



SCOTTISH EXECUTIVE

BUSINESS IMPROVEMENT DISTRICTS (BIDs)

Proposals for Secondary Legislation

1. INTRODUCTION

1.1 Primary legislation currently before the Scottish Parliament (in Part 9 of the Planning etc (Scotland) Bill), will provide the statutory basis for BIDs in Scotland. A Business Improvement District (BID) is a partnership between local businesses and their local authority to secure such additional services as the businesses determine they need to improve the business environment. Following a commitment given by the Scottish Ministers in 2003 to introduce BIDs in Scotland, a number of working groups have met to consider what the arrangements for BIDs should be. Full details of their deliberations and the decisions taken since by Ministers on their recommendations are published at:

<http://www.scotland.gov.uk/Topics/Government/local-government/17999/22235>

1.2 The primary legislation does not contain all the statutory provisions that will be needed to introduce BIDs. More detailed provisions will be contained in secondary legislation to be laid before both the Scottish and UK Parliaments in due course, once the primary legislation is enacted. The provisions to be laid before the UK Parliament (under section 104 of the Scotland Act 1998) relate to the billing, collection and setting of the BID levy (as the funds raised by BIDs will not be for local authority expenditure, but rather for the expenditure of the BID board).

1.3 Broadly speaking BID arrangements in Scotland mirror those in place in England and Wales. However, there are some differences and these are explained in this paper.

1.4 As indicated, the paper sets out proposals for the additional provisions to be included in secondary legislation. We will draft that secondary legislation taking into account comments received in response to this paper and we intend to consult on this later this year.

1.5 The proposals in the paper are split into the following sections:

- Part 2:** Developing BID proposals, **page 4**
- Part 3:** Billing and Collection, **page 7**
- Part 4:** Balloting, **page 11**
- Part 5:** Local authority veto power, **page 21**
- Part 6:** Accounting process, **page 23**
- Part 7:** Alteration of BID arrangements, **page 24**
- Part 8:** Termination of BID arrangements, **page 25**
- Part 9:** Involvement of owners, **page 26**

1.6 Specific questions are asked throughout the document. We would welcome responses to these questions, as well as views on any other aspect of the proposals described or on any related aspects that are not covered in this document. This paper is aimed at all those who will be involved in developing BIDs, including individual businesses and business organisations which may be acting on behalf of their members.

1.7 We would be grateful if you could clearly indicate in your response which questions or parts of the paper you are responding to as this will aid our analysis of the responses received. Copies of the written responses received (except those where the individual or organisation requested confidentiality) will be placed in the Scottish Executive library at

Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

1.8 Responses are sought **by Friday 04 August**. Please send your response (clearly marked **BUSINESS IMPROVEMENT DISTRICTS**) to:
anne.thomson@scotland.gsi.gov.uk

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If you have any queries, please contact **Billy McKenzie** by telephone on 0131 244 7051 or by e-mail to billy.mckenzie@scotland.gsi.gov.uk

1.9 All respondents should be aware that the Scottish Executive is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this paper.

2. DEVELOPING BID PROPOSALS

Obtaining information from a local authority for developing BID proposals

2.1 One of the first steps in developing a BID will be to identify all those businesses to be included in the BID area selected. In order to obtain this information, the “BID proposer” (the person or persons initially responsible for developing a BID) should contact the relevant local authority, in writing:

- To confirm that the person/s making the request intends to make use of the information requested only for the purpose of developing the BID proposal;
- To provide a summary, as far as possible at that point, of the nature of the BID proposals to be developed; and
- To provide the description of the geographical area of the BID proposals to be developed.

2.2 The information disclosed by the authority should not be shared with any other person, or be used for any reason other than developing the BID proposals outlined in the written request.

2.3 The local authority (or the lead local authority if a BID cuts across local authority boundaries – in which case the lead authority would be the authority which had in its boundaries the largest amount of voters) should take the following action on receipt of a request, that follows the correct procedures, from any eligible person who is developing BID proposals:

- prepare a document showing the name of each non-domestic ratepayer and the address and rateable value of each non-domestic subject which is occupied, or (if unoccupied) owned, by them in the geographical area of the BID proposals to be developed; and
- provide details of the current, and if possible planned, provision of services by the local authority (and other public bodies, such as the police); and
- supply a copy of the information in the document free of charge to the person concerned in electronic form.

Question 1: The requirement to provide details of current and, where possible, planned provision of services in the BID area as part of the procedures for taking forward BIDS proposals, was recommended by the BID working group, which involved COSLA. We propose to ask local authorities to liaise with other public bodies to ensure a comprehensive list is provided to the BID proposer. Is this proposal reasonable?

BID proposer

2.4 The following may draw up BID proposals.

- Any person who is a non-domestic ratepayer in relation to a non-domestic subject situated in the proposed BID area.
- Any person who has a relevant interest in land within the BID area (owner, mortgage holder or tenant, or directly or indirectly receives rent for the land).
- A body (whether corporate or not corporate) one of whose purposes is developing BID proposals (such as a Town Centre Management company).

- The relevant local authority.

Question 2: Should any other bodies be included in this list?

BID proposals, alteration of proposals and preliminary procedures

2.5 Following receipt of the information on the non-domestic ratepayers contained in the BID area, the BID proposer will then engage with those within the area who will be entitled to vote on the BID project. An important part of this is the development of the BID proposals. This is the most essential part of the work that the BID proposer will do, prior to the BID ballot. The BID proposal, or business plan, is a blueprint for a BID to which all businesses and other stakeholders can refer. It is the document upon which businesses will vote when they decide on whether to accept or reject the BID in the ballot. The proposal or business plan will be referred to and adapted as the BID proposal is developed prior to the vote. The proposal or business plan will be a key tool for all those working towards the successful implementation of a BID.

2.6 Each BID proposal and business plan will be unique to the BID concerned. However there are essential elements that should be detailed in every BID proposal. The BID regulations will state that the following must be included in all BID proposals, renewal proposals or alteration proposals:

- a statement of the works or services to be provided and by whom; the name of the organisation/company who will be managing them (i.e. the name of the BID company and those who will manage it); and the structure of the organisation/company (board membership, voting rights);
- a statement of the existing baseline services provided by the relevant billing authority or other public authority (such as the police);
- a description of the geographical area/s (including a map showing that area) in which the proposed BID arrangements are to have effect (this cannot include part only of a non-domestic subject);
- a statement of which non-domestic ratepayers and, if applicable, other property owners in the BID area are to be included in the funding of the BID, an explanation of how the BID levy is to be calculated and an explanation of whether any of the costs incurred in developing the BID proposals, holding of the ballot or implementing the BID are to be recovered through the BID levy;
- a statement of the class of non-domestic ratepayer or, if applicable, other property owners, (if any) for which relief from the BID levy is to apply and the extent of that relief;
- a statement regarding any additional contributions towards funding the BID, either financially or via the provision of additional services or accommodations/staff;
- a statement of whether the BID arrangements may be altered without an alteration ballot and, if so, which aspects of the BID arrangements may be altered in this way;
- a statement of the commencement date of the BID arrangements (no later than one year after the notice of the vote result is published); and
- a statement of the duration of the BID arrangements.

BID renewal proposals

2.7 By limiting the life of a BID to five years, the intention of the legislation is to protect ratepayers and, if applicable, other property owners from an indefinite commitment but it also provides a powerful incentive for the BID management to deliver visible benefits for a small cost, year on year. There should therefore be a regular cycle of activity that will include testing opinion and publicising the gains the BID has already made which would then form part of the renewal and re-authorisation process.

2.8 The matters to be included in renewal proposals are:

- a statement of the proposed period (not exceeding 5 years) of the renewed BID arrangements; and
- a summary of the BID arrangements, previously these would have been the BID proposals but once voted on and agreed they become the BID arrangements. This summary should include the geographical area of the BID, the works or service provided, an explanation of who is liable for the BID levy, the level of the BID levy and how it is calculated). Any changes from the previous proposals should be carefully detailed in the renewal proposals, with reasons for the change given.

Question 3: Are there any other matters that should be addressed in renewal proposals (for instance the performance and achievements of the current BID)?

BID alteration proposals

2.9 It is possible for a BID to be altered without the need of a further vote, as long as this is comprehensively outlined in the original BID proposals and the alteration does not differ from that.

2.10 Any other alterations would require a further vote before they can take place. Any area where changes are proposed should be fully detailed in the BID alteration proposals, which should follow the same format as the original proposals. The BID proposals should also outline the date the altered proposals will come into effect, and this should be no later than one year after publication of the alteration ballot result.

3. BILLING AND COLLECTION

3.1 There is no legislative requirement for the BID levy to be billed and collected by the local authority. However, given local authority expertise in this area it is likely that this will be the option most, if not all, BIDs would prefer. For ease, the “relevant billing authority” refers to the body responsible for billing and collecting the BID levy. Below are details of how the billing and collection arrangements are proposed to work.

Administration of the BID levy etc

3.2 The relevant billing authority shall, by the commencement date, provide for the imposition, administration, collection, recovery and application of the BID levy. The demand notice for the BID levy can be served by hand, via the post, or electronically if the person who is liable for the demand notice has agreed to this in advance.

The requirement for BID demand notices

3.3 For each chargeable period (12 month period, running from the date the BID arrangements come into force) the relevant billing authority shall serve a notice in writing on every person who is liable for the BID levy in relation to the BID arrangements. This demand notice is to be separate from the non-domestic rate (NDR) demand notice and a different demand notice is to be served for each chargeable period for the duration of the BID.

Question 4: For transparency for the customer and ease of administration for local authorities we propose to have a requirement for separate notices for the BID levy charge. Due to the involvement of owners in particular, and the necessary split of the RV element of the vote and charge, current local authority billing systems could not cater for the se arrangements. Views would be welcomed on this proposal.

3.4 A single notice may be served that covers more than one non-domestic subject if the person liable for the demand notice for all those subjects agrees to this. The amount to be paid for each non-domestic subject shall be separately listed on the demand notice.

Content of BID demand notices

3.5 A BID demand notice shall contain the following:

- a statement of the address and description of each non domestic subject to which the notice relates;
- a statement explaining how the BID levy is calculated for each non domestic subject to which the notice relates;
- a statement of the days (if any) on which the person liable for the BID levy for the non-domestic subject to which the demand notice relates, was the liable person for the levy; and
- the date/s on which the payment/s is/are to be made. These will be set out in the BID arrangements, and can be whatever period/s that are deemed reasonable (i.e. 10 monthly payments as per non-domestic rate demand notices).

3.6 When a billing authority serves a demand notice it must also include the following information:

- the revenue from the BID levy the billing authority was due to receive in the previous year;
- the amount spent on the BID arrangements in the previous year;
- a description of the matters on which it was spent; and
- a description of the matters on which it is intended to spend the revenue from the BID levy in the current financial year.

Invalid notices

3.7 If the information outlined at paragraph 3.5 above is incorrectly stated due to a mistake, but the calculation of the amount to be paid is accurate, then it is proposed that the demand notice is counted as valid. However, the billing authority must issue a revised demand notice as soon as possible after the mistake is discovered. This will ensure that until the amended notice is reissued the levy amount is still legally due.

Service of demand notices

3.8 The demand notice is due to be served on, or as soon as possible after, the first day of the relevant chargeable period. However, where the non-domestic subject changes occupancy/ownership during the chargeable period the demand notice must be served on the new occupier/owner the first day, as soon as possible.

Question 5: Should we allow a local authority to issue a demand notice prior to the chargeable period?

Payments under demand notices

3.9 Payments should be made in line with the payment periods set out in the BID arrangements, unless alternative arrangements have been made as per paragraph 3.12.

3.10 The demand notice will assume that the liable person will remain the liable person for the entire chargeable period. If this is not the case they are liable until they are no longer the liable person in respect to the non-domestic subject to which the demand notice relates.

3.11 If a demand notice is issued after the end of the relevant chargeable period, it will require payment for the entire period.

3.12 The billing authority and the liable person can agree alternative payment methods to those set out in the BID arrangements as long as the total monies due for a chargeable period are paid prior to a new chargeable period begins.

Demand notices: final adjustment

3.13 Where a demand notice is issued and the amount to be paid is inaccurate, and provision for dealing with this is not dealt with via earlier agreement, then the billing authority will reissue a bill for the correct amount as soon as practicable after the relevant chargeable period. Any outstanding amounts owed at the end of the chargeable period must

be paid within 14 days of receipt of the adjusted notice. If the liable person has overpaid as a result of the inaccurate notice the amount will be refunded to the liable person if required. Alternatively the overpaid amount can be offset against any future liability for the BID levy payment.

Enforcement

3.14 In England and Wales, the enforcement powers available to local authorities also apply to the collection of the BID levy, with various amendments. We propose to allow local authorities in Scotland to use messengers at arms and sheriff officers to carry out post decree enforcement of the BID levy, often through the use of summary warrants. However, where a BID board has decided to use a different billing and collection agent to a local authority, enforcement by summary warrant will not be available as these powers are open to public bodies only. Alternative collection agents to a local authority will be able to attempt pre-decree collection for civil debts in the normal way. The BID board, like any creditor, may raise a small cause, summary cause or ordinary decree for payment of money which, once decree is granted, will grant them the scope of enforcement methods to use such as arresting earnings, bank accounts or attachment of items outside the home.

Outstanding liabilities on death

3.15 Where a liable person dies and there is still monies owed for the BID levy, the executor or administrator shall be liable to pay the sum and may deduct this out of the assets and effects of the deceased. Where a liable person dies and has overpaid the amount due for the BID levy for the liable period then the executor or administrator will be entitled to the balance.

Joint occupiers and owners: billing

3.16 Where more than one person would be liable for the BID levy (eg a partnership) then all liable persons will be jointly and severally liable. The billing authority must send each of the jointly and severally liable persons a copy of the relevant demand notice.

Joint owners and occupiers: enforcement

3.17 Where more than one person is liable for BID levy and fails to pay, a reminder notice must be issued to each liable person for the recovery of the sums due.

Splits, mergers and new non-domestic subjects

3.18 Where a non-domestic subject is split the BID levy applying to the previous subject will be apportioned as per the new rateable values assigned to the split properties. Where these rateable values combined are less than the previous rateable value, provision should be made for this by the BID board, the BID levy cannot be increased to cover any funds lost.

3.19 Where properties are merged, the BID levy charges for the previous non-domestic subjects will be transferred to the merged subject as they stand.

3.20 For new non-domestic subjects, the BID levy will be applied if they fall within the class of subjects that are liable within the BID arrangements. The rateable value set by the

Assessor, on the day of occupation, will be the rateable value used for determining the BID charge liability for any new non-domestic subject.

Question 6: The proposals in paragraphs 3.18 to 3.20 are entirely new and have been inserted at the suggestion of businesses. Are they reasonable?

4. BALLOTING

Notification to local authority of intention to hold a ballot

4.1 A BID proposer should give the local authority, and the Scottish Ministers, 84 days advance notice that they intend to put the BID proposals, alteration proposals, or renewal proposals to a ballot.

Question 7: The 84 day advance notice of the intention to ballot period is taken from the English regulations. Is the same period appropriate for Scotland?

Information to be supplied alongside notification

4.2 Where a BID proposer/body is seeking approval of BID proposals, alteration proposals or renewal proposals, it shall send to the relevant billing authority:

- A copy of the proposals together with a summary of:
 - the consultation it has undertaken with those persons who are to be liable for the proposed BID levy;
 - the proposed business plan (including the estimated cash-flow, an estimate of the predicted revenue to be generated and the predicted expenditure to be spent under the BID arrangements, the predicted budget over the duration of the BID arrangements and the contingency margin included in the budget); and
 - the financial management arrangements for the BID body, and the arrangements for periodically providing the relevant billing authority with information on the finances of the BID body.
- Where other property owners beyond rateable occupiers (eligible to vote) are involved, the name and address of each owner, and the non-domestic subjects they own in the BID area. This information should include details of how the rateable value element of the vote is to be split for each property.
- A notice in writing requesting the relevant billing authority to instruct the ballot holder to hold a BID ballot.
- Such information as it shall reasonably require to satisfy itself that the BID proposer (or the BID body) has sufficient funds to meet the costs of the ballot (unless the local authority is providing this free of charge).

4.3 Any person who is to be liable for the BID levy must also be sent a copy of the BID proposals, alteration proposals, or renewal proposals, and the proposed business plan.

4.4 Where the relevant billing authority is of the view that the BID proposals, renewal proposals or alteration proposals conflict with a policy formally adopted by and contained in a document published by the authority (whether or not the authority is under a statutory duty to prepare such document) the authority shall, as soon as reasonably practicable after receiving the proposals, notify the BID proposer or BID body in writing explaining the nature of that conflict.

Instructions to hold a BID ballot, renewal ballot, alteration ballot or re -ballot

4.5 Once the relevant local authority has received notification requiring it to hold a ballot (or a re-ballot), and it has received the required information, it shall instruct the ballot holder to hold the ballot. Where relevant, the local authority will also supply the information regarding property owners to the ballot holder.

Ballot holder

4.6 The relevant returning officer for the local authority area in which the BID lies (or where the majority of the non-domestic subjects liable for the BID levy lie, if the BID crosses local authority boundaries) will hold the ballot and can appoint staff to assist.

Persons entitled to vote

4.7 Any person liable for the BID levy will be entitled to vote in the ballot to which that levy relates. If a person receives some relief from the BID levy, should their rateable value (RV) vote be capped to the same extent as the relief they receive? This would mean that where a person receives 50% levy relief on a non-domestic subject with a rateable value (RV) of £10,000, their RV vote would represent £5,000.

Question 8: There is no such stipulation in England along the lines of that in paragraph 4.7. Is this proposal reasonable? If so, should it be left to the discretion of the BID board or should it be mandatory?

4.8 Where more than one person is, or is to be, liable for the BID levy as partners or trustees, the person entitled to vote in respect of that non-domestic subject shall be the partners or trustees jointly.

Declaring a ballot void

4.9 Relevant persons can, within 28 days of the publication of the result of the ballot, request that the Scottish Ministers declare a BID ballot, renewal ballot, alteration ballot or re-ballot void if in their view a material irregularity has occurred. This request must be made in writing and the reason for the request must be outlined. The relevant persons are:

- the BID proposer or the BID body;
- at least 5 per cent of the number of persons entitled to vote in the BID ballot, renewal ballot, alteration or re-ballot, as the case may be; or
- the relevant billing authority.

Question 9: Are there any other persons who should be allowed to request that the Scottish Ministers declare a BID ballot void?

4.10 A material irregularity means:

- a contravention of any requirement of these Regulations which means it is likely, in the opinion of the Scottish Ministers, that voting in the ballot has been affected to a significant extent by the contravention;

- those not entitled to vote have voted in the BID ballot and it is likely, in the opinion of the Scottish Ministers, that the result of the BID ballot, renewal ballot, alteration ballot or re-ballot, as the case may be, has been affected to a significant extent; or
- persons entitled to vote have been prevented from voting or hindered from doing so freely in accordance with their own opinion and, in the opinion of the Scottish Ministers, it is likely that the result of the BID ballot, renewal ballot, alteration ballot or re-ballot has been affected to a significant extent.

Question 10: Are there any other reasons we should consider including in the meaning of a material irregularity?

4.11 On receipt of a request the Scottish Ministers will notify the complainant, the relevant billing authority and the BID proposer or the BID body, as the case may be, in writing that they have received the request and send a copy to each of them.

4.12 Following on from notification of the request, written representations in respect of it must be made within 28 days of notification. These representations can be from the complainant, the relevant billing authority and the BID proposer or the BID body. Copies of all representations will be supplied to the other parties and those parties can, within 14 days, make further representations in reply. Again, these representations will be copied to the other parties.

4.13 The Scottish Ministers will notify the complainant, the relevant billing authority and the BID proposer or the BID body in writing of their decision.

4.14 Where the Scottish Ministers declare a BID ballot void the relevant BID arrangements will not come into force on the commencement date; and if subsequently approved will come into force on such date as the relevant billing authority determines, as long as that is no later than one year after notification of the re-ballot result is published.

Payment of costs of a ballot

4.15 If the Scottish Ministers have declared a ballot void and they are of the opinion that the material irregularity was caused by the actions or omissions of the BID proposer or BID body then the BID proposer or body will be liable for the costs of the ballot and re-ballot. The local authority may recover this amount as a civil debt.

4.16 Where the number of persons voting in the ballot who have voted in favour is less than 25 per cent (same number as the minimum required turnout of eligible voters) of the number of persons entitled to vote in the ballot, and the proposals were not approved, the relevant billing authority may require the BID proposer or the BID body to pay the costs of arranging and holding the ballot. The local authority may recover this amount as a civil debt.

Question 11: These stipulations are in place to ensure that a BID proposer develops the BID proposals in line with the requirements of the legislation, and the associated guidance document. However, there will be cases where a BID ballot fails simply due to lack of support, despite the proposer following all the correct procedures. Also, there will be costs associated with the development of a BID prior to the ballot that may be difficult for a BID proposer to fully meet. Views on how these costs can be met would be welcomed.

Obtaining information from billing authority for the purpose of canvassing

4.17 As soon as possible after instructing the ballot holder to hold a ballot, the relevant billing authority shall provide the ballot holder, from its NDR billing records, the name and business address of each ratepayer within the BID area. The billing authority will also receive details from the BID proposer of the property owners in the BID area who are to be involved in funding the BID (if the power to involve them is to be used), and their address details. The billing authority will also pass these details to the ballot holder. The full list of those entitled to vote will be made available for inspection at the billing authorities principle office during normal working hours.

4.18 The BID proposer or BID body, and any person or group of persons who represent 5 per cent or more of those entitled to vote in the BID ballot, can request from the relevant billing authority a copy, free of charge, of the names and addresses of those entitled to vote in the BID ballot. This request can be made in writing or submitted electronically, should identify the BID area the request applies to, and confirm that the list will only be used for the purposes of canvassing those entitled to vote in the BID ballot. The information should not be disclosed by the requestor to any other person, and cannot be used other than for canvassing those entitled to vote in the BID ballot.

Question 12: In England a local authority is allowed to charge for supplying this information. Given that the supply of this information is not viewed as being burdensome, and is restricted to those involved in the BID, we propose not to allow this in Scotland. However, views, particularly from local authorities, would be welcomed on whether this would represent a significant financial burden.

Rules for BID ballots, renewal ballots, re-ballots and alteration ballots

4.19 The ballot will be held on a working day. It should be no earlier than 56 days after the notification of the ballot has been published, and at least 42 days after the ballot papers have been sent to all those entitled to vote. The ballot should be held no later than 90 days from the date on which the ballot holder published notice of the ballot. If the ballot is to be delayed for whatever reason, this must be done no later than 42 days before the day the ballot is to be held. The delay cannot be beyond 15 days from the original ballot date. Where the ballot holder does postpone the ballot they shall notify the relevant billing authority, and the BID proposer or BID body, in writing of the new day of the ballot and the reasons for the postponement and take reasonable steps to publicise the new day of the ballot.

Question 13: In England the ballot papers do not need to be sent to ratepayers until 28 days before the date of the ballot, and the date of the ballot is to be published 42 days before it takes place. Due to representations from business we have extended these periods. Is this appropriate?

4.20 A re-ballot cannot take place until at least one year after the date of the original ballot.

Question 14: England have no such restriction. The reason we are proposing this is to ensure there will be no rapid succession of ballots taking place in one area. If businesses have voted no, then it is reasonable to allow some time to pass before they are asked to

vote again. It will also ensure that BID proposers do all they can to properly consult with those who would be expected to fund the BID. Is this reasonable?

4.21 Ballots are to be conducted by post only.

4.22 The publication of the date of the ballot should state the date of the ballot, and explain that the ballot will be taken entirely by post with votes to be returned by 5p.m. on the day of the ballot.

4.23 The ballot holder must prepare a list of those persons entitled to vote and any proxies. They must also send to each person entitled to vote a statement which explains the arrangements for the ballot, and also stating that a copy of the BID proposals can be requested from the BID proposer (the name and address of the BID proposer must also be stated). Finally a copy of the notification must be sent to Scottish Ministers.

4.24 Each non-domestic ratepayer entitled to vote in a ballot will have one vote for each non-domestic subject occupied, or if unoccupied owned, by them in the geographical area of the BID. For property owners, other than occupier-owners, we propose to allow them one numerical vote for all the non-domestic subjects they own in the BID area. This is explained further at section 9.

4.25 The rateable value used for the purposes of the ballot will be the rateable value at 5p.m. on the day of the ballot.

4.26 Those entitled to vote in a ballot can nominate a proxy voter if they wish. Only one proxy is permitted per eligible voter.

4.27 The ballot is to be a secret ballot, and only the ballot holder and clerks can attend the count of the votes. No information regarding how people have voted can be divulged to any party other than the ballot holder and clerks. No person who has voted shall be required to state the way in which they voted.

Question15: In England attendance at the vote count is not restricted to just the ballot holder. However, representations have been made stating that this is leading to information being made available regarding how people have voted. We therefore propose to restrict attendance purely to those involved in the count. We would welcome views on this proposal.

The ballot paper

4.28 A standard ballot paper will be used for all BID ballots to ensure consistency of approach across Scotland. This is based on the English ballot paper contained in the BID regulations. The ballot paper will be based on the following format:

- Each ballot paper will have a number or barcode printed on the back.
- The box in which a vote can be marked on the ballot paper shall not be less than 1.5 centimetres square.
- All of the words on the ballot paper shall appear in the same size and type.
- Each ballot paper for a BID ballot, or a re-ballot in relation to a BID ballot, shall include the following:

Are you in favour of the Business Improvement District proposals for *[insert a list of the names of the streets in the geographical area covered by the BID proposals]*?

Place a cross (X) in the box of your choice.

YES		NO	
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This vote is in respect of –

[insert address of the non-domestic subject of the person entitled to vote]

I confirm that I am entitled to vote in respect of this non-domestic subject

Signed

Name (in block capitals)

Position (NB where the person entitled to vote is a company or partnership, please state the position held by the person signing)

Note: for your vote to be valid this ballot paper must be signed and returned to the ballot holder at *[insert address for return of ballot papers]* by 5p.m. on *[insert the day of the ballot]*

- Each ballot paper for a renewal ballot, or re-ballot in relation to a renewal ballot, shall include the following wording

Are you in favour of renewing the Business Improvement District arrangements for *[insert a list of the names of the streets in the geographical area covered by the BID]* for a further period of *[specify duration of the proposed renewed BID arrangements]*?

Place a cross (X) in the box of your choice.

YES		NO	
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This vote is in respect of

[insert address of the non-domestic subject of the person entitled to vote]

I confirm that I am entitled to vote in respect of this non-domestic subject

Signed

Name (in block capitals)

Position (NB where the person entitled to vote is a company or partnership, please state the position held by the person signing)

Note: for your vote to be valid this ballot paper must be signed and returned to the ballot holder at *[insert address for return of ballot papers]* by 5p.m. on *[insert the day of the ballot]*

- Each ballot paper for an alteration ballot, or re-ballot in relation to an alteration ballot, shall include the following wording

Are you in favour of the alteration of the Business Improvement District arrangements for *[insert a list of the names of the streets in the geographical area covered by the BID]*?

Place a cross (X) in the box of your choice.

YES		NO	
-----	--	----	--

This vote is in respect of

[insert address of the non-domestic subject of the person entitled to vote]

If you are casting your vote as the owner of the property, please tick this box

Please bear in mind only one numerical vote is granted to owners for all the properties they own in the area. The rateable value vote however is specific to each property

Name of owner (in block capitals).....

I confirm that I am entitled to vote in respect of this non-domestic subject

Signed

Name (in block capitals)

Position (NB where the person entitled to vote is a company or partnership, please state the position held by the person signing)

Note: for your vote to be valid this ballot paper must be signed and returned to the ballot holder at *[insert address for return of ballot papers]* by 5p.m. on *[insert the day of the ballot]*.

- If property owners are to be involved in the funding and voting on BID arrangements they will be issued with the following voting form (amended to reflect what the vote is for) for all properties owned in the BID area:

Are you in favour of the Business Improvement District arrangements for *[insert a list of the names of the streets in the geographical area covered by the BID]*?

Place a cross (X) in the box of your choice.

YES		NO	
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This vote is in respect of

[insert addresses of all the non-domestic subjects owned in the BID area by the person entitled to vote]

I confirm that I am entitled to vote in respect of these non-domestic subjects

Signed

Name (in block capitals)

Position (NB where the person entitled to vote is a company or partnership, please state the position held by the person signing)

Note: for your vote to be valid this ballot paper must be signed and returned to the ballot holder at *[insert address for return of ballot papers]* by 5p.m. on *[insert the day of the ballot]*

Procedure on issue of ballot paper

4.29 One ballot paper will be issued to each person entitled to vote in the ballot, in respect of each non-domestic subject for which he is entitled to vote (or where owners, who are not also rateable occupiers, are involved one paper for each owner covering all properties owned).

4.30 The address to which the ballot paper is to be sent is the address of the non-domestic subject or the principal place of business of the person entitled to vote. Alternatively the BID proposer can conduct a canvass of those entitled to vote to ask for the relevant address details for each person. This will mean the ballot papers and bills are directed towards the most appropriate address to ensure prompt receipt. If the BID proposer elects to undertake such a canvass they will be required to supply an updated list of address details to the billing authority and the ballot holder at least 14 days prior to the ballot papers being issued. Each person entitled to vote shall also be sent a statement prepared by the ballot holder providing an explanation of the BID arrangements and the arrangements for the ballot; and an envelope for the return of the ballot paper.

Question 16: In England the BID proposer is not permitted to update the address list, and it is the billing authorities records that are used for this. This can lead to a delay in the correct person receiving the ballot papers. Views are welcomed on whether the proposal outlined above is appropriate.

4.31 The ballot holder is permitted to use whatever means they think appropriate to deliver the ballot papers, in consultation with the BID proposer but the final decision will be theirs. This may mean that recorded delivery is used but given the expense of this (and the possibility that this will reduce the BID revenue) we are proposing not to have a mandatory requirement for recorded delivery. Postage shall be prepaid on envelopes in which the ballot paper is issued and return postage shall be prepaid on all return envelopes. No person other than the ballot holder and his clerks may be present at the issue of ballot papers, unless permitted by the ballot holder to attend.

Replacement ballot papers

4.32 If a ballot paper is spoilt or lost prior to being returned to the ballot holder the person entitled to vote can request a replacement ballot paper at any time from the ballot holder, providing evidence of their identity. This paper should be issued to the person entitled to vote when the ballot holder is satisfied that the request is genuine, or no later than 5 working days after notification that the ballot paper has been lost or spoilt and less than 3 working days before the ballot is held. The replacement ballot paper should be sent to the address indicated by the person entitled to vote.

Question 17: In England the issuing of replacement ballot papers is only done 4 days prior to the close of ballot, which may cause difficulties if not received and returned promptly. To ensure that everyone is given a proper amount of time to vote we are allowing a more flexible approach in Scotland. We would welcome views on this.

Receipt of return ballot papers

4.33 A postal ballot paper shall not be taken to be duly returned unless it is received by the ballot holder (either by hand or by post) before 5p.m. on the day of the ballot. The returned ballot paper will be kept in a secure receptacle until the votes are counted, and no person other than the ballot holder and his clerks may be present at the receipt of the ballot papers. The ballot holder shall retain the ballot papers for six months after the day of the ballot and then, unless otherwise directed by Court order, shall destroy them.

Rejected ballot papers

4.34 Where a ballot paper is received which bears the same number or barcode as a ballot paper already received, both that ballot paper and the other ballot paper bearing the same number or barcode shall be void and not counted. In addition any ballot paper which is unsigned, unmarked or void will be deemed to be void and not counted. However where a ballot paper on which the vote is marked elsewhere than in the proper place; or otherwise than by means of a cross; or by more than one mark, it will not be deemed to be void if the voting intention appears clear. The decision of the ballot holder on any question arising in respect of a ballot paper will be final.

Declaration of result

4.35 The ballot holder shall certify the total number of votes cast in the ballot excluding any votes given on rejected ballot papers, and the total rateable value of each non-domestic subject in respect of which a person voted in the ballot. Following on from this the ballot holder will certify the total number of votes cast in favour of the question asked in the ballot; and the total rateable value this represents. Once this is done the ballot holder will publish the result of the BID ballot as soon as possible.

Question 18: Should a time limit be given for publication of the ballot result?

Validity

4.36 No ballot will be declared invalid by reason of any act or omission of the ballot holder or any other person in breach of the ballot provisions, if it appears that the ballot was

conducted substantially in accordance with the ballot provisions and the act or omission did not affect the result. Once the BID commencement date has arrived the ballot will be deemed to be valid if no proceedings are started in relation to it prior to that date.

Information

4.37 The relevant billing authority shall supply to the ballot holder any information they require for the purposes of carrying out their functions in relation to a BID ballot.

Expenses of the ballot holder

4.38 All expenditure properly incurred by the ballot holder in relation to the holding of a ballot under these Regulations shall be paid by the relevant billing authority who can recover it from the BID levy if they so desire.

5. LOCAL AUTHORITY VETO POWER

Veto of BID proposals

5.1 An amendment will be proposed to Part 9 of the Planning etc (Scotland) Bill, which will outline the circumstances a local authority can use its veto power. The reasons a local authority will be entitled to exercise its right of veto are where the BID proposals:

- conflict with any structure plan, local plan, strategic development plan or local development plan which has been approved or adopted under the Planning Act (currently undergoing its parliamentary passage) and which applies to the proposed BID or any part of it; or
- conflict to a material extent with any policy formally adopted by and contained in a document published by the authority (whether or not the authority is under a statutory duty to prepare such a document); or
- lead to a significantly disproportionate financial burden being imposed on any person or class of persons (as compared to the other persons entitled to vote in the proposed BID).

Question 19: Is this veto power reasonable, are any additional reasons required?

5.2 Further to the above, we propose to set the following further conditions in the Regulations:

- That a disproportionate financial burden may be caused by the manipulation of the geographical area of the BID or by the structure of the BID levy; so that the burden is inequitable; and
- That were a local authority exercises its right of veto, this must be done prior to ballot papers being issued by the ballot holder.

Question 20: Are there any other conditions that should be considered?

5.3 When considering whether to exercise its right of veto a local authority must take account of the following (where relevant):

- The level of indicative support for the BID proposals, where available;
- The nature and extent of the conflicts referred to at paragraph 5.1;
- The structure of the proposed BID levy and how the financial burden of the BID is to be distributed amongst ratepayers in the geographical area of the BID;
- The extent to which the BID proposer discussed the BID proposals with the authority before submitting the BID proposals to the authority; and
- The cost incurred by any person in developing the BID proposals and canvassing in relation to the BID proposals.

Question 21: Are there any other factors a local authority should consider when exercising its right of veto?

5.4 Where a BID crosses local authority boundaries both local authorities will have the right of veto.

Appeal against veto

5.5 There will be a right of appeal to the Scottish Ministers against a local authorities use of the veto power. The request for an appeal to be held must be sent to the Scottish Ministers within 28 days. This request must be accompanied by a statement of the reasons for which the appeal is made.

5.6 On receipt of the appeal notice the Scottish Ministers will notify the appellant and the relevant local authority, in writing, that they have received the appeal notice; and send a copy of the appeal notice to the relevant local authority. Where two or more appeal notices relate to the same veto, the Scottish Ministers may decide those appeals together. The appeal will be determined by way of written representations to be made to the Scottish Ministers.

5.7 Within 28 days of being notified of the appeal the appellant and the relevant local authority may serve on the Scottish Ministers written representations in respect of the appeal. A copy of the representations made by one party shall be sent by the Scottish Ministers to the other parties. This will be accompanied by a statement explaining that any party may within 14 days of receiving them serve on the Scottish Ministers further written representations in reply. The Scottish Ministers will send a copy of these to the other parties.

5.8 In deciding whether to allow an appeal, the Scottish Ministers will take into account the following matters

- The level of indicative support for the BID proposals, where available.
- The nature and extent of the conflicts referred to at paragraph 5.1.
- The structure of the proposed BID levy and how the financial burden of the BID is to be distributed amongst ratepayers in the geographical area of the BID.
- The extent to which the BID proposer discussed the BID proposals with the local authority before submitting the BID proposals to the authority.
- Whether, after the local authority has received the request from the BID proposer to hold a ballot, the local authority changed any policy formally adopted by and contained in a document published by the authority so that such policy then conflicted with the BID proposals.
- The cost incurred by any person in developing the BID proposals and canvassing in relation to the BID proposals.

5.9 As soon as reasonably practicable after a decision has been made, the Scottish Ministers will send notice of their decision in writing to the appellant and the relevant billing authority. This decision is final.

6. ACCOUNTING PROCESS

BID Revenue Account

6.1 Where the relevant billing authority has more than one BID it shall ensure a separate BID Revenue Account is kept for each of the BIDs.

6.2 Where BID arrangements come to an end and there is a credit to the BID Revenue Account which, after deducting a reasonable sum for the cost of administering the arrangements for crediting or refunding the amount, would provide a credit or refund of at least £5 for each person liable to pay the BID levy the relevant billing authority will:

- calculate the amount of the credit to the BID Revenue Account (after relevant deductions have been made) which is to be credited or refunded to each levy payer;
- ensure the amount to be credited or refunded to each levy payer is calculated by reference to the amount of the BID levy each levy payer was liable to pay for the last chargeable period of the BID arrangements; and
- make arrangements for the amount so calculated to be credited against any liability by way of non-domestic rates of each levy payer or, where there is no liability for that person by way of non-domestic rates, for the amount to be refunded to that person.

6.3 Where the amount to be credited to each levy payer is not at least £5 the relevant billing authority shall carry the credit balance in the BID Revenue account to the credit of its general fund, or where not a local authority will transfer the outstanding balance to the relevant local authorities general fund.

Question 22: The £5 limit was set in England, this is to ensure that any refund represents value for money given the costs associated with this. We may also cater for the possibility of an alternative billing agent, and propose to allow any outstanding balance to be transferred to the relevant local authority. As the local authority can use this money towards its goal of improving the wellbeing of its citizens it is thought this would be appropriate. However, views on this proposal would be welcomed.

Credits to the Account

6.4 For each year a billing authority is required to keep a BID Revenue Account they will carry to the credit of the account amounts equal to the sums paid for the year through the BID levy, and any additional voluntary contributions from other parties (which can include the local authority). Any monies from the previous year that were uncollected should also be credited to the account, along with any credit balance from the previous year.

Debits to the Account

6.5 For each year a billing authority is required to keep a BID Revenue Account, they will carry to the debit of the account amounts equal to the cost to the authority for the year in respect of collecting the BID levy; the expenditure of the BID board for the year in respect of the BID arrangements; any sums credited to the account for the year or any previous year which, in the opinion of the authority, are bad debts which should be written off; and any provision for doubtful debts which, in their opinion, should be made in respect of sums so credited; and any debit balance shown in the account for the previous year.

7. ALTERATION OF BID ARRANGEMENTS

Alteration of BID arrangements without an alteration ballot

7.1 BID arrangements may be altered without an alteration ballot where the arrangements include a provision to that effect and where they include a provision describing the alteration procedure. However, certain elements cannot be altered without a ballot:

- The geographical area/s of the BID; and
- The BID levy if it would cause anyone to be liable to pay the BID levy who was not previously liable to pay; or increase the BID levy for anyone.

7.2 The alteration procedure must include, where there is a BID body, a consultation between the BID body and the relevant billing authority; and where a local authority BID body is responsible for implementing the BID arrangements, a consultation between the relevant billing authority and such representatives of the business community for the geographical area of the BID as the authority considers appropriate.

7.3 Where the BID arrangements are altered the billing authority will ensure that the changes are made by the time those BID arrangements (as altered) are to come into force and shall send a notice in writing, or electronically, explaining the reason for and the effect of the alteration to each person liable for the BID levy.

Alterations of the BID arrangements following a ballot

7.4 Where there is no provision in the BID arrangements for the arrangements to be altered, then a ballot of levy payers must be held. The same thresholds set for the original ballot will apply to the alteration ballot, unless the BID board determine different thresholds should be used. Any thresholds set cannot be lower than the standard settings of over 50% for both the numerical count and the RV count.

8. TERMINATING BID ARRANGEMENTS

Termination of BID arrangements

8.1 A local authority or BID board may terminate BID arrangements if it is clear that the BID does not have sufficient funds to meet its liabilities and arrangements for addressing the shortfall are not possible. If it becomes apparent that a shortfall is likely if the BID continues in its present form, the BID board must call a public meeting of levy payers to explain the potential shortfall and any solutions to address it. Without an alteration ballot, any solutions to address the shortfall cannot include any increase in the BID levy or other changes to the BID arrangements other than reducing the levels of additional services or other investments in the BID area. The BID board or local authority must inform each other of the termination of the BID arrangements at least 28 days before the termination date.

8.2 When arrangements are terminated, the relevant billing authority must give notice of the termination to all levy payers in the BID area, and refund any monies due in line with the repayment provisions contained at paragraphs 6.2 and 6.3.

Question 23: In England it is only the local authority who can terminate BID arrangements. We propose to allow this power to the BID board as well so that the private sector has an escape clause from a BID that runs into financial difficulties. Is it appropriate to allow both the local authority and BID board to terminate arrangements? Are there any other reasons for permitting BID arrangements to be terminated?

9. INVOLVEMENT OF OWNERS BEYOND RATEABLE OCCUPIERS

9.1 The BID working group recommended, and the Scottish Ministers have agreed, that the mandatory involvement of property owners should be included in the BID legislation which will apply to Scotland. (The proposal we are aiming to progress was the preferred model of the Scottish BID working group, which involved property experts.) As this aspect of the BID policy is reserved under the Scotland Act 1998, we have secured the agreement of the UK Government to progress the relevant legislative provisions through the UK Parliament.

9.2 The proposal is that the BID proposer:

- first identifies all relevant properties who will be eligible to vote (using the information supplied by the relevant local authority);
- then identifies all interests lying behind these (with reference to the Land Register and the Sasine Register if required);
- then allocates the percentage of the BID levy to be paid by the occupier, depending on an approximation of the benefits; and
- finally allocates the balance of the BID levy to the property owner.

9.3 The property owner will in practice be the “superior interest” for the property as it is likely there will be many owners whose interest in the property is distant due to them leasing it out on a long-term basis. The person who is sub-leasing the property to the actual occupier (the ratepayer) will in many cases be the most appropriate person to fund the levy and vote on the BID proposal. We propose to set a rule which will state that any “superior interest” who has more than 5 years to run on a lease, will be the relevant owner for the purposes of funding and voting on the BID arrangements.

9.4 The responsibility for whether property owners would be involved, and the extent of their financial contribution, would be left to each BID Board in consultation with ratepayers and “superior interests”. All “superior interests” who are asked to contribute towards the funding would have one numerical vote for all properties they “own” in the BID area. This is to prevent property owners from having a vote for each property they own in the area. We believe this is fair as the benefits they may receive will arise from the potential for increased rental levels and a reduction in vacancy rates. For occupiers, benefits can be variable depending on their business which we believe merits each business having a numerical vote.

9.5 The Rateable Value vote would be split according to the proportion each party paid towards the BID levy for the property in question. If the occupier contributed 25 per cent of the levy payment, and the owner 75 per cent then the Rateable Value vote would be split 25/75.

9.6 We propose that the relevant billing authority should have the same enforcement powers against owners as they for occupiers.

Question 24: We would welcome views on the proposal outlined above.

LIST OF QUESTIONS

Question 1: The mandatory requirement to provide details of current and planned provision of services in the BID area was recommended by the BID working group, which involved COSLA. We propose to ask local authorities to liaise with other public bodies to ensure a comprehensive list is provided to the BID proposer. Is this proposal reasonable?

Question 2: Should any other bodies to be included in the list of those allowed to develop BID proposals?

Question 3: Are there any other matters that should be addressed in renewal proposals (for instance the performance and achievements of the current BID)?

Question 4: For transparency for the customer and ease of administration for local authorities we propose to have a mandatory requirement for separate notices for the BID levy charge. Due to the involvement of owners in particular, and the necessary split of the RV element of the vote and charge, current local authority billing systems could not cater for these arrangements. Views would be welcomed on this proposal.

Question 5: Should we allow a local authority to issue a demand notice prior to the chargeable period?

Question 6: The proposals in paragraphs 3.18 to 3.20 are entirely new and have been inserted at the suggestion of businesses. Are they reasonable?

Question 7: The 84 day advance notice of the intention to ballot period is taken from the English regulations. Is the same period appropriate for Scotland?

Question 8: We are considering whether to cap a persons RV vote to the level of RV used in the calculation of the BID levy. Would this proposal be reasonable? If so, should it be left to the discretion of the BID board or should it be mandatory?

Question 9: Are there any other persons (in addition to those in paragraph 4.9) who should be allowed to request that Ministers declare a BID ballot void?

Question 10: Are there any other reasons (in addition to those in paragraph 4.10) we should consider including in the meaning of a material irregularity?

Question 11: There are stipulations in place to ensure that a BID proposer develops the BID proposals in line with the requirements of the legislation, and the associated guidance document. However, there will be cases where a BID ballot fails simply due to lack of support, despite the proposer following all the correct procedures. Also, there will be costs associated with the development of a BID prior to the ballot that may be difficult for a BID proposer to fully meet. Views on how these costs can be met would be welcomed.

Question 12: In England a local authority is allowed to charge for supplying information. Given that the supply of the information is not viewed as being burdensome, and is restricted to those involved in the BID, we do not plan to allow this

in Scotland. However, views, particularly from local authorities, would be welcomed on whether this would represent a significant financial burden.

Question 13: In England the ballot papers do not need to be sent to ratepayers until 28 days before the date of the ballot, and the date of the ballot is to be published 42 days before it takes place. Due to representations from business we have extended these periods, are these appropriate?

Question 14: We propose to have a restriction on when a re-ballot can take place so that a re-ballot cannot take place until one year after the date of the original ballot. The reason we are proposing this is to ensure there will be no rapid succession of ballots taking place in one area. If businesses have voted no, then it is reasonable to allow some time to pass before they are asked to vote again. It will also ensure that BID proposers do all they can to properly consult with those who would be expected to fund the BID. Is this reasonable?

Question 15: In England attendance at the vote count is not restricted to just the ballot holder. However, representations have been made stating that this is leading to information being made available regarding how people have voted. We therefore propose to restrict attendance purely to those involved in the count. We would welcome views on this proposal.

Question 16: In England the BID proposer is not permitted to update the address list, and it is the billing authorities records that are used for this. This can lead to a delay in the correct person receiving the ballot papers. Views are welcomed on whether this proposal is appropriate.

Question 17: In England the issuing of replacement ballot papers is only done 4 days prior to the close of ballot, which may cause difficulties if not received and returned promptly. To ensure that everyone is given a proper amount of time to vote we are allowing a more flexible approach in Scotland. We would welcome views on this.

Question 18: Should a time limit be given for publication of the ballot result?

Question 19: Is the veto power proposed at paragraph 5.1 reasonable, are any additional reasons required?

Question 20: Are there any other conditions on the veto power that should be considered?

Question 21: Are there any factors in addition to those set out that a local authority should consider when exercising its right of veto?

Question 22: A £5 refund limit was set in England to ensure that any refund represents value for money given the costs associated with this. We have catered for the possibility of an alternative billing agent being secured, and propose to allow any outstanding balance to be transferred to the relevant local authority. As the local authority can use this money towards its goal of improving the wellbeing of its citizens, we consider this would be appropriate. However, views on this proposal would be welcomed.

Question 23: In England it is only the local authority who can terminate BID arrangements. We propose to allow this power to the BID board as well so that the private sector has an escape clause from a BID that runs into financial difficulties. Is it appropriate to allow both the local authority and BID board to terminate arrangements? Are there any other reasons for permitting BID arrangements to be terminated?

Question 24: We would welcome views on the proposal relating to the involvement of property owners.