HM Revenue & Customs

Reform of the Landfill Communities Fund

Consultation document
Publication date: 18 March 2015
Closing date for comments: 10 June 2015

Subject of this consultation:	Proposals for reform of the Landfill Communities Fund to improve the flow of funding to communities.
Scope of this consultation:	The government announced at Autumn Statement 2014 that it would set up a working group to develop proposals to reform the Landfill Communities Fund. This consultation sets out the proposals developed by the working group. We are now asking for your feedback on the impact and workability of these proposals to help us determine the final shape of reform of the LCF.
Who should read this:	Operators of landfill sites, environmental bodies, and community groups who apply for LCF funding.
Duration:	The consultation starts on 18 March 2015 and the closing date for responses is 10 June 2015.
Lead official:	Daniel Taylor, HM Revenue and Customs
How to respond or enquire about this consultation:	Landfill-tax.consultation@hmrc.gsi.gov.uk Or by post to – Helen Derbyshire 3rd Floor West, Ralli Quays Salford M60 9LA
Additional ways to be involved:	Please contact Helen Derbyshire on 03000 588029 if you would like to discuss your response
After the consultation:	We will publish a summary of the consultation responses, and use it to finalise our proposals for reform of the Landfill Communities Fund. If we decide to make legislative changes, there will be a further consultation on draft legislation.
Getting to this stage:	The consultation document reflects proposals made by a working group which includes representatives from HM Treasury, HMRC, ENTRUST, the Association of Distributive Environmental Bodies, landfill operators, the Environmental Services Association, and representatives from environmental bodies who receive LCF funds.
Previous engagement:	This issue has not been the subject of any recent formal consultation, although extensive informal dialogue has taken place over recent months.

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Foreword

I have seen first-hand the difference that the Landfill Communities Fund and the commitment of volunteers can make to communities. The fund has delivered over £1.4 billion to local community projects across the UK since its introduction in 1996, alongside Landfill Tax.

As the government must seek the best value for money for the taxpayer and ensure that the flow of funding to communities is as efficient as possible, the failure of the sector as a whole to reduce the amount of unspent funds by March 2014 was disappointing. It was clear that things needed to change to ensure that as much funding as possible reached the community projects it was intended for, as quickly as possible. It was therefore announced at Autumn Statement 2014 that robust proposals for reform of the fund were necessary, and a working group was set up to develop these proposals.

I have followed the work of the group with great interest. The group has listened to feedback and learned much about how the Landfill Communities Fund is distributed. The proposals developed by the group, as outlined in this consultation, will deliver meaningful improvements, ensuring funding gets to communities more effectively. The LCF provides an important opportunity to transform our local communities and I welcome your views on how these proposals can be refined to ensure that the system is improved and that benefits are felt across communities.

Priti Patel MP

Exchequer Secretary to the Treasury

1. Introduction

The Landfill Communities Fund

The Landfill Communities Fund (LCF) was introduced alongside the Landfill Tax in 1996. Landfill operators can claim a credit of up to 5.1% (in 2014-15) against their Landfill Tax liability on 90% of the voluntary contributions they make to environmental bodies (EBs). The Landfill Communities Fund has provided £1.4 billion in total funds for over 52,500 community projects since 1996.

The LCF provides money to environmental bodies (EBs) for a variety of projects which comply with the objectives of the scheme. These objectives are referred to as 'Objects' in the Landfill Tax Regulations 1996.

In 2013-14, 77% of spend was on public parks and amenities, 16% on the conservation of biodiversity and 7% on restoration of culturally important buildings. Approved Objects also include remediation of land, reduction of pollution, and provision of administration services to other EBs.

The fund is regulated by ENTRUST, a not-for-profit private company. ENTRUST is funded by a levy on LCF contributions of around 2%. ENTRUST issue guidance, register and provide advice to EBs, approve and audit projects and undertake enforcement activities.

Landfill Tax will be devolved to Scotland from April 2015, as will the LCF. As such, the proposals set out in this consultation do not cover Scotland.

In this document, unless otherwise stated, reference to LCF contributions or funds refers to qualifying contributions.

Drivers for change

By 2011 EBs had accumulated large amounts of unspent money, worth more than double the annual value of the Fund, raising concerns that the money was not reaching communities as quickly as it should.

In 2011 the government challenged the sector to reduce the amount of unspent funds by 15% from the 2009-10 baseline of £152.7m by 31 March 2012. This was not met, and the challenge was extended to reduce unspent funds by 25% by end of March 2014.

Figures published in September 2014 show that the sector did not meet the government's challenge to reduce their unspent funds by 25%, with funds only being reduced by 17% overall at the end of March 2014. However, many individual EBs did meet the challenge, demonstrating that it was possible to achieve the required reduction in unspent funds.

As of 31 March 2014, £130m of LCF funds remained unspent. This is nearly twice the annual value of the LCF. While much of this money was allocated to projects but not yet spent, this figure shows that some of the LCF funds were not being allocated, or spent on projects as quickly as they could be. Furthermore, since its introduction, 11% of the LCF has been claimed as administrative costs by EBs. The LCF is tax foregone and the government has a responsibility to ensure it offers the best value for money for the taxpayer, and communities benefit as quickly and efficiently as possible.

At Autumn Statement 2014, the Exchequer Secretary announced that, given the failure of the sector to meet the unspent funds challenge, a working group would be set up to work up proposals to improve the flow of LCF funding to communities.

The Working Group

The working group was set up in November 2014 and comprised of representatives from organisations who contribute to, administer, and complete projects using LCF funds. The members of the working group are:

- HMRC
- HM Treasury
- National Trust
- Environmental Services Association
- Association of Distributive Environmental Bodies
- ENTRUST, the regulator of the Landfill Communities Fund
- RSPB
- Cumbria Waste Management Environmental Trust (CWMET)
- Mondegreen EB and Yourventure Ltd

The working group held meetings between November 2014 and January 2015. The group developed proposals that could improve the flow of LCF funding to communities, by removing barriers that can prevent or delay funding reaching projects. The working group also identified areas where policy barriers were causing unnecessary bureaucracy, and possible delay to the delivery of projects.

Scope of the consultation

The purpose of this consultation is to seek views on the proposals for the reform of the Landfill Communities Fund, as developed by the working group. We would particularly like to hear from landfill operators, EBs and community groups who apply for LCF funding.

The working group indicated that some of the delay in funding being delivered to projects was due to processes (such as the length of time required to gain planning permission) rather than a lack of demand for LCF funds. Given many reports from EBs that the scheme is already oversubscribed, we will not be widening the criteria for projects at this time.

2. Improving the flow of funding to communities

Require that funds are spent within a set period of time from receipt

The working group held extensive discussions on a time limit within which LCF funds must be spent. Such a time limit would speed up the flow of funds to communities, and prevent the accumulation of unspent funds in future.

Suggested time limits ranged from 18-30 months from when a contribution was sent from a landfill operator and received by an environmental body. The external members of the working group were broadly agreed upon a two year time limit. However, we feel that a more robust approach is necessary in order to deliver maximum funds to projects in the shortest time span. In order to tackle the build-up of unspent funds we propose to introduce a requirement that LCF contributions given by a landfill operator to an EB must be spent within 18 months.

If the EB who receives the funds from the landfill operator passes the funding on to another EB, for any purpose (usually for the funding of a project) the 18 month requirement would still apply from the date the funds were received by the original EB. This would require a change to the Landfill Tax Regulations 1996.

Most EBs currently allocate funds to approved projects and hold the money until the project is ready to receive it. The working group believe that requiring LCF funds to be spent within a time limited period will incentivise EBs to use the funds for current expenditure, meaning some projects could be completed quicker. This will still allow the funding of long-term projects, such as biodiversity or capital building projects, but with the funds coming from several years' funding rather than a single year. Research conducted by ENTRUST in 2012 concluded that 80% of LCF funded projects are completed within two years, so we do not consider that time-limiting would have a negative impact on the majority of projects.

The working group were confident that EBs would be able to implement this change, although it was envisaged that it could, in some cases require EBs to change their administrative processes. It was suggested that best practice seminars could be run by EBs who had already drastically sped up the distribution of LCF funds by simple changes to their administrative processes.

This proposal would not apply retrospectively, although HMRC and ENTRUST would work with EBs to ensure that those who currently hold large amounts of unspent LCF funds were encouraged to swiftly allocate them to appropriate community projects.

Q1: What impact do you envisage an 18 month spending requirement having on your organisation's ability to fund or complete projects using LCF funds?

This proposal would require a clear definition of 'spent' funding in the Regulations. The working group considered whether contributions should be classified as spent once the last invoice related to a project has been paid out, or at an earlier point. We would like to hear the views of EBs who receive LCF funding both directly and indirectly from a landfill operator on the point at which funds should be considered spent.

Q2: At what point should LCF funds be considered 'spent'?

Where an EB has not spent the funds within the time period we would seek to reduce that amount from the contributing landfill operator's tax credit for the next financial year. The aim of this proposal is to encourage landfill operators to be more active in overseeing the EBs they give their LCF contributions to. We particularly encourage landfill operators' responses on this aspect of the proposal.

Where the LCF contribution is received by a landfill operator but passed on from one EB to another, we would expect that the contract between both EBs will stipulate that the money will be spent within the time limit. While landfill operators have no control over the LCF contribution once the EB they give it to passes it on, we expect the landfill operator will ensure the EB it deals with has effective due diligence in place to ensure funds are spent quickly.

Q3: Would reducing the landfill operator's entitlement to a tax credit in line with the amount of unspent funds held by an EB have a significant impact on the likelihood of the landfill operator to continue to contribute to the LCF? Would this also impact EB's incentives to spend funds?

Cap the administrative costs of EBs who received LCF contributions directly from a landfill operator

Since the creation of the scheme, over £100m (11%) of total LCF spending has been claimed as administrative costs by EBs. While some administrative costs are inevitable, we are concerned that some EBs have become complacent about administrative costs. By way of comparison, government administration budgets were 1.9% of Total Managed Expenditure in 2012-13. Although we recognise that government administration benefits from greater economies of scale than the LCF, we must subject money that is tax foregone to greater scrutiny to ensure best value for money for the taxpayer.

ENTRUST, the regulator of the LCF, investigates around 50 EBs a year (out of the approximately 3000 EBs registered with them) that have administrative costs over 10%. However ENTRUST has limited powers of enforcement over EBs in this area, due to the private nature of the LCF. Around a dozen EBs have administrative costs that have remained significantly above 10% for the last five years. The government has come to the conclusion that a legislative solution is now required to tackle this issue.

The working group proposed a cap on administrative costs for any EB that receives funds directly from a landfill operator. EBs who receive LCF funds from other EBs will not be subject to the cap. We understand that most of these EBs already have a cap on their administrative costs imposed on them by the EBs who transferred the LCF funds directly from a landfill operator, and our analysis suggests that small EBs generally do not have problematic administrative costs.

The working group discussed the appropriate level for a cap, and caps between 7.5% and 20% of LCF funds were suggested. The government therefore proposes to cap administrative costs to 7.5% of LCF funds spent in a financial year. This would require a change to the Landfill Tax Regulations 1996.

Our initial analysis shows that many EBs already operate restraint regarding their administrative costs, and, as such, are unlikely to be affected by the cap. We expect that a 7.5% cap on the 12 EBs with the highest administrative costs would generate an additional £1 million a year to spend on projects.

Q4: How would a 7.5% cap on administrative costs affect your organisation's involvement with the LCF?

We are aware that the amounts received from landfill operators to individual EBs varies considerably. As such, we propose to put in place a threshold below which the cap on administrative costs would not apply. We would like your views on the appropriate level for the threshold, and we are particularly interested in responses from smaller EBs on this question.

Q5: What is an appropriate threshold below which the 7.5% cap on administrative costs should not apply?

The Landfill Tax Regulations 1996 state that "running costs" include any cost incurred in connection with the management and administration of a body or its assets. While the legislation does not cap administrative costs, running costs which are in excess of 10% of LCF expenditure per annum are monitored by ENTRUST's Compliance Team and, where appropriate, a review conducted.

As we propose to cap administrative costs as 7.5% of LCF monies received by an EB in a financial year we will have to further define what is meant by 'administrative' or running costs in legislation. We want this definition to be as simple and clear as possible, and would appreciate views from EBs as to how administrative costs should be defined in legislation.

Q6: What should administrative costs be comprised of?

As concerns have been raised that some EBs are holding considerable funds as wind-up costs we are considering whether wind-up costs should form part of this definition.

Q7: Should monies put aside for wind-up costs be included within the 7.5% cap on admin costs? If not, why not?

There is also a question of whether the cap should apply in the event of a decision to close the LCF, as we are aware that a declining income stream would make it difficult for EBs to keep their costs within the capped amount. We would particularly like to hear from EBs who are facing a declining income stream or who plan to wind up their operations soon on how the administrative cap could be applied to EBs who are winding up.

Q8: How should the cap be applied to EBs who are in the process of winding up?

Introduce a licensing requirement for EBs who receive contributions directly from a landfill operator.

The regulator of the Landfill Communities Fund, ENTRUST, currently has limited powers to address the inefficient use of funds by EBs. This reform would give ENTRUST the power to suspend an EB's ability to receive further LCF funds where that EB failed to meet certain performance indicators. This would be achieved by requiring all EBs receiving funds from a landfill operator to be licensed by ENTRUST, with that licence being suspended when indicators are not met. A suspended EB would continue to be able to spend funds held on qualifying projects.

There would be a limited appeals process for suspension.

Licensing would be based on adherence to set measurable standards. Information on when LCF contributions were received from a landfill operator; when those contributions were allocated to an LCF approved project; when the funds were transferred to the environmental body running the project; and what percentage of LCF funds received in a financial year were spent on the EBs administrative costs are the sorts of information that may be required. The working group think the administrative burden would be minimal as EBs who receive funds directly from a landfill operator should already hold much of the information that would be required to assess compliance with the standards.

Q9: Do you think licensing would place a significant burden on your organisation? If so, why?

Q10: What set measurable standards should EBs who receive funds directly from a landfill operator be required to meet?

Reform legislative barriers that can prevent or delay funds reaching local communities

The legislation specifies certain criteria on which LCF funds may be spent. The working group unanimously recommended removing the provision in the Landfill Tax Regulations 1996 which allow LCF funds to be invested for the purpose of generating income. Using LCF funds as long-term investments to generate income is contrary to the aims of the unspent funds challenge and prevents funding for projects reaching the community.

This legislative change would not apply retrospectively, and as such, would not affect existing investments.

Q11: Have you made significant use of investments using LCF funds? If so, please provide details.

Q12: To what extent would removal of the LCF investment provisions hamper your ability to deliver LCF projects? Please give details.

The working group also recommended the removal of Object F from the legislation. Object F allows for the provision of financial, administrative or other similar services by one EB to one or more other EBs.

Our initial analysis shows that only a single EB is currently using LCF funds to provide other EBs with administrative services, to benefit from undertaking this activity at a larger scale.

While we have uncovered no instances of misuse of Object F, we believe that this Object could be vulnerable to abuse, particularly if administrative costs are capped. Additionally, the working group felt strongly that the object criteria should only be used for community projects, not to help EBs run their organisations.

As such we propose to amend the Landfill Tax Regulations 1996 to remove this Object, unless we receive compelling evidence that Object F should remain. The legislation would be subject to the normal consultation process.

Q13: Would the removal of Object F from the Landfill Tax Regulations 1996 cause significant problems for your organisation? If so, why?

Reform policy barriers that can prevent or delay funds reaching local communities

The working group identified a number of administrative processes required by HMRC and/or ENTRUST which could potentially restrict the flow of funds to communities. These include:

- the requirement to monitor assets purchased through LCF funding in perpetuity;
- the requirement to keep records in perpetuity;
- the documentation and/or processes needed to demonstrate the Contributing Third Party; and
- registration of national projects as a series of individual projects (national projects being those carried out at a number of sites)

The government propose to carry out a policy review of each of these issues. This review will be carried out in parallel to the consultation. However, we are seeking your views on the areas listed above.

Q14: What are your views on the requirements to monitor and keep records on assets purchased through LCF funding in perpetuity?

Q15: Are there any other LCF policy areas that need simplifying or reviewing?

Q16: Are there any further reforms of the LCF you think are required? If so, please give details.

3. Assessment of Tax Impacts

Summary of Impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	Neg	Neg	Neg	Neg	Neg
Economic impact	These measures are not expected to have any economic impacts.				
Impact on individuals and households	There is no impact on individuals. These measures will not have a disproportionate negative impact on protected groups or families. They will not affect the number of children in poverty.				
Equalities impacts	There is no impact on equalities.				
Impact on businesses and Civil Society Organisations	We expect the impact to be minimal. However, the aim of this consultation is to fully explore the impact of the proposals on business and civil society organisations.				
Impact on HMRC or other public sector delivery organisations	There will be nil additional operational cost to HMRC.				
Other impacts	These proposals should have no impact on small or micro businesses. These proposals should free up more LCF funds for community projects.				

Q17: Do you think these measures would impact disproportionately on those with protected characteristics (as defined under the Equality Act 2010)?

4. Summary of Consultation Questions

Q1: What impact do you envisage an 18 month spending requirement having on your organisation's ability to fund or complete projects using LCF funds?

Q2: At what point should LCF funds be considered 'spent'?

Q3: Would reducing the landfill operator's entitlement to a tax credit in line with the amount of unspent funds held by an EB have a significant impact on the likelihood of the landfill operator to continue to contribute to the LCF? Would this also impact EB's incentives to spend funds?

Q4: How would a 7.5% cap on administrative costs affect your organisation's involvement with the LCF?

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Q11: Have you made significant use of investments using LCF funds? If so, please provide details.

Q12: To what extent would removal of the LCF investment provisions hamper your ability to deliver LCF projects? Please give details.

Q13: Would the removal of Object F from the Landfill Tax Regulations 1996 cause significant problems for your organisation? If so, why?

Q14: What are your views on the requirements to monitor and keep records on assets purchased through LCF funding in perpetuity?

Q15: Are there any other LCF policy areas that need simplifying or reviewing?

Q16: Are there any further reforms of the LCF you think are required? If so, please give details.

Q17: Do you think these measures would impact disproportionately on those with protected characteristics (as defined under the Equality Act 2010)?

5. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

Responses should be sent to Landfill-tax.consultation@hmrc.gsi.gov.uk by 10 June 2015.

Please contact Helen Derbyshire on 03000 588029 if you have any queries.

A summary of the questions in this consultation is included at chapter 4.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC Inside Government. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public

authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentially can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

If you have any comments or complaints about the consultation process please contact:

Oliver Toop, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Relevant (current) Government Legislation

The Landfill Tax Regulations 1996