in Wales**

- 6.1 The LCF ceased in Wales from 1 April 2018. We published HMRC's briefing on the Devolution of Landfill Tax to Wales in December 2017 and this can be viewed using the following link: <https://www.entrust.org.uk/news/devolution-of-landfill-tax-to-wales-and-the-two-year-transitional-period-fo>.

- 6.2 LOs based in Wales can no longer contribute to the UK LCF scheme, however there is a two year transitional period to allow any residual funds held by EBs in Wales to be spent. To support this projects can continue to be registered in Wales up until 30 September 2019, but all projects must be completed and all LCF funds spent by 31 March 2020. ENTRUST has published full Devolution Guidance to inform EBs about the changes and requirements through the transitional period and this can be read at:

<https://www.entrust.org.uk/guidance/guidance-documents/>

- 6.3 The Welsh Government has introduced the new Welsh Landfill Disposals Tax Community Scheme (LDTCS) which came into operation on 1 April 2018. The scheme is managed by the Wales Council for Voluntary Action (WCVA). More information is available at:

<https://www.wcva.org.uk/funding/landfill-disposals-tax-communities-scheme?seq.lang=en-GB>

## **7. ENTRUST engagement plan with LOs**

- 7.1 ENTRUST's Chief Executive, Christopher Welford, and members of the ENTRUST Board have a schedule of meetings with a number of LOs once a year to brief and discuss matters relating to the operation of the LCF. Following discussions with HMRC on how ENTRUST's engagement with LOs can be widened, last year we agreed with them to broaden our outreach activities by issuing an annual briefing note to all LOs who have participated in the scheme within the last three years. If you would like to participate in further engagement with ENTRUST about the LCF please contact Christopher Welford's PA, Helen Maccallum by emailing [helenmaccallum@entrust.org.uk](mailto:helenmaccallum@entrust.org.uk) or she can be reached by telephone on 01926 488317.