

**Consultation on the Draft Business  
Improvement Districts (Wales) Regulations 2005**

## Introduction

This consultation paper invites you to make comments on the draft Business Improvement Districts(Wales) Regulations 2005.

## Comments and Questions

You are invited to comment on the draft regulations for Wales and to answer each of the questions we have raised in this paper.

**Responses to this consultation are sought by.....November 2004.  
Responses should be sent to;**

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**Please note that unless a respondent specifically asks that a response be treated as confidential, the department may publish the response or otherwise make it available to the public.**

## Background

In September 2000 the Cabinet of the National Assembly for Wales issued a consultation paper, *“Simplifying the System: Local Government Finance in Wales*, which sought views on ideas for reforming elements of the local government finance system in Wales. A separate consultation paper, *“Modernising Local Government: A Green Paper* considered the case for reform in England.

*“Simplifying the System”* set out ideas for a supplementary business rate and partnership arrangements between local authorities and the business community. Responses to the consultation showed that opinion was divided on these proposals. Local Government welcomed them as a step in the right direction but expressed concerns that the administrative burden might outweigh the benefits. There was some support for a return of business rates to local authority control, but business on the other hand was strongly opposed to the additional tax.

In the light of the responses received the Welsh Assembly Government gave further consideration to options for encouraging stronger partnerships between local government and business. The policy statement *“Freedom and Responsibility in Local Government”* set out the basic principles of Business Improvement Districts. As there was little consensus for a return to local business rates, the Welsh Assembly Government decided to seek powers in the Local Government Bill to enable the introduction of Business Improvement Districts in Wales.

Business Improvement Districts are a partnership between local authorities and local businesses to provide additional services or improvements to a specified area. This is funded in whole or in part by a levy additional to the non domestic rates. The BID proposer would develop a proposal for the additional services or improvements that were required and the cost to the ratepayers. All ratepayers in the BID area would vote on the proposals in a ballot. Approval for the proposal in the ballot will have to meet two tests: Firstly a simple majority of those voting in the BID ballot must vote in favour. Secondly, those voting in favour must represent a majority by rateable value of the hereditaments (rateable properties ) of those voting. This “dual-key” mechanism offers some protection against large firms forcing through a proposal against the wishes of small firms, or vice versa.

The Bill received royal assent in September 2003 and became The Local Government Act 2003, part 4 sets out the legislative framework for BIDs in Wales. Part 4 is reproduced at Annex A. The Act can be accessed on the HMSO website at <http://www.legislation.hmso.gov.uk/acts/acts2003/30026--h.htm#41>

## Welsh Assembly Government

In addition the Government produced a Regulatory Impact Assessment (RIA) to accompany the Bill and this was updated at Royal Assent, a copy is included at Annex B..

In England the Government has been working closely with the Association of Town Centre Management (ATCM) to develop the BID idea in England. They produced a guidance document which provided a description of the options and the issues that needed to be considered in developing a BID. The Welsh Assembly Government set up a tripartite working group to develop ideas for BIDs in Wales and the English guidance document was adapted for use specifically in Wales. We consulted on this in November 2003.

In England the Association of Town Centre Management are managing a national pilot project for the ODPM to test the BID model. As part of this national project the minister agreed that a BID pilot could go ahead in Swansea to test the BID model in Wales. There are 21 pilot projects in England and 1 in Wales. The Swansea pilot is progressing and the BID hopes to go to the ballot in the autumn of 2005. Information about the pilot schemes can be found on the ATCM website at: <http://www.ukbids.org/>

The responses to the consultation on the guidance included some suggestions for improving the guidance document and for the BID regulations. A copy of the draft guidance document that was produced can be accessed on the Assembly website at <http://www.wales.gov.uk/subilocalgov/toc-e.htm#guide> for information. However in the light of developments on BIDs since this, responses to the consultation, what we are learning from the pilot schemes and the development of the regulations it will be necessary to redraft the guidance document in due course. This will be done once the regulations are finalised.

## **The Regulations**

The Local Government Act 2003 sets out the legislative framework for BIDs, annex A refers The primary legislation contains provision for regulations to be made to define the arrangements for specific areas such as the voting procedures, BID ballot arrangements, application of the veto, the BID revenue account etc.

We sought views on the draft regulations for England and responses to this consultation are summarised at annex C.

As far as possible it is the intention to allow the BID as much scope as we can but at the same time offering a fair system to all, safeguarding those involved in the partnership and BID money. By regulating for the ballot procedures, the right of veto, the BID revenue account etc, we can protect ratepayers, local authorities and BID revenue. We can ensure that the voting process is conducted fairly, powers of veto are only exercised when absolutely necessary and to protect members of the community outside of the BID who cannot vote for or against it. Also the BID money is properly collected and accounted for. In terms of who can propose a BID, managing the BID, defining the BID area, setting the BID levy etc we have tried to leave all of these details to the BID itself.

They have been drawn up with this in mind.

The next pages provide a summary of each regulation and questions. A copy of the draft regulations is at annex D and a Regulatory Appraisal at annex E. It is intended that when the guidance document is redrafted this will compliment the regulations. It will provide help and advice on setting up a BID in Wales and where to get further help and possible sources of additional funding.

Taking on board the comments made in the consultation regarding the difficulties smaller BIDs might face, it is also intended to look at producing examples and toolkits to assist BIDs. Particularly those which do not have the experience or resources available, with things like producing the business plan and BID proposals, consulting with ratepayers etc.

## **BID Process**

Before summarising the regulations, for those unfamiliar with the BID process the following aims to give an idea of how the process of setting up a BID will work.

An idea for a BID will exist and someone or a group or company will draw up the idea as BID proposals. They are the BID proposer. Before the proposals are voted on they are known as the BID proposals once they have been accepted in a ballot they will become the BID arrangements, the regulations stipulate when the BID arrangements commence. The regulations stipulate

who can propose a BID. They can be a non domestic ratepayer, someone with an interest in the land, a corporate or unincorporate body or the local authority. BID proposals must stipulate the matters contained in the regulations such as, the project to be delivered, services to be provided, the cost of the project, the cost of the levy to ratepayers, area of BID, duration of the BID etc.

The proposals for the BID will be drawn up and then be voted on in the ballot. The billing authority has a power to veto the BID proposals in certain circumstances and these are defined in the regulations. Before going to ballot, the BID proposer must be able to demonstrate that at least 20% of the businesses in the BID area are in support of the BID proposals. So prior to the ballot there will have been consultation with the businesses and other key stakeholders in the proposed BID area. The BID proposals must also be notified to the local authority. This is to ensure that a dialogue takes place between the BID proposers, local authorities and businesses involved at an early stage. It will avoid unnecessary costs being incurred if the ballot fails or if the local authority at a later stage has to veto the BID proposals because they are in disagreement with plans or policies for the local area. The regulations also stipulate when a local authority can apply its powers of veto.

The proposals will then be put to the ballot and the regulations define in detail what the proposal document should contain, when ratepayers should be notified of its contents and the procedures and timescale for the ballot. The billing authority will pay for the cost of the ballot except where the ballot is declared void because of the actions of the BID proposer.

If the ballot is successful, the BID proposals will become formal BID arrangements and the BID will commence.

The billing authority will then arrange for the billing and collection of the levy and will collect the BID levy from ratepayers as it does now with non domestic rates. The BID levy must be paid into the BID Revenue Account held by the local authority. The regulations stipulate the arrangements for the BID Revenue account. It is intended that the rules that apply to the collection and the enforcement of the non domestic rate will apply to the BID levy in the same way and so the BID regulations link to the rating legislation.

It is the intention that a BID will run for a specific period but no longer than 5 years without a rebalot. The regulations also stipulate the rules for a re ballot if the BID arrangements change, who pays the costs of the ballot and the termination arrangements of the BID.

## **Notes on Regulations and Questions**

### **Regulation 1 – Application, name, commencement and interpretation**

This regulation defines the commencement date for the BID regulations and the definition of the terms used in the regulations. A key definition is that of the BID body. The BID body is the body responsible for implementing the BID and whilst the guidance note suggests that this could be in the form of a company limited by guarantee that is just one option available to the body.

**1. Is the definition of the BID body adequate are any other definitions needed?**

**2. Should the BID body include at least 50% from the private sector?**

### **Regulation 2 – Obtaining Information from the billing authority for the purpose of developing BID proposals**

This regulation addresses one of the biggest issues raised by stakeholders.

In order to develop a BID it will be necessary for BID proposers to have access to information in the local authority rating list. Much of this information is publicly available from the VOA website although it is not an easily accessible format. Where the rating list has personal information on individuals (sole traders' etc ) this information is protected by the Data Protection Act (DPA).

This regulation gives powers to billing authorities to make available, for the purpose of a BID, information from the rating list, namely the name and address of the ratepayer and the rateable value. They may make this available to the BID proposer, the Ballot holder and to other interested parties.

Extracting this information from the rating list might incur a cost to the billing authority. As a result they have the discretion to charge for this service.

The regulation also clearly limits the use of this information to matters concerned with developing BID proposals.

**3. Do you feel it is essential for BID proposers to have access to this information?**

### **Regulation 3 – BID Proposer**

This defines the persons who can draw up BID proposals. A BID Proposer can be ;  
BA; NDR ratepayer; person with an interest in the land; body who wishes to develop BID proposals. It is expected that generally the business community

will take the lead in proposing BIDs but by including a broad definition, this regulation allows a wide number of groups to take the lead in developing a proposal. Proposers must be in the BID area.

**4. Do you think anyone else should be included in the definition?**

**5. Does the BID proposer have to be in the BID area?**

**Regulation 4 – BID Proposals, renewal proposals ,alteration proposals and preliminary procedures.**

This regulation sets out what the BID proposer must do before going to a ballot and what must be contained in the BID proposals. The content of the BID proposal document is set out in schedule 1 to the regulations.

This regulation and schedule 1 aims to ensure that discussion takes place between the BA and local business at an early stage thus avoiding the need for the veto to be exercised at a later stage. It provides the opportunity for the BID proposer to demonstrate they have support for the proposal and provides sufficient information to the ratepayer so that they can feel confident and forms the basis of the BID arrangements. It should ensure that the BID is well thought out, costed and defined. It should prevent an ill conceived proposal from going to ballot.

**Schedule 1 – Content of BID Proposals, renewal proposals or alteration proposals.**

The BID proposal defines almost all aspects of the BID. Schedule 1 lists the key elements to be included.

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- a) the projects or services
- b) the baseline services
- c) business plan
- d) geographical area
- e) ratepayers and the nature of the levy
- f) reliefs
- g) alteration
- h) duration
- i) commencement

In addition to the proposal regulation 3 also sets out the additional actions that a BID proposer must take and the supporting evidence that must be given to the billing authority before the BID goes to ballot.

For example the proposal must contain evidence that consultation has taken place with ratepayers and that 20% of ratepayers feel that the proposal should

go to a ballot. We understand that most of the BID pilot projects are aiming to gain a higher percentage of support before going to the ballot so this percentage should be achievable.

The BID proposer must also demonstrate that they have sufficient funds to cover the cost of the ballot. This does not mean they have to pay the ballot costs. In most circumstances the billing authority will pay for the cost of the ballot, however, once the BID arrangements come into force the billing authority could charge the BID for the cost of the ballot, if this was stated in the proposal. If the ballot is declared void and the Welsh Assembly has issued a notice stating that the reason the ballot was void was because of a material irregularity caused by the actions or omissions of the BID proposer, then the BID proposer will pay the ballot costs.

**6. Do you agree that schedule 1 contains sufficient information for the ratepayer to be able to decide how to vote on the proposals in the ballot?**

**7. If not what additional information do you think the proposal should contain?**

**8. Should there be a threshold of support in the ballot below which the BID proposer pays for the cost of the ballot rather than the billing authority?**

#### **Regulation 5 – Instructions to hold a ballot, renewal ballot, alteration ballot or re ballot**

A billing authority must hold a ballot when asked to do so, but it must be satisfied that the BID proposal complies with regulation 3 and schedule 1. A ballot will only be held if the BID proposals submitted meet the requirements in schedule 1 and regulation 3. These criteria mean that ballots will only proceed if they have a reasonable chance of being successful.

**9. Do you have any comment on regulation 4.**

#### **Regulation 6– the Ballot Holder**

This regulation defines the ballot holder. The returning officer for the local authority is the “ballot holder”. In many cases this is the Chief Executive and as returning officer in local elections they have individual accountability for the conduct of the election. They also charge for the services in an individual capacity. For BID ballots, the ballot holder may delegate the tasks to other people. By making provision in the regulations that the ballot is conducted by the returning officer, this aims to ensure that the ballot is conducted in line with other voting procedures and is seen to be conducted fairly.

**10. Do you have any comments on Regulation 6?**

## **11. Is there anyone else who could carry out the ballot procedures?**

### **Regulation 7 and Schedule 2 – Arrangements for Holding the Ballot and Conduct of the Ballot.**

This regulation defines the arrangements for holding a ballot and sets out the key steps and key times.

The Ballot holder must hold a ballot in accordance with the rules set out in **Schedule 2 of the regulations.**

The following procedures are defined by the regulations;-

The BID Proposer must send details of the BID proposals to the National Assembly six weeks before the notification of the ballot that they wish to hold a ballot. It must send a copy of the proposals to the billing authority and details of the consultation with the businesses that will be liable for the BID levy.

The ballot holder must publish the notice of the ballot and advise eligible voters and the billing authority and the National Assembly of the date of the ballot. The notice and the BID proposal must be sent to the ratepayers 42 days before the day of the ballot.

Ballot papers must be sent to all eligible ratepayers 28 days before the day of the ballot.

The ballot closes at 17:00hrs on the day of the ballot. This must be at least 28 days after the ballot papers were sent to voters and at least 42 days after the notice of the ballot and no later than 90 days from the date of the notice of the ballot.

The commencement date is the day on which the BID arrangements come into force and the ratepayers become liable for the levy. This must be no later than 365 days after the date when the BID proposer first submits the BID proposals to his billing authority.

## **12. Do you agree with the timescales?**

## **13. Are the ballot procedures fair and transparent?**

### **Regulation 8 – person entitled to vote**

This regulation defines the people entitled to vote in the BID ballot. The person entitled to vote is the non domestic ratepayer in the defined area on the day of the notice of the ballot. The BID proposer can obtain information from the billing authority to ensure the accuracy of the rating list.

The ballot papers must be sent to the addressee on the rating list. Where a businesses rate demand is sent to its head office or an accountant or a rating surveyor, the company would need to make arrangements to get the ballot papers to the person who it would wish to vote in the ballot.

**14. Do you agree that the definition of the person entitled to vote in the ballot is reasonable?**

**Regulation 9 – declaring a ballot void**

This regulation gives power to the National Assembly to declare a ballot void and defines when this can occur.

A ballot can be declared void if there is a material irregularity (a significant breach of the rules). It can only be declared void if the appellant writes to the Assembly within 28 days of the notice of result of the ballot. The regulation also defines the appellant who can be the billing authority, BID proposer or a group of at least 20 people entitled to vote in the ballot.

The National Assembly will write to the BID proposer with the result of the appeal and if it was voided because of actions of the BID proposer it may make BID proposer liable for costs. The complaint process should only be used to complain about an alleged irregularity in the ballot. It cannot be used to complain because a person does not support the proposal.

**15. Is the 28 day time limit appropriate?**

**Regulation 10 – Payment of cost of a ballot**

This is explained in the note on Regulation 3 and Regulation 8. It is worth repeating that the BID proposal can specify that the cost of the BID ballot will be recovered from the BID levy but obviously this can only take effect if the ballot is successful and a levy is subsequently collected.

**16. Is it reasonable that the BID proposers only pay for the ballot under these specific conditions?**

**Regulation 11 – inspection of billing authority records and restrictions on use**

This regulation addresses one of the biggest issues raised by stakeholders.

In order to develop a BID it will be necessary for BID proposers to have access to information in the local authority rating list. Much of this information is publicly available from the VOA website although it is not an easily accessible format. Where the rating list has personal information on individuals (sole traders' etc ) this information is protected by the Data Protection Act (DPA).

This regulation gives powers to billing authorities to make available, for the purpose of a BID, information from the rating list, namely the name and address of the ratepayer and the rateable value. They may make this available to the BID proposer, the Ballot holder and to other interested parties.

Extracting this information from the rating list might incur a cost to the billing authority. As a result they have the discretion to charge for this service.

The regulation also clearly limits the use of this information to matters concerned with developing BID proposals and canvassing people entitled to vote.

**17. Do you feel that it is essential for the BID proposers to have access to this information?**

**Regulation 12 - Veto of BID proposals**

Billing authorities will have the power to Veto BID proposals in certain circumstances. This regulation defines when this can be exercised and in what timescale.

The criteria already laid down in regulations 2 and 3 aim to ensure that early talks take place between the business community and the local authority in developing the BID proposals. The billing authority will have published plans and documents outlining policies and duties relating to their strategic aims, planning, city centre management, service provision, economic and business development and duties towards residents etc. The veto can be exercised if any of the plans is in conflict with the BID proposals or if the BID places an unnecessary financial burden on any person or class of persons, compared to other ratepayers in the geographical area of the BID.

The local authority has been given the power to Veto the BID proposals so that the interests of other people in the BID area are protected and that they are not adversely affected by the changes being made as a result of the BID. Also to protect ratepayers if the determination of the BID levy is unfair. In practice the Veto should be rarely used as the early dialogue between businesses and the local authority will mean that the BID should be aware of any concerns that the billing authority has, however the power to Veto has been given as a last resort.

The power of veto must be exercised within 14 days of the date of the ballot.

The local authority must also take into account certain factors when preparing to veto the BID plans. They are that the level of support for the BID has been considered, that the nature and conflict of the plans with the BID, the structure of the levy and how the financial burden is to be distributed amongst other ratepayers in the area, the extent of the discussions that took place with the BID proposers and the local authority in the beginning and the costs involved in developing and canvassing the BID proposals.

**18. Is the criteria set out in this regulation sufficient to enable the local authority to make the right decision in exercising the veto?**

**19. Is the timescale sufficient?**

**20. What do you think should happen if the BID spans more than one local authority area, which local authority should have the power of veto?**

### **Regulation 13 – Appeal against the Veto.**

This regulation sets out who can appeal against the veto. Any person may appeal to the Assembly against the BID proposals within 28 days of the Veto notice. In addition to the criteria followed by the billing authority in deciding whether to veto a BID, the Assembly will also consider whether the local authority changed any plans after it received a request to hold the ballot which then meant that the BID conflicted with the local authority plans.

**21. Do you think that this is fair?**

**22. Do you think that the timescales are sufficient?**

### **Regulation 14 – BID Revenue Account**

This regulation sets out the arrangements for the handling of the BID levy when collected by the billing authority.

The idea is that the billing authority will act as a conduit for the money to the BID body. The powers are designed so that they work if the billing authority passes over the money to the BID body and also in the circumstances when the billing authority will itself deliver the BID arrangements.

The billing authority must set up a BID revenue account for each BID by the date the BID arrangements come into force. The billing authority will collect the BID levy and pay this into a separate BID revenue account separate from other income. The billing authority can make credits to the account from the BID levy and voluntary contributions. It can debit the account with the agreed costs to implement the BID arrangements and this will be the transfer of money to the BID partnership and also for billing authority expenditure in respect of the BID arrangements. When BID arrangements come to an end any outstanding sums over £5,000 must be returned to ratepayers. Amounts under £5,000 can be returned to the billing authority general fund.

Schedule 3 defines the arrangements for the management of the BID revenue account. We have copied the English model here which was developed from a series of meetings with revenue managers.

**23. Do you think that regulation 14 makes adequate provision for the management of the BID revenue account?**

## **24. Should any other matters be considered?**

### **Regulation 15 – Administration of BID Levy etc**

Regulation 14 provides for the local authority to administer, collect, recover and apply the BID levy using the NDR system.

The regulations do not follow all of the NDR regulations. For example there is no automatic procedure to determining the BID levy and no right of appeal against the levy although this could be stipulated in the BID arrangements. The regulations do not specify how the levy is determined that is left to the BID to decide and will have been detailed as part of the BID proposals voted on and become the BID arrangements if approved at ballot. It can be determined based on RV or by a fixed or variable levy, the guidance notes provide some examples on this.

There is no right of appeal against the levy and so this must be in the BID arrangements. There are no powers currently in the NNDR system to deal with appeals against the levy so the BID will have to stipulate any rights of appeal to the levy in the BID arrangements, or to deal with splits and mergers or a revaluation.

Schedule 4 sets out the specific details and picks up on aspects of the rating regulations and attempts to translate these into practical steps for billing collection and enforcement of the levy.

The regulations therefore only work on the basis that;-

The basis of the BID levy is decided according to the method determined by the BID and set out in the BID arrangements.

There is no official right of appeal against the levy although the BID could allow for this in the BID arrangements to ensure these matters are handled fairly.

The levy can be imposed as an annual fee without instalments or reliefs, depending on the specification in the arrangements.

## **25. Does regulation 15 give sufficient power to the billing authority to administer the BID levy effectively?**

## **26. Should any other issues be included?**

### **Regulation 16 – Alteration of BID arrangements without an alteration ballot.**

This regulation sets out when BID arrangements can be changed without a new ballot taking place.

Any alteration of the bid arrangements can only be made without a new ballot if the BID arrangements allow for this. The regulation limits what can be altered without a ballot. They do not allow for alterations to the geographical

area of the BID, make additional classes of ratepayer liable for the BID levy or alter the levy by more than 5% over the period of the BID.

It might be necessary to alter the BID arrangements as the BID progresses and so if these changes increase the services or streamline a process it seems unnecessary to hold a ballot. The regulation provides a safeguard so that the levy cannot rise unexpectedly unless of course the arrangements stipulate that it will increase by say inflation each year.

It also ensures that there is adequate consultation between the ratepayers and the BID body before any alteration takes place.

**27. Does regulation 16 give enough flexibility to alter a BID in response to changing circumstances without an alteration ballot being needed and without compromising the BID arrangements?**

**Regulation 17- Alteration of BID arrangements following a Ballot.**

This sets out the alteration of BID arrangements following a ballot. If the BID arrangements need to be altered to change the geographical area of the BID or say the levy, i.e. those things that are limited by regulation 15, then an alteration ballot will need to be held. The ballot rules are the same for an alteration ballot.

**28. Does this regulation offer enough protection for ratepayers?**

**Regulation 18 – Termination of the BID arrangements.**

This regulation sets out when the billing authority or BID body can terminate the BID arrangements. The BA can terminate the BID arrangements if there is insufficient money to meet the BID liabilities and after discussion with the BID body and ratepayers there is no solution to be reached. The BID body can terminate the arrangements if the services are no longer required or there are circumstances beyond its control and it has consulted with the billing authority and business community.

28 days notice must be given of any termination. The billing authority must notify ratepayers of any termination and make any necessary repayments of the BID levy.

There will be circumstances where the BID must be terminated. This regulation is defined so that the BID or the Local authority can terminate the BID in certain circumstances. In all circumstances there needs to be a dialogue with ratepayers, the BID body and the billing authority before the decision is made to terminate the BID.

**29. Do you agree with regulation 18?**

**30. If not what alternative method should be available to satisfy the ratepayers, the local authority and the BID?**

**Regulation 19 – Information**

This regulation allows the exchange of information with the ballot holder to allow him to carry out his duties. The billing authority must supply any information to the ballot holder that he requires to hold the BID ballot. The ballot holder needs to have access to the names and addresses of those persons eligible to vote so the billing authority must supply this information to the ballot holder.

**30. Do you agree with regulation 19?**

**Regulation 20 – Expenses of the ballot holder**

The expenses of the ballot holder are paid by the billing authority. These can be recouped from the BID, if this was agreed in the BID arrangements, or from the BID proposer, if regulation 9 is applied.

**31. Are you content with the arrangements for the costs of the ballot?**

**Regulation 21 - Electronic communication of requests, applications or notices**

This regulation allows for the electronic communication in certain circumstances where the regulations require a request to be made in writing except when serving a notice or demand for the BID levy under Schedule 4.

**32. Do you agree with regulation 21?**

## Local Government Act 2003

### PART 4 BUSINESS IMPROVEMENT DISTRICTS

#### BID arrangements

##### **41 Arrangements with respect to business improvement districts**

(1) A billing authority may in accordance with this Part make arrangements ("BID arrangements") with respect to an area (a "business improvement district") comprising all or part of the area of the authority.

(2) The purpose of BID arrangements is to enable-

(a) the projects specified in the arrangements to be carried out for the benefit of the business improvement district or those who live, work or carry on any activity in the district, and

(b) those projects to be financed (in whole or in part) by a levy ("BID levy") imposed on the non-domestic ratepayers, or a class of such ratepayers, in the district.

##### **42 Joint arrangements**

(1) The Secretary of State may by regulations make provision for or in connection with enabling two or more billing authorities to make BID arrangements with respect to a business improvement district comprising all or part of the area of each of the authorities.

(2) The provision which may be made by regulations under this section includes provision which modifies any provision made by or under this Part in its application to such arrangements.

##### **43 Additional contributions and action**

(1) The persons specified in subsection (2) may make financial contributions or take action for the purpose of enabling the projects specified in BID arrangements to be carried out.

(2) Those persons are-

(a) the billing authority which has made the arrangements,

(b) a county council or parish council any part of whose area falls within the business improvement district, and

(c) any other person authorised or required to do so in accordance with the arrangements.

##### **44 Duty to comply with arrangements**

Where BID arrangements are in force, the billing authority which made the arrangements must comply with them.

##### **45 BID levy**

(1) BID levy is to be imposed in a business improvement district only for periods ("chargeable periods") falling within the period in which BID arrangements are in force in respect of the district.

(2) The length of any chargeable period, and the day on which it begins, are to be such as may be specified in the BID arrangements.

(3) The amount of BID levy for any chargeable period-

(a) is to be calculated in such manner as may be provided in the BID arrangements, and

(b) may be different for different cases.

#### **46 Liability for BID levy**

(1) BID arrangements must specify the description of non-domestic ratepayers in the business improvement district who are to be liable for BID levy for a chargeable period.

(2) A person is to be liable for BID levy for a chargeable period if he falls within that description at any time within the period.

(3) The amount of a person's liability for BID levy for any chargeable period is to be determined in accordance with the BID arrangements.

(4) Any amount of BID levy for which a person is liable is to be paid to the billing authority which made the arrangements.

#### **47 BID Revenue Account**

(1) A billing authority which has made BID arrangements must, in accordance with proper practices, keep an account, to be called the BID Revenue Account.

(2) Amounts paid to the authority by way of BID levy must be credited to the BID Revenue Account.

(3) Amounts are to be debited to the BID Revenue Account only in accordance with BID arrangements.

(4) The Secretary of State may by regulations make further provision in relation to the BID Revenue Account.

#### **48 Administration of BID levy etc**

(1) The Secretary of State may by regulations make provision with respect to the imposition, administration, collection, recovery and application of BID levy.

(2) The provision which may be made by regulations under this section includes provision-

(a) corresponding to any provision which may be made by regulations under section 50 or 63 of, or Schedule 9 to, the Local Government Finance Act 1988 (c. 41) (joint owners or occupiers, death and administration of non-domestic rating);

(b) modifying or applying with modifications any provision made by regulations under any of those provisions.

(3) Nothing in subsection (2) is to be taken as limiting the power conferred by subsection (1).

#### **49 BID proposals**

(1) BID arrangements are not to come into force unless proposals for the arrangements ("BID proposals") are approved by a ballot of the non-domestic ratepayers in the proposed business improvement district who are to be liable for the proposed BID levy.

(2) The Secretary of State may by regulations make provision-

(a) as to the persons who may draw up BID proposals,

(b) as to the procedures to be followed in connection with the drawing up of BID proposals,

(c) as to the matters to be included in BID proposals, and

(d) as to the date which may be provided under BID proposals for the coming into force of BID arrangements which give effect to the proposals.

#### **50 Approval in ballot**

(1) BID proposals are not to be regarded as approved by a ballot held for the purposes of section 49(1) unless two conditions are satisfied.

(2) The first condition is that a majority of the persons voting in the ballot have voted in favour of the BID proposals.

(3) The second condition is that A exceeds B.

(4) A is the aggregate of the rateable values of each hereditament in respect of which a person voting in the ballot has voted in favour of the BID proposals.

(5) B is the aggregate of the rateable values of each hereditament in respect of which a person voting in the ballot has voted against the BID proposals.

(6) For the purposes of subsections (4) and (5), the rateable value of a hereditament is that shown on the day of the ballot under section 42(4) of the Local Government Finance Act 1988 (c. 41).

### **51 Power of veto**

(1) This section applies where BID proposals are approved by a ballot held for the purposes of section 49(1).

(2) The billing authority to which the proposals relate may, in prescribed circumstances, veto the proposals within such period from the date of the ballot as may be prescribed.

(3) In deciding whether to exercise the veto, a billing authority is to have regard to such matters as may be prescribed.

(4) If a billing authority vetoes BID proposals, it must give notice of the exercise of the veto to the persons entitled to vote in the ballot.

(5) The notice-

(a) must set out the reasons for the exercise of the veto, and

(b) must give details of the right of appeal under section 52.

(6) A copy of the notice must be sent to the Secretary of State.

### **52 Appeal against veto**

(1) Where a billing authority vetoes BID proposals, any person who was entitled to vote in the ballot may appeal to the Secretary of State.

(2) The Secretary of State may by regulations make provision in relation to appeals under this section, including provision-

(a) as to the time by which an appeal is to be made,

(b) as to the manner in which an appeal is to be made,

(c) as to the procedure to be followed in connection with an appeal, and

(d) as to the matters to be taken into account in deciding whether to allow an appeal.

### **53 Commencement of BID arrangements**

(1) This section applies where BID proposals are approved by a ballot held for the purposes of section 49(1).

(2) The billing authority concerned must ensure that BID arrangements which give effect to the proposals are made by the time the arrangements are to come into force in accordance with this section.

(3) Subject to subsection (4), the BID arrangements are to come into force on such day as may be provided under the BID proposals.

(4) If the BID proposals are vetoed under section 51, BID arrangements which give effect to the proposals are not to come into force unless the Secretary of State allows an appeal against the veto under section 52.

(5) Where the Secretary of State allows such an appeal, BID arrangements which give effect to the proposals are to come into force on such day as the Secretary of State may determine.

(6) The day determined under subsection (5) must not be earlier than the day mentioned in subsection (3).

(7) Before making a determination under subsection (5), the Secretary of State must consult-

- (a) the billing authority concerned, and
- (b) such persons as appear to him to be representative of the non-domestic ratepayers who are to be liable for the proposed BID levy.

#### **54 Duration of BID arrangements etc**

(1) BID arrangements are to have effect for such period (not exceeding 5 years) as may be specified in the arrangements.

(2) BID arrangements may be renewed for one or more periods each of which must not exceed 5 years, but only if the renewal of the arrangements on that or each occasion is approved by a ballot of the non-domestic ratepayers in the business improvement district who are liable for the BID levy.

(3) The renewal of BID arrangements is not to be regarded as approved by a ballot held for the purposes of subsection (2) unless the two conditions in section 50 which apply to the approval of BID proposals are satisfied in relation to the renewal of the arrangements.

(4) The Secretary of State may by regulations make provision-

- (a) as to the alteration of BID arrangements, and
- (b) as to the termination of BID arrangements.

(5) The provision which may be made by virtue of subsection (4)(a) or (b) includes provision preventing or restricting the alteration or early termination of BID arrangements.

(6) Nothing in subsection (5) is to be taken as limiting the power conferred by subsection (4).

(7) No regulations under subsection (4) shall be made by the Secretary of State unless a draft of the statutory instrument containing the regulations (whether containing them alone or with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.

#### **55 Regulations about ballots**

(1) The Secretary of State may by regulations make provision in relation to ballots.

(2) The provision which may be made by regulations under this section includes provision-

- (a) as to the timing of ballots;
- (b) as to the non-domestic ratepayers entitled to vote in a ballot;
- (c) as to the question to be asked in a ballot;
- (d) as to the form that ballots may take;
- (e) as to the persons who are to hold ballots;
- (f) as to the conduct of ballots;
- (g) conferring power on the Secretary of State to declare ballots void in cases of material irregularity;
- (h) for or in connection with enabling a billing authority to recover the costs of a ballot from such persons and in such circumstances as may be prescribed.

(3) Nothing in subsection (2) is to be taken as limiting the power conferred by subsection (1).

(4) No regulations under subsection (1) which include provision of the kind mentioned in subsection (2)(b) shall be made by the Secretary of State unless a draft of the statutory instrument containing the regulations (whether

containing them alone or with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.

(5) In this section "ballot" means a ballot held for the purposes of section 49(1) or 54(2).

#### **56 Power to make further provision**

(1) The Secretary of State may by regulations make such supplementary, incidental, consequential or transitional provision as he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this Part.

(2) The provision which may be made under subsection (1) includes provision amending any enactment (whenever passed or made).

(3) No regulations under subsection (1) which include provision amending an Act shall be made by the Secretary of State unless a draft of the statutory instrument containing the regulations (whether containing them alone or with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.

#### **57 Crown application**

This Part binds the Crown.

#### **58 Wales**

(1) Sections 54(7), 55(4) and 56(3) do not apply in relation to Wales.

(2) In their application in relation to Wales-

(a) the remaining provisions of this Part have effect as if for each reference in those provisions to the Secretary of State there were substituted a reference to the National Assembly for Wales, and

(b) section 43(2)(b) has effect as if for the reference to a county council or parish council there were substituted a reference to a community council.

#### **59 Interpretation of Part 4**

(1) In this Part-

"BID arrangements" and "BID levy" have the meaning given by section 41; "billing authority" means-

(a) in relation to England, a district council, a unitary county council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly; and

(b) in relation to Wales, a county council or county borough council;

"business improvement district" has the meaning given by section 41;

"enactment" includes an enactment contained in a local or private Act or comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));

"non-domestic ratepayer", in relation to any area, means a person subject to a non-domestic rate under section 43 or 45 of the Local Government Finance Act 1988 (c. 41) (liability to non-domestic rates) because he is the owner or occupier of a hereditament situated in that area;

"prescribed" means prescribed by regulations made by the Secretary of State;

"unitary county council" means a county council that is the council for a county in which there are no district councils.

(2) Other expressions which are used in this Part and in Part 3 of the Local Government Finance Act 1988 (non-domestic rates) have the same meaning in this Part as they have in that Part.

## **Local Government Act 2003**

### **Regulatory Impact Assessment**

#### **Purpose and intended effect**

The intention to introduce Business Improvement Districts (BIDs) in England was announced in April 2001. BID schemes will provide local authorities and local businesses with the opportunity of working together to put in place projects to improve their local area.

The BID would consist of a partnership between local authorities and local business for additional services and improvements. These would be funded by a levy raised through an additional levy on the business rate. The details of each BID scheme, including the nature of the improvements and the size of the addition to the rates, will be for the businesses affected to agree upon. They would vote in a referendum upon the agreed proposal. BIDs will therefore reflect the concerns of business.

Much of the detail of individual BIDs will be left to be agreed between local councils and businesses. This will provide each local area with the flexibility to introduce improvements suited to their local needs. All businesses within the BID area which would be liable for the BID levy would have a vote to decide whether or not the scheme went ahead. This vote would be conducted through a dual voting mechanism. A majority in a vote would constitute a majority of businesses voting and a majority of the total rateable value of those businesses. If a majority were in favour all ratepayers in the area would contribute to the cost of the scheme. If the majority were against, then the scheme would not go ahead.

Primary legislation will be needed to give authorities power to enter into BIDs, to give the statutory framework for BIDs, to provide for balloting and appeal procedures in relation to BIDs, and to allow for the levying, collection and enforcement of the BID levy.

These proposals are intended to provide businesses with a greater say in the improvements to be undertaken in their area where they are prepared to pay for them.

#### **Risks**

Business Improvement Districts encourage businesses to participate in improving their local area in partnership with local authorities. Currently there is no formal legislation allowing money to be levied on the business rate for these purposes.

#### **Options**

Before provision was made to include Business Improvement Districts in the White Paper *Strong Local Leadership - Quality Public Services*, the option of introducing a supplementary business rate was considered.

The supplementary rate was a proposal which would have allowed the local authority to raise a levy on its ratepayers equal to no more than 5 per cent of the business rate. But before the levy could be raised the authority would first have had to establish an agreed partnership arrangement with local businesses, and the decisions on the spending of the income from the levy would have been made through this partnership arrangement.

Business Improvement Districts is a scheme which can be initiated by businesses, the local authority or any stakeholder in a local community. The levy to be raised is approved by business and the way in which the money is spent is agreed on in advance.

Full details of the benefits and costs of each of these options are set out below.

## **Benefits**

### *The Supplementary Rate*

The Green Paper *Modernising Local Government Finance* (September 2000) set out proposals for a supplementary rate which could be levied in addition to the business rate. The aim was to encourage local authorities to form partnerships with local businesses as well as giving local authorities the freedom to vary the rate. This was intended to allow local authorities greater scope to invest in community projects. It was also aimed at encouraging partnership between local authorities and local businesses.

However, from their responses to the Green Paper it is clear that many local authorities saw the supplementary rate as primarily a means of raising revenue, and the requirement to have a partnership agreement was seen as a burden on the resources of local authorities. The 'cost' seemed disproportionate to the additional revenue the supplementary rate would generate. Businesses felt that they would have no means of avoiding the supplementary rate once they had entered into partnership agreements. They therefore thought that businesses would vote against the partnership arrangements and thus the supplementary rate could become an obstacle to partnership working, rather than facilitating it. There was also a real risk that the supplementary rate powers would not be used in many areas of the country.

### *Business Improvement Districts*

Business Improvement Districts address these problems. BIDs can be driven by the business community to effect changes that will benefit them in their local community. BIDs give businesses the opportunity to agree on the projects for which they are contributing, the amount of money they are prepared to raise, and can be involved in the administration of the schemes themselves. Similarly, local authorities will no longer have the onus of organising and administering partnership arrangements, as BIDs will be voluntary and may be initiated entirely by the business community or other stakeholder in the area. The costs of setting up and implementing each BID can be agreed as part of the BID levy. Local authorities will not contribute to the costs of BIDs unless they choose to do so. It will therefore be far more cost effective, from the point of view of local authorities, to implement BIDs than the supplementary rate.

BID projects are likely to have benefits for the community and the local authority as well as the business community. For example, the installation of a Closed Circuit TV system in a town centre benefits businesses who are the victims of crime and vandalism, but also protects the local community and provides security for individuals. More widely a BID will be able to contribute towards urban regeneration. Coventry City Company has successfully implemented a scheme in which businesses make voluntary contributions towards the enhancement of the city centre. This has already led to a significant increase in the footfall in the city centre, demonstrating that consumers have noticed an improvement in their environment and business will benefit from a greater number of consumers. In this way BIDs are intended to give businesses the opportunity to be involved in their local communities and direct their contributions far more precisely than a supplement on the business rate would have allowed.

The number of successful voluntary schemes throughout the UK also demonstrates that BIDs could help to produce significant local improvements. Voluntary schemes have worked well but at present some businesses benefit from improvements paid for by others, refusing to make a contribution themselves. This problem of "free-riding" is one of the key reasons for introducing BIDs legislation. The legislation will state that as long as a majority of the ratepayers in the area who vote are in favour of the BID, other ratepayers will be obliged to contribute to receive the same benefits. The introduction of BIDs legislation will ensure that all businesses in an area pay to receive benefits from the BID.

However, the provision made for the flexibility of BIDs in each local area means that it is impossible to quantify the benefits that may arise from each scheme to each section of the community. The fact that each BID will be tailor-made means that the impact it will have on its community could well be unique. Nevertheless, without the aforementioned benefits to business and local communities, the BID would be unlikely to find support.

### *Costs*

The cost of BIDs is difficult to quantify. The projects and services that businesses choose to support through BIDs will be paid for by businesses through the rating system. However, the cost of each BID scheme depends once again on the individual businesses participating. The legislation will give businesses the opportunity to vote on each proposal put forward, and this will include the amount that they are prepared to pay. Under a BID, those who benefit from the improvement will contribute to the cost, even though they may not have been in favour of establishing the BID. This will only occur when the majority of business ratepayers have voted in favour of the proposal. This majority must be both a majority of businesses voting and represent more than 50 per cent of the rateable value of those businesses. In these circumstances it is inappropriate to legislate on the scope or cost of a BID. It can be as modest or ambitious as local businesses want, but whatever is proposed, all ratepayers will have a vote on the proposed BID.

Local authorities are not required to finance BID schemes. Any costs that may occur from implementing and enforcing the BID can be anticipated by the local authority and covered by the levy received from the businesses involved. However, authorities may choose to make a direct contribution to individual

BID schemes from their existing resources, either through expenditure or grants or by the provision of services. Any administrative costs incurred in drawing up proposals to be voted upon can also be met retrospectively by the BID levy, should the proposal be accepted. The administrative costs of proposals that are not successful at the vote will be met by those making the proposal, whether it is the business community or the local authority. However, these administrative costs should be minimal, as neither local authorities nor members of the business community are likely to bring a proposal to the vote if they think it will not be successful. We anticipate that businesses and local authorities will be able to establish whether or not their idea is likely to be supported before the proposal is officially drawn up to be considered for the vote. The guidance issued alongside the legislation on BIDs will fully address the issue of how to form successful partnerships. BIDs will vary in size enormously, and their budgets will vary accordingly. Voluntary schemes in the UK have been funded in many different ways and therefore cannot be used as an accurate representation of the way in which many BIDs would work in practice. The London Circle Initiative, which set up 5 pilot BID-style schemes around London was funded by £4.6 million of the Single Regeneration Budget from the London Development Agency. Although some public sector funding may be available for BIDs, it is unlikely that the majority would have a budget of this scale. Many voluntary area-based initiatives have operated on a far smaller budget, for example, the regeneration partnership for Morpeth - Morpeth Pride are looking at the possibility of raising £150, 000 annually as an absolute maximum, to make changes to their town centre. Morpeth is a small market town, and BIDs will apply to these places on a small scale, rather than on the scale of the Circle Initiative.

The fact that such disparity in size and location of Business Improvement Districts will exist, and the fact that there is no way of anticipating the amount of money businesses will be prepared to devote to BIDs, makes any further estimate of the total cost of BIDs impossible. Inevitably, businesses will refuse to endorse any BID which requires them to pay a sum they cannot afford.

### **Securing Compliance**

BIDs are intended to be versatile. As such each proposal will be agreed by businesses as detailed above and so the issue of cost will be regulated by those who are paying.

The costs of billing, collection and enforcement of BIDs will be the responsibility of the local authority. Once again the additional costs faced by the local authority can be met out of the BID levy.

### **Impact on small businesses**

Businesses have welcomed BIDs as a useful development on the original proposal to introduce a supplementary rate which had been set out in the Green Paper *Modernising Local Government Finance* (September 2000). The interests of small businesses have been considered carefully in relation to BIDs. The dual voting mechanism is designed to ensure that the interests of small businesses are represented in the BID mechanism. First a majority of all

ratepayers voting must vote in favour. Secondly, a majority weighted by the rateable values of the hereditaments of those ratepayers must be in favour of the proposal. This means that a few large businesses cannot secure the establishment of a BID against the wishes of a larger number of small businesses, while maintaining protection for large businesses themselves. The amount that small businesses chose to contribute to a BID scheme will be left to each BID area to decide, and this voting system should ensure that their interests will be effectively represented. It will be possible for smaller businesses to contribute at a lower rate than larger businesses, if that is agreed locally.

## **Consultation**

The 1997 Labour Manifesto said that there were sound democratic reasons for returning business rates to local control, but that no change would be made without first consulting business. Business was strongly opposed to local control of the level of rates, though most local authorities were in favour of it.

The White Paper *Modern Local Government* (July 1998) said the national rate system would be retained, but that local authorities would be given the power to levy a limited supplement of no more than 5 per cent of the national rate to be spent locally on projects agreed with business. As a precondition, local authorities would have to establish partnership agreements with their ratepayers, to establish the use of the supplement.

The Green Paper *Modernising Local Government Finance* (September 2000) detailed proposals for a supplementary rate originally proposed in the White Paper *Modern Local Government* (July 1998). The aim was to encourage local authorities to form partnership arrangements with local business and provide local authorities, in return, with a limited power to vary the business rate, either across the whole authority, or in specified areas.

Both businesses and councils raised concerns about the complexity of the partnership arrangements, and businesses were further concerned that having agreed to such arrangements they would not be able to block the levying of a supplementary rate.

The new BID scheme has taken on board these views, following further discussions with business and local authority groups. BIDs are the successor to the supplementary rate proposal.

The primary legislation for BIDs was the subject of consultation in the summer of 2002 as part of the consultation exercise on the draft Local Government Bill. A summary of the responses on the draft Bill can be found on the internet at [www.local-regions.odpm.gov.uk/consult/bill/responses/index.htm](http://www.local-regions.odpm.gov.uk/consult/bill/responses/index.htm)

In the case of BIDs it was suggested by representatives of property companies and others that property owners who were not ratepayers should have a vote in whether to set up a BID, and in return the owners should be liable for the BID levy. However as noted in the White Paper there are practical difficulties in extending the BID levy to non ratepayers. To do so would require a new tax on property ownership. Instead the Bill allows for contributions by property owners on a voluntary basis, and the guidance on the establishment and working of BIDs will set out how owners can best be

involved: there is clearly already enthusiasm among a number of property owners to be involved.

Another suggestion made by a number of consultees was that for a vote to be valid the numbers voting must exceed a prescribed percentage of those entitled to vote. However the need for such a rule is not clear. There will be ample advance publicity on the BID vote, and for such a vote to succeed two tests will have to be met. First a majority of those voting must vote in favour, and second they must command a majority of the rateable value of those voting.

It was also suggested during the consultation process that the prescribed percentages of rateable value and of voters who must vote in favour for a BID ballot to succeed, should appear in the Bill itself, rather than later prescribed in the secondary legislation. This change will be made, and the prescribed percentages will now appear in Section 50 of the Local Government Act.

### **Monitoring and evaluation**

Businesses will want to monitor and evaluate BIDs to ensure that they are delivering the expected benefits. We expect that measures for monitoring and evaluation will form part of the BID proposal on which businesses will vote initially. In addition, after no more than five years businesses will have to vote for the BID to continue. They will only do so if they are happy with the results of the BID. It will also be possible to make BIDs subject to more frequent review: when setting up a BID it could be agreed that it will be subject to review after perhaps three or four years, or be subject to annual reviews. However, these are not likely to be appropriate in the case of long term schemes requiring significant capital investment.

### **Competition Assessment**

The competition assessment was introduced jointly by the Office of Fair Trading and the Cabinet Office to ensure that new legislation will not make a change in the competitive environment which could lead to a negative effect on the working of markets. In order to ascertain whether there were any competition effects, ODPM carried out the competition filter and found no markets where serious competition concerns were identified.

As participation in BIDs is voluntary and will be implemented and voted on by the whole business community, firms can decide if it is in their interest to join. It is, therefore, highly unlikely that this legislation will change the number or size of businesses. While one firm could choose to contribute more to a BID than others in the area, they will do this voluntarily.

The legislation itself will apply equally to all businesses and will not have a disproportionate effect on new entrants vis a vis incumbents. ODPM therefore believes that this measure will not have any significant effect on competition.

### **Recommendation**

These proposals were set out in the Local Government White Paper *Strong Local Leadership - Quality Public Services* on 11 December 2001 which said it was the Government's intention to implement them.

Summary of comments on the English Regulations.

- how will void properties be treated;
- whether the BID body should be a legal entity;
- the role of property owners in BID and whether the property owner should contribute to the levy where there is no tenant in the property;
- whether the threshold of 20% of support for the BID before the ballot can be held is too high or too low;
- a central BID register should be created to monitor BIDs being set up;
- the six week notification to the SoS of BID proposal, prior to the BID ballot, (so that a BID register can be maintained) is too short a timescale notification should be at least 12 weeks before the ballot;
- ratepayers must receive the necessary information about the BID to make an informed decision, a statement must be given to them about the proposals but the statement must contain the necessary information and the regulations are not specific enough about this;
- BID proposals must distinguish between LA baseline services and services to be funded by the levy. The proposal must clearly set this out and what happens if a third party is sub contracted to supply the services;
- the proposal set out in schedule 1 should include a system of measurement and evaluation, details of others contributing to the BID such as property owners and the structure of the BID who are the responsible officers etc so that its accountability is understood;
- a 60% turnout threshold at the ballot is proposed so that with limited publicity a very small majority could push through a vote. A poor turnout should signify poor communication by those proposing the BID and therefore lack of support for the proposal;
- timing of the ballot and receipt of ballot papers needs consideration to give sufficient time for ratepayers to study the proposals; 28 days for the ballot process should be extended;
- registration of any prospective BID should be 6 months in advance of the ballot;
- there should be recourse to a formal appeal procedure for those unhappy with the procedures in setting up a BID;
- the ballot needs to define the financial amount to be charged for administering the ballot, concerns that some LA's will charge a profitable cost for administering the ballot, BID should not be burdened with costs from its inception, more spent on the ballot means less available for the improvements;
- Inspection of BA records needs to be available and easily accessed in electronic format to those canvassing a BID vote;
- the BID should support the LA Local Plan and this should be clarified before going to vote;
- timescale for appeals against the veto needs amending from 28 days to 42 days;
- administration of the BID levy arrangements is inadequate as it leaves the BID to look at issues relating to empty properties, splits and mergers etc.;

- LA power of termination of BID needs careful consideration so that there is not overwhelming control of the BID;

We also received some general comments that did not relate specifically to the issues raised regarding the regulations. These included the fact that the BID regulations seem to require a lot of resource to be able to comply with the detail contained in them. It is thought that this resource will only exist in the larger areas and so the larger areas will become even more attractive as a result of the BID, to the detriment of the smaller town centres and so a "cut down" scheme should be developed to fit the Welsh context. Concerns are expressed about how they will operate in areas where no partnerships have previously existed. Displacement issues are raised, a BID could displace problems of crime etc to areas where there is no BID therefore the BID should consider the effects of its proposals. Also the BID should not place additional rates on any voluntary organisation without its agreement.

## **Regulatory Appraisal**

### **Business Improvement Districts**

#### **Purpose and intended effect**

The intention to introduce Business Improvement Districts (BIDs) in Wales was announced in response to the consultation on the future of business rates in Wales and proposals set out in the Welsh Assembly Government policy statement "Freedom and Responsibility in Local Government". At the Local Government Partnership Meeting on the 15<sup>th</sup> July 2002, Mrs Hart announced her intention to work with local government and business to develop the Business Improvement Districts (BIDS) model in Wales. BID schemes will provide local authorities and local businesses with the opportunity of working together to put in place projects to improve their local area.

The BID would consist of a partnership between local authorities and local business for additional services and improvements. These would be funded by a levy raised through an additional levy on the business rate. The details of each BID scheme, including the nature of the improvements and the size of the addition to the rates, will be for the businesses affected to agree upon. They would vote in a referendum upon the agreed proposal. BIDs will therefore reflect the concerns of business. Much of the detail of individual BIDs will be left to be agreed between local councils and businesses. This will provide each local area with the flexibility to introduce improvements suited to their local needs. All businesses within the BID area which would be liable for the BID levy would have a vote to decide whether or not the scheme went ahead. This vote would be conducted through a dual voting mechanism. A majority in a vote would constitute a majority of businesses voting and a majority of the total rateable value of those businesses. If a majority were in favour all ratepayers in the area would contribute to the cost of the scheme. If the majority were against, then the scheme would not go ahead.

Primary legislation will be needed to give authorities power to enter into BIDs, to give the statutory framework for BIDs, to provide for balloting and appeal procedures in relation to BIDs, and to allow for the levying, collection and enforcement of the BID levy. These proposals are intended to provide businesses with a greater say in the improvements to be undertaken in their area where they are prepared to pay for them.

#### **Risks**

Business Improvement Districts encourage businesses to participate in improving their local area in partnership with local authorities. The Local Government Act 2003 introduces legislation allowing money to be levied on the business rate for these purposes.

## Options

Before provision was made to include Business Improvement Districts in the policy statement "Freedom and Responsibility in Local Government", the option of introducing a supplementary business rate was considered.

**The supplementary rate was a proposal which would have allowed the local authority to raise a levy on its ratepayers equal to no more than 5 per cent of the business rate. But before the levy could be raised the authority would first have had to establish an agreed partnership arrangement with local businesses, and the decisions on the spending of the income from the levy would have been made through this partnership arrangement.**

**Business Improvement Districts is a scheme which can be initiated by businesses, the local authority or any stakeholder in a local community. The levy to be raised is approved by business and the way in which the money is spent is agreed on in advance.**

Full details of the benefits and costs of each of these options are set out below.

## Benefits

### The Supplementary Rate

The Green Paper "Simplifying the System: Local Government Finance in Wales" (September 2000) set out proposals for a supplementary rate which could be levied in addition to the business rate. The aim was to encourage local authorities to form partnerships with local businesses as well as giving local authorities the freedom to vary the rate. This was intended to allow local authorities greater scope to invest in community projects. It was also aimed at encouraging partnership between local authorities and local businesses.

**However, from their responses to the Green Paper it was clear that many local authorities saw the supplementary rate as primarily a means of raising revenue, and the requirement to have a partnership agreement was seen as a burden on the resources of local authorities. The 'cost' seemed disproportionate to the additional revenue the supplementary rate would generate. Businesses felt**

that they would have no means of avoiding the supplementary rate once they had entered into partnership agreements. They therefore thought that businesses would vote against the partnership arrangements and thus the supplementary rate could become an obstacle to partnership working, rather than facilitating it. There was also a real risk that the supplementary rate powers would not be used in many areas of the country.

### Business Improvement Districts

Business Improvement Districts address these problems. BIDs can be driven by the business community to effect changes that will benefit them in their local community. BIDs give businesses the opportunity to agree on the projects for which they are contributing, the amount of money they are prepared to raise, and can be involved in the administration of the schemes themselves. Similarly, local authorities will no longer have the onus of organising and administering partnership arrangements, as BIDs will be voluntary and may be initiated entirely by the business community or other stakeholders in the area. The costs of setting up and implementing each BID can be agreed as part of the BID levy. Local authorities will not contribute to the costs of BIDs unless they choose to do so. It will therefore be far more cost effective, from the point of view of local authorities, to implement BIDs than the supplementary rate.

BID projects are likely to have benefits for the community and the local authority as well as the business community. For example, the installation of a Closed Circuit TV system in a town centre benefits businesses who are the victims of crime and vandalism, but also protects the local community and provides security for individuals.

More widely a BID will be able to contribute towards urban regeneration. Coventry City Company has successfully implemented a scheme in which businesses make voluntary contributions towards the enhancement of the city centre. This has already led to a significant increase in the number of visitors in the city centre, demonstrating that consumers have noticed an improvement in their environment and business will benefit from a greater number of consumers. In this way BIDs are intended to give businesses the opportunity to be involved in their local communities and direct their contributions far more precisely than a supplement on the business rate would have allowed. The number of successful voluntary schemes throughout Wales also demonstrates that BIDs could help to produce significant local improvements. Voluntary schemes have worked well but at present some businesses benefit from improvements paid for by others, refusing to make a contribution themselves. This problem of “free-riding” is one of the key reasons for introducing BIDs legislation.

The legislation will state that as long as a majority of the ratepayers in the area who vote are in favour of the BID, other ratepayers will be obliged to contribute to receive the same benefits. The introduction of BIDs legislation will ensure that all businesses in an area pay to receive benefits from the BID. However, the provision made for the flexibility of BIDs in each local area means that it is impossible to quantify the benefits that may arise from each scheme to each section of the community. The fact that each BID will be tailor-made means that the impact it will have on its community could well be unique. Nevertheless, without the aforementioned benefits to business and local communities, the BID would be unlikely to find support.

## **Costs**

The cost of BIDs is difficult to quantify. The projects and services that businesses choose to support through BIDs will be paid for by businesses through the rating system. However, the cost of each BID scheme depends once again on the individual businesses participating. The legislation will give businesses the opportunity to vote on each proposal put forward, and this will include the amount

that they are prepared to pay. Under a BID, those who benefit from the improvement will contribute to the cost, even though they may not have been in favour of establishing the BID. This will only occur when the majority of business ratepayers have voted in favour of the proposal. This majority must be both a majority of businesses voting and represent more than 50 per cent of the rateable value of those businesses. In these circumstances it is inappropriate to legislate on the scope or cost of a BID. It can be as modest or ambitious as local businesses want, but whatever is proposed, all ratepayers will have a vote on the proposed BID.

Local authorities are not required to finance BID schemes. Any costs that may occur from implementing and enforcing the BID can be anticipated by the local authority and covered by the levy received from the businesses involved. However, authorities may choose to make a direct contribution to individual BID schemes from their existing resources, either through expenditure or grants or by the provision of services. Any administrative costs incurred in drawing up proposals to be voted upon can also be met retrospectively by the BID levy, should the proposal be accepted. The administrative costs of proposals that are not successful at the vote will be met by those making the proposal, whether it is the business community or the local authority. However, these administrative costs should be minimal, as neither local authorities nor members of the business community are likely to bring a proposal to the vote if they think it will not be successful. We anticipate that businesses and local authorities will be able to establish whether or not their idea is likely to be supported before the proposal is officially drawn up to be considered for the vote. The guidance issued alongside the legislation on BIDs will fully address the issue of how to form successful partnerships.

BIDs will vary in size enormously, and their budgets will vary accordingly. Voluntary schemes in Wales have been funded in many different ways and therefore cannot be used as an accurate representation of the way in which many BIDs would work in practice. The London Circle Initiative, which set up 5 pilot BID-style schemes around London was funded by £4.6 million of the Single Regeneration Budget from the London Development Agency. Although some public sector funding may be available for BIDs, it is unlikely that the majority would have a budget of this scale. Many voluntary area-based initiatives have operated on a far smaller budget, for example, the regeneration partnership for Morpeth – Morpeth Pride are looking at the possibility of raising £150,000 annually as an absolute maximum, to make changes to their town centre. Morpeth is a small market town, and BIDs will apply to these places on a small scale, rather than on the scale of the Circle Initiative. The fact that such disparity in size and location of Business Improvement Districts will exist, and the fact that there is no way of anticipating the amount of money businesses will be prepared to devote to

BIDs, makes any further estimate of the total cost of BIDs impossible. Inevitably, businesses will refuse to endorse any BID which requires them to pay a sum they cannot afford.

### **Securing Compliance**

BIDs are intended to be versatile. As such each proposal will be agreed by businesses as detailed above and so the issue of cost will be regulated by those who are paying. The costs of billing, collection and enforcement of BIDs will be the responsibility of the local authority. Once again the additional costs faced by the local authority can be met out of the BID levy.

### **Impact on small businesses**

Businesses have welcomed BIDs as a useful development on the original proposal to introduce a supplementary rate which had been set out in the Green Paper "Simplifying the System: Local Government Finance in Wales" (September 2000). The interests of small businesses have been considered carefully in relation to BIDs. The dual voting mechanism is designed to ensure that the interests of small businesses are represented in the BID mechanism. First a majority of all ratepayers voting must vote in favour. Secondly, a majority weighted by the rateable values of the hereditaments of those ratepayers must be in favour of the proposal. This means that a few large businesses cannot secure the establishment of a BID against the wishes of a larger number of small businesses, while maintaining protection for large businesses themselves.

The amount that small businesses chose to contribute to a BID scheme will be left to each BID area to decide, and this voting system should ensure that their interests will be effectively represented. It will be possible for smaller businesses to contribute at a lower rate than larger businesses, if that is agreed locally.

### **Consultation**

The 1997 Labour Manifesto said that there were sound democratic reasons for returning business rates to local control, but that no change would be made without first consulting business. Business was strongly opposed to local control of the level of rates, though most local authorities were in favour of it.

The Assembly's Green Paper "Simplifying the System: Local Government Finance in Wales" (September 2000) said the national rate system would be retained, but that local authorities would be given the power to levy a limited supplement of no more than 5 per cent of the national rate to be spent locally on projects agreed with business. As a precondition, local authorities would have to establish partnership agreements with their ratepayers, to establish the use of the supplement. The Assembly's Green Paper "Simplifying the System: Local Government Finance in Wales" (September 2000) detailed proposals for a supplementary rate originally proposed in the Governments

White Paper Modern Local Government (July 1998). The aim was to encourage local authorities to form partnership arrangements with local business and provide local authorities, in return, with a limited power to vary the business rate, either across the whole authority, or in specified areas. Both businesses and councils raised concerns about the complexity of the partnership arrangements, and businesses were further concerned that having agreed to such arrangements they would not be able to block the levying of a supplementary rate.

The new BID scheme has taken on board these views, following further discussions with business and local authority groups. BIDs are the successor to the supplementary rate proposal. The primary legislation for BIDs was the subject of consultation in the summer of 2002 as part of the consultation exercise on the draft Local Government Bill. A summary of the responses on the draft Bill can be found on the internet at;  
**[www.local-regions.odpm.gov.uk/consult/bill/responses/index.htm](http://www.local-regions.odpm.gov.uk/consult/bill/responses/index.htm)**

In the case of BIDs it was suggested by representatives of property companies and others that property owners who were not ratepayers should have a vote in whether to set up a BID, and in return the owners should be liable for the BID levy. However there are practical difficulties in extending the BID levy to non ratepayers. To do so would require a new tax on property ownership. Instead the Local Government Act 2003 allows for contributions by property owners on a voluntary basis, and the guidance on the establishment and working of BIDs will set out how owners can best be involved: there is clearly already enthusiasm among a number of property owners to be involved.

Another suggestion made by a number of consultees was that for a vote to be valid the numbers voting must exceed a prescribed percentage of those entitled to vote. However the need for such a rule is not clear. There will be ample advance publicity on the BID vote, and for such a vote to succeed two tests will have to be met. First a majority of those voting must vote in favour, and second they must command a majority of the rateable value of those voting. It was also suggested during the consultation process that the prescribed percentages of rateable value and of voters who must vote in favour for a BID ballot to succeed, should appear in the Bill itself, rather than later prescribed in the secondary legislation. This change was made, and the prescribed percentages now appear in Section 50 of the Local Government Act 2003.

### **Monitoring and evaluation**

Businesses will want to monitor and evaluate BIDs to ensure that they are delivering the expected benefits. We expect that measures for monitoring and evaluation will form part of the BID proposal on which businesses will vote initially. In addition, after no more than five years businesses will have to vote for the BID to continue. They will only do so if they are happy with the results of the

BID. It will also be possible to make BIDs subject to more frequent review: when setting up a BID it could be agreed that it will be subject to review after perhaps three or four years, or be subject to annual reviews. However, these are not likely to be appropriate in the case of long term schemes requiring significant capital investment.

### **Competition Assessment**

The competition assessment was introduced jointly by the Office of Fair Trading and the Cabinet Office to ensure that new legislation will not make a change in the competitive environment which could lead to a negative effect on the working of markets. In order to ascertain whether there were any competition effects, the competition filter was carried out and found no markets where serious competition concerns were identified. As participation in BIDs is voluntary and will be implemented and voted on by the whole business community, firms can decide if it is in their interest to join. It is, therefore, highly unlikely that this legislation will change the number or size of businesses. While one firm could choose to contribute more to a BID than others in the area, they will do this voluntarily. The legislation itself will apply equally to all businesses and will not have a disproportionate effect on new entrants vis a vie incumbents. Welsh Assembly Government therefore believes that this measure will not have any significant effect on competition.

### **Summary**

These proposals were set out in the Assembly's Policy Statement "Freedom and Responsibility in Local Government", March 2002 which said it was the Assembly's intention to consider options for encouraging stronger partnerships between local government and business.

