EXPLANATORY MEMORANDUM TO
THE BUSINESS IMPROVEMENT DISTRICTS
(PROPERTY OWNERS) (ENGLAND) REGULATIONS 2014

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty. This memorandum includes information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations make provision in relation to the setting up and operation of arrangements for a levy on owners of certain property interests in the area of a Business Improvement District.

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

3.1 Regulations 7 to 13, 19 to 21 and Schedule 2 are subject to the affirmative procedure (see section 29 of the Business Rate Supplements Act 2009). However, section 29(4) allows other provisions to be included in regulations, together with such provisions. So whilst those regulations and Schedule 2 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 property owner Business Improvement Districts in one statutory instrument.

4. Legislative Context

4.1 Schedule 2 to the Business Rate Supplements Act 2009 ("the 2009 Act") provides that a billing authority in England may make arrangements ("Business Rate Supplement-Business Improvement District arrangements") in respect of a Business Improvement District in its area. Business Improvements Districts are provided for by Part 4 of the Local Government Act 2003 and enable specific projects carried out for the benefit of those who live, work or carry on any activity within the district, to be financed by a levy imposed on the non-domestic ratepayers, or a class of such ratepayers, in the district. The 2003 Act requires billing authorities wishing to launch a Business Improvement District to consult on proposals set out in a prospectus and to hold a ballot of potential levy payers. The purpose of Business Rate Supplement-Business Improvement District arrangements is to make similar provision for financing projects by a levy on persons with a relevant property interest in the district.

4.2 "Billing authority" in relation to England, means a district council, a unitary county council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly. "Non-domestic

ratepayer", in relation to any area, means a person subject to a non-domestic rate under section 43 or 45 of the Local Government Finance Act 1988 because that person is the owner or occupier of a hereditament situated in that area. A person has a relevant property interest for the purposes of Business Rate Supplement-Business Improvement District arrangements if the person has an interest of a prescribed description in a hereditament that is situated in the district and is shown in the local non-domestic rating list maintained for the billing authority (see paragraph 2 of Schedule 2 to the 2009 Act).

4.3 Paragraph 1 of Schedule 2 to the 2009 Act limits Business Rate Supplement-Business Improvement District arrangements to areas where there is both a ratepayer Business Improvement District and a business rate supplement under the 2009 Act (or where a business rate supplement may be imposed, the condition under section 4 of the 2009 Act having been satisfied). In England, the 2009 Act provides county councils, district councils in areas where there is no county council, and the Greater London Authority with a new power to levy a supplement on the national business rate. These authorities are known in the Act as levying authorities. The 2009 Act requires levying authorities wishing to launch a business rate supplement to consult on proposals set out in a prospectus and to hold ballots where the expected revenue from the levy will amount to more than one third of the total cost of the project to be funded.

4.4 Paragraph 3 of Schedule 2 to the 2009 Act limits the Business Rate Supplement-Business Improvement District levy to periods falling within the chargeable period of the business rate supplement and the period in which the Business Improvement District arrangements are in force. Subject to that, the starting date, duration, amount of the levy, and liability to the levy are as set out in the Business Rate Supplement-Business Improvement District arrangements.

4.5 Business Rate Supplement-Business Improvement District arrangements cannot come into force unless proposals for the arrangements are approved by a ballot of those who are to be liable for the levy (paragraph 5 of Schedule 2). Two conditions must be met for proposals to be approved – firstly the majority of persons voting in the ballot must approve them; secondly the amount as is calculated by reference to rateable value (in the manner prescribed in regulations) and is attributable to persons who voted in favour of the proposals must exceed the amount as is similarly calculated and is attributable to persons who voted against the proposals.

4.6 Schedule 2 to the 2009 Act makes further provision for the establishment, operation and termination of Business Rate Supplement-Business Improvement District arrangements (and paragraph 9 applies various provisions of the 2003 Act for that purpose). Those provisions are supplemented by this instrument which makes similar provision to that made in relation to Business Improvement Districts by the Business Improvement Districts (England) Regulations 2004 (S.I. 2004/2443 as amended by S.I. 2013/2265).

4.7 This is the first exercise of the powers under Schedule 2 to the 2009 Act.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Coastal Communities, Local Growth and Resilience, Penny Mordaunt MP, has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Business Improvement Districts (Property Owners) (England) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 Ratepayer Business Improvement Districts have been operating since 2004. These have proved to be successful in facilitating greater joint working between the business community and local authorities to improve the local trading environment and the Government now wants to introduce property owner Business Improvement Districts (referred to as "BRS-BID arrangements" in the primary legislation and these Regulations).

7.2 Mary Portas, in her independent report[1] into the future of high streets, argued that landlords, as critical long-term stakeholders should be able to make contributions and have a voice on planning and strategic decisions that affect their property. She recommended that the Government should legislate to allow landlords to become high street investors by contributing to the Business Improvement District.

7.3 The Government agreed that the role of landlords is crucial to the future success of town centres and committed to explore how a property owner Business Improvement District could be delivered. Government did this with the assistance of the Business Improvement District industry, whose view was that property owner Business Improvement Districts could strengthen the part that property owners (including landlords) play in the future of town centres and in promoting growth.

7.4 Currently property owners can make contributions to a ratepayer Business Improvement District but this is done on a voluntary basis. There are examples where property owners do make such contributions but it is by no means uniform and means that property owners are getting the benefit of the Business Improvement District activities without making a financial

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6292/2081646.pdf

contribution. Furthermore, without a formal role it is difficult for the property owner to influence the activities of the Business Improvement District and it cannot therefore bring forward projects it might think to be beneficial.

8. Consultation outcome

8.1 Government consulted on its proposals for the introduction of property owner Business Improvement Districts. The consultation "Property Owner & Business Improvement Districts, formalising the role of property owners who are not ratepayers, in Business Improvement Districts" ran over an 8 week period between 23 July and 17 September 2013.

8.2 In total 43 written responses were received. The majority of responses came from individual business organisations and local authorities. Responses were also received from representative bodies such as the Association of Town & City Management, The Retail Consortium, The British Property Federation, The Association of Convenience Stores and the Royal Institute of Chartered Surveyors.

8.3 The consultation document made it clear that the Government was of the view that property owner Business Improvement Districts should operate on much the same basis as ratepayer Business Improvement Districts. This means that the Government intended only to establish the legislative framework for property owner Business Improvement Districts and that it would give the same level of discretion to the property owner Business Improvement District proposer in developing in the Business Improvement District arrangements, as exists under the Ratepayer Business Improvement District Regulations 2004. It will therefore be for the property owner Business Improvement District proposer (defined as a person with a relevant property interest in the Business Improvement District, a body (whether corporate or not) or the relevant billing authority) to set out the operational parameters of the property owner Business Improvement District. So, matters concerning the eligibility to vote in the ballot, the levy (i.e. who will be eligible for the levy, and what the levy rate will be) and what services will be provided within the Business Improvement District area are all developed by the property owner Business Improvement District proposers. These arrangements should be clearly set out in the proposal document, which must then be circulated to all those entitled to vote. Whether the property owner Business Improvement District goes ahead will be subject to a ballot and there will be a right of appeal to the Secretary of State.

8.4 The responses were supportive of the introduction of property owner Business Improvement Districts. The Government's consultation response was published in March 2014 and is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/286412/Property_Owners_and_Business_Improvement_Districts_-_Summary_of_consultation_responses.pdf

8.5 The statutory powers under which the scheme will be implemented limit property owner Business Improvement Districts to areas where there is

both a Business Rate Supplement being levied and where there is a ratepayer Business Improvement District in place. Currently a Business Rate Supplement is only levied by authorities in London, and as such these proposals will only allow property owner Business Improvement Districts to operate in London.

9. Guidance

9.1 Property owner Business Improvement Districts will operate on much the same basis as the familiar existing ratepayer Business Improvement Districts and as such we do not consider there is a need for formal guidance.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument.

10.2 These Regulations will enable the creation of a property owner Business Improvement District. The extent to which there is any impact can only be established when a property owner Business Improvement District has been created and become operational. The impact will be determined by what levy has been charged, which property owners are identified as being liable for the levy and what services will be provided within the property owner Business Improvement District.

10.3 All of these are matters for the property owner Business Improvement District proposer and whether or not the Business Improvement District becomes operational is determined by the ballot process. Where there is a majority of votes (number and by rateable value) in favour, the property owner Business Improvement District will proceed.

10.4 In relation to the property owner Business Improvement District the primary role for the billing authority will be to maintain the Business Improvement District Revenue Account and to administer the collection and enforcement of the collection of the levy. The extent to which a billing authority has to do this will be determined by whether or not the property owner Business Improvement District becomes operational or not and for the same reasons as outlined above, we cannot say when that impact would be felt or what it would be.

11. Regulating small business

11.1 These Regulations apply to small businesses where they are property owners.

12. Monitoring & review

12.1 There are no requirements on property owner Business Improvement Districts to report to the Government. However, the Government has committed to reviewing the implementation of any property owner Business Improvement District in London.

13. Contact

Elizabeth Cowie at the Department for Communities and Local Government Tel: 0303 444 3810 or email: elizabeth.cowie@communities.gsi.gov.uk can answer any queries regarding the instrument.