



Business rate supplements: draft proposals on ballot and administration arrangements

Consultation



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and administration arrangements

Consultation

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Online via the Communities and Local Government website: www.communities.gov.uk

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May 2009

Product Code: 09LGF05943

ISBN: 978-1-4098-1468-9

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Summary of this consultation

Scope of the consultation

Topic of this consultation:	<p>The Business Rate Supplements (BRS) Bill, currently being considered by Parliament, makes provision for county councils, unitary district councils and the Greater London Authority to levy a supplement on the business rate. Levying authorities will be able to use the proceeds to fund additional projects to promote the economic development of their local areas.</p> <p>The Bill provides that where a BRS will support more than one third of the total cost of a project, levying authorities will be required to ballot those who will be liable for the proposed supplement.</p> <p>The Bill also requires that there are separate accounting and administration arrangements for the revenue raised through BRS.</p> <p>The Bill makes provision for the Secretary of State to make regulations covering the BRS administration and ballot arrangements. This paper consults on the policy to be put into effect by these regulations.</p>
Scope of this consultation:	<p>This consultation paper sets out the Government's proposals for the ballot and administration arrangements for BRS and seeks respondents' views.</p>
Geographical scope:	<p>The proposals set out in this consultation paper will extend to England only.</p>
Impact Assessment:	<p>The Impact Assessment covering the proposals set out in this paper will follow shortly.</p>

Basic Information

To:	This is a general consultation, open to all. In particular, we are interested to hear the views of: <ul style="list-style-type: none"> • local authorities and their representative bodies; and • businesses and their representative bodies.
Body/bodies responsible for the consultation:	This consultation is being led by the BRS Bill Team, within Communities and Local Government.
Duration:	This consultation opened on 13 May 2009. All comments should be received by 19 August 2009.
Enquiries:	For enquiries about the content or scope of the consultation and requests for hard copies, please contact the Business Rate Supplements Bill Team: Telephone: 020 7944 3031/4223 Post: Business Rate Supplements Bill Team Department for Communities and Local Government 5/C 1 Eland House Bressenden Place London SW1E 5DU Email: brsregsconsultation@communities.gsi.gov.uk
How to respond:	To respond by post, please write to: Business Rate Supplements Bill Team Department for Communities and Local Government 5/C 1 Eland House Bressenden Place London SW1E 5DU To respond by email, please write to: brsregsconsultation@communities.gsi.gov.uk
Additional ways to become involved:	As this is a largely technical issue with specialist interests following discussions with those affected, this will be a purely written exercise.
After the consultation:	The responses to this consultation will inform the regulations to be laid before Parliament (subject to Parliamentary approval of the BRS Bill) covering the ballot and administration arrangements for BRS. We anticipate that the Government's response to the consultation will be published alongside the laying of the regulations before Parliament.
Compliance with the Code of Practice on Consultation:	This consultation complies with the Code of Practice on Consultation issued by the Department for Business Enterprise and Regulatory Reform.

Background

<p>Getting to this stage:</p>	<p>This paper sets out the Government’s proposals for the ballots and accounting arrangements as provided for in the BRS Bill, currently before Parliament.</p> <p>The Bill follows <i>Business rate supplements: a White Paper</i>, which was published alongside the 2007 Pre-Budget Report and Comprehensive Spending Review in October 2007.</p>
<p>Previous engagement:</p>	<p>The BRS Bill is currently before Parliament. This follows extensive debate, as set out below:</p> <ul style="list-style-type: none"> • <i>The Lyons Inquiry into Local Government</i>, which recommended introducing a new local flexibility to set a supplement on the current national business rate, following discussion with experts, key stakeholders and the public. • <i>The Review of sub-national economic development and regeneration</i>, which followed extensive engagement, including discussions and submissions from the private sector and local government. • Prior to the publication of <i>Business rate supplements: a White Paper</i>, discussions were held with key stakeholders from both business and local government. • The BRS Bill was included in the consultation paper <i>Preparing Britain for the future: the Government’s Draft Legislation Programme 2008-09</i>. • A second series of informal discussions was held with key stakeholders during the summer of 2008, including many who were involved in the informal discussions prior to the publication of the White Paper. During this round of informal discussions, we sought stakeholder views on a number of technical issues that will be covered in the statutory guidance and secondary legislation.

About this consultation

This consultation document and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Department for Business Enterprise and Regulatory Reform and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

CLG Consultation Coordinator
Zone 6/H10
Eland House
London SW1E 5 DU

or by email to: consultationcoordinator@communities.gsi.gov.uk

For details about how to respond to this consultation please see Chapter 1 Introduction, Process and timetable for this consultation.

Chapter 1

Introduction

Part 1 Background

- 1.1 The *Lyons Inquiry into Local Government*¹, published in March 2007, noted the important role of local government in promoting the well-being and interests of their areas and the people living there. A key element of this is to support and encourage the economic development of the local area.
- 1.2 The Inquiry identified the need for local authorities to have greater flexibility to raise revenues to invest in their areas. Sir Michael Lyons recommended introducing a new local flexibility to set a supplement on the national business rate. The Government responded in July 2007 in the *Review of sub-national economic development and regeneration*², stating “supplementary business rates have the potential to provide a powerful new tool for local authorities to invest in infrastructure to support long-term growth in their areas, backed by mechanisms to ensure that there is a strong voice for business”. Later, in October 2007, the Government published *Business rate supplements: a white paper*³, alongside the 2007 Pre-budget report and the Comprehensive Spending Review.
- 1.3 The Government is now taking forward the proposals set out in the White Paper through the Business Rate Supplements (BRS) Bill⁴ and by publishing for public consultation the draft statutory guidance on BRS, in January 2009⁵.
- 1.4 The Business Rate Supplements Bill was introduced in the House of Commons on 4 December 2008 and the House of Lords on 12 March 2009. In England, the Bill proposes that county councils, unitary district councils, and the Greater London Authority (GLA) should be given a new discretionary power to levy a supplement on the national business rate. Levying authorities will be able to retain the proceeds to fund additional projects aimed at promoting the economic development of their area – i.e. the supplement cannot be used to fund existing services and can only be spent on economic development.

¹ Lyons Inquiry into Local Government, *Place-shaping: a shared ambition for the future of local government*, Sir Michael Lyons, March 2007

² *Review of sub-national economic development and regeneration*, HM Treasury, Department for Business, Enterprise and Regulatory Reform, and Communities and Local Government, July 2007

³ *Business Rate Supplements: a White Paper*, HM Treasury, Communities and Local Government, October 2007

⁴ A copy of the Bill as introduced to the House of Lords is available at <http://services.parliament.uk/bills/2008-09/businessratesupplements.html>. References to clause numbers in this document are to this version of the Bill.

⁵ *Business Rates Supplements: a consultation on the draft statutory guidance*, HM Treasury and Communities and Local Government, January 2009. (http://www.hm-treasury.gov.uk/consult_businessrate_supp.htm)

- 1.5 Any local authority wishing to levy a BRS will have a duty to prepare a prospectus setting out the details of the proposed supplement and the project it will fund. In the prospectus, authorities will be required to set out:
- their detailed plans for expenditure, including timescales and other funding sources
 - the way in which the supplement will work, including its expected duration, the amount to be levied, and any exemptions or reliefs they intend to apply
 - how this spending is additional to their existing plans
 - the way in which they will deal with differences between the planned and outturn expenditure, and
 - their assessment of the impact of the supplement on local businesses and show how this relates to the benefits that will be delivered from the projects supported by the supplement.
- 1.6 Authorities will be required to hold a statutory consultation on the proposals set out in their prospectus. Where the supplement will support more than one third of the total cost of the project, levying authorities will also be required to hold a ballot of those businesses that will potentially be liable for the supplement. Where a ballot is held, the authority will need the support of a simple majority of those which voted, both in terms of rateable value (RV)⁶ and the number of non-domestic properties affected, before a supplement can be levied.
- 1.7 Before the supplement can be levied, a final prospectus – setting out the arrangements for the BRS as it will be introduced – will need to be published. This final prospectus will reflect any changes that have been made to the BRS as a result of the consultation (however, the local authority will not be able to make any changes to the prospectus published for the purposes of the ballot). The publication of a final prospectus will ensure that ratepayers have an accurate and up to date document setting out how the supplement will work and how the revenue raised will be spent.
- 1.8 The Bill sets out a number of other protections for business ratepayers. It sets an upper limit for BRS of 2p per pound of RV, so that no business will pay more than 2p per pound in BRS. It also enables the Secretary of State to prescribe a rateable value threshold for triggering liability for BRS. As set out in the White Paper, in England, properties with a RV of £50,000 or less will be exempt from the supplement.

⁶ Apart from properties which are exempt from business rates, each non-domestic property has a rateable value. Valuation officers of the Valuation Office Agency set the rateable values. The rateable value broadly represents the yearly rent the property could have been let for on the open market on a particular date.

1.9 Authorities will also have flexibility to:

- raise the RV threshold for liability above the £50,000 threshold
- introduce a taper (for example, putting in place a BRS of 0.5p in respect of properties with an RV of £50,001-£60,000, 1p in respect of non-domestic properties with a RV of £60,001-£100,000, and 2p in respect of non-domestic properties with an RV greater than £100,000), and
- offset Business Improvement District (BID) levies against liability for the BRS.

1.10 All references to the Bill in this consultation paper, including clause numbers, refer to the BRS Bill as introduced in the House of Lords.

1.11 Secondary legislation is needed before local authorities can levy a BRS. This consultation seeks views on the technical matters to be covered by the secondary legislation on:

- the ballots process and entitlement to vote (clause 9)
- the administration of BRS (clauses 17 and 21)
- the arrangements for recovering the costs of collection (clause 22)

1.12 This paper sets out the Government's detailed proposals for both the administration of BRS and the ballot process for consultation. The Government would welcome views on any proposals set out in this paper. We are particularly keen to hear your views on the specific issues covered by the consultation questions. We have included a list of all of the consultation questions at the end of this chapter. For ease of reference, the consultation questions can also be found following the description of each proposal.

1.13 An impact assessment on the proposals set out in this paper will follow shortly.

Part 2 The process and timetable for this consultation

1.14 Comments on the proposals set out in this paper should be sent to:

Business Rate Supplements Bill Team
5/C1 Eland House
Bressenden Place
London
SW1E 5DU

Alternatively, please email brsregsconsultation@communities.gsi.gov.uk

1.15 If you have any queries the BRS Bill team can be contacted at the above address or email. Alternatively you can contact the BRS Bill team on 020 7944 3031/4223.

1.16 This consultation opened on 13 May 2009. All comments should be received by 19 August 2009.

Part 3 Consultation questions

Consultation questions on proposed ballot process

Question 1: Do you agree that levying authorities should have powers to delegate the function of running the ballot as proposed? If not, what changes would you suggest and why?

Question 2: Do you agree with the Government's proposals regarding the form of the ballot? If not, what changes would you suggest and why?

Question 3: Do you agree with the proposed arrangements for setting the date of the ballot? Do you think that the proposed flexibilities to postpone the ballot are appropriate? If not, what changes would you suggest and why?

Question 4: Do you think the Government should be more prescriptive in terms of which individuals should be able to vote on behalf of a body corporate, partnership or an unincorporated association? If yes, what particular issues would you like the Government to cover in regulations and why?

Question 5: Is the timetable given for providing the names of those entitled vote appropriate? If not, what changes would you suggest and why?

Question 6: Do you agree with the suggested arrangements for proxy voting? If not, what changes would you suggest and why?

Question 7: Do you think any additional information should be provided as part of the notice of the ballot? If yes, what additional information do you think should be provided and why?

Question 8: Is there any additional information you would add to the ballot paper and, if so, why? Is there any information suggested for inclusion in the ballot paper that you do not think should be included? If so why?

Question 9: Do you agree with the proposed arrangements for issuing ballot papers, including those that are lost or inadvertently spoilt? If not, what would you change and why?

Question 10: Do you agree with the proposed arrangements for the conduct of the ballot and the counting of the ballot papers? If not, what would you change and why?

Question 11: Do you agree with the proposed arrangements for collating the result of the ballot? If not, what would you change and why?

Question 12: Do you agree with the proposed arrangements for declaring the result of the ballot, in particular the information that is declared? If not, what changes would you suggest and why?

Consultation questions on proposed administrative arrangements

Question 13: Are these proposals sufficient to allow billing authorities to administer the BRS efficiently and effectively. If not, what extra measures are needed and why?

Question 14: Do you consider that there should be a mechanism for addressing any shortfall in BRS revenue that may arise? If so, how do you envisage such a mechanism operating?

Question 15: Do these proposed accounting arrangements provide sufficient transparency and accountability? If not, what extra measures are needed and why?

Question 16: Do you agree it is reasonable to set a threshold below which refunds should not be made, and that £5 is an appropriate level to set the threshold? If not, what alternative arrangements would you suggest and why?

Question 17: Do you agree with the arrangement proposed for calculating administrative expenses associated with refunds and credits? If not, what arrangements should be adopted and why?

Question 18: Do you agree that the existing duty imposed on auditors by the Audit Commission Act 1998 is sufficient and that specific auditing provisions are not required to accompany the introduction of BRS? If not, what specific measures are needed, and why?

Consultation questions on the proposed arrangements for recovering the cost of collecting BRS

Question 19: Do you agree that option 3 provides the most appropriate arrangement for calculating administrative expenses associated with BRS? If not, what arrangement should be adopted, and how should it operate?

Question 20: Do you agree that billing authorities and levying authorities should be able to agree how billing authorities' costs of running a ballot should be covered? If not, what alternative arrangements would you suggest, and why?

Chapter 2

Ballots

Part 1 Background on BRS and ballots

- 2.1 *Business rate supplements: a white paper*, made clear the Government's plans that all Business Rate Supplement (BRS) proposals will be subject to a statutory consultation. The white paper also stated that "Where the supplement will support more than a third of the total cost of a project there will...be a...ballot of businesses affected."
- 2.2 In line with the Government's white paper commitment, the BRS Bill provides that a local authority will be required to hold a ballot if:
- the proposed supplement will support more than a third of the total cost of the project (clause 7(1)); or
 - a variation in an existing BRS means the supplement will support more than a third of the total cost of the project (clause 10(7)).
- 2.3 Local authorities will also be required to hold a ballot if, in response to comments made during the consultation, the proposed project or estimated costs are revised in such a way that it is predicted that the BRS will support more than one third of the total cost of the project.
- 2.4 A local authority may also decide to conduct a ballot if it thinks there should be one, even if the supplement will support less than one third of the total cost of the project.
- 2.5 Those eligible to vote will be asked whether the project, as set out in the BRS prospectus produced by the local authority, should go ahead. The ballot question for a new BRS is set out in clause 7(3) and for a proposal to vary a BRS in clause 10(10).

2.6 Cause 9 of the BRS Bill gives the Secretary of State power to make regulations setting out:

- who runs the ballot
- the timing of the ballot
- the form a ballot may take
- the conduct of the ballot, and
- who may cast the vote on behalf of a body corporate, partnership or unincorporated association.

2.7 The Government intends that the ballot arrangements for BRS should mirror, as far as appropriate, the system used for Business Improvement Districts (BIDs)⁷. This will provide as much consistency as possible with existing systems and timescales that local authorities and businesses are already used to.

Part 2 Summary of proposed ballot process and timescales

2.8 A summary of the proposed ballot process, timescales and key provisions, proposed by the Government is set out below. Further details are discussed in part 3.

- As with BIDs, the Government proposes that only postal ballots should be used.
- It will be the responsibility of the levying authority to ensure a ballot is carried out if required.
 - In single tier areas the levying authority will be responsible for appointing the returning officer in the authority, or another official to act as returning officer, to run the ballot.
 - In two tier areas, the Government proposes that the levying authority should have flexibility to delegate the function of running the ballot to one or more of the billing authorities in the area (as provided for in clause 9(3)(c) and 9(3)(d)). The billing authority/ies in turn will appoint their own returning officer/s, or other official/s, to run the ballot.
- The Government proposes that the date of the ballot should be decided by the levying authority. The date of the ballot will be the last day that the ballot papers need to be returned to the returning officer for counting.
- The levying authority should notify the returning officer of the date of the ballot between 118 and 70 calendar days before the ballot is due to take place. The Government does not intend to prescribe the timing of the ballot in relation to the consultation.

⁷ The ballot arrangements for BIDs are set out in the Business Improvement Districts (England) Regulations 2004 (SI 2004/2443), <http://www.opsi.gov.uk/si/si2004/20042443.htm>

- Once notified of the date of the ballot, the official running the ballot will need to prepare a list of those persons entitled to vote. This will need to be done between 90 and 42 calendar days before the date of the ballot, as consistent with the timescales for BID ballots. Clause 7 of the Bill sets out the entitlement to vote in a ballot on a new BRS (with essentially the same arrangements applying under clause 10 for ballots on proposed variations to an existing BRS). Where the person eligible to vote is an organisation, as opposed to an individual, the Government proposes that the regulations should allow for that organisation to have the flexibility to decide who will complete the ballot paper.
- Also between 90 and 42 calendar days before the ballot, the official running the ballot will need to ensure that notice of the ballot has been given to those entitled to vote. The notice will need to set out the date and other details of the ballot, including how a copy of the prospectus setting out the details of the proposed BRS can be obtained.
- Once those eligible to vote have been notified of the ballot they may wish to arrange for a proxy voter. The Government proposes making arrangements for proxy voting, as this will provide greater flexibility for businesses.
- The ballot papers will then need to be sent out to those entitled to vote or their proxies. The Government proposes that the ballot papers should be sent out no later than 28 calendar days before the date of the ballot.
- After the ballot papers have been returned to the official running the ballot, the votes will need to be counted. Where the levying authority is running the ballot this will be a relatively simple process of counting the ballot papers and determining if a majority, both in terms of the number of votes and in terms of rateable values⁸, have voted in favour of the proposal⁹. Where more than one authority is running the ballot the votes will need to be collated in some way. The Government proposes that each returning officer should count the votes cast in their area and pass their results on to a single returning officer nominated to collate the results.

⁸ Apart from properties which are exempt from business rates, each non-domestic property has a rateable value. Valuation officers of the Valuation Office Agency set the rateable values. The rateable value broadly represents the yearly rent the property could have been let for on the open market on a particular date.

⁹ This arrangement, referred to as a “double-lock”, was committed to in Business rate supplements: a white paper and is now set out in clause 8 and 10(11) of the BRS Bill. It follows the existing arrangements used for BIDs.

Summary table of proposed process and timetable

Action	Timeline
Levy authority decides the date of the ballot. If the running of the ballot is to be delegated, the billing authorities will need to be consulted.	
The official(s) running the ballot is notified of the date of the ballot.	Between 118-70 calendar days before the day of the planned ballot.
The official(s) running the ballot prepares a list of those persons entitled to vote.	Between 90-42 calendar days before the planned ballot.
The official(s) running the ballot publishes a notice of the ballot, which: a) states the date of ballot; and b) explains that the ballot will be conducted entirely by post.	
The official(s) running the ballot prepares the list of proxy voters (as necessary)	
The official(s) running the ballot sends each person entitled to vote/proxy voters a statement which: a) explains the arrangements for the ballot; b) explains how the person can access a copy of the prospectus; and c) provides the name and address of the local authority proposing the BRS-funded project.	
The official(s) running the ballot sends out the ballot papers to those persons eligible to vote/proxy.	At least 28 calendar days before the day of the planned ballot.
Day of the ballot	No later than 90 calendar days from the publication of the notice of the ballot.

Part 3 Proposed arrangements for ballots

Who runs the ballot?

- 2.9 It will be the responsibility of the levying authority to ensure a ballot is carried out if necessary. In single tier areas the Government intends that the levying authority will be responsible for appointing its returning officer, or another official, to run the ballot.
- 2.10 However, the Government considers that there should be flexibility in terms of who can run the ballot in two tier areas. The Government proposes to give levying authorities flexibility to choose to either run the ballot themselves or to delegate the function so that they can utilise the expertise in billing authorities, if they consider it appropriate to do so. This gives rise to the following options:
- a. The levying authority appoints its returning officer, or another official to act as returning officer, to run the ballot.
 - b. The levying authority delegates the running of the ballot to one or more of the billing authorities in its area. Each billing authority will then appoint its own returning officer, or another official, to run the ballot in its area. If the ballot is run by two or more authorities, the results will need to be collated in some way. This is discussed in detail in paragraphs 2.74 to 2.77.
- 2.11 The BRS Bill provides for two or more levying authorities to levy a multi-area supplement for a joint project. In the case of multi-area supplements, the Government proposes that there should be flexibility for the levying authorities involved to either:
- a. nominate one of the levying authorities involved in the multi-area supplement to run the ballot; or
 - b. for each levying authority involved in the supplement to take responsibility for running the ballot in their respective areas.
- 2.12 As with BRS levied by a single authority, the Government considers that there should be flexibility for levying authorities in two tier area that are involved in a multi-area supplement to delegate the function of running the ballot to the billing authorities in their area. In cases where all of the levying authorities involved in the multi-area supplement are part of two tier areas, there are two possible options:
- a. each levying authority could delegate the running of the ballot to one or more of the billing authorities in their respective areas; or
 - b. some levying authorities could appoint an official from within the authority to carrying out the ballot for their area while others may choose to delegate the function to the billing authorities in their respective areas.

- 2.13 There may also be instances where there is a mix of levying authorities in single and two tier areas involved in a multi-area supplement. The Government envisages that there should still be flexibility for the levying authorities in two tier areas to delegate running the ballot to one or more of the billing authorities in their area. This gives rise to the scenario where the levying authorities in single tier areas run the ballot for their area themselves and the levying authorities in two tier areas delegate running the ballot to one or more of the billing authorities in their area.
- 2.14 The options outlined in paragraphs 2.12 and 2.13 above would, potentially, make the administrative arrangements complex. However, they would provide additional flexibility and are consistent with the proposals for single authority supplements.
- 2.15 Where a ballot is run by a number of authorities (either levying or billing authorities) the results will need to be collated, as the result of any ballot will need to be based on the total number of votes across the geographical area in which a supplement will be levied (this is explained in more detail in paragraph 2.75). Possible options for how this could be achieved are outlined in paragraphs 2.76 to 2.77.
- 2.16 The finance arrangements for ballots are discussed in Chapter 4, paragraphs 4.14 – 4.15.

Question 1

Do you agree that levying authorities should have powers to delegate the function of running the ballot as proposed? If not, what changes would you suggest and why?

The form the ballot will take

- 2.17 We propose that, as with BIDs, only postal ballots should be used.
- 2.18 The Government considers that the ballot papers should be sent out by, and returned to, the official running the ballot for the area. To prevent confusion, particularly in those cases where the returning officer is based in a different local authority to one proposing the supplement, the ballot paper should include the return address for the ballot papers (please see paragraph 2.51).
- 2.19 The Government considers that voters should be able to return the ballot papers by hand. For simplicity, we suggest that the ballot papers should be returned to the official running the ballot, at the address given on the ballot paper.

Question 2

Do you agree with the Government's proposals regarding the form of the ballot? If not, what changes would you suggest and why?

Timing of the ballot

- 2.20 Consistent with the ballot arrangements for BIDs, we propose that the day of the ballot should be a working day.
- 2.21 The Government considered whether, in cases where a number of authorities are running the ballot, there should be flexibility for the ballot to be held on different days. This would provide additional flexibility, although restrictions would need to be put in place around the publication of the results, to ensure voters are not influenced by votes which had already been cast. However this option could also cause confusion. For example, it opens up the possibility of a business based at more than one location having two ballot dates.
- 2.22 For simplicity, both in administrative terms and for the voters, the Government considers that there should only be one ballot day for any given supplement. This includes both BRS proposals put forward by one levying local authority, as well as possible multi-area supplements. This is also consistent with the arrangements for local and general elections.
- 2.23 We anticipate that the date of the ballot will, in large part, be determined by the date the proposed supplement is due to start. Therefore the Government considers that the date of the ballot should be set by the levying authority. However, if the levying authority is delegating the running of the ballot, we consider that the levying authority should be required to consult the authority/ies running the ballot before making their final decision on the date.
- 2.24 The Government does not intend placing any restrictions on the date of the ballot in relation to the consultation. However, levying authorities will need to bear in mind that to ensure voters are all balloted on the same proposal, once notification of the ballot has been given the prospectus cannot be revised.
- 2.25 In the case of multi-area supplements, the Government considers that authorities proposing the supplement should come to an agreed date for the ballot. We do not intend setting out how this should be achieved. Instead, we think this should be something that is decided at the local level.
- 2.26 The Government proposes that, irrespective of whether the function of running of the ballot has been delegated, the returning officer should be notified of the date of the ballot, in writing, 118-70 calendar days before the ballot is due to take place. This adds 28 calendar days to the minimum and maximum time that the official running the ballot has to prepare the list of those entitled to vote.

Flexibility to postpone the day the ballot

- 2.27 The Government considers that there should be scope to delay the date of the ballot, as is the case with BIDs. This will provide additional flexibility, in case of unexpected delays in arranging the ballot.
- 2.28 We propose that the levying authority should be able to delay the ballot by up to 15 working days, up to 42 calendar days before the day the ballot was originally planned for, as with BIDs. When postponing a ballot, the levying authority should be required to notify the official running the ballot a minimum of 42 calendar days before the date originally given for the ballot. The Government considers this notification should be in writing.
- 2.29 We also consider that where the running of the ballot has been delegated to another authority the levying authority should be liable for the administration costs associated with the change in date (see Chapter 4, paragraphs 4.14 – 4.15).
- 2.30 The Government considers that, if a ballot is being conducted for a proposed multi-area supplement, the decision to postpone the ballot should be agreed by all of the levying authorities. In such cases, the Government proposes that the timescales and requirements outlined in paragraph 2.28 should apply.
- 2.31 In all cases where a ballot is postponed, we propose that the official running the ballot should be required to take reasonable steps to publicise the new day of the ballot to those eligible to vote and proxy voters.

Question 3

Do you agree with the proposed arrangements for setting the date of the ballot?
Do you think that the proposed flexibilities to postpone the ballot are appropriate?
If not, what changes would you suggest and why?

Preparing the list of voters

- 2.32 Taken together, clauses 6 and 7 of the BRS Bill set out who will be entitled to vote in a ballot on a new BRS (with essentially the same arrangements applying under clause 10 in relation to ballots on proposals to vary a supplement). In summary, a person will be entitled to vote if the authority thinks they will be liable to pay the BRS on the first day it is charged, or would have been but for specified circumstances.
- 2.33 Ratepayers who will be liable for the supplement will be eligible for a vote on each of the properties that will attract liability for the BRS. Therefore if one business occupies two properties in respect of which the supplement will be payable the business will be entitled to one vote for each property.

2.34 The Bill provides for the Secretary of State to make regulations setting out who may cast a vote in cases where the person eligible to vote is a body corporate, partnership or an unincorporated association. The Government proposes that in such cases the organisation itself should have the flexibility to determine who will complete the ballot paper. This individual does not necessarily need to be the same person who will be responsible for undertaking the practical arrangements needed for paying the supplement, if it is levied.

Question 4

Do you think the Government should be more prescriptive in terms of which individuals should be able to vote on behalf of a body corporate, partnership or an unincorporated association? If yes, what particular issues would you like the Government to cover in regulations and why?

2.35 Once notified of the ballot, the official running the ballot will need to prepare a list of persons entitled to vote. The Government proposes that this will take place 90 to 42 calendar days before the planned ballot, as is the current timescale for BIDs.

2.36 In two tier areas, the levying authority will not hold details about the ratepayers in its area. Therefore, the BRS Bill provides for levying authorities in two tier areas to request information from billing authorities, in particular the names and addresses of each person who is subject to national non-domestic rates and the rateable value of each non-domestic property (clause 25 of the Bill). We intend that levying authorities should be able to use this information for the purposes of organising a ballot.

2.37 In those instances where the running of the ballot has been delegated to the billing authorities, the levying authority will need to inform the billing authorities which persons will be liable for the supplement and therefore eligible to vote. To allow the billing authorities the time needed to undertake the necessary preparations, we propose the information should be provided 104-56 calendar days before the day of the planned ballot. This allows 14 calendar days, on top of the time frame given for preparing a list of voters.

Question 5

Is the timetable given for providing the names of those entitled vote appropriate? If not, what changes would you suggest and why?

Provision for proxy voting

2.38 To provide additional flexibility to businesses, we suggest that arrangements should be made for proxy voting for BRS ballots. The proposals for proxy voting, in particular the timetable described below for appointing a proxy, mirror the existing arrangements for BIDs.

- 2.39 The returning officer will have responsibility for maintaining a list of proxy voters (in addition to the list of those entitled to vote).
- 2.40 We consider that for each vote they are entitled to exercise, the person entitled to vote should be able to apply to appoint one (but only one) person to act as a proxy at any one time. So a person who will pay the BRS in respect of two properties, and therefore have two votes, would be able to appoint one proxy for one property and one proxy for the other property. The proxy for both properties could be the same person, but need not be.
- 2.41 Where a person wishes to appoint a proxy, we propose they should be required to apply to the returning officer for the ballot for a proxy vote, no later than 5pm on the tenth calendar day before the ballot.
- 2.42 The application should:
- state the address of the non-domestic property for which the applicant is entitled to vote
 - state the full name and address of the person who the applicant wishes to be the proxy
 - be signed by the applicant, and
 - contain a statement from the applicant that he/she has consulted the person named to act as a proxy and that the person is capable and willing to be appointed.
- 2.43 The Government suggests that where the official running the ballot approves an application for a proxy vote, they should notify the applicant and the person named to act as the proxy in writing. The official running the ballot will also need to add the name to the list of proxy voters.
- 2.44 We propose that in cases where the application for the proxy is rejected, because it does not meet the criteria set out in paragraph 2.42 or because a proxy has already been appointed for a particular property by the person liable to pay the BRS, the official running the ballot should notify the applicant in writing, explaining the reason for the decision. The Government considers that the decision of the official running the ballot on the proxy application should be final.
- 2.45 The Government considers that provision should also be made for the proxy to be cancelled by the person entitled to vote or the proxy voter. If either wishes to cancel the proxy they must do so before 5pm on the fifth calendar day before the ballot. Otherwise the proxy's vote will be counted as part of the ballot.

2.46 We propose that where a proxy is successfully cancelled the official running the ballot should notify (i) the person entitled to vote; and (ii) the proxy voter that the appointment has been cancelled. This should be done in writing. The official running the ballot will also need to remove the name from the list proxies.

2.47 The Government considers that, as is the case with BIDs, the appointment of the proxy voter should only last for one ballot. Or put another way, if the person entitled to vote wishes to appoint the same proxy for a second ballot (for example on a different supplement, or a later ballot on the same BRS) they should be required to make a new application to the relevant returning officer.

Question 6

Do you agree with the suggested arrangements for proxy voting? If not, what changes would you suggest and why?

Notice of the ballot to those entitled to vote

2.48 The Government proposes that, as with BIDs, the official running the ballot should be required to publish notice of the ballot at least 42 calendar days, and a maximum of 90 calendar days, before the date of the ballot. The notice of the ballot should state the planned date of the ballot and that the ballot will be held entirely by post.

2.49 As is the case with BIDs, at the same time the official running the ballot provides notice of the ballot they should be required to send each person entitled to vote:

- a. details of the arrangements for the ballot, including the arrangements for appointing a proxy
- b. details of how the person can access a copy of the prospectus, and
- c. the name and address of the local authority proposing the BRS-funded project.

2.50 The Government considers that the notice of the ballot should be sent to all those entitled to vote simultaneously, to ensure that everyone has the same time to decide whether or not to support the proposed BRS. Therefore, in those cases where a ballot is held by more than one authority, the Government proposes that the authorities running the ballot and the levying authority should be required to agree a date for sending out the notice of the ballot to those entitled to vote.

Question 7

Do you think any additional information should be provided as part of the notice of the ballot? If yes, what additional information do you think should be provided and why?

The format of the ballot papers

2.51 We propose that all ballot papers should follow the format set out below, which is similar to the ballot papers provided for BIDs.

- The ballot paper must ask voters to vote on the ballot question, as prescribed in clauses 7 or 10 of the BRS Bill, as appropriate.
- The ballot paper should include a reminder that the paper needs to be returned to the official running the ballot by 5pm on the day of the ballot.
- The ballot paper should include the return address for the ballot papers.
- Each ballot paper should have a unique identifying code, such as a bar code, printed on the back.
- The box on which a vote may be marked on the ballot paper should be no less than 1.5cm square.
- The ballot paper should ask for the name and signature of the person voting, as well as the address of the non-domestic property in respect of which the supplement would be payable. (These details can then be checked against the list of those eligible to vote and list of proxies.)
- The ballot paper should ask the position of the person who is signing the ballot paper.
- The ballot paper should include a statement, signed by the voter, confirming that they are entitled to vote.

Question 8

Is there any additional information you would add to the ballot paper and, if so, why? Is there any information suggested for inclusion in the ballot paper that you do not think should be included? If so, why?

Procedure for issuing a ballot paper

2.52 The procedure the Government proposes for issuing the ballot papers follows the existing regulations covering the ballot arrangements for BIDs.

2.53 The Government proposes that the ballot papers should be sent out at least 28 calendar days before the planned ballot, as is the case with BIDs.

2.54 In terms of sending out the ballot papers, the Government considers that the ballot paper should be sent to the address of the property, or the principal place of business, of each person entitled to vote.

2.55 The Government suggests that, enclosed with the ballot paper should be a prepaid return envelope for the ballot paper.

Lost ballot papers

- 2.56 The Government proposes that provision should also be made for dealing with lost ballot papers. We consider that the process for dealing with lost BRS ballot papers should follow the regulations currently governing ballots held for BIDs.
- 2.57 We suggest that if, four working days before the date of the ballot, a voter has not received a ballot paper, they may apply to the official running the ballot for a replacement.
- 2.58 For the purposes of seeking a replacement ballot paper, the Government considers that the voter could be the person appointed by the business to vote or the appointed proxy voter. In making the application the voter will need to provide some proof of identity.
- 2.59 If the official running the ballot is satisfied of the voter's identity, and has no reason to doubt that the voter did not receive the first ballot paper, they should issue another ballot paper to the voter. To prevent fraud, the official running the ballot should make a note of the lost ballot paper, to ensure the lost ballot paper is not later used in the ballot.
- 2.60 The Government considers that the voter should be able to apply for a new ballot in person, or via post. In cases where the application has been made in person, it considers that the official running the ballot should be able to hand the replacement paper to the voter direct.

Inadvertently spoiled ballot papers

- 2.61 The Government proposes that in cases where a voter inadvertently spoils their ballot paper, they should be able to request a new paper from the official running the ballot. In such cases, the voter must ensure the official running the ballot receives the request and spoiled ballot paper no later than three working days before the ballot. The official running the ballot should be in receipt of the spoiled paper before issuing a new ballot paper.
- 2.62 The Government proposes that the voter should be able to apply for a fresh ballot paper in person, or via post. In cases where the application for a new ballot paper has been made in person, the official running the ballot may hand the replacement paper to the voter direct.

Question 9

Do you agree with the proposed arrangements for issuing ballot papers, including those that are lost or inadvertently spoiled? If not, what would you change and why?

The conduct of the ballot and the counting of the papers

2.63 The Government's proposals for the receipt of return ballot papers, the secrecy of the vote, procedure for spoilt ballot papers and dealing with rejected ballot papers all replicate the existing arrangements for BIDs.

Receipt of return ballot papers

2.64 The Government proposes that, in order to be counted, ballot papers should be returned to the official running the ballot before 5pm on the day of the ballot.

2.65 We also propose to include in regulations provision that the ballot papers should be stored in a secure place, and should only be seen by officials directly involved in counting the ballot.

Secrecy of vote

2.66 The Government intends that the votes cast as part of the ballot should remain secret. Those involved in counting the ballot should be required to keep the vote of individuals confidential. Neither the authority proposing the supplement, nor those entitled to vote, should attempt to ascertain whether a person voted for, or against, the proposal. Nor should any person who voted in the ballot be required to state which way he/she voted.

2.67 The Government proposes that the official running the ballot should be required to ensure that voters and those involved in counting the votes are aware of the need for secrecy, and their specific responsibilities with regard to this.

Spoilt ballot papers

2.68 Ballot papers that are spoilt, but where the voter has not requested a replacement paper, should be classified and counted as spoilt ballot papers. The number of spoilt ballot papers should then be reported as part of the general declaration of the result.

2.69 The Government proposes that ballot papers should also be declared void, and not counted, if the paper is unsigned or the paper is unmarked. Nor should the vote be counted if the marking is unclear because:

- a. the vote is marked elsewhere than in the proper place on the ballot paper
- b. the vote is marked by a means other than a cross, or
- c. there is more than one mark.

In all other instances, the Government considers that it should be left to the discretion of the official running the ballot whether or not the vote should be counted.

2.70 The Government considers that the decision of the official running the ballot, in terms of whether a ballot paper is void, should be final.

Ballot papers that should be discounted

- 2.71 Where two ballot papers received by the authority have the same number or bar code, the Government considers that both should be declared void and not counted.
- 2.72 The Government proposes that the official responsible for running the ballot should check that none of the completed ballot papers has been previously declared as lost (paragraph 2.59 refers).
- 2.73 The official responsible for running the ballot will also need to check that only ballot papers from those entitled to vote or on the list of proxies are counted. This will include ensuring that any ballot papers issued to those entitled to vote but that have been subsequently delegated to a proxy are not counted in the ballot. They will also need to check that any proxies that have been cancelled are not counted as part of the ballot.

Question 10

Do you agree with the proposed arrangements for the conduct of the ballot and the counting of the ballot papers? If not, what would you change and why?

Collation of the results

- 2.74 Clause 8 of the Bill sets out how approval is to be given for a proposed BRS. Before the supplement can go ahead, local authorities will need to win a simple majority, both in terms of the number of non-domestic properties affected and rateable value. This system is referred to as a “double-lock” and is already in use for BIDs.
- 2.75 The majority will need to be won across the entire geographical area to which the supplement will apply. Where the ballot is run by the levying authority it can assess the result itself. However, in cases where the ballot is split into different areas – in the case where a ballot is run by a number of billing authorities or in the case of a proposed multi-area supplement – the votes cast across the entire area will need to be brought together in some way.
- 2.76 The Government proposes that the officials running the ballot should each have responsibility for counting the ballot papers they have individually issued. The results would then be collated by an official specifically appointed for this task by the authority/ies proposing the supplement (for ease of reference, referred to as the chief returning officer). We consider that the authority/ies should have flexibility to either appoint the chief returning officer from within the levying authority or one of the billing authorities.

- 2.77 To enable the chief returning officer to collate the results, the Government proposes that the officials running the individual ballots should be required to notify the chief returning officer of the:
- a. number of votes counted
 - b. number of those in favour of the proposed supplement
 - c. number of those against the proposed supplement
 - d. total rateable value of those in favour
 - e. total rateable value of those against, and
 - f. number of spoiled ballot papers.

Question 11

Do you agree with the proposed arrangements for collating the result of the ballot? If not, what would you change and why?

Declaration of the result and the retention of ballot papers

- 2.78 The Government proposes that there should be a requirement on the official running the ballot/chief returning officer to declare publicly the result of the ballot. The Government envisages that they should be required to make a declaration stating the:
- a. number of votes counted
 - b. number of those in favour of the proposed supplement
 - c. number of those against the proposed supplement
 - d. total rateable value of those in favour
 - e. total rateable value of those against, and
 - f. number of spoiled ballot papers.
- 2.79 In cases where more than one authority is running the ballot, the result will need to be aggregated before the result of the ballot is made public (please refer to paragraphs 2.75 to 2.77). As the ballot relates to a single supplement, the Government considers that only the result of the ballot for the entire geographical area in which the BRS will apply should be made public.
- 2.80 The Government does not envisage putting a time limit on the declaration of the result. Instead, as it the case with BIDs, the Government proposes that the result of the ballot should be declared as soon as is practical.

2.81 Consistent with the regulations on BID ballots, the Government proposes that the ballot papers should be retained by the official running the ballot for a period of six months after the day of the ballot, unless otherwise directed by the High Court.

Question 12

Do you agree with the proposed arrangements for declaring the result of the ballot, in particular the information that is declared? If not, what changes would you suggest and why?

Chapter 3

Proposed administration and accounting arrangements

- 3.1 Paragraph 2.26 of *Business rate supplements: a white paper* emphasised the need for BRS to be subject to a transparent accounting framework and undertook to set out detailed proposals for the accounting constraints before finalising the arrangements.
- 3.2 The BRS Bill contains powers for the Secretary of State to make regulations in relation to the accounting arrangements for BRS and for the collection and enforcement of BRS. This chapter of the consultation paper invites views on the Government's proposals for the secondary legislation on these matters.
- 3.3 In broad terms, BRS will be a local supplement on the national business rate and, in most cases, it is expected they will be collected as part of the annual rates billing round. However, other than in unitary areas, the power to levy the supplement will rest with authorities that are not rates billing authorities – namely the GLA in London and county councils in two-tier authority areas. A mechanism therefore needs to be put in place for billing authorities that are not levying authorities to collect the supplement and to pass the revenue to the relevant levying authority. Such arrangements already exist in respect of council tax.
- 3.4 The intention is that the arrangements should be based on other aspects of the wider local government finance system. Of particular relevance to BRS is the process by which county councils issue council tax precepts to billing authorities, the process by which precepts are collected, and the accounting arrangements for precepts.
- 3.5 So that the proposals for secondary legislation can be seen in context, details of the existing arrangements relevant to BRS are summarised in Part 1 of this chapter. The steps that authorities must comply with before levying a BRS are set out in Part 2 of this chapter. The Government's proposals for administering and accounting for BRS are set out in Part 3 of this chapter.

Part 1 Existing arrangements

Process for setting the council tax

- 3.6 Responsibility for collecting both non-domestic rates (NDR) and council tax falls to billing authorities; in England, these are the London boroughs and the Common Council of the City of London, district councils and unitary authorities. However, unlike NDR which is set by the Government, billing authorities set the council tax for their areas as well as collect it.
- 3.7 Various local services are provided by what are known as “major precepting authorities” (these are county councils, police authorities, the Greater London Authority and fire authorities). If the whole or part of a billing authority’s area falls within a major precepting authority’s area, the major precepting authority must issue a precept to the billing authority. The precept is essentially the amount of council tax that the precepting authorities need to raise to provide their services, and it is collected by billing authorities alongside their own council tax before being passed to the major precepting authority.
- 3.8 Precepts must state the level of the precept and the amount that the major precepting authority calculates the billing authority must pay to it for the year. Precepts must be issued before 1st March in the financial year preceding the year for which the council tax is being set.

Collection and enforcement of precepts

- 3.9 There is no practical distinction between the way that a billing authority collects its own council tax and precepts – the amounts collectively comprise the council tax billed for by the authority.
- 3.10 The detailed arrangements for billing are set out in secondary legislation¹⁰. These require demand notices to be served on those persons liable for council tax and to state any precept issued by major precepting authorities.
- 3.11 There is also no practical distinction in the way that a billing authority enforces liability for its own council tax and any precept. This is governed by Part 6 of the Administration and Enforcement Regulations which confers sole responsibility for collection and enforcement on billing authorities.

¹⁰ Part 5 of the Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992/613) and the Council Tax and Non-Domestic Rating (Demand Notices) (England) Regulations 2003 (SI 2003/2613).

Collection and enforcement of NDR

- 3.12 NDR collected by billing authorities are paid into a central account – “the pool” – administered by the Secretary of State. This process is governed by the Contributions Regulations¹¹ which allow billing authorities to retain a proportion of rates yield to cover the cost of collection. Revenue paid into the pool is redistributed to local authorities as part of the annual local government finance settlement.
- 3.13 The Collection and Enforcement Regulations¹² require demand notices to be served annually on all ratepayers and set out the arrangements for payments under demand notices – including that payments are made by instalments. Failure to pay the sum due under a demand notice can result in the billing authority applying to a magistrates’ court for a liability order and further action leading ultimately to imprisonment. There is provision in the Regulations for outstanding liabilities on death.
- 3.14 As for council tax, the content of rates demand notices is governed by the Demand Notices Regulations¹³. These require billing authorities to explain how bills have been calculated. They also prescribe the text for the explanatory notes which must accompany bills. Schedule 3 to the Regulations requires certain budgetary information to also be provided.

Local authority funds

- 3.15 All billing authorities are required to maintain a collection fund. Sums to be paid into collection funds include those received by the authority in respect of council tax and those sums received in respect of NDR.
- 3.16 The amounts that must be met from collection funds include payments from billing authorities to major precepting authorities in respect of any precept issued by them.
- 3.17 Complementary provisions are contained in the Funds Regulations¹⁴. These require billing authorities to draw up a schedule of instalments of payments to major precepting authorities. Where payments are not made in accordance with the schedule of instalments, interest becomes payable to the major precepting authority.
- 3.18 The Funds Regulations also require billing authorities to estimate for each financial year any surplus or deficit in their collection fund and to apportion them between the billing authority and its major precepting authorities. The rules for calculating surpluses and deficits, and their apportionment, are in paragraphs 2 and 6 of Schedule 2 to the Funds Regulations.

¹¹ The Non-Domestic Rating Contributions (England) Regulations 1992 (SI 1992 / 3082).

¹² The Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (SI 1989 / 1058)

¹³ The Council Tax and Non-Domestic Rating (Demand Notices) (England) Regulations 2003 (SI 2003/2613)

¹⁴ The Local Authorities (Funds) (England) Regulations 1992 (SI 1992 / 2428)

- 3.19 County councils are required to maintain a county fund. All receipts are paid into the county fund and all expenditure is met from it. This means that all county council precept receipts go into the county fund and any billing authority collection fund deficits the county council is required to contribute to are met out of the county fund.
- 3.20 The GLA and all billing authorities except the City of London must maintain a general fund, into which all monies received must be paid and from which all payments must be made (unless, in areas which are required to have both a collection fund and general fund, the receipt or payment is instead required to go through the collection fund). Regulation 13 of the Funds Regulations specifies circumstances in which money may be transferred into the general fund from the collection fund. GLA precept receipts are paid into its general fund and any billing authority collection fund deficits it is required to contribute to are met out of the general fund. Interest which is payable by a billing authority to a major precepting authority under the Funds Regulations has to be met from its general fund.

Business Improvement Districts (BIDs)

- 3.21 Where a BID is operating in a billing authority area, the BID revenues are paid to the billing authority which must maintain a separate BID Revenue Account. Amounts may only be debited to the BID Revenue Account in accordance with the BID arrangements. This ensures the money is ringfenced for the sole purposes of the BID.
- 3.22 As for council tax and NDR, the detailed arrangements for billing are set out in secondary legislation¹⁵. The Regulations require demand notices to be served on those persons liable for the BID levy and set out the content of such notices.

Part 2 Levying a BRS

- 3.23 There are a number of steps that levying authorities will need to take before billing authorities will be able to collect a BRS. The various requirements are set out in the Bill and are outlined below.
- 3.24 To enable levying authorities to set the BRS and prepare their BRS prospectus, they will be able to require relevant information from billing authorities – in particular in relation to rateable values in the billing authority's area and the addresses of ratepayers to be consulted.

¹⁵ The Business Improvement Districts (England) Regulations 2004 (SI 2004 / 2443)

3.25 When a BRS is levied, the levying authority will be required to tell the billing authority:

- the class of ratepayers liable for the levy
- the amount of the BRS for the financial year
- whether it is granting any BRS reliefs for the financial year, and
- whether BID levies are to be offset.

It will then be for the billing authority to calculate individual liability for BRS. There is no prescribed form for the information to be provided by levying authorities; as long as it is complete, the billing authority must bill for the BRS.

3.26 In areas where more than one BRS is being levied in the same financial year (within the overall 2p limit), the levying authority may send a single notification to the billing authority, but the information set out above must be shown in respect of the individual BRS.

Levying a BRS as part of the annual billing round

3.27 Where BRS is to be levied as part of the main billing round – i.e. with effect from the first day of a financial year (1 April) – notice must be given to billing authorities by the levying authority before 1 March in the preceding financial year and the levying authority will need to ensure its consultation and/or ballot are timed to allow for this. This deadline is consistent with the existing precepting process.

Levying BRS outside normal billing round

3.28 All BRS-funded projects will have a lead-in time, which will include statutory consultation on the BRS in all cases and ballots in some. In view of this, and as part of the overall management of the project, we expect levying authorities will want billing authorities to collect BRS as part of the normal billing round. This will not only make the administration of BRS easier for billing authorities, but will also enable BRS revenue to come on stream from the start of the financial year and assist in financial planning for both levying authorities and business ratepayers.

3.29 However, circumstances may arise where the supplement is levied outside the normal annual billing round. This might happen, for example, if the levying authority fails to provide the billing authority with the necessary information to enable it to calculate and impose the BRS levy as part of the annual NDR bill. Alternatively, in order to make an early start on a project, the levying authority may not want to wait until the start of the following financial year before starting to collect BRS revenue.

- 3.30 Where BRS is collected as part of the normal billing round, the costs of doing so will be met from BRS revenues. However, where the supplement is first levied with effect from a date other than 1 April, in two-tier areas the levying authority will be responsible for meeting the billing authority's costs of sending out revised rate bills. The levying authority will not be able to meet these costs from BRS revenues. Instead, it must cover the costs from its own funds. This will also be the case in single tier areas where billing commences other than from 1 April.
- 3.31 If the BRS arrangements change mid-year, the levying authority must notify the billing authority in the same way that it would if it was levying a BRS for the first time. It will also be required to cover the administrative costs of rebilling out of its own funds (not from revenue collected through the BRS).
- 3.32 The level of a BRS and those liable to pay it could change from year to year and it would not be reasonable to expect billing authorities to predict what that level should be and how it should be applied to affected ratepayers. Levying authorities will therefore be required each year to notify billing authorities of the level of the BRS for the coming year. Where a BRS commences or is revised mid-year, the levying authority will be required to notify the billing authority of the arrangements for the BRS for the following financial year by 1 March, so that the BRS can be collected through the main NDR billing round.

Part 3 Proposals

- 3.33 The proposals in this part of the consultation paper are for technical regulations needed to give full effect to the provisions of the BRS Bill and put in place the arrangements for BRS as set out in the white paper. As noted above, the intention is that, so far as possible, the administration and accounting arrangements for BRS should be based on those that already exist elsewhere in the NDR and council tax systems. In most cases, this will require minor adjustments to those arrangements.

Collection and enforcement of BRS (clause 21)

- 3.34 As mentioned above, we expect in most cases that the levy will be collected as part of the annual NDR billing round. Provision will also need to be made for the collection of BRS outside the normal billing round.
- 3.35 **We propose that the secondary legislation governing the collection and enforcement of BRS will cover the following key areas.**
- **Billing authorities will be required to issue demand notices in respect of BRS for each chargeable period.** This will need to show a breakdown between NDR and BRS liability where BRS is to be levied as part of the annual billing round. Where there is more than one BRS in operation in the area, each will need to be identified in the demand notice.

- Consistent with the arrangements for payment of NDR, **provision will be made for the payment of BRS in instalments throughout the year.**
- **Where BRS commences or is varied after 1 April, billing authorities will have to issue a revised demand notice to ratepayers, showing their new BRS liability. We propose that this should also show the ratepayer's main NDR liability,** but this will be unchanged unless there is a separate reason for an adjustment to be made at the same time. This could, for example, happen where the rateable value of a ratepayer's property has altered as a result of an appeal to the valuation officer.
- There will be **provision for adjustments to be made to individual BRS liability** where payment is found to be in excess of, or less than, the amount payable in relation to the hereditament.
- In cases of default on rates liability that includes a BRS component, NDR and BRS liability should – like the council tax – be treated as a single amount for the purposes of enforcement. **We propose that the billing authority in those cases should not be required in effect to enforce NDR or enforce BRS – it will simply enforce the overall rates bill.** As a consequence of this, the methods of enforcement will be unaffected by there being a BRS component to the overall rates bill.
- The proposed regulations will also need to ensure that the arrangements for the collection and enforcement of BRS cater for those situations where liability falls to **joint owners and occupiers**. Provision will also be made for dealing with **outstanding BRS liabilities on death**.
- Provision will also be made for the notices and other documents related to BRS to be transmitted by **electronic communication**.

Question 13

Are these proposals sufficient to allow billing authorities to administer the BRS supplement efficiently and effectively. If not, what extra measures are needed and why?

Accounting for BRS

3.36 The White Paper outlined the safeguards that would be needed in order to maximise the benefits of BRS. Among these was the need to secure accountability to the business community. If BRS are to promote, rather than inhibit, the development of strong relationships between local authorities and businesses in their areas, they must be administered in a way which gains credibility and legitimacy from the business community.

3.37 In this context, and to ensure that BRS can command the support of businesses that will be paying the supplement, it will be important to have in place a robust set of accounting arrangements. These are set out in Schedule 2 to the Bill.

BRS revenue accounts

3.38 The Bill requires levying authorities that impose a BRS to keep a BRS revenue account for each BRS they operate. This will be similar to the BID revenue accounts that authorities are required to have for BIDs that are established in their areas. In single tier areas outside of London and for the GLA, this account will in practice form part of the general fund and, in two-tier areas, it will in practice form part of the county fund.

3.39 The Bill also makes provision for the GLA to enter into arrangements with any of its functional bodies (Transport for London, the London Development Agency, the Metropolitan Police Authority and the London Fire and Emergency Planning Authority) so that revenue collected from a BRS by the GLA may be used by the functional body on a project to which the BRS relates. Where the GLA levies a BRS, any functional body which receives any of the BRS receipts must also maintain a BRS revenue account. If two or more levying authorities are acting jointly, each authority must have its own BRS revenue account.

3.40 **The proposed regulations will set out what must be credited and debited to the BRS account.** Credits to the account will include BRS revenues for the year, and debits will include expenditure on the project to which the BRS relates. Where the GLA has entered into arrangements with one of its functional bodies, the GLA BRS account will need to show the revenue it has received from the billing authorities in its area, and the revenue it has passed to the functional body. Similarly, the BRS account for the functional body will need to reflect as a credit the revenue it receives from the GLA, and as a debit the expenditure on the project to which the BRS relates.

Collection funds

3.41 In the same way as they do for council tax and NDR revenues, the Bill provides for billing authorities, in the first instance, to pay BRS revenues into their collection fund. However, an important difference between NDR and BRS is that BRS revenue will not be paid into the central NDR pool. NDR will continue to be governed by the existing arrangements in the Contributions Regulations.

3.42 **The proposed regulations will make provision for BRS revenue in collection funds to be transferred to the appropriate BRS revenue account.** In single-tier areas outside of London where the BRS revenue does not have to be transferred to a different levying authority, **the regulations will provide for BRS revenue to be transferred from the authority's collection fund to its BRS revenue account.**

- 3.43 In two-tier areas and in London, **the regulations will require the billing authority to transfer the BRS revenue from its collection fund to the levying authority's BRS revenue account** (less any permitted deductions for its costs), so that it is available for the project for which the BRS has been levied.
- 3.44 As with the existing arrangements for precepts, billing authorities which are not levying authorities will be required to prepare a schedule of instalments and **the regulations will make provision for payment of interest where instalments are not paid**. The regulations will also make provision for adjustments at the end of the year if the amount of BRS collected differs from the instalments paid. On receipt of BRS revenue from the billing authority, the levying authority will then be required to pay it directly into their BRS revenue account.
- 3.45 As mentioned in paragraph 3.18 above, billing authorities are required each year to estimate any surplus or deficit in their collection funds and to apportion these between the billing authority and its major precepting authorities. In the same way that billing authorities collect precepts and pass these to their precepting authorities, billing authorities will be responsible for collecting BRS and transferring the revenue to the levying authority.
- 3.46 We have considered whether an arrangement similar to that which applies in respect of precepts is required in relation to the collection and enforcement of BRS. Whether collected as part of the normal billing round or as a separate exercise, NDR and BRS will both be paid into the billing authority's collection fund. NDR revenues will continue to be paid from the collection fund to Communities and Local Government under well-established arrangements. Depending on whether a billing authority is also a levying authority, the BRS revenue collected will either be transferred to its BRS revenue account, or to the levying authority's BRS revenue account.
- 3.47 As mentioned in paragraph 3.35, authorities will not be required to distinguish between NDR and BRS when enforcing payment of the overall rates bill. Nevertheless, levying authorities will want to be satisfied that billing authorities are pursuing the payment of BRS rigorously. This raises the issue of how to deal with any shortfall in revenue that may occur.
- 3.48 On the one hand, it could be argued that there would be little incentive for billing authorities to actively pursue non-payment of BRS if all shortfalls were to be met by the levying authority. On the other hand, it would not be reasonable for billing authorities to bear the full brunt of any shortfall in anticipated BRS revenue which may arise.

3.49 One option for addressing this issue could be to require billing authorities to calculate at the end of the year the level, if any, of BRS liability that has not been discharged. One way of doing this would be:

- the billing authority identifies which ratepayers, if any, that are liable to the BRS have not discharged their full NNDR and BRS liability at the end of the financial year and the proportion of the total NNDR and BRS liability outstanding
- the billing authority calculates the proportion of the total rates bill which relates to BRS
- the billing authority then applies the proportion of the total bill which has not been paid to the proportion of the total bill which relates to BRS, to establish the proportion of BRS that has not been paid.

3.50 This then raises the question of how the unpaid portion of BRS should be allocated between the billing authority and the levying authority.

3.51 As with the collection of NDR, billing authorities will be under a duty to diligently collect and enforce payment of BRS. In view of this, one approach would be to leave billing authorities to deal with collection and enforcement issues in the same way as they deal with the collection and enforcement of NDR; this would require no special mechanism for dealing with any shortfalls in revenue that may arise. An alternative would be for the billing authority and levying authority to agree between themselves how to handle this matter.

3.52 Conversely, consultees may feel that there should be a formal mechanism for addressing any shortfall in BRS revenue to provide clarity for both billing authorities and levying authorities. Any such mechanism would, however, need to strike the right balance between providing appropriate incentives and ensuring fairness.

Question 14

Do you consider that there should be a mechanism for addressing any shortfall in BRS revenue that may arise? If so, how do you envisage such a mechanism operating?

Council tax

3.53 Under existing arrangements, unitary authorities, county councils and the GLA are required to calculate their estimated expenses and their estimated income, apart from annual income from redistributed rates and revenue support grant and certain other income streams. This ultimately feeds into the authority's calculation of its council tax. The Government wants to ensure that BRS do not artificially increase or decrease council tax and **we therefore propose that BRS income and expenditure should be excluded for the purposes of estimating income and expenditure for the year. We propose to achieve this through secondary**

legislation. This mirrors the approach taken for BIDs where the income and expenditure are similarly excluded from the calculation of estimated income and expenditure for the year.

Refunds and credits

- 3.54 The Government considers that any BRS money that has been collected and not spent at the time the BRS comes to an end should be returned to those ratepayers that have paid the supplement. This could either be refunded to the ratepayer or credited against the ratepayer's liability for non-domestic rates. It could also be credited against a ratepayer's liability for another BRS in the same levying authority area.
- 3.55 That said, a balance needs to be struck between refunding supplement payments to ratepayers when a BRS comes to an end and ensuring that the cost of doing so is not disproportionate. The Bill enables regulations to be made providing for refunds if a BRS comes to an end and setting out how refunds or credits are given. We propose the regulations should cover the following areas.
- 3.56 Where the levying authority is not a billing authority, **the regulations will require the levying authority to transfer the outstanding sums to each billing authority within its administrative area.** This will require the levying authority to calculate the relative proportions made by billing authorities to the overall BRS revenue credited to the levying authority's BRS account and to divide the outstanding amount between the billing authorities according to the contribution each has made to the overall BRS revenue.
- 3.57 Where the GLA has entered into arrangements for one of its functional bodies to use money raised through BRS on a project for which the supplement has been raised, **the regulations will provide for any outstanding sum held by the functional body to be transferred to the GLA before being transferred to the billing authorities in the GLA's area.**
- 3.58 Where BRS money is transferred from the levying authority in these circumstances, **the regulations will require the billing authority to calculate the amount to be refunded or credited to each ratepayer by reference to the ratepayer's previous liability for BRS for the last full financial year of the BRS arrangements. This will require the billing authority to calculate the relative proportions made by individual ratepayers to the amount of BRS collected for the last chargeable period. They will also require the billing authority to make arrangements either to refund the money to the ratepayer, credit the amount against any liability for NDR, or credit the amount against the ratepayer's liability for another BRS within the levying authority's area.**

- 3.59 **We propose that refunds should only be made to those ratepayers who would be entitled to at least £5 by way of a credit or refund.** For amounts less than this, the cost of administering the refund or credit is likely to be disproportionate for both the taxpayer and the billing authority.
- 3.60 **The regulations will also make provision for levying authorities and billing authorities to deduct a reasonable sum for the administrative costs involved in making refunds or credits to BRS ratepayers.**
- 3.61 The Government considers that the approach to assessing the reasonableness of administrative costs involved in making refunds or credits should be similar to that proposed for the calculation of administrative expenses related to the collection and enforcement of BRS (see Chapter 4). Circumstances will vary depending on the arrangements put in place at the outset by the particular levying authority. For example, some authorities may have incorporated tapering arrangements as part of their BRS proposals, applied reliefs and chosen to offset the payment of BID levies against BRS liability, whereas others may have taken a different approach.
- 3.62 In the case of a billing authority that is not a levying authority, the Government considers that the amount it can retain to meet administrative expenses should be agreed with the levying authority. However, like the administrative expenses associated with the collection and enforcement of BRS, this should be subject to an upper ceiling.
- 3.63 **We propose that this should be set at £5 per hereditament in respect of which a credit or refund is made.** This would be consistent with the view above that refunding or crediting amounts less than £5 are likely to be outweighed by the costs of administration. **We propose that this same limit should apply in respect of administrative expenses incurred by a levying authority that is a billing authority.**

Question 15

Do these proposed accounting arrangements provide sufficient transparency and accountability? If not, what extra measures are needed and why?

Question 16

Do you agree it is reasonable to set a threshold below which refunds should not be made, and that £5 is an appropriate level to set the threshold? If not, what alternative arrangements would you suggest and why?

Question 17

Do you agree with the arrangement proposed for calculating administrative expenses associated with refunds and credits? If not, what arrangements should be adopted and why?

Audit

3.64 The Audit Commission Act 1998 imposes a general duty on auditors to be satisfied that accounts comply with all the requirements applicable to those accounts.

We consider this general duty is sufficient to cover the introduction of BRS. **We do not therefore propose to introduce any specific provisions in relation to the audit of BRS.**

Question 18

Do you agree that the existing duty imposed on auditors by the Audit Commission Act 1998 is sufficient and that specific auditing provisions are not required to accompany the introduction of BRS? If not, what specific measures are needed, and why?

Chapter 4

Proposed arrangements for recovering the costs of collecting BRS

- 4.1 In unitary areas, levying authorities will be the billing authority for BRS. In two-tier areas, the billing authority will be the district authority or, in London, the boroughs and the Common Council of the City of London.
- 4.2 Clause 22 of the Bill makes provision for billing authorities to recoup the costs they incur in the collection and recovery of BRS (referred to in the Bill as “administrative expenses”). When billing commences from the beginning of the BRS, this can be done from BRS receipts. Where it is not, in two-tier areas, the levying authority must meet billing authorities’ costs from its own resources; and in single-tier areas it must bear its own costs rather than offset them against BRS receipts.
- 4.3 The detail of how these costs will be paid for will be addressed in the secondary legislation.
- 4.4 The BRS Bill gives upper-tier authorities a new power to fund local projects. Provided the link can be made to economic development, authorities will have a reasonable degree of flexibility as to the type of project they wish to promote through BRS funding. The supplement can be levied at different rates, reliefs may be granted, and the duration of projects will vary from case to case. The numbers of businesses paying BRS will also vary from area to area. This illustrates the local nature of BRS and that there is no “one-size-fits-all”. By the same token, billing authorities are likely to have different software suppliers, operating systems and staffing arrangements for dealing with the administrative aspects of BRS.
- 4.5 Billing authorities should rightly be able to cover the legitimate costs they incur in collecting and enforcing payment of BRS. Equally important is that these costs should be proportionate to the amount of BRS collected. While those paying the supplement will accept that any project will include some administrative overheads, business support for BRS will be diminished if significant sums are diverted away from the project itself into collection costs.

- 4.6 For NDR, the estimated contribution to the central pool for 2008-09, excluding revenue from those properties on the central rating list (in respect of which rates are, in effect, paid directly into the pool rather than to billing authorities), amounts to some £19.8bn. The national costs of collection allowance (that is, the amount that is shared among all billing authorities to cover collection costs) for that year is £83,606,000. As a percentage of the total rates revenue generated from properties on local lists, this amounts to 0.42 per cent. This comparison provides a useful basis for considering how best to calculate the administrative expenses associated with BRS. However, this figure is unlikely to remain the same each year. Given the variations in total NNDR yield and the total costs of collection allowance for the year in question, the percentage will range from around 0.4 to 0.6 per cent¹⁶.
- 4.7 Where the supplement is first levied with effect from a date other than 1 April, billing authorities will have to issue a fresh set of demand notices at a time when this would not otherwise have been necessary to all non-domestic ratepayers in their area liable for the supplement. This will inevitably make the cost of collecting BRS higher than if collected as part of the annual billing round. There will be the initial set-up costs for changes to computer software (as above), as well as the usual costs associated with preparing and issuing demand notices, such as bill production, stationery and postage.
- 4.8 Unlike NDR, the costs of collection and recovery will not fall to be met from the pool, so the Contributions Regulations will not be relevant to identifying collection and enforcement costs associated with BRS. Different options are considered below. The options are proposed both for when BRS is collected as part of the NNDR billing round and when BRS is collected as a separate exercise, outside the annual billing round.

Option 1: Costs of collection and enforcement to be a fixed percentage of the annual total amount of BRS to be collected by the billing authority, say, 0.5 per cent. On this basis, if a billing authority expected to collect £4 million a year, the authority could retain £20,000 for administrative expenses.

Option 2: Cost of collection and recovery to be a fixed amount, irrespective of the type and scale of the project, the level of the supplement or the number of properties liable for BRS within the billing authority area. This could be set at, say, £30,000 per annum per billing authority.

Option 3: The amount a billing authority can retain for administrative expenses should be agreed locally with the levying authority, subject to an upper limit.

¹⁶ Costs of collection percentages for previous years are as follows: 2005-06 = 0.53%; 2006-07 = 0.49%; 2007-08 = 0.46%; 2008-09 = 0.42%

Consideration

- 4.9 In deciding which of these options would provide the most appropriate means for calculating administrative expenses associated with BRS, we have been mindful that the arrangements should be transparent and easy to apply. In addition, when the BRS is levied is part of the ordinary billing round, the amount that billing authorities should be able to offset against BRS revenues must be proportionate to the work undertaken by them. Similarly, even if the BRS is levied at other times, in two-tier areas, the amount that the billing authority can recover from the levying authority should be proportionate to the work it undertakes. It would also be preferable to have an arrangement that did not require regulations to be amended every year. At the same time, it would seem illogical to introduce a system that bears no relation to the number of properties that are liable for the supplement and hence will give rise to collection costs.
- 4.10 **Option 1** has the attraction of simplicity, but will not necessarily be a reliable indicator of the extent of collection costs. This could cover costs in some cases, but fail to meet costs in others. It would also provide illogical results when comparing costs incurred through the normal billing round, and those incurred through a separate collection round. Collecting BRS part-way through a year would involve greater expense for a billing authority than if done as part of the billing round. However, having an allowance based on a fixed percentage of revenue collected would mean that the billing authority collecting as part of the annual billing round would be entitled to retain a relatively larger proportion, despite having expended less in the way of costs.
- 4.11 **Option 2** is also a straightforward proposal, but it would require regulations to be updated regularly to cater for inflation. It bears no relation to the size of the authority, the size of the project, the level at which the supplement is set, or the number of properties liable for BRS. Having a fixed rate could provide adequate cover in some cases, but be inadequate or too generous in others.
- 4.12 **Option 3** offers a solution that addresses the local and varying nature of BRS. Levying authorities will be able to make use of their partnership arrangements with billing authorities to agree an amount that accurately reflects actual costs incurred. However, bearing in mind the principles that costs should be proportionate and linked to the amount of revenue being generated, the Government considers that these should be subject to an upper limit. The relationship between NDR annual revenue and the national cost of collection allowance provides an established and appropriate model and the Government therefore also proposes that administrative costs should be limited to a range between 0.4 and 0.6 per cent of the total amount generated in that billing authority's area through BRS for that year.

- 4.13 Given these different considerations, **the Government proposes that option 3 provides the most appropriate mechanism for calculating administrative expenses associated with BRS. The same approach can be applied when BRS is collected either as part of the annual billing round, or as a separate exercise.**

Costs of ballots

- 4.14 The arrangements for holding ballots in those cases where they are held will – along with the preparation of the prospectus and the consultation – form part of the initial work necessary to determine whether a BRS is to be levied on identified non-domestic ratepayers in any particular case. As such, it is appropriate that the cost of the ballot arrangements should fall to be met by the levying authority proposing to levy the BRS.
- 4.15 However, Chapter 2 of the consultation document discusses options for delegating the function of running the ballot to authorities other than the levying authority proposing to levy the BRS. In those circumstances, **the Government considers that billing authorities and levying authorities should be able to reach an agreement that about the way in which a billing authority's costs of holding the ballot will be covered (although it should not be possible for them to be met out of any future BRS revenues).**

Question 19

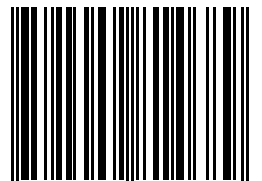
Do you agree that option 3 provides the most appropriate arrangement for calculating administrative expenses associated with BRS? If not, what arrangement should be adopted, and how should it operate?

Question 20

Do you agree that billing authorities and levying authorities should be able to agree how billing authorities' costs of running a ballot should be covered? If not, what alternative arrangements would you suggest, and why?

ISBN: 978-1-4098-1468-9

ISBN 978-1-4098-1468-9



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