

BRC response to Consultation Paper on the Draft Business Improvement Districts (England) Regulations 2004

The British Retail Consortium is the lead trade association of UK retailing and exists to defend and enhance where possible, the economic, political and social climate in which its members operate. BRC members sell a wide selection of products through centre of town, out of town, rural and virtual stores. Reflecting the diversity of modern retailing, BRC members include the large multiples and department stores, charity shops and small and medium sized independent retailers. There are over 188,000 VAT-registered retail businesses in the UK operating in more than 322,000 retail outlets. In 2002 retail sales were an estimated £234 billion. The retail industry employs nearly three million people and accounts for almost 11% of the total UK workforce.

The BRC welcomes the opportunity to comment on the Consultation paper on the Draft Business Improvement Districts (England) Regulations 2004. The BRC supports the principle of BIDs as a potential mechanism for channeling investment and improving the trading environment. Please find below our key points in response to this consultation.

Summary of Key Points

We welcome regulations that:

- Protect minority interests through the local authority veto
- Require a BID to prove 20% support for vote
- Establish a BID register

We are concerned over:

- Insufficient advance notice for ratepayers
- The information to be sent to ratepayers: a “statement” rather than the full BID proposal
- The power of termination of BID arrangements by the local authority
- Ease of alteration of BID arrangements
- Omissions from the BID proposal: measurement and other contributions
- Lack of a turnout threshold
- Property owner powers and lack of a mechanism to levy property owners
- No prescription of BID structure
- Rating arrangements
- Access to information
- Local authority charging

The BRC welcomes the inclusion of regulations that:

Protect minority interests

Regulation 11 (1)(c) allows the local authority to veto proposals that place inequitable burdens on ratepayers through the manipulation of the boundary or levy. The BRC has always supported such a power so as to protect ratepayers who would be unfairly penalised.

Require a BID to prove 20% support for vote

Regulation 3(2)(b)(1) ensures that a BID must demonstrate 20% support for a ballot from liable ratepayers. The BRC believes that this is a sensible and practical requirement that discourages BIDs that have not properly consulted local businesses. It also prevents unnecessary expenditure of resources from the local authority for a ballot that is unlikely to succeed. If a BID is unable to demonstrate 20% support for a ballot, it is extremely unlikely to succeed through the ballot at all. This threshold should not be reduced and must be

interpreted so that support is clear and unambiguous, demonstrated to the local authority through the collection of signatures.

Establish a BID register

Regulation 2(2) requires a BID proposer to inform the Secretary of State of his/her intention to draw up BID proposals at least six weeks prior to instructing the local authority to hold a ballot. The BRC understands from discussions with officials and correspondence with Phil Hope MP that this provision has been inserted for the purpose of establishing a BID register. The BRC welcomes and supports this although we have further recommendations set out below.

The BRC is concerned over the following:

Insufficient advance notice for ratepayers

The BRC welcomes and supports inclusion of Regulation 2(2) on the understanding that it is for the purpose of establishing a BID register. For a register to be effective, however, it must include a brief overview of the proposed boundary, lifespan, services and levy, together with contact details and likely timetable of the BID. The notice period should also reflect ratepayers' ability to properly consider BID proposals. It is likely that a national retailer may consider BID proposals on a quarterly basis and notification should allow for this timetable.

We therefore call for the notification period in Schedule 2 (1) to be extended from 42 days to 84 in order to facilitate an informative and valuable register, providing sufficient advanced notice to ratepayers. The final BID proposals should also be made available to ratepayers at least 56 days prior to the ballot in order to provide the opportunity to fully consider plans and for ratepayers to engage with the BID if they have not already done so. The notice period in Regulation 2(2) should also be extended from 6 to 12 weeks so as to provide an opportunity for ratepayers to influence BID proposals at their inception.

The ballot process, at 28 days, does not currently reflect the complexities of businesses internal procedures. The billing address will, in many circumstances, not be the same location as that of the decision maker(s). To ensure that ballot papers are properly exchanged and allowing for difficulties such as staff absences, the ballot period in Schedule 2 (3) should be extended to 42 days.

[We are happy for BIDs to "pre-register" ahead of the passage of regulations so as to facilitate rapid ballots by those sites keen to commence operation as soon as possible.]

The information to be sent to ratepayers: a "statement" rather than the full BID proposal

Schedule 2 (1)(b) requires a "statement providing an explanation of the BID arrangements" to be sent to each ratepayer. The BRC is concerned that regulations do not specify the contents of this statement and that such a document could become little more than a sales leaflet. It is essential that ratepayers be given the necessary information on which to make an informed judgement. Much of this information is specified in Schedule 1 and must be contained within the BID proposal, but this is instantly devalued if ratepayers do not see this document and are simply "sold" the BID. We request clarification on this issue.

Furthermore, we can find no obligation for a BID to inform ratepayers of the full contents of the BID proposal. Regulation 3 (2) (c) ensures that this is made "available" but with no apparent need to communicate this to ratepayers. We are concerned that as regulations stand, ratepayers may not be made aware of vital information on which their decisions should be based.

The power of termination of BID arrangements by the local authority

Regulation 17 appears to give the local authority a great deal of power to terminate the BID. We note that this should be carefully considered to ensure that the local authority is not given overwhelming control over the BIDs activities.

Ease of alteration of BID arrangements

The BRC strongly supports the assertion in Regulation 15 that the BID should not be able to vary the boundary or levy amount without a ballot of ratepayers. We are concerned, however, that the BID would be able to vary everything else, particularly its goals and level of service provision. This would undermine the credibility of the BID proposal as it could potentially change immediately after the initial vote.

Omissions from the BID proposal

Schedule 1 prescribes the contents of the BID proposal and much of the detail contained is welcomed. There are, however, omissions to the Schedule.

We recommend that the information specified in Schedule 1 should also include:

- **Systems of measurement.** Businesses will pay close attention to the objectives and key performance indicators listed. These will only be credible if they are accompanied by clear and pre-determined systems of measurement and evaluation. Without such defined features, results from the BID will be subjective and open to dispute.
- **Other contributors.** The BRC is aware that some national retailers have already stated that BIDs will only be supported if there are contributions from other key stakeholders, primarily local property owners. For the success of BIDs, therefore, it is vital that reference is made to such contributions in the proposal.
- **Structure & Officers.** Ratepayers should be made aware of the structure of the BID so as to properly understand its accountability. The BIDs officers should also be set out in the proposal, indicating their representation i.e. whether they come from the public, private or voluntary sector.

Lack of a turnout threshold

Those proposing a BID must have sufficient incentive to encourage participation and develop awareness of the proposed BID among ratepayers. If the only legislative requirement for a BID is that it gains a simple majority of those voting (by number and rateable value), it is entirely possible that with limited publicity, a very small minority of businesses could be persuaded to push through a positive BID vote. Smaller retailers, particularly independent operators, may well not appreciate the significance of the ballot or may not be able to meet time constraints for the deadline. A non-vote, therefore, should not be seen as passive support. A poor turnout can only signify a lack of business support and/or poor communication by those proposing a BID.

The BRC, in common with many existing overseas BIDs, proposes a 60% turnout threshold. For the reasons set out above we feel that a BID must secure widespread support and that this requirement must be enshrined in legislation.

With regard to Regulation 3, we also feel that there should be a minimum threshold of support below which BID proposers would meet the cost of the ballot, rather than the billing authority. The aim of this would be to discourage purely speculative BID proposals.

Property owner powers and lack of a mechanism to levy property owners

As the Government has not implemented a mandatory levy on property owners, despite wide-ranging calls for such a levy to be permitted, we do not understand the rationale for property owners to be allowed to form a BID under Regulation 2. While we actively encourage, and expect, property owner contributions we are aware that landlords will benefit from a successful BID in terms of increased property values and rents. In instances

where property owners are not occupiers and therefore not ratepayers, as is commonly the case with commercial property, it is unreasonable for BIDs to be set up by those who will have no obligation to contribute but who will benefit financially.

The BRC renews the call for the inclusion of a facility to levy a charge on property owners. Property owners have the long-term interest in the areas they are based, benefiting from any local improvements through property and rental values. Almost all existing overseas BIDs charge property owners rather than occupiers. Many retailers are unlikely to support a BID that does not have some degree of funding from property owners.

No prescription of BID structure

The BRC believes that the BID body (Regulation 1) should be a clearly defined, separate legal entity. The BRC has always supported a prescribed structure for the management of a BID, specifically in the shape of a Board led by the private sector. Businesses must have confidence that the BID is independent and responsive to ratepayers, thus having the ability to call those operating the BID to account. Under current arrangements this is not the case and we feel this is a serious omission. Where non-incorporated bodies act as BIDs there may be no practical means of investigating their financial soundness. We suggest that the definition in Regulation 1 be amended to allow only incorporated bodies to act as BID bodies.

Rating arrangements

We consider that Regulation 14 (and Schedule 4) is inadequate. The current drafting leaves individual BID bodies the responsibility of setting up schemes to deal with, *inter alia*, new hereditaments, split or merged hereditaments, deletions from the Rating List, exemptions, and properties treated as part-domestic, in any BID levy arrangements. Failure to deal with these matters properly in BID arrangements could result in financial hardship for ratepayers and is likely to create a series of significant legal disputes. Failure to specify how these matters are to be dealt with will also result in BID arrangements varying widely throughout the country. This will make it difficult for multiple property occupiers to respond to BID arrangements, as each BID arrangement will be different and will, therefore, need to be investigated individually. We recommend that further consideration be given to the means by which BID levy can deal with issues such as those set out above.

Access to information

We consider that the maintenance of the information within Regulation 10 may expose ratepayers to intrusive enquiries. We also consider that there is no clear means of identifying the intent of persons seeking access to the information held under this Regulation.

Local authority charging

We are concerned that Local Authorities have expressed interest in setting a profitable charge for the cost of administering the BID ballot. We believe that the BID should not be burdened by costs from its very inception, particularly as this will result in either higher cost to ratepayers or lower output from the BID. We welcome the content of Regulation 9 as a sensible approach to minimising the costs of the BID.