EXPLANATORY MEMORANDUM TO THE

BUSINESS IMPROVEMENT DISTRICTS (ENGLAND) REGULATIONS 2004

2004 No.

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty. This memorandum includes information for the Joint Committee on Statutory Instruments.

2. Description

These Regulations make provision in relation to the setting up and operation of business improvement districts (BIDs).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regulations 8, 16, 17 and 18 are subject to the affirmative procedure (see section 55(4) and 54(7) of the Local Government Act 2003, respectively). However, sections 54(7) and 55(4) allow other provisions to be included in regulations together with such provisions. So whilst regulations 8, 16, 17 and 18 are the only provisions subject to the affirmative procedure we have included other provisions with them in these Regulations in order to keep all subordinate legislation relating to business improvement districts in one statutory instrument.

3.2 The Committee will note that there is no criminal sanction for breach of regulation 2(3) or 11(4) or paragraph 6 of Schedule 2 nor is there an express power to create such a sanction. Instead it is considered that breach of these provisions can be pursued through proceedings for breach of statutory duty.

4. Legislative Background

These Regulations are being made under the powers in sections 47 to 49, 51, 52, 54 to 56 and 123 of the Local Government Act 2003. This is the first use of the powers in Part 4 of this Act.

5. Extent

This instrument applies to England.

6. European Convention on Human Rights

The Minister of State for Local and Regional Government and Fire has made the following statement:

In my view the provisions of the Business Improvement Districts (England) Regulations 2004 are compatible with the Convention.

7. Policy background

7.1 The Government wishes to promote partnership working between local authorities and local businesses. This will strengthen the role of local authorities as community leaders, encouraging them to improve links with their business communities, while businesses will be more involved in decisions affecting their local area.

7.2 The Government decided to take forward a scheme of business improvement districts (BIDs), funded through an agreed additional levy on the business rate payers. BIDs would consist of a partnership between local authorities and local businesses for additional services and improvements.

7.3 The Government announced its intention to introduce BIDs in England, with further details provided in the White Paper *Strong Local Leadership - Quality Public Services* (December 2001).

7.4 There has been extensive consultation with key stakeholders, existing BID pilot schemes, local authorities and business. The primary legislation for BIDs was part of the consultation exercise on the draft local government bill during the summer of 2002. In 2003 the Office of the Deputy Prime Minister set up a BIDs steering group which produced a draft working guidance document on BIDs. The Guidance was subject to consultation during the autumn of 2003. Throughout these consultations there has been informal consultation with key stakeholders, including the National BIDs Pilot Scheme. The outcome of these discussions and consultations helped to shape a draft set of regulations that were subject to formal consultation earlier this year. Responses received indicated a strong showing of positive opinion towards the policies set out in the Regulations from those persons/bodies who will take BIDs forward and implement new and successful improvement schemes across the country.

7.5 The Regulations will prescribe those matters that must be included in developing and implementing a BID. The Regulations allow for BID proposals to be innovative, and to address the particular needs and problems of the local area.

7.6 The Regulations prescribe those matters that the BID proposer and the billing authority must consider and take into account when developing a BID. It was decided not to be too prescriptive on who should be allowed to propose a BID, but to set out certain requirements for what needs to be contained within a BID proposal. This was in order to prevent unworkable schemes from going ahead and subsequently failing.

7.7 The Regulations make detailed provision in relation to the ballot, including: who is entitled to vote; payment of the ballot costs; and the application of the post-ballot veto by a billing authority and appeal against any veto. The person entitled to vote is the non-domestic ratepayer of a hereditament within the BID area on the day the notice of ballot is published, regardless of whether or not that same person is in occupation on the day of the ballot. This lays the onus on the billing authority and the BID proposer to make sure the list held by the authority is as up to date as possible. It should also be noted that, for example, for the bigger companies who may pay their rates through a national

headquarters or through an agent, we have included a power allowing proxy voting.

7.8 The Local Government Act 2003 and the Regulations require the following steps-

(i) pre-proposals notification - at least 84 days before a BID proposal is submitted (regulation 3(2));

(ii) notification of proposals - proposals shall include the proposed commencement date for the BID arrangements (regulation 4 and paragraph 1(3) of Schedule 1);

(iii) instruct the ballot holder to arrange the ballot - the billing authority may only delay doing this in certain specified circumstances (regulation 5);

(iv) publication of notice of ballot - no later than 42 days before the day of the ballot (paragraph 3 of Schedule 2);

(v) send ballot papers to voters and a statement on the arrangements for ballot - no later than 42 days before the day of the ballot (paragraph 3 and 10(3) of Schedule 2);

(vi) day of the ballot - shall be at least 28 days after the date ballot papers were sent to voters and no later than 90 days after publication of the notice of ballot (paragraph 2 of Schedule 2);

(vii) counting the votes - as soon as practicable after the day of the ballot (paragraph 14 of Schedule 2);

(viii) notice of the result - published as soon as reasonably practicable after the result is certified (paragraph 17 of Schedule 2);

(ix) complaint concerning material irregularity in a ballot - must be made within 28 days of the notice of the result (regulation 9);

(x) veto of an approved BID - the billing authority may not veto a BID after 14 working days from the day of the ballot (section 51 and regulation 12);

(xi) appeal against a veto - any person may appeal against a veto within 28 days of the date of the veto notice (section 52 and regulation 13);

(xii) commencement date - the commencement date is the date set out in the proposals - it may be no later than a year after that notice; where the ballot is declared void the corresponding BID arrangements will not commence until a date set by the authority after the re-ballot (section 53, regulation 9(12) and paragraphs 1(3) and 3(3) of Schedule 1).

7.9 The Regulations also prescribe the actions to be taken by the billing authority for collection and administration of the BID levy. In general we have broadly followed the normal rules that apply to non-domestic business rates.

7.10 BIDs will need to have some flexibility in order to meet new circumstances within the area. The Regulations will allow BID arrangements to be altered, without the necessity of a ballot only in prescribed circumstances, outside these circumstances BID arrangements can only altered following a further ballot in favour of the alteration.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is difficult to quantify, as it is dependent on how many BIDs are established and this in turn is dependent on whether the business community, through successful ballots, accepts BIDs. Please see the attached Regulatory Impact Assessment for more details on this issue.

9. Contact

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