



Report to:	Development Committee
Subject:	Response to Department for Social Development (DSD) Consultation on Business Improvement District (BID) Regulations
Date:	20 August 2013
Reporting Officer:	Shirley McCay, Head of Economic Initiatives and International Development, Ext. 3459

1.	Relevant Background Information
1.1	On 22 Feb 2011 the Development Committee approved the Council's response to DSD's initial consultation on the creation of Business Improvement Districts (BIDs). The enabling legislation for BIDs was subsequently passed by the NI Assembly, and was formally adopted on 21 March 2013.
1.2	DSD are now consulting on 22 draft regulations, which will underpin the establishment of a BID. They have asked respondents to answer five principle questions, which we have covered at appendix 1 below. The deadline for submission of responses is 6 September 2013.
2.	Key Issues
2.1	The 22 regulations primarily cover the following key issues: <ul style="list-style-type: none"> • The role of the BID proposer, how information is obtained and developed into a business case for the prospective BID area, and the Council power of veto. • Electoral procedures for the BID ballot • Financial procedures, including collection and enforcement of the BID levy and maintaining the BID Revenue Account.
2.2	While the Council are generally supportive of BIDs, the Committee will wish to note that elections to Shadow Councils to be held in May 2014, with new Councils taking legal form on 1st April, 2015. It is unclear at present as to how the Shadow Council will be administered and how decisions will be taken. The existing Council will, at that stage, be winding down, and it is questionable if the outgoing or Shadow Council will be best placed to deal with any BID proposals.
2.3	Evidence from England and Scotland suggests a 12-18 month timeframe to fully develop a BID. If a business body starts their development work now, then the electoral procedures could take place within, or towards the end of, the Shadow BID period. This concern is reflected in Council's draft response.

3.	Provision of information and Governance
3.1	As part of the previous consultation in 2011 Council raised concerns over the provision of ratings information. Council welcome the fact that under regulation 2 this responsibility has been assigned to DFP.
3.2	As part of good Governance the Council are also suggesting that each BID is required to set up a formal Board, which is distinct from the executive functions of the BID. Such a Board should consist of appropriate local stakeholders, which could include business and community leaders, and could also be extended to Members of the Local Authority. The BID should produce an annual report for their Board, which is made available to local stakeholders and the general public (e.g. via publishing on a website). The aim of the annual report is to record progress against the business and financial plan set out in the original BID proposals.
4.	Council Power of Veto
4.1	The power of Veto primarily relates to planning issues and safeguarding business or individuals from excessive financial pressures. Regulation 5(4) mentions the potential for conflict with published Council policy, but this is not specifically subject to veto (save from a more general veto around insufficient consultation with the Council). It is recommended that the consultation response requests that Regulation 5(4) is given appropriate weight by making conflicts with published Council policy subject to veto.
5.	The Electoral Ballot
5.1	Under Regulation 6 the Council has a duty to appoint a Ballot Holder, for the purposes of running the initial Ballot, or any renewal ballots, alternation ballots, or re-ballots. Save for the concerns raised at para 2.2 the Council is content with this obligation, and the mechanisms and timescales to challenge a ballot covered in Regulation 10, and of administering the ballot covered at schedule 2.
5.2	Under Regulation 11 the Council can require the BID proposer or BID body to pay for the costs of arranging and holding the ballot (proof of funds must be demonstrated prior to the ballot). At a future date an options paper will be brought back to Committee in relation to the recovery of electoral costs.
6.	BID levy and BID Revenue Account
6.1	The Council have significant concerns over these issues, covered at s15, s16 and schedule 4 of the Regulations, which places the duty for the collection, enforcement and administration of the BID levy onto the Council. In the previous consultation Council strongly advocated that the legal responsibility for the collection and enforcement of the levy should be transferred from Council to LPS. Local Councils have no previous role in this field and it does not appear appropriate to engage them in this work.
6.2	The current regulations state that Councils can appoint “a person for the administration, collection and recovery of the BID levy” which is referred in the legislation as “a billing body”. However, where a billing body is not appointed “any reference to the billing body shall be construed as a reference to the district council.” In other words, while the responsibilities can be devolved, the legal duty has not been transferred.

6.3	If the Council, or its agent, were to collect the BID levy there would be difficulties in ensuring the correct rateable value to use for each property, given the constantly changing rates database. Resources would also be needed to deal with collection, enforcement, administration and appeals.
6.3	The draft response to DSD strongly advocates that responsibility for the BID levy should transfer to LPS. Furthermore, in the event of LPS taking ownership, we see no value in Council administering the Revenue Account on behalf of the BID, and further recommend that money collected is passed directly to the BID without passing through Council accounts.
6.4	Should the Council retain the legal duty to collect, enforce and administer the levy, then we will need to consult with DSD over free access to the LPS database, and provision to require the levy to be paid in advance by direct debit. While we envisage significant complications with the regulations as they stand, these two measures would help mitigate the risks.
7. Resource Implications	
7.1	Should a BID be initiated the draft regulations will require additional resources from Democratic Services (the electoral ballots); Finance (the collection, enforcement and administration of the Levy); and Policy / Legal (development of BID proposals and business case).
8. Equality and Good Relations Considerations	
8.1	There are no Equality and Good Relations implications attached to this report.
9. Recommendations	
9.1	Members are asked to approve the draft response to the DSD consultation.
10. Decision Tracking	
Timeline: N/A Reporting Officer:	
11. Key to Abbreviations	
BID: Business Improvement District DSD: Department for Social Development LPS: Land and Property Services	
12. Documents Attached	
Appendix 1: Draft response to DSD consultation on Business Improvement District Regulations Appendix 2: DSD Introduction to the Consultation and Summary of the Draft Regulations	

Department for Social Development Consultation: Business Improvement District Regulations

Draft Belfast City Response – August 2013

1.	Introduction
1.1	Belfast City Council welcome the opportunity to respond to the Department for Social Development's (DSD) consultation on Business Improvement Districts (BIDs).
1.2	Belfast City Council recognise that BIDs have been a positive mechanism for the promotion and regeneration of town centres and other business areas. The Council has active experience of supporting businesses across the City, most recently in the "Backin' Belfast" initiative in early 2013, but also through our support for Trader's Groups and from our physical regeneration programme "Renewing the Routes". The Council welcome the introduction of BIDs as a further way to enhance the partnership between the public and private sector; and will support any business area that comes forward to lead and develop BID proposals.
1.3	However, the Department will be aware that a significant period of Local Government Reform is currently underway. Elections to Shadow Councils will be held in May 2014, with new Councils taking legal form on 1st April, 2015. It is unclear at present as to how the Shadow Council will be administered and how decisions will be taken. The existing Council will, at that stage, be winding down, and it is questionable if the outgoing or Shadow Council will be best placed to deal with any BID proposals during that time.
1.4	Evidence from England and Scotland suggests a 12-18 month timeframe to fully develop a BID. If a business body starts their development work now, then the electoral procedures could take place within, or towards the end of, the Shadow BID period. This will be an extremely demanding period for Local Authorities – in particularly our democratic, financial, and legal services. DSD may therefore wish to stipulate in the Regulations that the commencement of electoral procedures will not occur prior to the 1 April 2015, at which point the Shadow Councils will take legal form.
1.5	If this stipulation is not made, then Belfast City Council would welcome further guidance and legal assurance around the process for Shadow Councils to respond to BID proposals, and administer relevant procedures.
2.	Is there an adequate level of prescription in the Regulations to ensure effective governance while still allowing for local flexibility in putting together a BID process?
2.1	As part of the previous consultation in Feb 2011, Belfast City Council suggested that ratings information should be provided by DFP. The Council welcome the fact that DSD have incorporated this suggestion at Regulation 2, and are content that this approach is a sensible way to initiate the development of BID proposals. The Council is also content at the concept of a BID proposer drawn from the business community, which is outlined at Regulation 3.
2.2	The Council are also content with subsequent processes, outlined at Regulation 5, which

	require a business and financial plan, and evidence of appropriate stakeholder consultation, before any commitment to an electoral ballot is made.
2.3	Belfast City Council note that many BIDs in the UK and Ireland, as part of their Governance procedures, have included formal Boards, both in Shadow form during the development stage and as part of ongoing best management practice. Many of these Boards include appropriate local stakeholders, which could be business and community leaders, and Members of the Local Authority. While we are not suggesting that membership details of any Board should be prescribed, the Department may wish to consider if the creation of a BID Board, which is distinct from the executive and management function, should be included within the Regulations.
2.4	As part of good governance we also suggest that the executive of the BID produce an annual report to their Boards, reporting progress against the business and financial plan set out in the original BID proposals. This report should be made available to local stakeholders and the wider public (this duty could be discharged by placing a copy of the report on the BID's website).
2.5	The concept of a formal Board carries further importance should the Council's suggestion that the levy receipts are passed directly to the BID (see para 4.4 and 4.5 below) be adopted.
3.	In Regulation 10 and Schedule 2, are the timescales, e.g. for issuing ballot papers, appeals, vetoes etc, set at the correct level? If not please be specific about which ones you think should be changed.
3.1	Under Regulation 6 the Council has a duty to appoint a Ballot Holder, for the purposes of running the initial Ballot, or any renewal ballots, alternation ballots, or re-ballots. Save for the concerns raised at para 1.3 and 1.4 above, the Council is content with this obligation, and the mechanisms and timescales to challenge a ballot covered in Regulation 10, and of administering the ballot covered at schedule 2.
4.	In Schedule 4, is it sufficient to provide the power for councils to enforce the payment of unpaid levies and leave the specifics of how to go about it up to the Councils? If not, please provide further information.
4.1	The Council have significant concerns over the proposed financial regulations, covered at s15, s16 and schedule 4, which places the duty for the collection, enforcement and administration of the BID levy onto the Council. While we note the ability to devolve these matters to a billing body, Regulation 16 clearly states that the legal duty rests with the Council.
4.2	In NI the collection of business rates is undertaken by the Land & Property Services Agency (LPS). Local councils have no previous role in this field and it does not appear appropriate to engage them in this work. It is our proposal that the business levy should be collected by LPS. To do otherwise will mean different billing, collection and enforcement systems causing both duplication and confusion. The preferred and most cost effective approach is therefore collection and enforcement by LPS.
4.3	Our concerns are further re-inforced by the fact that, following consultation on the primary legislation, DSD issued a memorandum dated 25 June 2012, stating that, on this matter, they had received a number of concerns relating to billing, collecting and enforcing the BID levy. In the memo (para 10) they stated they had discussed this issue with DFP and had

	agreed that LPS would be responsible for the administration of the BID levy. This has not been reflected in the Regulations, and no reference to LPS has been made.
4.4	In addition we see no value in Local Authority management of the BID Revenue Account, which appears to create an unnecessary administrative tier. Involving Local Authorities in the administration of accounts may also suggest that Councils are imposing an additional tax on business. This could undermine the intention of the Department, as outlined in the introduction to the consultation, that the levy is best viewed as a collective investment by businesses for specific additional services.
4.5	In addition to transferring the billing, collection and enforcement of the Levy to LPS, Belfast City Council would also propose that the Levy is passed directly to the BID rather than coming through Council accounts. Appropriate financial controls are best achieved through the Governance of a BID Board, as recommended at para 2.3 above, and by requiring the BIDs to produce an annual report, recommended at para 2.4 above.
5.	Is more clarity required on any of the processes?
5.1	As highlighted in these responses, further clarity is required in relation to: <ul style="list-style-type: none"> • The possibility of local authorities administering electoral procedures from May 2013 to March 2014, when Shadow Councils are in force and a significant period of local government reform is underway (para 1.3 and 1.4) • Should the duties to collect, enforce and administer the Levy remain with Local Authorities, over which the Council has registered significant concern at para 4.1 and 4.2, then further guidance on the practical management of these responsibilities will be required. • Further clarification would be useful on the obligations on businesses that start trading in the BID area after it has been established. It is assumed that these businesses will be legally liable for the Levy, even though they did not have an opportunity to vote on the proposals, but it may be sensible to make specific reference to this.
6.	Any other comments?
6.1	While our intention will be to fully support the development of BID proposals, Council welcome the powers of veto outlined at Regulation 13, and view these as a sensible measure that can help focus minds and secure stronger agreement.
6.2	In terms of the BID conflicting with Planning Orders listed at Regulation 13, it is important to recognise that the Council also have a number of statutory and non-statutory improvement plans for areas. This can include area plans, corporate plans or other strategic initiatives. Regulation 5(4) recognises the potential for conflict or an overlap between the BID and existing plans published by the Council. However, there is no power to resolve these potential conflicts, save through a more loosely defined power to veto BID proposals due to lack of consultation with the Council (Reg 13(3e)). Belfast City Council suggest that the more specific conflicts mentioned at Regulation 5(4) are also included in the power of veto.
6.3	DSD are no doubt aware that the Planning (NI) Order 1991, which is referenced at Regulation 13(2), will be superseded by the Planning Act (NI) 2011, and elements of the Planning Act (NI) 2013. While the final BID legislation must be consistent with current

	legislation at the time of enactment, it may be appropriate to reference these changes, including the proposed Council powers of area and community planning. The role of Council will increase in volume as a result of the proposed transfer of planning and regeneration functions.
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DSD Introduction to the Consultation and Summary of the Draft Regulations

1. INTRODUCTION

The first Business Improvement District (BID) was founded in Canada in 1970 when town centre businesses in Bloor West Village, Toronto decided action was needed to revitalize the town and attract shoppers back from out-of-town shopping centres. They successfully lobbied for legislation for all the businesses in the proposed BID area to pay a levy which was used to improve the physical appearance of the town and also to promote the town centre as a vibrant, attractive and safe place to work, shop and live. Today there are some 140 BIDs across England, Scotland and Wales with two BIDs also established in the Republic of Ireland.

A BID allows businesses within a defined area to vote for collective investment in specific additional services in order to improve the commercial environment within that area. It is not intended to replace public investment in the area; instead, additional services or projects are funded by a local business levy. All businesses within a potential BID area have the opportunity to vote on proposals before the levy is imposed.

Proposals are developed by local business-led partnerships, usually in co-operation with the local council. The BID levy is not an additional tax – it is best understood as an investment which businesses collectively make in their area in order to fund services which they feel will directly benefit the local economy. The BID levy is payable by the non-domestic ratepayers within the BID area.

2. ABOUT THIS CONSULTATION

Aims and Objectives

This consultation seeks views on the processes and level of prescription outlined in these Regulations, and all the details underpinning the establishment of a BID.

The Department is keen to hear from everyone who has an interest in BIDs, including business owners and traders, local councillors, business representative organisations, councils, other public, private and voluntary sector bodies and anyone else who wishes to submit a response.

AVAILABILITY AND RESPONSES

This consultation is available online from the DSD website (www.dsdni.gov.uk) and runs for 12 weeks from 17th June 2013 to 6th September 2013 and applies to Northern Ireland
Document Number: 151365

(NI). Respondents are asked to submit their views as early as possible during this period to allow as much time as possible for consideration.

We have identified a number of key questions in relation to this consultation. These questions are contained at Appendix 1 of this booklet. You can complete the online survey on the consultation website, or you can use the questions included in this document and return your responses to us by e-mail at social.policy@dndni.gov.uk. Alternatively you can post your response to us at the address provided in this section. Requests for this consultation document in different formats and languages will be considered.

Alternatively should you only wish to respond to a particular element of this consultation and do not wish to complete all of the questions contained at Appendix 1 of this booklet you can submit your comments referring to the relevant question. For example:
Question x – I/We consider that.....

All responses not submitted electronically must be made in writing and attributable so that there is an objective record of the view expressed.

Your name, address and organisation name (if applicable) should be clearly stated. Responses should be submitted before the closing date.

FREEDOM OF INFORMATION ACT 2000

The Freedom of Information Act gives the public access to any information held by a public authority, namely, the Department for Social Development in this case. This right of access to information includes information provided in response to a consultation. Your response, and all other responses to the consultation, may therefore be disclosed on request. If you would like your response to be treated as confidential, please indicate this clearly.

RESPONSES

Written responses should be sent to:-

Business Improvement Districts Unit

Department for Social Development

Level 3, Lighthouse Building

1 Cromac Place

Gasworks Business Park

Ormeau Road

Belfast

BT7 2JB

3. BUSINESS IMPROVEMENT DISTRICTS LEGISLATION IN OTHER JURISDICTIONS

Legislation enabling the formation of BIDs was passed in England and Wales in 2003, (with subsequent regulations published in 2004 and 2005 respectively) and in Scotland in 2006 (regulations in 2007). Also in 2007, the ROI enacted legislation to allow for the creation of statutory BIDs. Therefore, putting in place legislation to provide for statutory BIDs in NI brings us in line with the other nearby jurisdictions of the UK and ROI.

A consultation on the BIDs policy proposals was carried out by the Department from 1 December 2010 – 28 February 2011. The consultation sought views and comments. A copy of the findings from the consultation is available from the Department's website at www.dsdni.gov.uk.

The Business Improvement Districts Act (Northern Ireland) received Royal Assent on 21 March 2013.

These draft Regulations are based on the existing Regulations in place for England and Wales and Scotland. In some instances, however, it has been necessary to develop processes which are specific to Northern Ireland. This approach therefore aims to promote consistency of application as far as possible and is able to draw on what has worked best in the other jurisdictions, but also to ensure that our legislation is fit for purpose for our specific circumstances here in Northern Ireland.

4. THE NEED FOR A STATUTORY BUSINESS IMPROVEMENT DISTRICTS SCHEME IN NORTHERN IRELAND

Prior to the introduction of legislation for BIDs, they could operate in Northern Ireland on a voluntary basis only. This meant that businesses could opt to pay a levy, but those who refused could still reap the benefits of the additional services delivered in their area. Putting legislation in place to enable statutory BIDs means that all businesses within the defined BID area would be balloted over whether a BID should be in place, and would then be legally required to pay the levy if the BID proposal was successful.

5. SUMMARY OF THE DRAFT REGULATIONS

In summary, these Regulations make provision in relation to business improvement districts. Business improvement districts are provided for in the Business Improvement Districts Act (Northern Ireland) 2013 ("the 2013 Act") as areas within which projects specified in the BID arrangements are to be carried out for the benefit of that district or

those who live, work or carry on any activity in the district. Those projects are to be financed (in whole or in part) by a BID levy imposed on eligible non-domestic ratepayers, or a class of such ratepayers in the district. A business improvement district may only be established where those entitled to vote approve the BID proposals, which on approval become BID arrangements.

Regulation 2 provides for the Department of Finance and Personnel (“DFP”) to supply information from its non-domestic rates records to persons developing BID proposals. DFP may charge for supply of this information.

Regulation 3 specifies the persons who may draw up BID proposals and **regulations 4 and 5** specify the procedures to be followed in connection with drawing up of BID proposals.

Schedule 1 specifies the matters to be included in BID proposals.

Regulation 6 provides for the district council to hold a BID ballot on receipt of BID proposals.

Regulation 7 provides that the district council shall appoint the ballot holder for any ballot in respect of business improvement districts required under the 2013 Act or these Regulations.

Regulation 8 and **Schedule 2** make provision for the arrangements for holding a ballot and the conduct of a ballot. Regulation 9 provides for who is entitled to vote in a ballot

Regulation 10 confers a power on the Department for Social Development (“the Department”) to declare a ballot void in cases of material irregularity, and procedures connected with that.

Regulation 11 enables a district council to recover the costs of a BID ballot or a renewal ballot from the BID proposer or BID body in the prescribed circumstances.

Regulation 12 provides for DFP to supply information from its non-domestic rates records for the purpose of canvassing in relation to a ballot. DFP may charge for supply of this information. Provision is also made for the restriction of the use of the information.

Regulation 13 prescribes the circumstances in which a district council may veto BID proposals, the period within which this has to be done and the matters to which a district council shall have regard to in deciding whether to exercise the veto.

Regulation 14

makes provision in relation to appeals against the exercise of the veto.

Regulation 15 and **Schedule 3** make further provision in relation to the BID Revenue Account.

Regulation 16 provides that the district council may appoint a billing body to administer, collect and recover the BID levy in accordance with **Schedule 4**. Where it does not, the district council is to carry out those functions. **Schedule 4** makes provision with respect to the imposition, administration, collection, recovery and application of the BID levy.

Regulation 17 applies where two or more district councils are enabled to make joint BID arrangements. It provides that such district councils shall appoint a single billing body in respect of the joint arrangements which may be one of them, another district council or

another person. It also deals with how references to district councils in certain other parts of these Regulations are to be read when there is a joint BID arrangement.

Regulations 18 and 19 provide for the alteration of BID arrangements with or without an alteration ballot, and

Regulation 20 provides the circumstances in which BID arrangements may be terminated.

Regulation 21 provides for the supply of information to the ballot holder for the purposes of carrying out that person's functions under the Regulations.

Regulation 22 provides for electronic communication of requests, applications and notices. This provision does not apply to notices under Schedule 4 because that Schedule makes specific provisions for electronic communication of demand notices