

BUSINESS IMPROVEMENT DISTRICTS BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department for Social Development in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The proposed Bill will introduce provisions to allow for statutory business improvement districts (BIDs) in Northern Ireland and will provide a general legislative framework for the BID scheme, with the detail of the scheme intended to be introduced through secondary legislation.
4. BIDs legislation is already in place in England, Wales, Scotland and the Republic of Ireland. The concept originated in America and experience has shown that the BID model has the potential to bring about an improved business environment and improved economic growth. Proposals for Northern Ireland BIDs have been informed by legislation and practice in other parts of the UK and Ireland.
5. Failure to introduce BIDs legislation would mean that those who wish to establish BIDs would have to rely on informal or voluntary financial arrangements. Experience has shown that this can be problematic and lead to difficulties in raising sufficient finance to support schemes.
6. In broad terms, the Bill will:
 - Allow a district council to define a BID within its council area or in cooperation with a neighbouring council;

- Require a district council to set up a ring-fenced BID Revenue Account to hold funds raised by the local levy;
 - Require that BID proposals be formally compiled and put to a vote via an official ballot;
 - Specify those entitled to vote in the ballot (non-domestic rate payers within the proposed BID area);
 - Specify the conditions for approval of a ballot. The interests of large and small businesses are to be protected by a voting system which requires a simple majority in both votes cast and rateable value of votes cast plus a minimum 25% turnout (by number and rateable value) in order to be successful. BID proposers in a given area may specify that they wish to set a higher threshold;
 - Allow a district council to veto BID proposals in certain exceptional circumstances (e.g. if proposals are considered to significantly conflict with existing council policy or if they are likely to impose a disproportionate financial burden). In the event of a council exercising this veto, the BID proposers would be able to appeal to the Department;
 - Specify the maximum timeframe (five years) for BID arrangements to operate before needing to be resubmitted to a ballot.
7. Many of the provisions in the Bill will provide for the later introduction of statutory rules. It is largely through these instruments that the detail of what is required legislatively, to underpin the introduction of BID arrangements, will be put in place. The Department's intention is to allow maximum flexibility within the general framework provided for in primary legislation, in order that the scheme can be adapted to suit local needs.

CONSULTATION

8. The Department consulted on proposals for business improvement districts between 01 December 2010 and 28 February 2011 and received 37 written responses.
9. From the responses received it is clear that there is an overwhelming support for the introduction of business improvement districts in Northern Ireland. Of the 37 responses received 35 (95%) were very supportive, feeling that the BID model would facilitate local businesses to work in partnership with local government in addressing issues impacting on the viability and vitality of town centres.
10. The main area of concern raised in the consultation related to responsibility for the billing, collection and enforcement of the BID levy. The Department had proposed in its consultation paper that this should be handled at local council level. However, a significant percentage of respondents suggested that this responsibility would be better placed with Land and Property Services (LPS) which currently carries out a similar role in its collection of the annual rates. Following discussions with the Department of Finance and Personnel (DFP), it has been agreed that LPS will take on a role in the administration of the BID levy, the details of which will be set out in secondary legislation and guidance from the Department.
11. The Bill has been developed in consultation with DOE, DFP and DOJ in recognition of the overlap with their areas of policy responsibility.

OPTIONS CONSIDERED

12. Three options were considered. Option 1 was to do nothing and allow BIDs in Northern Ireland to continue based on voluntary contributions with no mechanism to require payment or enforcement of a levy.
13. Option 2 was to develop legislation which would enable the introduction of statutory BIDs and provide a framework for regulation. Legislation would be flexible and the Department would leave questions such as the rate of the levy and relative contributions of different businesses to local discretion while providing a framework of advice and guidance.
14. Option 3 was to develop more prescriptive legislation that would attempt to regulate more aspects of BIDs operation and place more emphasis on standardisation and central control rather than local discretion.

15. The Department's preferred option was option 2 as it was considered that it offered the best balance between a statutory framework and local discretion for the business community to determine appropriate costs.

OVERVIEW

16. The Bill contains twenty-two clauses and commentary on these provisions follows. Comments are not given where the wording is self-explanatory.

Clause 1: Arrangements with respect to business improvement districts

This Clause enables a district council to make arrangements for a business improvement district in a defined area within the district council's boundary for the benefit of those identified in the BID proposals. Clause 1 also makes explicit that a BID project, in a district council area, need not involve businesses that are within a discrete geographic area, but can consist of businesses that are linked thematically, or that are near to one another without being wholly adjacent to each other.

Clause 2: Joint arrangements

This Clause allows the Department to make regulations outlining the procedure for when a BID proposal covers an area lying within the boundaries of two or more district councils.

Clause 3: Additional contributions and action

This Clause allows district councils, and any other person identified in the "BID arrangements", to make voluntary financial contributions towards funding a BID project.

Clause 4: Duty to comply with arrangements

This Clause places a duty on a district council to comply with the BID arrangements, once these are in force.

Clause 5: BID proposals

This Clause ensures that a BID project will only go ahead if the BID proposals have been approved by a ballot of those ratepayers identified in the BID proposals. Clause 5 also allows the Department to set out in regulations the persons who can draw up BID proposals; the procedures for consultation, including who can be consulted on the proposals; the procedures which a person taking forward a BID arrangement should follow when drawing up BID proposals; what should be outlined in the BID proposals; when the BID

arrangements would commence; the circumstances in which disclosure of relevant information must be made by DFP; the purpose(s) for which this information may be used; and provides for the creation of offences and penalties in relation to the unauthorised disclosure of any data provided by DFP.

Clause 6: Entitlement to vote in Ballot

This Clause sets out how entitlement to vote is determined. It requires the BID proposer to provide a statement to the district council that lists all those who will be eligible to vote in the BID ballot. The choice of who can vote is ultimately determined by the names appearing in the statement prepared by the BID proposers and the decision of who appears on the list is vested in the BID proposers. A person will be eligible to vote if he is chargeable to rates in respect of a property on the Net Annual Valuation (NAV) list within the BID area.

Clause 7: Approval in ballot

This Clause sets out the conditions that must be met before a BID ballot can be regarded as approved. The conditions are:

- (a) A majority of the votes cast are in favour of the BID proposal;
- (b) At least 25% of those entitled to vote have done so;
- (c) Those who vote in favour represent a greater aggregate of net annual value than those who vote against;
- (d) At least 25% of the aggregate of the net annual values of all hereditaments in respect of which an eligible ratepayer is entitled to vote, have done so.

Clause 8: Approval in ballot – alternative conditions

This Clause allows those who have drawn up BID proposals to set a higher margin of either net annual values, or numbers of votes cast, or both, before a BID ballot can be taken as approved. In addition, the BID proposals submitted to the district council are required to state whether the alternative voting conditions will apply, so that a greater majority will be required, in either the number of votes cast by persons voting, or of the net annual value element of the vote.

Clause 9: Power of veto

This Clause confers the right to veto BID proposals on a district council. It requires the district council to notify the BID proposers whether or not it will use its veto, and to provide reasons for that decision, including where the veto has not been applied. Clause 9 also provides that the circumstances in which the district council may veto a BID proposal may be prescribed by the Department and that

the Department may also prescribe the matters which the district council must consider before it may veto a BID proposal. Where the veto is applied, the ballot will not take place. District councils are also required to inform the person drawing up the BID proposals that he has a right of appeal against the veto to the Department. The district council must also notify the BID proposer of the details of that right of appeal.

Clause 10: Appeal against veto

This Clause allows any person who was entitled to vote in the BID ballot to appeal to the Department against a district council's decision to veto BID proposals. The Department will be able to make further provision via regulations as to the process behind an appeal.

Clause 11: Commencement of BID arrangements

This Clause provides for the BID arrangements to come into force on the day detailed in the BID proposals. It also places a duty on the district council to ensure the BID arrangements commence on the relevant day.

Clause 12: Imposition and amount of BID levy

This Clause provides that a BID levy can only be raised while BID arrangements are in force, and provides that the levy is to be calculated in accordance with the arrangements. The BID levy is not limited to being calculated on the basis of rateable value. It could for example be a flat rate levy. This clause also allows a BID levy to be different for different classes of ratepayer, which means relief(s) could be provided from the BID levy. Subsection (5) requires BID proposals to state whether the costs of developing the BID proposals and holding of the ballot are to be recovered through the BID levy.

Clause 13: Liability and accounting for BID levy

This Clause provides that BID proposals must specify who is liable for the BID levy, and that a person's liability is to be determined in accordance with the BID arrangements. It further specifies that all levy monies be paid directly to the district council which made the BID arrangements in question.

Clause 14: BID Revenue Account

This Clause requires a district council to open an account which is exclusively used to hold all revenues pertaining to a particular BID arrangement. This clause also gives the Department powers to make further provision relating to the BID account by regulations.

Clause 15: Administration of BID levy etc.

This Clause provides that the Department may make regulations governing the imposition, administration, collection, recovery and application of the BID levy.

Clause 16: Duration of BID arrangements etc.

This Clause sets a maximum time limit for BID projects of 5 years. It also provides for BID arrangements to be renewed, but only where a further ballot is approved under the same conditions as outlined in clause 7 or clause 8, if alternative conditions used. This clause also allows the Department to make regulations setting out the procedure for alteration and termination of BID arrangements.

Clause 17: Regulations about ballots

This Clause allows the Department to make regulations governing the ballot process, particularly, but not exclusively, in relation to:

- (a) The timing of ballots;
- (b) The persons entitled to vote;
- (c) The question to be asked in a ballot;
- (d) The allocation of votes to those eligible ratepayers entitled to vote in a ballot,
- (e) The form that ballots may take;
- (f) The persons who are to hold ballots;
- (g) The conduct of ballots;
- (h) Allowing the Department to declare ballots void in cases of material irregularity;
- (i) Enabling a district council to recover the costs of a ballot.

Clause 18: Power to make further provision

This Clause allows the Department to make consequential and transitional provisions where necessary.

Clause 19: Further provision as to regulations

This Clause provides that any regulations made in the Bill are subject to negative resolution procedures in the Assembly, other than regulations under clause 9. Draft affirmative procedure is required for regulations under clause 2(1) (where they contain provision which modifies other legislation), clause 5(2)(f)(iii) (the creation of offences and penalties in connection with any unauthorised disclosure of such information), clause 9(3) (circumstances in which the district council veto may be exercised) and clause 18(1) (where they contain provision amending any other statutory provision).

Clause 20: Crown application

This Clause provides that the Bill applies to the Crown.

Clause 21: Interpretation

This Clause provides definitions of terms used in the Bill.

Clause 22: Short title

This Clause provides that the new legislation shall be known as the Business Improvement Districts Act (Northern Ireland) 2012.

FINANCIAL EFFECTS OF THE BILL

17. The proposals do not have any significant financial implications for the Department. The operation of BIDs will require the Department to fulfil a central guidance and support role which can be met from within existing resources. The issue of the Department providing funding for the development of BID proposals will be considered further as arrangements are being developed. Provision will be made in secondary legislation for Land and Property Service (LPS) and district councils to have the option of recovering from the revenue raised by the levy, any costs incurred from the BID levy administration, data sharing and ballot arrangements.
18. In line with the legislation in Great Britain and the Republic of Ireland, the legislation will not be prescriptive in stipulating who will liable for the levy. It will be up to the BID proposer to determine in his BID proposals which non-domestic ratepayers will be liable to pay the BID levy and at what rate. Inclusion in a BID area will mean entitlement to vote on the BID proposals. However, as most BID proposals are targeted at commercial retail areas, it is unlikely that many government departments or other public bodies will become liable for a levy.

HUMAN RIGHTS ISSUES

19. The Department considers the provisions of the Bill to be compatible with the Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

20. In accordance with the duty under Section 75 of the Northern Ireland Act 1998, officials have conducted an equality screening exercise to determine the potential implications for equality of opportunity of the policy proposals. Initial conclusions were that the proposals will have no significant detrimental impacts and therefore a full impact assessment was not considered necessary. These conclusions were further supported in that there were no equality concerns raised during the public consultation exercise.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

21. The Department has conducted a preliminary regulatory impact assessment and concluded that the proposals will not have a disproportionate impact on businesses, charities, social economy enterprises or the voluntary sector. BID projects will be funded directly by district businesses and other organisations and this will only occur if they agree through a ballot that the BID should be established.

LEGISLATIVE COMPETENCE

22. The Minister for Social Development has made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Business Improvement Districts Bill would be within the legislative competence of the Northern Ireland Assembly.”