

J – The Closure of the LCF in Scotland

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1. Guidance for all EBs on the closure of the LCF in Scotland and arrangements in place for the transitional period

1.1 Background

1.1.1 By virtue of provisions in The Scotland Act 2012, responsibility for the collection and administration of Landfill Tax in Scotland was devolved to the Scottish Government from 1 April 2015. This affects the LCF which ceased in Scotland from 1 April 2015.

1.1.2 There is a two year transitional period to enable LCF projects in Scotland to be completed and for all remaining LCF funds in Scotland to be spent. The transitional period runs from 1 April 2015 to 31 March 2017. EBs can continue to register projects in Scotland with us during the transitional period but all projects must be completed by 31 March 2017.

1.2 Purpose of this guidance

1.2.1 This guidance outlines the background to the changes which are made as a result of the closure of the LCF in Scotland. It provides guidance on the record-keeping, reporting and other obligations of EBs throughout the transitional period.

1.2.2 In this guidance we cover:

- The definition of terms used in this guidance;
- Contributions received by EBs;
- Responsibilities when making a transfer to another EB during the transitional period;
- Expenditure of LCF monies in the transitional period, and from 1 April 2017; and
- The protection and monitoring of LCF assets and projects in Scotland.

1.2.3 This guidance should be read by all EBs as it affects EBs throughout the UK.

1.3 The definition of terms used in this guidance

1.3.1 In this section we set out some words and phrases which are used throughout this guidance and explain what we mean by those terms.

1.3.2 Contributions in the transitional period

1.3.2.1 For the duration of the transitional period, contributions into the LCF will be divided into “old” monies and “new” monies. Old and new monies must be accounted for separately and clear audit trails maintained to ensure the monies are distinguishable. The terms “old” and “new” monies, and the difference between them, are explained below.

1.3.3 “Old” monies

1.3.3.1 “Old” monies are LCF contributions arising from Landfill tax credits claimed by LOs in relation to waste put into landfill sites anywhere in the UK on or before 31 March 2015.

1.3.3.2 “Old” monies can be spent throughout the UK, including in Scotland, during the transitional period. After the transitional period (ending 31 March 2017) old monies can only be spent in England, Wales or Northern Ireland.

1.3.4 “New” monies

1.3.4.1 “New” monies are LCF contributions arising from Landfill tax credits claimed by LOs in relation to waste put into landfill sites in England, Wales or Northern Ireland on or after 1 April 2015. (Any contributions arising from Landfill tax credits claimed by LOs registered for Scottish Landfill tax, which relates to waste put into landfill sites in Scotland on or after 1 April 2015, will be paid into the new Scottish scheme and are not part of the LCF.)

1.3.4.2 “New” monies can be spent throughout England, Wales and Northern Ireland during the transitional period but cannot be spent on projects in Scotland during the transitional period.

1.3.5 LCF and Scottish Landfill Communities Fund (SLCF)

1.3.5.1 For the avoidance of doubt, when we refer to the LCF we are referring to the scheme which closed in Scotland on 31 March 2015 and now operates in England, Wales and Northern Ireland. We refer to the scheme which commenced in Scotland on 1 April 2015 as the Scottish Landfill Communities Fund or SLCF.

1.4 Contributions received by EBs

1.4.1 In this section we set out the additional information which will be requested from EBs reporting a contribution received from a LO in May or June 2015.

1.4.2 Additional background

1.4.2.1 It is already a regulatory requirement that EBs make records in respect of the contributions which they receive, and that they report the receipt of contributions to us. (See paragraph 8 of *Section A: Quick Start guide*.)

1.4.2.2 As a result of the closure of the LCF in Scotland, from 1 April 2015 it is also necessary for all EBs to identify whether the contributions they receive during the transitional period are “old” monies or “new” monies. This additional identification is required in order for EBs to understand where those contributions may be spent.

1.4.3 Assumptions to be applied to contributions received

1.4.3.1 We have agreed with HMRC that we will apply certain assumptions as to whether the contributions received by EBs during the transitional period will constitute “old” monies or “new” monies. These assumptions will apply to all LCF contributions received by all EBs, wherever based, during the transitional period.

1.4.4 First assumption

1.4.4.1 All contributions received by EBs in April 2015 are assumed to be “old” monies. As set out above, this means that these monies can be spent throughout the UK, including in Scotland, until 31 March 2017, and in England, Wales and Northern Ireland thereafter. (This assumption is on the basis that

LOs make payment to EBs when they submit their Landfill Tax return, and this is one month after the period to which the return relates. Therefore a contribution received in April 2015 will derive from Landfill tax credits claimed by LOs in relation to waste which was put into landfill on or before 31 March 2015.)

1.4.5 Second assumption

1.4.5.1 All contributions received by EBs on or after 1 May 2015 are assumed to be “new” monies. This means that these monies cannot be spent on projects in Scotland from 1 April 2015.

1.4.5.2 For EBs who are not based in Scotland or do not have projects in Scotland, this second assumption does not affect their day to day operations. However, EBs based in Scotland or with projects in Scotland may wish to correct our assumption in order that a contribution received on or after 1 May 2015 which, in fact, was derived from Landfill tax credits claimed by LOs in relation to waste put into landfill on or before 31 March 2015 can be regarded as “old” monies and be available to be spent in Scotland during the transitional period.

1.4.6 How to correct our assumption that a contribution in May or June 2015 is “new” money

1.4.6.1 Our assumption that any contribution received on or after 1 May 2015 is “new” monies is based upon what is most likely to be the position. However, our assumption may be incorrect in some cases. EBs can correct our assumption in respect of a contribution received in the transitional period by sending us a completed Form 3A with accompanying evidence (see further below). This documentation should be sent to our [Compliance team](#).

1.4.6.2 If you do not need to correct our assumption because you are content that the contributions are regarded as “new” monies then you do not need to return Form 3A to us.

1.4.7 The evidence which should accompany Form 3A

1.4.7.1 The evidence which should accompany your Form 3A is any written material which will demonstrate that, contrary to our assumption, the contribution received by your EB is derived from Landfill tax credits claimed by LOs in relation to waste which went into landfill on or before 31 March 2015. It is likely that a letter or other evidence from your contributing LO will be the best evidence of this.

1.4.8 Obtaining a copy of Form 3A

1.4.8.1 Form 3A will only be available in hard copy; it will not be available via EOL. We will send a copy of Form 3A when we email our invoice for the levy due on the contribution received to any EB whose contribution was received in May or June 2015.

1.4.8.2 We will not send Form 3A when a contribution has been received after 30 June 2015 but it will be available upon request for the duration of the transitional period. Please contact a member of our Finance team on 01926 438300 if you need a copy of Form 3A after 30 June 2015.

1.4.9 Reviewing Form 3A

1.4.9.1 We will review your Form 3A and the supporting documentation and will acknowledge receipt within five working days.

1.4.9.2 Once we are satisfied that all of the necessary information has been provided to us, we will accept or reject your evidence. If you are unhappy with our response you can ask for it to be considered by our Review Panel.

1.5 Responsibilities when making a transfer to another EB during the transitional period

1.5.1 This section of the guidance sets out the responsibilities of an EB when it makes a transfer of LCF monies to another EB during the transitional period.

1.5.2 Additional background

1.5.2.1 It is already a regulatory requirement that an EB must make and retain a record of any transfers which it makes (see paragraph 10.3 of *Section A: Quick Start guide*).

1.5.3 Responsibility of transferring EB to notify recipient where there is a transfer of LCF monies

1.5.3.1 As all EBs must be able to identify the contributions they hold so that they can identify where those contributions may be spent, it is the responsibility of the transferring EB to additionally inform the recipient EB whether the LCF monies transferred are “old” monies or “new” monies.

1.5.3.2 Where the transfer is partly of “old” monies and partly of “new” monies, the transferring EB must notify the recipient EB that the transfer is mixed funds and notify the recipient EB how much of the transfer constitutes “old” monies and how much constitutes “new” monies.

1.5.3.3 The transferring EB must notify the recipient EB no later than the time at which the LCF monies are transferred. This notification must be in writing. The notification may form part of a funding agreement or may be made separately.

1.5.3.4 It is EBs’ responsibility to ensure they have the necessary systems in place to identify the contributions they hold, and to inform any EB to whom LCF monies are transferred.

1.5.4 No changes to Form 7

1.5.4.1 We will not make any changes to **Form 7: transfer of monies between Environmental Bodies** as a result of the closure of the LCF in Scotland. Transfers should be reported to us in the usual way.

1.5.4.2 We will not ask for any additional information from the reporting EB at the time at which the transfer of LCF monies is reported to us but may require records to be available on request or for review at inspection.

1.6 Expenditure of LCF monies during the transitional period, and from 1 April 2017

1.6.1 During the transitional period, EBs throughout the UK may hold “old” monies, “new” monies or a mixture of both. This section of the guidance sets out the different rules on how these monies can be spent.

1.6.2 Expenditure of “old” monies

1.6.2.1 During the transitional period, “old” monies can be spent throughout the UK, including in Scotland, on LCF approved Objects, namely projects and running costs.

1.6.3 Projects

1.6.3.1 “Old monies may be spent on approved LCF projects throughout the UK. All LCF projects in Scotland must be completed by 31 March 2017.

1.6.4 LCF running costs

1.6.4.1 During the transitional period, an EB may continue to meet its reasonable and relevant running costs attributable to its LCF activities from the LCF “old” monies which it holds, in accordance with the proportion of total funds principle set out in Regulation 33(8) of the Landfill Tax Regulations 1996 (Regulations). Please see *Section C: Project Approval and Spending LCF monies* for further guidance on what constitutes reasonable and relevant running costs.

1.6.4.2 Where an EB has running costs which are attributable to managing LCF projects in Scotland then only “old” monies can be used to meet those running costs.

1.6.5 Other expenditure

1.6.5.1 Up to 31 March 2017, LCF “old” monies can also be transferred to another EB or returned to the original contributing LO (HMRC will clawback the relevant tax credit).

1.6.5.2 Where a transfer is made to another EB, the transferring EB must follow our guidance on transfers in the transitional period.

1.6.6 Expenditure of “new” monies

1.6.7 Projects

1.6.7.1 “New” monies can be spent on projects throughout England, Wales and Northern Ireland during the transitional period. No “new” monies can be spent on projects in Scotland at any time.

1.6.8 LCF running costs

1.6.8.1 “New” monies may be spent on the reasonable and relevant running costs of an EB (wherever based) which are attributable to the management of approved LCF projects in England, Wales or Northern Ireland, in accordance with the proportion of total funds principle set out in Regulation 33(8) of the Regulations.

1.6.8.2 Please see Section C of our Guidance manual for further guidance on what constitutes reasonable and relevant running costs.

1.6.8.3 “New” monies cannot be spent on the running costs of an EB (wherever based) which are attributable to the management of LCF projects in Scotland.

1.6.9 Other expenditure

1.6.9.1 During the transitional period, LCF “new” monies can also be transferred to another EB. Where a transfer is made to another EB, the transferring EB must follow our guidance on transfers in the transitional period.

1.6.9.2 “New” monies may also be returned to the original contributing LO (HMRC will clawback the relevant tax credit).

1.7 LCF expenditure after 31 March 2017

1.7.1 From 1 April 2017 it will no longer be necessary for EBs to distinguish between “old” and “new” monies as no LCF monies (“old” or “new”) will be able to be spent on projects in Scotland or on running costs attributable to the management of projects in Scotland.

1.7.2 From 1 April 2017 it will be non compliant for LCF monies to be spent on projects in Scotland or on EB running costs which are attributable to the management of LCF projects in Scotland.

1.7.3 From 1 April 2017 an EB (wherever based) will be able to meet its reasonable and relevant running costs from LCF monies only if it is running one or more LCF projects in England, Wales or Northern Ireland. The proportion of LCF monies which can be used to meet an EB’s running costs must not exceed the proportion of that EB’s total running costs which are attributable to its carrying out of LCF projects in England, Wales or Northern Ireland.

2. Additional reporting requirements for Scottish EBs

2.1 Purpose of this guidance

2.1.1 This guidance is for Scottish EBs regarding additional reporting obligations during the transitional period, and how EBs in Scotland will be affected if they continue to hold LCF monies after the end of the transitional period.

2.2 Additional reporting obligations during the transitional period for all EBs in Scotland which hold LCF monies

2.2.1 Please note that this part of the guidance only applies to EBs based in Scotland which:

- Held a balance of LCF monies as at 31 March 2015, or
- Received a contribution of “old” monies during the transitional period, or
- Received a transfer of “old” monies during the transitional period.

2.2.2 All EBs, including all EBs in Scotland, must continue to submit a statutory Annual Return by 28 April each year. This remains the case even after the end of the transitional period. EBs which do not wish to retain this obligation should seek voluntary revocation from the LCF.

2.2.3 Additional reporting in relation to LCF monies held

2.2.3.1 In order to oversee the orderly and effective closure of the scheme in Scotland we are introducing additional reporting requirements for EBs based in Scotland who hold LCF balances during the transitional period.

2.2.3.2 In order to minimise the administrative burden on EBs, the additional reporting will be based on the existing Annual Return procedure via EOL. EBs should submit an interim annual return via EOL in the same manner as the statutory Annual Return. We will send a reminder to all EBs who will need to report to us before the reporting deadline. Any EB which is required to file an interim report but

which is not yet registered to use EOL should contact our Registrations team (on 01926 488 300) to register for EOL or to request a hard copy of Form 4.

2.2.3.3 Once EBs who need to make an interim return have submitted their interim returns, we will collect the data and then the interim returns will be un-reconciled to enable EBs to continue to report project completions until the next interim reporting deadline. EBs should ensure they meet the reporting deadlines (set out below) to minimise the period when Annual Return forms will be unavailable.

2.2.3.4 The additional reporting should be undertaken by EBs on the following dates:

Date report required	Period covered by report
14 October 2015	1 April 2015 to 30 September 2015
14 October 2016	1 April 2016 to 30 September 2016
14 December 2016	1 April 2016 to 30 November 2016
14 January 2017	1 April 2016 to 31 December 2016
14 March 2017	1 April 2016 to 28 February 2017

2.2.3.5 These reports are in addition to the statutory Annual Return which EBs must continue to submit by 28 April each year.

2.3 EBs in Scotland which hold LCF monies from 1 April 2017

2.3.1 Please note that this part of the guidance only applies to EBs based in Scotland. It does not apply to EBs in England, Wales or Northern Ireland.

2.3.2 EBs based in Scotland which have approved LCF projects in England, Wales or Northern Ireland

2.3.2.1 From 1 April 2017, a Scottish EB which will continue to operate in the remainder of the UK may hold LCF monies to spend on LCF projects in England, Wales or Northern Ireland. Such an EB may also spend LCF monies on its running costs which are attributable to the management of LCF projects in England, Wales or Northern Ireland.

2.3.3 EBs based in Scotland which do not have approved LCF projects in England, Wales or Northern Ireland

2.3.3.1 An EB based in Scotland which does not have an approved LCF project in England, Wales or Northern Ireland in place on 1 April 2017 will be assumed not to continue to operate under the LCF.

2.3.3.2 A Scottish EB which is assumed not to be continuing will not be able to hold LCF monies after 31 March 2017.

2.3.3.3 From 1 April 2017, where an EB in Scotland which does not have one or more approved LCF projects in England, Wales or Northern Ireland holds LCF monies, HMRC will clawback the relevant amount from the LO which funded that EB.

2.4 Revocation of EBs based in Scotland

- 2.4.1 All EBs (including those in Scotland which are assumed not to continue to operate) will continue to be enrolled with ENTRUST unless and until they seek voluntary revocation from the LCF.
- 2.4.2 It continues to be a regulatory requirement that every enrolled EB should submit a statutory Annual Return to us by 28 April each year. This includes enrolled EBs in Scotland, even if those EBs no longer have any LCF monies and do not have any LCF projects in England, Wales or Northern Ireland. EBs which do not wish to retain the obligation to submit an Annual Return should seek voluntary revocation from the LCF.
- 2.4.3 EBs in Scotland which will not manage projects in England, Wales or Northern Ireland will not be able to hold LCF monies from 1 April 2017 and so will not be able to use LCF monies to meet the costs of preparing or submitting a LCF Annual Return.
- 2.4.4 Forms to request voluntary revocation are available on our [website](#).

3. Monitoring projects and assets in Scotland

3.1 Purpose of this guidance

- 3.1.1 This guidance is for all EBs on the monitoring and protection of LCF funded assets and projects in Scotland during and after the end of the transitional period.

3.2 Monitoring and protection for projects and assets throughout the UK during the transitional period

- 3.2.1 All EBs should continue to follow the guidance set out in Section C of the Guidance Manual on the monitoring and protection of LCF funded projects and assets (including land and buildings) for the duration of the transitional period.
- 3.2.2 However, where a project is based in Scotland and the EB is likely to spend LCF monies during the transitional period in protecting or monitoring an LCF funded project or asset (including existing assets) which is based in Scotland, then the EB concerned should refer to us for advice on a case by case basis as to whether it is appropriate to continue monitoring or protecting that project or asset for the remainder of the transitional period. EBs are welcome to approach us for individual advice if they have any concerns in this area.

3.3 Monitoring and protection for projects and assets in Scotland from 1 April 2017

- 3.3.1 Please note that this part of the guidance only applies to projects in Scotland. It does not apply to projects in England, Wales or Northern Ireland. (LCF funded assets and projects in England, Wales and Northern Ireland should continue to be monitored and protected from 1 April 2017 in accordance with the guidance set out in Section C of the Guidance Manual.)
- 3.3.2 From 1 April 2017, no LCF monies may be spent on the protection or monitoring of any LCF funded projects or assets (including land and buildings) in Scotland. Any LCF monies spent in Scotland on or after 1 April 2017 will be non compliant spend. Therefore EBs cannot spend any LCF money on the protection or monitoring of any LCF funded asset or project.