EXPLANATORY MEMORANDUM TO

THE COMMUNITY RIGHT TO CHALLENGE (BUSINESS IMPROVEMENT DISTRICTS) REGULATIONS 2015

2015 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.

2. Purpose of the instrument

2.1 This instrument will add an additional type of body, a body responsible for the implementation of Business Improvement District arrangements ("BID bodies"), to the list of organisations that can submit an Expression of Interest to deliver local authority services through the Community Right to Challenge (section 81(6) of the Localism Act 2011). This will allow BID bodies to formally challenge local authorities to give them the opportunity to bid to run services in their area.

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

3.1 None

4. Legislative Context

4.1 Under section 81(6) of the Localism Act 2011 ("the Act"), "relevant authorities" (defined as including a county council, a district council or a London borough council) are required to consider an expression of interest submitted by a "relevant body" in relation to providing, or assisting in providing, a service provided by or on behalf of a local authority. Under section 81(6)(e) of the Act, the Secretary of State can, by affirmative order, specify a "relevant body". This instrument specifies "BID bodies" under that provision. A BID body is broadly defined as a body responsibly for implementing Business Improvement District arrangements (section 41(1) of the Local Government Act 2003); however, it does not include bodies where a local authority is responsible for implementing such arrangements.

4.2 The responsibility for implementing Business Improvement District arrangements is conferred upon bodies by virtue of section 41(1) of the Local Government Act 2003 (and section 16 of, and Schedule 2 to, the Business Rates Supplements Act 2009 in relation to Business Rate Supplement Business Improvement Districts). These Acts allow for "arrangements" to be made with respect to business improvement districts. The reference to "responsibility" has precedent in secondary legislation made under these Acts: see the Business Improvement Districts (England) Regulations 2004 (article 2) and the Business Improvement Districts (Property Owners) Regulations 2014 (article 2).

5. Territorial Extent and Application

5.1 This instrument applies to England only. There are no implications for the devolved administrations.

6. European Convention on Human Rights

The Minister for Communities has made the following statement regarding Human Rights:

"In my view the provisions of the Community Right to Challenge (Business Improvement Districts) Regulations 2015 are compatible with the Convention rights".

7. Policy background

7.1 In 2011 Parliament passed DCLG's Localism Act, which contains Community Right to Challenge (also referred to here as 'the Right') provisions and associated regulations. Sections 81 to 86 of the Localism Act create a right for certain types of body to express an interest in running certain services which the local authority or fire and rescue authority has responsibility for. The authority must consider and respond to this expression of interest, rejecting any only on grounds specified in regulations. If an expression of interest is accepted, the authority must carry out a procurement exercise for the service.

7.2 Section 81 (6) of the Localism Act lists the type of body that can submit an expression of interest under the Right to Challenge as:

(a) a voluntary or community body, .
(b) a body of persons or a trust which is established for charitable purposes only, .
(c) a parish council, .
(d) in relation to a relevant authority, two or more employees of that authority.

7.3 Section 81 (6)(e) of the Localism Act empowers the Secretary of State to add further bodies to this list through secondary legislation.

7.4 Business Improvement Districts ("BIDs") are bodies established to improve a defined commercial area, such as a town centre. BIDs are funded by a levy on businesses in their area. Most BIDs are established under Part 4 of the Local Government Act 2003. In 2014, the Government carried out a review of Business Districts to ascertain how effective they have been and how they can support the viability of Town Centres in the future. As part of this review, the Government consulted with Business Improvement Districts and representative bodies, such as the Association of Town and City Management and the Local Government Association to establish measures that would allow the bodies to be able to achieve more.

7.5 In many cases, the bodies were interested in ensuring that local government services that affected business areas were as effective as possible and met their needs. In some cases, the bodies believed that they could improve outcomes if they had the opportunity to bid to deliver the services themselves. Ensuring Business Improvement Districts can use the Community Right to Challenge is one way to support both these aims. Business Improvement Districts are often established as non-profit social enterprises, eligible to the use the Community Right to Challenge, but this is not always the case and, under the current legislation, local authorities may well reject Expressions of Interest on the grounds that the BID is not a relevant body under the Act. Adding Business Improvement Districts to the list of Relevant Bodies under Section 81(6) of the Act will clarify the position in relation to BIDs, allowing them to use the Community Right to Challenge to put forward alternative ways to deliver services locally and to bid to deliver them.

7.6 For the purposes of the regulations, a BID is set out in Article 2. Under Article 2, this is the body, or bodies, responsible for implementing "BID arrangements"; however, the definition does not include a "local authority BID body" or bodies which are part of a joint arrangement with other bodies responsible for implementing BID arrangements where one of the bodies in the joint arrangement is a local authority BID body.

8. Consultation outcome

8.1 As part DCLG's town centre announcement in December 2013, a commitment was made for a Review of Business Improvement Districts. The review was to consider options to strengthen the role of Business Improvement Districts to ensure they are able to play a key role in shaping and revitalising their town centres.

8.2 The review was undertaken during the Spring and Summer 2014 involving meetings with the British BIDs and Association of Town and City Management, both sector leads who also organised round tables involving over 20 individual Business Improvement District bodies. DCLG also met with the Local Government Association and visited a range of Business Improvement District bodies and local authorities.

8.3 The Review demonstrated the additional value a Business Improvement District can bring to a town centre but it also highlighted how the current model and legislation can restrict Business Improvement Districts from being actively involved in important decisions that affect a Business Improvement District area. One element highlighted was the requirement to amend legislation to give Business Improvement District bodies the opportunity to run local authority services, by adding Business Improvement District bodies to the list of relevant bodies that can challenge to run local authority services under the Community Right to Challenge.

9. Guidance

9.1 The Statutory Guidance on the Community Right to Challenge will be amended to reflect this change.

10. Impact

10.1 The impact on business, charities or voluntary bodies is positive, but small. No new burdens are created. In some cases new opportunities to bid to run local services will be created, which can be taken up by local voluntary bodies and businesses, as well as the BID that has made the expression of interest. By enabling BIDs to have the opportunity to run town centre services where they can do so more effectively, the regulations will improve local business conditions.

10.2 The impact on the public sector is minimal. The right to challenge is a tool that allows relevant bodies to put forward applications to deliver services, but is also intended to be used where the body decides that their attempts to influence the authority have not been heeded. Experience with the Right to Challenge since its introduction has shown that most groups opt to continue to engage with local authorities through other means. Our estimate of the number of Expressions of Interest submitted to date is around 50 across England. As the number of groups being added is small, we do not expect a high number of Expressions of Interest to result. There are less than 200 BIDs currently in operation and we expect only a minority to consider using the power.

10.3 Based on the take up of the powers across the Voluntary Sector and Parishes of the power, we do not expect more than 10 expressions of interest over the next 2 years. Local Authorities have already received New Burdens Payments to cover the cost of implementing policies and systems to manage Expressions of Interest. Where expressions of interest are successful, this will lead to better services in business areas, promoting growth and higher Business Rate receipts.

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

11. Regulating small business

11.1 The legislation does not place any burdens on small business.

12. Monitoring & review

12.1 Although government does not require authorities to notify us of expressions of interest or their outcomes, we do carry out some intelligence gathering with delivery partners and local government. We will use this to monitor the level of interest and uptake amongst BIDs of this power.

13. Contact

13.1 Matthew West at the Department for Communities and Local Government Tel: 0303 444 2069 or email: Matthew.west@communities.gsi.gov.uk can answer any queries regarding the instrument.