

GUIDANCE ON THE BUSINESS IMPROVEMENT DISTRICTS (ENGLAND) REGULATIONS 2004

Intention

The purpose of this guidance is to explain the intention behind the legislative framework of BIDs and to advise the reader on issues which may arise in the development and implementation of a BID scheme. Definitive interpretation of legislation is a matter for the courts to decide and this guidance should not be interpreted as anything other than guidance.

The Business Improvement Districts (England) Regulations 2004 prescribe the basic requirements which must be met in order for the BID to meet its statutory duty. The Regulations are available from the HMSO and cost £6.00.

Regulation 1 - gives the definition of the various terms used in the Regulations, for example the meaning of 'BID proposer' and 'BID body'.

Regulation 2 - provides for the billing authority to supply information from its non-domestic rate records to persons developing BID proposals.

- Authorities will be able to provide details of names and addresses of the non-domestic ratepayers and the rateable values of the hereditaments located in the area covered by the BID proposals.
- Authorities may charge for supplying this information.

The intention behind Regulation 2 is to enable BID Proposers to develop a BID scheme through canvassing opinion from the business community. As part of this development we would strongly encourage Billing Authorities, BID Proposers and the Ballot Holder to work together in making sure that the local rating list is up to date, and that any proxy voting rights are in place. An up to date list will help make sure that the right person in the company receives the ballot paper in plenty of time.

Regulation 3 - specifies the persons who may draw up BID proposals:

- A billing authority
- A non-domestic ratepayer
- A person with an interest in land within a proposed BID area
- Members of a body which has, amongst its aims, the intention to manage a Business Improvement District.

A BID Proposer is statutorily required to notify, in writing, the Secretary of State and the relevant Billing Authority of their intention of asking the Billing Authority to put the BID Proposal to the ballot. This notice is required 12

weeks prior to the BID Proposer submitting proposals to the billing authority for balloting.

The address to which the notice should be sent in regards the Secretary of State is:

Secretary of State
Office of the Deputy Prime Minister
5/H2 Eland House
Bressenden Place
London
SW1E 5DU

Each BID will emerge from the unique circumstances in the area and this Regulation allows a wide number of interested groups to take the lead in developing a proposal. It is fundamental to the success of a BID that it has support from all interested parties. This means an open and constructive dialogue between the local authority and the business community in creating a solid and committed partnership. This will increase the chances of a successful BID.

ODPM will include a list of potential BIDs on its website. The information held will be based on the information received under the statutory requirements of the legislation.

Regulation 4 and Schedule 1 - set out the matters that should be included in a BID proposal.

Where BID proposers decide to seek approval of BID proposals in a BID ballot, under this Regulation they must send to the billing authority:

- a copy of the BID proposals;
- a summary of the consultation it has undertaken;
- a summary of the proposed business plan;
- a summary of the financial arrangements for the BID body.

The BID proposer also needs to satisfy the Billing Authority that he/she has sufficient funds to pay the costs of the ballot, if required to do so under Regulation 10.

Under this Regulation, anyone liable for the proposed BID levy is entitled to receive a copy of the BID proposals and the proposed business plan, if they ask for a copy.

If a billing authority considers that a proposed BID proposal conflicts with their formally published policies, the authority must notify the BID proposer or the BID body in writing, explaining the nature of the conflict.

BID proposals must include information on:

- the works or services to be provided, the name of the provider and the type of body it is;
- the existing baseline services;
- the geographical area to be covered by the BID arrangements;
- the non-domestic ratepayers to be liable for the BID levy (i.e. whether all business or specified classes of business), how the levy will be calculated, and whether costs incurred in developing the BID proposals, holding the ballot, or implementing the BID are to be recovered through the levy;
- the ratepayers who will benefit from relief from the levy and the level of that relief;
- whether the BID arrangements may be altered without an alteration ballot and, if so, which aspects may be so altered;
- the duration of the BID arrangements and when they will start.

Similar requirements are specified where BID arrangements are to be altered.

The BID Proposal is fundamental to the success of a BID. When putting together a plan it is important that the BID proposer takes account of the statutory requirements that need to be included in any proposal. It is recommended that the Proposer involve the local authority at an early stage in the development of the proposals. This will ensure that any concerns the Authority may have are addressed early on instead of occurring at a later stage.

Non-domestic ratepayers must have a clear understanding of the proposed scheme in order to be able to vote accordingly. An underdeveloped proposal is likely to be unsuccessful at ballot.

A proposal that has not been fully developed may cause problems once the BID arrangements are under way.

Regulation 5 - requires the billing authority to instruct the ballot holder (the returning officer for local elections in the area) to hold a ballot:

- when it receives a BID Proposal that complies with Regulation 4
- when an alteration ballot is necessary
- if instructed by the Secretary of State under regulation 9 (declaring a ballot void).

This regulation clearly states that the billing authority has to be content that the proposals cover the issues laid down in Regulation 4 and therefore Schedule 1 (see below).

If a Billing Authority has been involved during the early stages of the BID development then the instruction to go to ballot should occur soon after the

notice given under regulation 4. In such circumstances an instruction could probably be given within a week of receiving the notice.

Regulation 6 - provides that the local authority returning officer is "the ballot holder".

This person is also often the Chief Executive. The ballot holder will be familiar with the management of local elections but BIDs will be a new area for ballot holders.

The ballot holder may delegate this duty to one or more persons.

Regulation 7 and Schedule 2 - requires the ballot holder to carry out the BID ballot and sets out the instructions that must be followed.

The ballot process provides sufficient time for a ratepayer to consider a proposal. Many ratepayers will need to gain approval from their head office, discuss it with their board or consult with interested groups and therefore the regulations allow a period of time for this to happen.

The timetable is as follows.

- The billing authority instructs the ballot holder to hold a ballot, renewal ballot, a alteration ballot, or re-ballot.
- The ballot holder publishes notice of the ballot - no later than 42 days before the day of the ballot.
- The day of the ballot must be at least 28 days after the date ballot papers are sent to voters and no later than 90 days after publication of the notice of the ballot.
- The ballot holder sends ballot papers to voters with a statement on the arrangements for ballot - no later than 42 days before the day of the ballot.
- On the day of the ballot, all ballot papers must be received by 17.00 hours.
- The votes must be counted as soon as practicable after the day of the ballot.
- The notice of the result must be published as soon as reasonably practicable after the result is certified.
- A complaint concerning a material irregularity in a ballot must be made within 28 days of the notice of the result.
- The billing authority must exercise their veto (if required) within 14 days of the day of the ballot.
- Ratepayers can appeal against the exercise of the veto within 28 days of the veto notice.
- Commencement date must be no later than a year from the notice of the result.

Schedule 2 contains detailed procedural requirements on BID ballots under the following headings in the following order:

- Timetable
- Day of the ballot
- Ballot - preliminary procedures
- Ballots - general
- Proxy voting
- Requirement of secrecy
- Notification of requirement of secrecy
- The ballot paper
- Prohibition of disclosure of vote
- Procedure on issue of ballot paper
- Spoilt ballot papers
- Lost ballot papers
- Receipt of return ballot papers
- The count
- Rejected ballot papers
- Decisions on ballot papers
- Declaration of result
- Validity
- Retention of ballot papers

To improve the chances of a ballot running smoothly and effectively and increase a high turnout it is important that extensive groundwork has been done prior to the ballot papers being sent out.

- The BID Proposer, the Billing Authority, and the Ballot Holder together to make sure that the local rating list is updated and that any proxy voting rights are in place.
- The ballot paper will be sent to hereditament concerned; the principal place of business in England of the ratepayer or, where a proxy is appointed, to the address of the proxy.
- Whilst the Regulations are clear on what can/cannot be printed on the ballot paper it is possible to include wording on the envelope containing the ballot paper. Words identifying the envelope as containing important documentation may be printed on the outside of the envelope.

The ballot holder is statutorily required to send a copy the notice of ballot to the Secretary of State at the following address:

Secretary of State
 Office of the Deputy Prime Minister
 5/H2 Eland House
 Bressenden Place
 London
 SW1E 5DU

Regulation 8 - provides that the person entitled to vote will be the non-domestic ratepayer:

- as defined in the BID proposals (BID area, type of property etc);
- who is the ratepayer on the day of the ballot.

Where a person has two hereditaments within a BID area, he will get a vote for each hereditament.

'Person' means any legal person i.e. natural person, and company.

In the case of a ballot paper being addressed to a company and not to a named individual then the ballot holder is not obliged to check whether the person who signed the ballot paper has the authority of the company to do so. It is for the company to ensure its internal procedures in place to deal with such correspondence. However, as previously mentioned prior groundwork will help to prevent such a scenario from occurring.

Regulation 9 -

A ballot can be declared void if there is a material irregularity, ie a breach of the rules that has influenced the result by a significant extent.

A ballot can only be declared void if a complainant writes to the Secretary of State within 28 days of the announcement of the result of the ballot.

The complainant can be:

- the relevant billing authority
- the BID proposer or the BID body;
- at least 5% of the number of persons entitled to vote in the BID ballot.

The Secretary of State will notify the BID proposer, the local authority and the complainant of his decision and where it was the result of action or omission of the BID proposer may include an explanation to that effect which could make the BID proposer liable to any costs incurred.

Regulation 10 - enables a billing authority to recover the costs of a BID ballot or a renewal ballot from the BID proposer or BID body:

- where less than 20% of eligible ratepayers vote in favour of the proposals and either the ballot was unsuccessful or was declared void due to acts or omissions of the BID proposer /body.

However, there is nothing in the Regulations preventing local authorities from negotiating with BID proposers to share the ballot costs, where a BID is successful. Some authorities may wish to absorb such costs as part of their contribution towards the BID.

Regulation 11 - provides for the billing authority to supply information to the ballot holder from its non-domestic rates records for the purpose of canvassing in relation to a ballot.

Authorities are required to provide details of names and addresses of the non-domestic ratepayers and the rateable values of the hereditaments located in the BID area.

A copy of the information provided by the billing authority may be requested by:

- the BID proposer or the BID body;
- any person/s representing at least 5% of those liable for any proposed BID levy.

Authorities may make a reasonable charge for supplying the information.

The Regulation also prevents the disclosure or use of the information except for the purposes of canvassing those entitled to vote in a BID ballot.

Regulation 12 - enables billing authorities to veto BID proposals if they consider the arrangements are likely to:

- conflict to a material extent with any of their published policies;
- place a disproportionate and inequitable financial burden on any person or group of persons through manipulation of the BID geographical area or the structure of the BID levy.

The veto must be made within 14 days from the day of the ballot.

In deciding whether to exercise its veto, the billing authority must have regard to the following:

- the level of support for the BID proposals;
- the nature and extent of the conflict with the local authority's published policies;
- the structure of the BID levy and how the financial burden of the BID is to be distributed among ratepayers;
- the amount of prior discussion between the BID proposer and the local authority before submitting the BID proposals to the authority;
- the costs incurred in developing BID proposals and in canvassing.

We expect the veto to be used only in extreme cases where the local authority has not been fully involved in the development of the BID scheme.

Regulation 13 - sets out the procedures for dealing with appeals against the use of the veto.

Any person entitled to vote in a BID ballot may appeal to the Secretary of State within 28 days of the veto notice being given by the billing authority.

Appeals must be dealt with by way of written representations. On receipt of an appeal, the Secretary of State must acknowledge receipt and send a copy of the appeal to the billing authority.

Following this, the appellant and the billing authority may make written representations to the Secretary of State within 28 days, and a copy of those representations are copied to the other parties. The parties have a further 14 days to make additional representations.

In deciding whether to exercise its veto, the Secretary of State must take into account:

- the level of support for the BID proposals;
- the nature and extent of the conflict with the local authority's published policies;
- the structure of the BID levy and how the financial burden of the BID is to be distributed among ratepayers;
- the amount of prior discussion between the BID proposer and the local authority before submitting the BID proposals to the authority;
- whether the billing authority changed any of their published policies after being notified of proposals to proceed to a BID ballot, so that the policy then conflicted with the BID proposals; and
- the costs incurred in developing BID proposals and in canvassing.

Regulation 14 and Schedule 3

Where a BID is approved in the ballot the Billing Authority must set up a BID revenue account by the day the arrangements come into force which account for debits and credits. Details are specified in Schedule 3.

BID moneys are ring-fenced from other local authority funds. This means that they can only be spent on BIDs. Each BID must have its own separate BID revenue account even if there is more than one BID within a billing district.

Where a BID comes to an end or is terminated, and if there is a credit to the BID Revenue Account that equates to more than £5 per levy payer, that amount must be returned to the levy payer.

When developing a BID proposal thought should be given to the procedures for transferring the monies from the BID Revenue Account to the BID Body. In most circumstances it is envisaged that the BID Body will carry out the works/services under the BID arrangements with the BA handing amount over directly into the BID Body bank account.

Regulation 15 - cross-refers to Schedule 4 that sets out the procedures to be followed by the billing authority in the administration, collection, recovery and applications of the BID levy.

Regulation 16 - allows BID arrangements to be altered without an alteration ballot, where the BID arrangements include a specific provision to that effect. But arrangements can not be altered without a ballot if the alteration would:

- change the geographical area of the BID;
- change the BID levy in a way that would make liable for the BID levy any person who was not previously liable to pay;
- increase the BID levy for any person.

Where the BID arrangements make provision for alterations to be made without an alteration ballot, there must be consultation those responsible for implementing the BID arrangements and the relevant billing authority.

Regulation 17 - provides for alterations to be made to BID arrangements following a ballot.

Where alterations are proposed to BID arrangements which do not allow for alterations to be made without a ballot and the alterations would:

- change the geographical area of the BID;
- change the BID levy in a way that would make liable for the BID levy any person who was not previously liable to pay;
- increase the BID levy for any person;

the alterations can not come into force unless the alteration proposals are approved by a ballot of the ratepayers liable for the levy under the alterations and the majority of businesses balloted are in favour, both in terms of the numbers and in terms of rateable value.

Regulation 18 - allows a billing authority to terminate BID arrangements:

- if it is of the view that the BID body will have insufficient finances to meet its liabilities;
 - and it has offered the BID body a reasonable opportunity to arrange for financing the shortfall or a reduction in the works or services under the BID arrangements;
 - and those liable for the BID levy have been given the opportunity to make representations at a public meeting about the proposed termination.
- if the authority is unable, due to circumstances beyond its control, to provide works or services necessary for the BID to continue;
 - and there has been consultation with the representatives of the business community.;

Those responsible for the BID arrangements may also terminate those arrangements where:

- the works or services to be provided under the BID arrangements are no longer required;
- the BID body, due to circumstances beyond its control, is unable to provide works or services which are necessary for the BID to continue;
- and provided there has been consultation with the billing authority and representatives of the business community.

At least 28 days notice must be given of an intention to terminate the BID arrangements.

Regulation 19 - requires the billing authority to supply to the ballot holder any information he needs to enable him to carry out his functions under the Regulations.

Regulation 20 - requires the billing authority to pay the ballot holder's expenses in holding ballots under the Regulations. However, where Regulation 10 applies, or where the billing authority has an agreement with the BID proposer, the authority can pass these costs on to the BID proposer.

Regulation 21 - provides for the electronic communication of requests, applications or notices referred to in the Regulations, provided they are legible and capable of being used for subsequent reference.

Schedule 3 - sets out the information required to be reflected in a BID Revenue Account kept by a billing authority.

Schedule 4 - contains detailed requirements on the imposition, administration, collection, recovery and application of the BID levy under the following headings in the following order:

- Interpretation
- The requirement for demand notices
- Content of demand notices
- Invalid notices
- Service of demand notices
- Payments under demand notices
- Payments under demand notices: further provision
- Demand notices: final adjustment
- Enforcement
- Outstanding liabilities on death
- Application of BID administration provisions to the Crown
- Joint occupiers and owners: billing

- Joint occupiers and owners: enforcement
- Enforcement in relation to partnerships