

Executive Summary

E.1. The Government's central economic objective is to achieve high and stable levels of growth and employment. Improving the economic performance of every locality in England is an essential element of that objective. This is firstly because we are committed to delivering fairness and opportunity for all in every region and community in the country. It is also because unfulfilled economic potential in every locality must be released to meet the overall challenge of increasing the UK's long term growth rate.

E.2. This document sets out the objectives, principles and concepts that will guide the Government in designing a scheme to allow local authorities retain some of the revenue from business rates. The primary legislation for the scheme is being sought in the Local Government Bill now in Parliament. This document only applies to the proposals for the scheme in England. This is a devolved matter and the devolved administrations in Scotland, Wales and Northern Ireland will be deciding policy separately.

E.3. At a local level there is currently a mismatch between the costs of economic development and the benefits that accrue from it. Economic development poses direct costs on local authorities in terms of greater congestion on local transport and impact on the local environment. Potentially it also imposes costs on other local authority services, most obviously housing, education and community safety.

E.4. In contrast, the benefits of economic growth typically accrue either to individuals, through more and better employment, or, in tax terms, at a national level. This suggests that whilst costs of economic development accrue at a local authority level, the benefits accrue at a wider level.

E.5. This scheme will change this situation. Currently, all business rate revenues are collected by local authorities and passed into a central pool. These revenues are then re-distributed on a per capita basis. This scheme will allow local authorities to individually retain some of the business rate revenues that are associated with growing the business rate tax base at a local level.

E.6. This scheme will create positive financial incentives for local authorities to work in partnership with business, Regional Development Agencies, Learning and Skills Councils and other key local and regional players to maximise economic growth. The Government's approach to economic policy is most effective when it is based on maximising growth in each locality. This approach can only be delivered by effective economic leadership from local authorities, providing what business in the area needs to fulfil its potential.

E.7. The scheme will follow the approach to Local Government set out in the 2001 Local Government White Paper *Strong Local Leadership – Quality Public Services*. Revenues from the scheme will not be ring fenced and local authorities will be free to decide whether and how to maximise local economic growth so as to benefit from the scheme.

E.8. This document is focused on the principles and concepts that will underlie the Government's approach to the scheme and the choice between options. The Government would welcome comments on these proposals by 31 October 2003. All comments will be carefully considered before the Government puts forward firm proposals for the exact mix of variables during the course of next year. The scheme will be launched on 1 April 2005.

E.9. The document is set out as follows:

- An opening chapter on objectives and principles for the scheme
- A chapter which sets the scheme in the wider policy context
- Two chapters which introduce some of the variables for the scheme and the ideas on which the Government is consulting
- A chapter setting out next steps and the timetable for introducing and evaluating the scheme
- Two appendices containing the technical working of the scheme and model baselines.

The Policy Context

E.10. This scheme fits firmly within the Government's existing approach to economic, enterprise, local government and business rates policy.

E.11. Analysis presented in this document suggests that if local authorities successfully respond to the incentives created by the scheme, this will have a beneficial impact on local productivity and growth leading to stronger economic performance. Also, one of the key principles for this scheme is that the incentives should be relevant to all local authorities. This means that the scheme underpins efforts to reduce differentials in economic growth throughout the country whilst maximising overall economic growth.

E.12. This scheme is also a key part of the Government's new approach to local government. The revenues raised from the scheme will not be ring fenced and local authorities will be free to spend them as they choose on local priorities. The scheme provides the tools and incentives to deliver the demands of local people with regard to economic growth without prescribing what those demands should be or how to deliver them.

E.13. The scheme also complements existing business rates policy by encouraging greater co-operation with business. It is not intended in any way to pre-empt findings of the wide ranging review into the balance of funding in local government finance.

Baselines

E.14. The key technical variable underlying the scheme is the setting of baselines. These drive the expected performance of each local authority and therefore the distribution of incentives and revenues from the scheme.

E.15. The chapter on baselines proposes five different models, each of which creates different incentives, distributional impacts and is more or less intelligible to those who need to respond to and operate the scheme.

E.16. Currently, the two models the Government favours are:

- The National Historic Growth model which groups local authorities nationally and then separates them into five sub-groups depending on relative historic performance; or
- The Sub Regional model which groups local authorities according to their Government Office for the region and then separates them into three sub-groups depending on relative historic performance.

E.17. The Government believes that these models best provide a challenging incentive to authorities with high historic growth and an achievable target for authorities with low historic growth ensuring that overall the scheme provides a relevant incentive to all local authorities. **The Government invites consultees to indicate which model they prefer and why.**

Floors, Scaling Factors, Ceilings and Tiers

E.18. The other controllable variables for the scheme are the floors, scaling factors, ceilings and tiers. The floor denotes the level, relative to the baseline, above which a local authority will retain revenues. The scaling factor determines the percentage of revenues retained, the ceiling the maximum amount of revenue retained and the tier the relationship between lower and upper tier authorities. These factors interact to maintain equity between options and ensure a balance between an overall strong incentive and the distribution of that incentive amongst authorities.

E.19. The Government has identified two main options for delivering floors and scaling factors:

- A high floor / high scaling factor option. Under this option individual local authority floors would be set high, so that only around 50% of authorities would receive benefit from the scheme without improving performance. However, this will be compensated for by a high scaling factor, allowing retention of, say, 95% of revenues above the floor. This option creates a relatively stronger incentive to do better.

- A medium floor / medium scaling factor option. Under this option, individual local authority floors would be set so that around 75% of authorities would receive benefit from the scheme without improving performance. However, there would be a lower scaling factor with local authorities allowed to retain around 65% of revenues above the floor. This option provides greater up front support to do better.

E.20. The Government believes that overall these options provide the best match of incentives to improve and up-front support so as to enable local authorities to deliver better economic performance. **The Government invites consultees to indicate which option they prefer and why.**

E.21. Further work is needed on whether and how to distribute revenues between London Boroughs and the Greater London Authority and between shire districts and shire counties. **The Government invites consultees to indicate how they believe this should be done.**

E.22. As a ceiling, the Government proposes a restriction on gains of 1% of Formula Spending Share¹ per annum rising as the scheme rises and therefore reaching 3% of formula spending share in year 3.

Administrative Requirements

E.23. The growth incentive scheme will require some changes to local authorities' existing administrative arrangements. It will also require local authorities to supply some information to central government so that it can monitor the additional revenue retained.

E.24. During the course of 2004 we will then be testing and refining these through an administrative dry run of the scheme with a group of local authorities. **As part of this consultation the government is inviting local authorities to volunteer for being part of the administrative dry run.**

Evaluation and Revaluation

E.25. It is the Government's intention to evaluate thoroughly the operation and effectiveness of the scheme once it has been operational for two to three years. At that time the Government will review the long term design of the scheme.

E.26. The Government is determined to ensure that the 2010 revaluation does not obscure the economic effect of the scheme or result in windfall gains for certain

¹ Formula Spending Share is the level of spending by each local authority assumed by central government in deciding how to distribute revenue support grant.

authorities at the expense of others. Details on how this will be achieved will be published nearer the time.

Summary

E.27. To summarise, the Government sees this scheme as an important part of its economic policy and its approach to local government. The scheme creates strong incentives for local government to maximise economic growth in a manner that most suits the local electorate and in this way the scheme is part of the Government's new approach to Local Government building on the vision of the 2001 White Paper.

E.28. However, the scheme is also new and the Government's approach is therefore cautious. In particular the scheme includes several elements designed to ensure that the distributional impact of the scheme is fair and an incentive to all. The Government is committed to an evaluation process to assess the impact of the scheme before deciding on the long-term design of the scheme. Nevertheless, the Government is committed to ensuring that the scheme continues for the foreseeable future so as to realise the full benefits from a culture of enterprise and partnership between local authorities and the business community.

Introduction

This consultation paper invites you to make comments on the draft Business Improvement Districts (England) regulations 2004.

Background on Business Improvement Districts (BIDs)

The Government introduced the concept of Business Improvement Districts (BIDs) in the White Paper, *Strong Local leadership – Quality Public Services*, which was published in December 2001. http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_605682.hcsp

Business Improvement Districts (BIDs) 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 proposer would develop a proposal describing the additional services and the cost to ratepayers. All ratepayers in the business improvement district area would vote on the proposal in a ballot. Approval for the proposal in the ballot would 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.

Comments and questions

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

Responses to the questions raised and on the proposed approach to the regulations in general are sought by 14th May 2004. Responses should be clearly marked as such and sent to:

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London SW1E 5DE

E-mail: peter.reilly@odpm.gsi.gov.uk

We particularly welcome responses by e-mail, when this is convenient to the respondent.

Any questions, comments or complaints about this consultation exercise should be sent to:

David Plant
CSID
26 Whitehall
London SW1A 2WH

E-mail: david.plant@odpm.gsi.gov.uk

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.

The Regulations

Background on the regulations

The policy and the practical details on Business Improvement Districts have been extensively debated.

The Local Government Bill (Part 4) set out the legislative framework for BIDs. We consulted on the draft Bill prior to presenting it to Parliament in January 2003. During the Bill's passage through parliament the framework was vigorously debated and some amendments proposed. The Bill received Royal Assent in September 2003 and became the Local Government Act 2003. It is available from the HMSO on <http://www.legislation.hmso.gov.uk/acts/acts2003/20030026.htm>

In parallel a Regulatory Impact Assessment (RIA) was produced. A RIA is an assessment of the impact of government policy, in terms of the costs, benefits and risks. The current RIA for BIDs, which was updated at Royal Assent, is included in this consultation document.

A working draft of a guidance document was published in January 2003 providing a comprehensive description of the options and the issues that needed to be considered in developing a BID.

http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_023522.hcsp

We conducted a consultation on this guidance document during September 2003.

http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_609127.hcsp

The responses to that consultation have influenced the content of the draft BID regulations. A final guidance document will be produced once the regulations are finalised.

In addition to the primary legislation and the guidance, additional regulations need to be formulated to define specific areas such as the voting procedures, the conduct of the ballots, the application of the veto, the revenue account and any other issues needed to make BIDs operate successfully. The detail of the management of the BID arrangements will be left to the local management decisions as far as possible.

The next pages provide an informal commentary on each regulation followed by one or two questions. A copy of the draft regulations themselves (the Statutory Instrument) follows on from these notes (annex A).

Notes on Regulations

Regulation 1 – Citation, application, commencement and interpretation

A key definition here is that of the BID body – the entity responsible for implementing the BID arrangements. The most likely organisation is a company limited by guarantee. The billing authority would enter an agreement ("a contract" – Schedule 1) with the BID body to deliver the services in the BID arrangements.

However the regulations have been constructed in a way that allows many other types of entity to deliver the arrangements including the local authority itself.

Question 1. *Are any additional definitions needed?*

Regulation 2 – BID proposer

This is a broad definition allowing a wide variety of groups to take the initiative in developing a proposal. It is expected that members of the business community would develop most BIDs. A person intending to submit a BID proposal will have to notify the Secretary of State. ODPM intends to keep a national database of BIDs and proposed BIDs, and to make this information available to the public.

Question 2. *Do you think anyone else should be included?*

Regulation 3 – BID proposals, renewal proposals, alteration proposals and preliminary procedures

This regulation, along with Schedule 1, is a key aspect of the nature of the proposal.

The aim of this regulation and Schedule 1 is to have proposals which are well thought out, clearly costed and accurately defined. The key aim here is prevent a spurious and ill-conceived proposal from going to the 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.

- 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 defines additional actions and supporting evidence and that the proposer must furnish to the billing authority before a BID goes to a 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. Most BID pilot projects are aiming to achieve a much higher degree of support before going to the ballot and so this seems to be an achievable minimum requirement.

There must be a contract between the billing authority and the BID Body. This should include a schedule of the financial payments between the billing authority and the BID Body, clarification of the duties and responsibilities of each party, an agreement on the baseline services and actions on termination or alteration.

The BID proposer must also demonstrate that they have the funds to cover the cost of the ballot. This does not mean they have to pay the ballot costs.

- Once the arrangements come in to force the billing authority could charge the BID for the cost if the ballot, if this was stated in the proposal;
- Where the BID ballot is declared void and the Secretary of State has issued a notice stating that the reason for the ballot to be declared void is a material irregularity caused by the actions or omissions of the BID proposer, then the BID proposer will pay the ballot cost;
- In all other circumstances the billing authority will pick up the costs of the ballot.

Question 3a. Do you agree that schedule 1 contains the sufficient information for a ratepayer to decide how they will vote in the ballot?

Question 3b. Are you clear about the responsibilities of the billing authority in this process?

Question 3c. Should there be a threshold of support (above 20%) in the ballot below which the BID proposer picks up the cost of the ballot rather than the billing authority?

Regulation 4 – Instructions to hold a ballot, renewal ballot, alteration ballot or re-ballot

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 where there seems to be a reasonable chance that it will be successful.

Question 4. Do you have any comment on regulation 4?

Regulation 5 – Ballot Holder

The returning officer for the billing 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 and have personal liability insurance. For BID ballots, the ballot holder may delegate the tasks to other people.

Question 5. *Is there anyone else who could fulfil this role?*

Regulation 6 – Arrangements for holding a ballot and the conduct of the ballot

The ballot process is defined in Schedule 2.

There are a few key steps and key times.

Notification to the Secretary of State

The BID proposer must inform the Secretary of State six (6) weeks before the notification of the ballot (under Regulation 3(2)(a)(ii)) that they wish to hold a ballot (Regulation 2(2)).

Notice of the ballot

The ballot holder must publish the notice of the ballot and advise eligible voters and the billing authority [and the Secretary of State] of the date of the ballot. The notice and the BID proposal must be sent to the ratepayer 42 days before the day of the ballot.

Ballot Papers

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

The Day of the ballot

The ballot closes at 17.00 hrs 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.

Commencement Date

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.

Schedule 2

The key issues have been summarised in the commentary on Regulations 6 and 7.

Question 6. Do you agree with the timescales?

Question 6a. Are the ballot procedures fair and transparent?

Regulation 7 – person entitled to vote

The person entitled to vote is the non-domestic ratepayer in the defined area on the day of the notice of the ballot according to the records of the billing authority for that date.

A number of other options were considered in deciding this definition.

1. Ratepayers in the defined area on the day of the ballot. This would result in the register of eligible people changing over the period of the ballot with no certainty up until the day of the ballot.
2. A unique voters' roll containing the actual names of the eligible voter supplied by ratepayers. As the current rating list does not contain the actual names of individuals, compiling this voter's roll would have to be a distinct activity. The cost and technical difficulties of compiling this prior to the notification of the ballot and then maintaining it until the day of the ballot were considered disproportionate to the benefits.
3. A voters' roll amalgamating properties occupied by the same registered occupier. As the rating list does not contain this information, a separate exercise would have to be undertaken to determine this. Again this was perceived to be disproportionate to the benefit.

There is nothing to stop the BID proposer from obtaining information, which can be used to enhance the accuracy of the rating list.

The ballot papers will be sent to the addressee on the rating list. Consequently where a business's rate demand, for example, is sent to its head office, 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.

This approach was determined after extensive discussion with practitioners.

Question 7. Do you agree that the definition of the person entitled to vote in the BID ballot is reasonable?

Regulation 8 – Declaring a ballot void

This regulation gives power to the Secretary of State to declare a ballot void if there has been a material irregularity. For example, ineligible people have voted or eligible people have been prevented from voting freely and it is clear that the result was affected to a significant extent as a result of the irregularity.

A person who wishes to complain of a possible irregularity must write to the Secretary of State within 28 days after the notice of the result of the ballot. This complaint process can only be used to complain about an alleged irregularity in the ballot. It can not be used to complain just because the person does not support the proposal, believes it to be unfair or any other such reason.

If the Secretary of State declared the ballot void and decides that it was due to the BID proposer then the costs of the ballot can be recovered from the BID proposer.

Question 8. *Is this appropriate time limit?*

Regulation 9 – 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.

Question 9. *Is it reasonable that the BID proposers only pay for the ballot under these specific conditions?*

Regulation 10 – 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 in 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.

Question 10. *Do you feel that it is essential to have access to this information?*

Regulation 11 – Veto of BID proposals

A BID is a partnership between the local authority and the business community with benefits to both partners. The criteria in Schedule 2 and Regulation 3 ensure that co-operation takes place in developing the proposal.

Therefore the situation should not arise which requires the billing authority to exercise its veto. However the power exists as a last resort.

The billing authority will have a number of 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. These policies must be clearly stated if they are to be used as the justification for the veto. If the criteria in Schedule 1 have been met then the factors to be considered in regulation 11 (3) should already have been adequately covered by the proposal.

We have included a power to veto in order to provide protection to other groups where the structure of the BID is so obviously unfair. This should not be seen as a sweeping power but in fact a very narrow power to be used when the design of the geographic area or the determination of the levy presents obvious unfairness to a group of ratepayers.

Question 11. *Is the criteria, set out in the above regulation, sufficient for the billing authority to make the right decisions in exercising the veto?*

Regulation 12 – appeal against the veto

Any person may appeal to the Secretary of State against the application of the veto within 28 days. In addition to the criteria followed by the billing authority in deciding whether to veto a BID, the Secretary of State shall also consider whether, after the date on which the notice pursuant to regulation 3(2)(a)(ii) is received, the relevant billing authority changed any plan or any policy so that such plan or policy then conflicted with the BID proposals.

Question 12. *Are the timescales sufficient?*

Regulation 13 – BID Revenue Account

The billing authority must have a separate account for each BID.

The normal arrangement will be for the billing authority to act as a conduit for the money to the BID body. In these cases the operating account will be with the BID Body.

The powers here are designed to work both when the billing authority passes the money over to the BID body and in those circumstances when the billing authority will itself deliver the BID arrangements.

When BID arrangements come to an end any outstanding sums over £5000 must be returned to ratepayers and amounts under £5000 can be returned to the billing authority general fund.

Schedule 3

This schedule is primarily for billing authority revenue managers. It defines the arrangements that need to be made to manage the BID revenue account. This emerged from a series of meeting with revenue managers.

Question 13. Does regulation 13 gives sufficient guidance to billing authorities to administer the BID revenue account?

Regulation 14 – Administration of BID levy etc.

Schedule 4 provides details on the imposition, administration, collection and recovery and application of the BID levy.

The regulations do not specify any particular method of determining the levy. The regulations on the principle that the BID levy will be defined in the BID arrangements rather than defined by the current rating system. In other words the levy can be based on a fixed or variable levy, related or unrelated to rateable value, with different calculations for different groups of ratepayers allowed.

One consequence of this approach is that any right of appeal must be written into the BID arrangements. No powers exist under the NNDR system to deal with appeals against the BID levy or to provide for new (and spilt and merged) properties or to deal with revaluation.

As the levy will be relatively small this does not introduce significant unfairness but it is expected that BID proposers will deal with these issues fairly in their BID arrangements.

Schedule 4

Schedule 4 picks up many aspects of rating regulations and translates these into simple and practical process for billing, collection and enforcement.

The following assumptions are integral to make these regulations work.

- The basis of the levy is decided according to the method determined in the BID arrangements.
- There is no official right of appeal against the decision on the levy unless it is allowed in the arrangements.
- The levy can be imposed as a single annual fee, with or without instalments or reliefs, depending on the specification in the arrangements.

Question 14. Does regulation 14 give sufficient power to the billing authorities to administer the BID levy efficiently and effectively?

Regulation 15 – Alteration for BID arrangements without an alteration ballot

Except where Regulation 16 applies, an alteration to the BID arrangements may only take place where the BID arrangements allow this. No alteration under this regulation may change the geographical area, to include a new definition of people to be include in the levy or to increase the BID levy.

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

Question 15. Does regulation 15 give enough flexibility to alter a BID in response to changing circumstances without an alteration ballot being needed, and without comprising the BID arrangements?

Regulation 16 – Alteration of BID arrangements following a ballot

If a suggested alteration falls outside the scope of Regulation 15 an alteration ballot must be held following the normal ballot procedure. If the ballot is successful the alteration to the BID arrangements may take place.

Question 16. Does this regulation offer enough protection to ratepayers?

Regulation 17 – Termination of BID arrangements

There will be situations where the BID must be terminated. This regulation is defined so that both the BID body and the billing authority may terminate the BID in certain (different) circumstances: The BID body when the services are no longer required and the billing authority where they consider the financial resources are insufficient.

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.

Question 17. Do you agree with regulation 17? If not, what alternative method is available which will satisfy the Billing Authority, the BID Body and the ratepayers?

Regulation 18 – Information

This regulation allows the exchange of information to the ballot holder for him to carry out his duties.

Regulation 19 – Expenses of ballot holder

The billing authority must pay the ballot holders expenses. These can be then recouped from the BID itself – if it was agreed in the BID arrangements – or from the BID proposer if Regulation 9 applied.

