

Response to the Social Development Committee Call for Evidence on the Business Improvement Districts Bill September 2012

This response has been drafted to respond to the Social Development Committee call for evidence regarding the Business Improvement Districts Bill. It was drafted in liaison with the Local Economic Development Forum and using evidence from a number of councils.

The NILGA Executive Committee is to consider the key issues for local government at their meeting on 14th September 2012, and it is anticipated that NILGA will be giving verbal evidence on this issue on 18th October 2012.

A summary of the Bill proposals are set out in Appendix 1

**For further information or to discuss any of the issues highlighted, please contact
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**Derek McCallan
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20th September 2012**

1.0 INTRODUCTION

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities and is supported by all the main political parties in Northern Ireland. Economic Development is a key issue for local government, given the leading role of councils in developing local economic growth and prosperity. Councils take their responsibility for economic well-being and job creation very seriously, and are keen to ensure that the wider economic policy frameworks can be translated into council services that are required on the ground.

NILGA welcomes the opportunity to respond to this call for evidence as many of our member councils are extremely keen to move forward with Business Improvement Districts as soon

as possible, in partnership with their local businesses. We trust that our comments will be taken into account when developing the final document.

2.0 BACKGROUND

NILGA would highlight the local authority role as strategic leader in place-shaping, responding to residents' ambitions and aspirations and working with partners to deliver necessary services at the local level. The Association would also point to efforts that have been ongoing through three rounds of European funding to develop the capacity of the local government sector to fulfill a strategic role in the delivery of Local Economic Development (LED), particularly in the context of the RPA process.

The expansion of LED activities undertaken by local councils is highlighted by an almost zero base in the early 1990s, through to a commitment of around £30million per annum in 08/09, two-thirds of which is made up from rates contributions with the remaining third coming from other sources, mainly EU funds.

NILGA strongly welcomes the growing recognition of the role of local authorities as bodies that are capable of making a unique and complementary contribution to the social and economic prosperity of Northern Ireland. Local government is keen to work in partnership with the NI Assembly Departments and Committees to ensure that we can jointly plan and prioritise activity, maximising resources available to grow our economy.

NILGA welcomes the recognition of the need for an integrated and coherent approach to economic development within the region and the role of partners in delivering a shared economic agenda.

3.0 GENERAL COMMENTS

- It is increasingly evident that there is huge support for introduction of Business Improvement Districts in Northern Ireland, and that a locally applied 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. This Bill is therefore broadly welcomed.
- The 'high level' nature of the Bill is of some concern however, and it is imperative that councils are materially involved in working with the Department on more detailed policy and legislation.
- The intention of the Department to allow maximum flexibility within the primary legislation is noted, but it is the view of NILGA that there are a number of specific issues that would be better detailed as specifics in the bill.

4.0 SPECIFIC ISSUES

4.1 Collection of the levy

It is noted that the explanatory memorandum details the department's intention that the levy should be collected by Land and Property Services, and this is welcomed. However, this

intention is unclear within the wording of the Bill itself. Clarity is required within the Bill as to who collects the associated levy.

4.2 Enforcement of the Levy

Similarly, there is a need to clarify who would be responsible for enforcement in the event of non-payment. At present this aspect is completely unclear, and again, it is recommended that LPS is the enforcement body.

4.3 Organisation of BID Ballots

Greater role clarity is required on the organisation of BID ballots.

4.4 Guidance on the Power to Veto

There is no available guidance on the power to veto. NILGA would encourage the Department to work with councils to develop relevant guidance.

5.0 RESPONSE TO CLAUSES OF THE BILL

Clause 1: Arrangements with respect to business improvement districts

NILGA supports the proposed arrangements which allow a BID to be created in a defined area which need not involve the totality of businesses that are contained within a discrete geographic area, but can consist of businesses that are linked thematically, or that are near to one another without being adjacent to each other. This will allow councils more scope and flexibility in two ways. One, to create BIDs under a specific theme, such as tourism, will allow firm alignment of the BID within a council's wider strategic context and its key corporate priorities. Secondly, it provides more scope to maximise the potential BID revenue stream, which will be a crucial issue for many towns across Northern Ireland, given their size and total rateable value.

Clause 2: Joint arrangements

NILGA supports this clause which 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. This again will maximise the potential BID revenue stream, and will allow for swift and smooth integration of BID schemes after 2015 local government reform.

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. This will be an essential prerequisite to many BIDs becoming a viable proposition and will introduce a key element of financial flexibility and the ability to tailor budgets to suit individual locations. However, this and other aspects of the legislation will need to be fully legal and equality proofed.

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. This will require detailed discussions and a close working relationship with the local councils for the remainder of the BID legislative process. There is a huge onus and corporate responsibility placed on councils in the legislative details agreed to date and within this consultation process, with limited detail on the practical delivery or potential liability. There is a delicate balancing act to ensure that BIDs are enshrined in a legislative framework that is robust enough to ensure that is viewed by the key stakeholders as a sustainable, legal funding entity and allowing the BID the flexibility to respond to the environment that it is operating in. It is essential that these discussions are transparent and inclusive.

Clause 5: BID proposals

NILGA broadly supports the proposed BID proposals, which are closely aligned to the Scottish legislation. The proposals will ensure that BIDs are developed within a recognised, agreed legislative framework and operate in a professional, uniform manner across the province. This will be essential to gaining the early and continued support of the wider business community. BID proposals must identify ratepayers that are eligible to take part in the ballot. The Department will 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.

As discussed in Clause 4 above, this will require detailed discussions and a close working relationship with the local councils for the remainder of the BID legislative process to agree the detail of the BID proposals and ensure they are fit for purpose.

Clause 6: Entitlement to vote in Ballot

NILGA supports this clause which sets out how entitlement to vote is determined. The clause mirrors that of the Scottish, Welsh and English Bills. 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

NILGA supports this clause which sets out how approval of the ballot is determined as, similar to Clause 6 above it adopts tried and tested legislation across the other UK jurisdictions and represents international best practice.

NILGA agrees with the proposal to frame the voting system in terms of votes cast as the only equitable and manageable way forward. This is similar to the legislation in Scotland, England and Wales and most other jurisdictions where BIDs exist.

NILGA is in favour of the same ballot approval procedure of a majority (over 50%) in both number of votes cast and rateable value, to protect the interests of both small and large businesses. NILGA believes that the minimum turnout should be set at 25%, to ensure a credible voting face, and notes the issues in the Republic of Ireland where this level has not been set and BIDs are set up without a strong mandate.

Clause 8: Approval in ballot – alternative conditions

To avoid confusion, particularly in the early stages of introducing BIDs across NI and also given the relatively small size of NI towns and cities, NILGA does not feel it is necessary to introduce alternative conditions for approval of a ballot, such as introduction of a higher margin of either net annual values, or numbers of votes cast, or both, before a BID ballot can be taken as approved.

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. Councils do need to have the power of veto in exceptional circumstances to provide adequate protection for the rate payer, and would value guidance on application of this power.

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. NILGA agrees that there also needs to be a regulatory requirement to appeal against the veto, exercised by the Department to ensure transparency, but, as before, careful and detailed consultation will be required to agree the details of the regulations going forward.

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. While NILGA agrees with the need for the BID arrangements to come into force on the day detailed in the BID proposals, which is in keeping with the nature of the commercial agreement that is being entered into, it should be the responsibility of the BID company or team to ensure that this is the case, not the council concerned.

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.

The rate of levy has been the subject of much debate in other parts of the UK. It is recommended to be between 1 and 2.5% of the rateable value, although, recently, in their publication "Industry Criteria and Guidance Notes for BIDs", the British Retail Consortium (BRC) and the Interbank Rating Forum (IBRF) as guide for their membership base, which, collectively makes up a significant proportion of the rateable base of most larger towns and cities, have put forward a strong recommendation for levies of up to and including 1%. This, it is argued, may discriminate against smaller locations and prevent them from achieving a worthwhile annual budget. This issue will be particularly relevant in Northern Ireland and is worthy of further discussion and debate, particularly with the BRC. There is also an issue about the uniformity of the levy to be considered. The example of Bathgate in Scotland is noted, where businesses with a rateable value of less than £10k were liable for a one-off payment of £100, and larger businesses operated on the more common %age of rateable value calculation. The ability of the BID to pull in additional funding resources may also be a significant factor in the Northern Ireland context, as the total levy amount achievable may be quite small in the majority of cases. It would be considered important that this flexibility to pull in other funding sources was upheld within the regulatory framework. The issue of "cost neutral" BIDs i.e. the ability of the BID to offer significant cost savings through collective buying power or procurement is another important factor in the established UK BIDs is another issue which must not be overlooked and considered in more detail within the NI context.

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.

NILGA believes that this Clause is too prescriptive and does not reflect the flexibility and ability to adapt to local needs that is apparent in other clauses. Councils who have put in place a strong partnership structure with strong governance and financial operating framework and operate as a limited company or other suitable legal structure should have

the flexibility to transfer this accounting and liability for the BID levy to the local legal entity. This would again facilitate the notion that this is a commercial arrangement of which a council is a key partner and not the enforcer. NILGA does accept that in many cases, particularly in smaller towns, the council will need to assume this role.

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. The same comments apply as in Clause 13 above.

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. Again, the need to ensure that there is careful and detailed consultation with councils on the details of the regulations going forward will be required. NILGA would reiterate that a careful balance between a sound legislative framework and the position of Council as a partner rather than simply an enforcer needs to be achieved. Research in to best practice and the experiences of other jurisdictions will be essential here.

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. NILGA is of the view that a timeframe of 5 years is considered appropriate to ensure that BIDs have an appropriate timeframe to demonstrate tangible benefits. It would be inappropriate to have an open-ended BID if it is not seen to be delivering, which is the case in the Canadian model.

Clause 17: Regulations about ballots

This clause allows the Department to make regulations governing the ballot process.

NILGA would reiterate the need to ensure that there is careful and detailed consultation with councils on the details of the regulations going forward will be required. The comments in Clause 15 also apply in this case.

Clause 18: Power to make further provision

This clause allows the Department to make consequential and transitional provisions where necessary. NILGA accepts the need for this clause in the interest of flexibility and adaptability to local need within a sound legislative framework, but again would request close consultation on practical delivery.

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). NILGA is satisfied with this requirement subject to the consultation referred to above.

NILGA has no comment to make in regard to the following clauses:

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.



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Appendix 1 Summary of the Bill

The proposed Bill introduces provisions to allow for statutory Business Improvement Districts (BIDs) in Northern Ireland and will provide a general legislative framework for a BID scheme. Many of the provisions in the Bill will provide for the later introduction of statutory rules.

In summary, 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.

The Bill has been developed in consultation with DOE, DFP and DOJ in recognition of the overlap with their areas of policy responsibility.

Appendix 2 - Examples

Ballymena Borough Council

Ballymena has proactively supported the BID concept at a local level and introduced the first voluntary BID (V-BID) in Northern Ireland. Ballymena has also acted as the lead Council in an innovative Interreg IVA funded project which was designed to promote effective partnership working and BID development across 5 towns in Northern Ireland, the Republic of Ireland and Scotland. Council has worked with the key stakeholders in the town to create a partnership company, Ballymena Town Centre Development Ltd (BTCD) which will deliver a BID Implementation Plan, a key output of the Interreg programme. Ballymena was the only town which was assessed by the consultancy team to be BID-ready.

The Implementation Plan assumes that legislation will be in place by Autumn 2013, the target date set by DSD at a meeting in April 2012. It is imperative that the legislative and consultation process adheres to this target date, to allow Ballymena to proceed to Ballot in early Spring 2014. Council is working closely with BTCD on this consultation process and additional lobbying activity to advance the BID legislation.

Ballymena's ambition to be the first BID in Northern Ireland is part of a wider strategic priority for the Council and a key strand of the Integrated Economic Development Strategy. This is to secure and grow the Town Centre economy through a Destination Ballymena approach. Destination Ballymena articulates the vital role of the Town Centre as a key economic driver for the Borough and defines its role in relation to the unique villages that make up the

Borough. It recognises their co-dependency and collective role in establishing a strong business proposition and promotional platform that will drive footfall and employment opportunities for the Borough. The Ballymena BID will be an integral part of this ambitious process. It will be a crucial source of additional funding, but, even more importantly, it will be a vehicle to develop the key public/private stakeholder relationships that will be crucial to its success.