

Subsidiary Legislation made under ss. 9(4), 10, 11(2), 14(2), 16(4), 17(1) and 18(1).

## **Business Improvement Districts Regulations 2021**

**LN.2021/317**

*Commencement*

**8.7.2021**

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**2021-12**

**Business Improvement Districts**

**2021/317**

**Business Improvement Districts Regulations 2021**

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SCHEDULE 1 CONTENT OF BID PROPOSALS, RENEWAL PROPOSALS OR ALTERATION PROPOSALS

SCHEDULE 2 RULES FOR BID BALLOTS, RENEWAL BALLOTS AND ALTERATION BALLOTS

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*In exercise of the powers conferred on it by sections 9(4), 10, 11(2), 14(2), 16(4), 17(1) and 18(1) of the Business Improvement Districts Act 2020, the Minister for Business has made the following Regulations-*

**Application, citation, commencement and interpretation.**

1.(1) These Regulations may be cited as the Business Improvement Districts Regulations 2021 and shall come into operation on the day of publication.

(2) In these Regulations—

“the Act” means the Business Improvement Districts Act 2021;

“alteration ballot” has the meaning given in regulation 17;

“alteration proposals” means proposals in relation to the alteration of BID arrangements pursuant to regulation 17;

“the amount payable” for a chargeable period or part of a chargeable period in relation to a particular person, the billing authority and a hereditament means—

- (a) the amount that person is liable to pay to the authority as regards the hereditament in respect of the period or part thereof under section 8 of the Act by virtue of that person falling within the description of persons liable to the BID levy in the BID arrangements; or
- (b) where an amount falls to be credited by the authority against that person’s liability in respect of the period or part thereof, the amount (if any) by which the amount referred to in sub-paragraph (a) exceeds the amount falling to be so credited;

“ballot holder” has the meaning given in regulation 6;

“barcode” means marks—

- (a) appearing on the ballot paper and containing in an encoded form information relating to a voter and a ballot;
- (b) capable of being scanned electronically in a manner that permits the encoded information contained in the marks to be decoded; and
- (c) in which the information encoded in the marks cannot be decoded when read only by the human eye;

“BID” means business improvement district;

“BID arrangements” has the meaning given to it in section 3(1) of the Act;

“BID ballot” means a ballot under section 11(1) of the Act;

“BID body” means, where a billing authority BID body is not responsible for implementing the BID arrangements, the body (whether corporate or not corporate) responsible for the implementation of the arrangements;

“BID levy” have the meaning given to it in section 3(2) of the Act;

“BID Proposals” has the meaning given to it in section 11(1) of the Act;

“BID proposer” means a person who draws up BID proposals;

“billing authority” has the meaning given to it in section 4 of the Act;

“billing authority BID body” means, where:

- (a) the billing authority; or
- (b) any other body or person that carries out the functions of the billing authority under the Act; or
- (c) any other body or person that is under the control of a body or person falling within paragraphs (a) or (b),

is responsible for implementing the BID arrangements, that person;

“business improvement district” has the meaning given to it in section 2 of the Act;

“chargeable period” has the meaning given to it in section 7 of the Act;

“commencement date” subject to regulation 9(12), means the day, pursuant to section 15 of the Act, the BID arrangements are to come into force;

“data form” means information which is in a form which is capable of being processed by means of equipment operating automatically in response to instructions given for that purpose;

“the day of the ballot” means the day determined by the ballot holder, in accordance with Schedule 2, as the day by which ballot papers must be returned to him;

“demand notice” means the notice required to be served under paragraph 2(1) of Schedule 4;

“electronic communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) by means of an electronic communication network;

“electronic communication network” has the meaning given to it in section 2 of the Communications Act 2006;

“GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

“hereditament” means anything which is or is treated as being a hereditament for the purposes of the Public Health Act;

“Minister” means the Minister for Business;

“non-domestic” has the meaning given to it in section 270 of the Public Health Act;

“non-domestic ratepayer”, means a ratepayer who pays a rate in respect of a non-domestic hereditament;

“OFT” means the body corporate established pursuant to section 3(1) of the Fair Trading Act 2015;

“person entitled to vote” has the meaning given in regulation 8;

“rate” has the meaning given to it in section 270 of the Public Health Act;

“ratepayer” has the meaning given to it in section 270 of the Public Health Act;

“re-ballot” means a BID ballot, renewal ballot, or alteration ballot, as the case may be, which is required to be arranged pursuant to regulation 9(10);

“Register of Tenancies of Business Premises” means the register established pursuant to section 39(1) of the Landlord and Tenant Act 1983; and

“renewal ballot” means a ballot under section 16(2) of the Act;

“renewal proposals” means proposals in relation to the renewal of the BID arrangements under section 16(2) of the Act;

“superficial area”, in relation to a hereditament, means the superficial area shown in the Register of Tenancies of Business Premises in respect of that hereditament.

“veto” means a veto by the Minister pursuant to section 13(2) of the Act;

“veto notice” means a notice given by the Minister pursuant to section 13(4) of the Act; and

“working day” means any day other than a Saturday, Sunday, or any day which is a bank holiday in Gibraltar.

(3) Other expressions which are used in these Regulations and in the Act have the same meaning in these Regulations as they have in the Act.

**Obtaining information from billing authority for the purpose of developing BID proposals.**

2.(1) On receiving a request (made in accordance with sub-regulation (2)) from any person who is developing BID proposals, the billing authority shall—

- (a) prepare a document showing (as far as the billing authority is able to ascertain) the name of each non-domestic ratepayer and the address and superficial area of each hereditament which is occupied, or (if unoccupied) owned, by him in the geographical area of the BID proposals to be developed; and
- (b) supply a copy of the information in the document to the person concerned in data form.

(2) A request under paragraph (1) shall—

- (a) be made in writing to the billing authority;
- (b) confirm that the person making the request intends to make use of the information requested only for the purpose of developing the BID proposal described in the request made pursuant to paragraph (1);
- (c) provide a summary of the nature of the BID proposals to be developed;
- (d) provide the description of the geographical area of the BID proposals to be developed; and

(e) be accompanied by the fee (if any) imposed by the billing authority under paragraph (4).

(3) No person may—

(a) disclose to any person any information supplied to it under paragraph (1);

(b) make use of any such information,

otherwise than for the purpose of developing the BID proposal described in the request made pursuant to paragraph (1).

(4) The billing authority may impose a charge in respect of dealing with a request and supplying the information under this regulation on the person to whom the information is to be supplied.

(5) The billing authority shall ensure the amount of a charge imposed under paragraph (4) is reasonable having regard to the costs incurred or likely to be incurred by the authority in dealing with requests and supplying information under this regulation.

**BID proposer.**

3.(1) The following persons may draw up BID proposals—

(a) any person who, at the date he sends BID proposals to the billing authority under regulation 4(2)(a)—

(i) is a non-domestic ratepayer in relation to a hereditament situated in the area to be comprised in such proposals;

(ii) has an interest in land (situated in the area to be comprised in such proposals) as freeholder, mortgagee or lessee, or directly or indirectly receives rent for the land (whether or not he is a non-domestic ratepayer in relation to that land); or

(iii) is a body (whether corporate or not corporate) one of whose purposes is developing BID proposals; and

(b) the billing authority.

(2) Subject to regulation 3(3), a BID proposer shall, at least 84 days before sending the notice required under regulation 4(2)(a)(ii), notify the billing authority and the Minister in

writing of the proposer's intention of asking the billing authority to put the BID proposals to a ballot.

(3) Regulation 3(2) shall not apply where the BID proposer sends the notice required under regulation 4(2)(a)(ii) on or before 31<sup>st</sup> August 2021.

**BID proposals, renewal proposals, alteration proposals and preliminary procedures.**

4.(1) BID proposals, renewal proposals or alteration proposals, as the case may be, shall include the matters mentioned in paragraphs 1, 2 and 3 of Schedule 1.

(2) Where a BID proposer decides to seek approval of BID proposals in a BID ballot or the BID body decides to seek approval of alteration proposals in an alteration ballot or renewal proposals in a renewal ballot, it shall—

- (a) send to the billing authority—
  - (i) a copy of the BID proposals, alteration proposals or renewal proposals, as the case may be, together with a summary of—
    - (aa) the consultation it has undertaken with those persons who are to be liable for the proposed BID levy;
    - (bb) the proposed business plan (including the estimated cashflow, an estimate of the predicted revenue to be generated and the predicted expenditure to be spent under the BID arrangements, the predicted budget over the duration of the BID arrangements and the contingency margin included in the budget);
    - (cc) the financial management arrangements for the BID body, and the arrangements for periodically providing the billing authority with information on the finances of the BID body; and
  - (ii) a notice in writing requesting the billing authority to instruct the ballot holder to hold a BID ballot in relation to the BID proposals, an alteration ballot in relation to the alteration proposals or a renewal ballot in relation to the renewal proposals, as the case may be; and
- (b) provide the billing authority with such information as it shall reasonably require to satisfy itself that the BID proposer or, as the case may be, the BID body, has sufficient funds to meet the costs of the BID ballot, the renewal ballot, or the re-ballot in relation to the BID ballot, or the renewal ballot, as the case may be, should it be required to do so under regulation 10.



(3) Where—

- (a) a BID proposer decides to seek approval of BID proposals in a BID ballot;
- (b) a BID body or a billing authority BID body, as the case may be, decides to seek approval of alteration proposals in an alteration ballot or renewal proposals in a renewal ballot,

it shall send a copy of the BID proposals, alteration proposals, or renewal proposals, as the case may be, and the proposed business plan, to any person who is to be liable for the proposed BID levy who requests a copy.

(4) Where the billing authority is of the view that the BID proposals, renewal proposals or alteration proposals conflict with a policy formally adopted by and contained in a document published by the authority (whether or not the authority is under a statutory duty to prepare such document) the authority shall, as soon as reasonably practicable after receiving the proposals, notify the BID proposer or BID body, as the case may be, in writing explaining the nature of that conflict.

**Instructions to hold a BID ballot, renewal ballot, alteration ballot or re-ballot.**

5.(1) Where the billing authority—

- (a) subject to paragraph (2), receives a notice pursuant to regulation 4(2)(a)(ii);
- (b) in the case where a billing authority BID body is responsible for implementing the BID arrangements, decides to seek approval of alteration proposals or renewal proposals, as the case may be; or
- (c) receives a notification from the Minister under regulation 9(10) requiring it to arrange a re-ballot;

it shall instruct the ballot holder to hold a BID ballot, a renewal ballot, an alteration ballot or re-ballot, as the case may be.

(2) Where the billing authority receives a notice pursuant to regulation 4(2)(a)(ii), it shall not be required to instruct the ballot holder under paragraph (1) until such time as the BID proposer or BID body, as the case may be, complies with the requirements of regulation 4(1) and (2).

**Ballot holder.**

6.(1) The person who holds a BID ballot, renewal ballot, alteration ballot or re-ballot (“the ballot holder”) shall be such person as the Minister may from time to time appoint by notice in the Gazette.

(2) The ballot holder may by writing under his hand appoint one or more persons to discharge all or any of his functions under these Regulations.

**Arrangements for holding a ballot and conduct of a ballot.**

7. On receipt of an instruction under regulation 5, the ballot holder shall make arrangements for conducting a BID ballot, alteration ballot, renewal ballot or re-ballot, as the case may be, in accordance with Schedule 2.

**Persons entitled to vote.**

8.(1) Subject to paragraph (3), a person shall be entitled to vote in a BID ballot, an alteration ballot or a re-ballot in respect of a BID ballot or an alteration ballot if, on the date the ballot holder publishes the notice under paragraph 3(a) of Schedule 2, he falls within the class of non-domestic ratepayers to be liable for the BID levy described in the BID proposals or the alteration proposals, as the case may be.

(2) Subject to paragraph (3), a person shall be entitled to vote in a renewal ballot or a re-ballot in respect of a renewal ballot if, on the date the ballot holder publishes the notice under paragraph 3(a) of Schedule 2, he falls within the class of non-domestic ratepayers who on that date are liable for the BID levy.

(3) Where, in respect of a hereditament, more than one person is or is to be liable for the BID levy as partners or trustees the person entitled to vote in respect of that hereditament shall be the partners or trustees jointly.

**Declaring a ballot void.**

9.(1) Subject to paragraph (3), the Minister may declare void a BID ballot, renewal ballot, alteration ballot or re-ballot if it appears to him that a material irregularity has occurred.

(2) In this regulation, “material irregularity” means—

- (a) a contravention of any requirement of these Regulations which, in the Minister’s opinion, means it is likely that voting in the BID ballot, renewal ballot, alteration ballot or re-ballot, as the case may be, has been affected to a significant extent by the contravention;

- (b) persons other than persons entitled to vote have purported to vote in the BID ballot and, in the Minister's opinion, it is likely that the result of the BID ballot, renewal ballot, alteration ballot or re-ballot, as the case may be, has been affected to a significant extent; or
- (c) persons entitled to vote have been prevented from voting or hindered from doing so freely in accordance with their own opinion and, in the Minister's opinion, it is likely that the result of the BID ballot, renewal ballot, alteration ballot or re-ballot, as the case may be, has been affected to a significant extent.

(3) Paragraph (1) shall not apply unless, by the date which is 28 days after the notice of the result is published pursuant to paragraph 17 of Schedule 2, a person ("the complainant"), being a person or group of persons referred to in paragraph (4), has made a request (by notice given in writing) to the Minister to exercise his powers under this regulation, specifying the reason for such a request.

(4) The persons mentioned in paragraph (3) are—

- (a) the BID proposer or the BID body;
- (b) at least 5 per cent. of the number of persons entitled to vote in the BID ballot, renewal ballot, alteration or re-ballot, as the case may be; or
- (c) the billing authority.

(5) On receipt of a request under paragraph (3) the Minister shall notify the complainant, the billing authority and the BID proposer or the BID body, as the case may be, in writing that he has received the request and send a copy to each of them.

(6) Where two or more requests relate to the same ballot, the Minister may decide those requests together.

(7) Within 28 days of the date of the notice given by the Minister under paragraph (5) the complainant, the billing authority and the BID proposer or the BID body, as the case may be, may serve on the Minister written representations in respect of the request.

(8) A copy of the representations made by one party shall be sent by the Minister to the other parties and shall be accompanied by a statement explaining the effect of paragraph (9).

(9) Any party to whom a copy of representations is sent under paragraph (8) may within 14 days of receiving them serve on the Minister further written representations in reply and the Minister shall send a copy of any such further representations to the other parties.

(10) The Minister shall notify the complainant, the billing authority and the BID proposer or the BID body, as the case may be, in writing of his decision and where he declares void a BID ballot, renewal ballot, alteration ballot or re-ballot, he shall notify the billing authority in writing requiring it to arrange for a re-ballot or, as the case may be, a further re-ballot to be held.

(11) Where the Minister declares void a BID ballot, a renewal ballot, an alteration ballot or a re-ballot in relation to such a ballot and he is of the opinion that the material irregularity was caused by the actions or omissions of the BID proposer or BID body, as the case may be, he shall issue a notice in writing to that effect with his decision notice and, he shall include in the notice an explanation of the effect of regulation 10.

(12) Where the Minister declares void a BID ballot, a renewal ballot, an alteration ballot or a re-ballot in relation to such a ballot—

- (a) the BID arrangements, the renewed BID arrangements or the alterations to the BID arrangements, to which the ballot declared void relates, shall not come into force on the commencement date; and
- (b) subject to paragraph (13), the BID arrangements, the renewed BID arrangements or the alterations to the BID arrangements, if subsequently approved in the re-ballot, shall come into force on such day as the billing authority determines.

(13) The day determined under paragraph (12) shall be no later than a year after the date of the notice of the result is published pursuant to paragraph 17 of Schedule 2.

#### **Payment of costs of a ballot.**

10.(1) This paragraph applies where the number of persons voting in the ballot who have voted in favour is less than 20 per cent. of the number of persons entitled to vote in the ballot and—

- (a) the proposals were not approved in the ballot; or
- (b) the Minister issues a notice under regulation 9(11) in relation to the ballot.

(2) Where paragraph (1) applies the billing authority may require the BID proposer or the BID body, as the case may be, to pay the costs of arranging and holding the ballot and the billing authority may recover this amount as a civil debt due to it.

(3) The costs referred to in paragraph (2) include any expenses properly incurred by the ballot holder and charged to the billing authority pursuant to regulation 20.

Obtaining information from billing authority for the purpose of canvassing.

11.(1) As soon as practicable after instructing the ballot holder to hold a ballot (under regulation 5(1)), the billing authority shall—

- (a) prepare a document showing (as far as the billing authority is able to ascertain) the name of each non-domestic ratepayer and the address and superficial area of each hereditament which is occupied, or (if unoccupied) owned, by him in the geographical area to which any BID proposals, alteration proposals or renewal proposals, as the case may be, relate;
- (b) provide a copy of the document referred to in paragraph (1)(a) to the ballot holder as soon after instructing as practicable; and
- (c) make available for inspection by any person a copy of the information in the document referred to in sub-paragraph (a) at its principal office during normal working hours.

(2) On receiving a request (made in accordance with paragraph (3)) from—

- (a) the BID proposer or BID body, as the case may be;
- (b) any person who, or any group of persons which, represents 5 per cent. or more of the persons who are to be liable for any proposed BID levy,

the billing authority shall supply a copy of the information in the document it is required to prepare under paragraph (1) to the person or group of persons concerned in data form.

(3) A request under paragraph (2) shall—

- (a) be made in writing to the billing authority;
- (b) identify the BID ballot, alteration ballot, renewal ballot or re-ballot in relation to which the request is made;
- (c) confirm that the person or group of persons making the request intends to make use of the information requested only for the purpose of canvassing persons entitled to vote in the BID ballot, alteration ballot, renewal ballot or re-ballot identified in the request made pursuant to paragraph (2); and
- (d) be accompanied by the fee (if any) imposed by the billing authority under paragraph (5).

(4) No person may—

- (a) disclose to any person any information supplied to it under paragraph (2);
- (b) make use of any such information,

otherwise than for the purpose of canvassing persons entitled to vote in the BID ballot, alteration ballot, renewal ballot or re-ballot identified in the request made pursuant to paragraph (2).

(5) The billing authority may impose a charge in respect of dealing with a request and supplying the information under this regulation on the person to whom the information is to be supplied.

(6) The billing authority shall ensure the amount of a charge imposed under paragraph (5) is reasonable having regard to the costs incurred or likely to be incurred by the authority in dealing with requests and supplying information under this regulation.

(7) The billing authority shall ensure that it discharges its obligations under this regulation in a manner which complies with GDPR.

**Veto of BID proposals.**

12.(1) For the purposes of section 13(2) of the Act, the prescribed circumstances are that the Minister is of the opinion the BID arrangements are likely—

- (a) to conflict to a material extent with any policy formally adopted by and contained in a document published by the Government; or
- (b) to be a significantly disproportionate financial burden on any person or class of persons (as compared to the other non-domestic ratepayers in the geographical area of the BID) and —
  - (i) that burden is caused by the manipulation of the geographical area of the BID or by the structure of the BID levy; and
  - (ii) that burden is inequitable.

(2) For the purposes of section 13(2) of the Act, the prescribed period is 14 working days from the day of the ballot.

(3) For the purposes of section 13(3) of the Act, the prescribed matters to which the Minister shall have regard in deciding whether to exercise his veto are—

- (a) the level of support (as evidenced by the result of the BID ballot or re-ballot of a BID ballot, as the case may be) for the BID proposals;
- (b) the nature and extent of the conflict referred to in paragraph (1)(a);
- (c) in relation to paragraph (1)(b), the structure of the proposed BID levy and how the financial burden of the BID is to be distributed amongst ratepayers in the geographical area of the BID;
- (d) the extent to which the BID proposer discussed the BID proposals with the authority before submitting the BID proposals to the authority under regulation 4; and
- (e) the cost incurred by any person up to the end of the period prescribed in paragraph (2) in developing the BID proposals and canvassing in relation to the BID proposals.

**Appeal against veto.**

13.(1) A person (“the appellant”) who wishes to appeal against a veto under section 14(1) of the Act shall serve on the OFT, within 28 days of the veto notice being given by the Minister under section 13(4) of the Act, a notice in writing (“the appeal notice”) accompanied by a statement of the reasons for which the appeal is made.

(2) On receipt of the appeal notice the OFT shall—

- (a) notify the appellant and the Minister, in writing, that it has received the appeal notice; and
- (b) send a copy of the appeal notice to the Minister.

(3) Where two or more appeal notices relate to the same veto, the OFT may decide those appeals together.

(4) The appeal shall be determined by way of written representations to be made to the OFT.

(5) Within 28 days of the date of the notice given by the OFT under paragraph (2), the appellant and the Minister may serve on the OFT written representations in respect of the appeal.

(6) A copy of the representations made by one party to the appeal shall be sent by the OFT to the other parties to the appeal and shall be accompanied by a statement explaining the effect of paragraph (7).

(7) Any party to an appeal to whom a copy of representations is sent under paragraph (6) may within 14 days of receiving them serve on the OFT further written representations in reply and the OFT shall send a copy of any such further representations to the other parties to the appeal.

(8) In deciding whether to allow an appeal, the OFT shall take into account the following matters—

- (a) the level of support (as evidenced by the result of the BID ballot or re-ballot of a BID ballot, as the case may be) for the BID proposals;
- (b) the nature and extent of the conflict referred to in paragraph (1)(a) of regulation 12;
- (c) in relation to paragraph (1)(b) of regulation 12, the structure of the proposed BID levy and how the financial burden of the BID is to be distributed amongst ratepayers in the geographical area of the BID;
- (d) the extent to which the BID proposer discussed the BID proposals with the authority before submitting the BID proposals to the authority under regulation 4;
- (e) whether, after the date on which the notice pursuant to regulation 4(2)(a)(ii) is received, the Government changed any policy formally adopted by and contained in a document published by the Government so that such policy then conflicted with the BID proposals; and
- (f) the cost incurred by any person up to the end of the period prescribed in regulation 12(2) in developing the BID proposals and canvassing in relation to the BID proposals.

(9) As soon as reasonably practicable after a decision has been made, the OFT shall send notice of his decision in writing to the appellant and the Minister.

**BID Revenue Account.**

14.(1) Schedule 3 shall have effect with respect to the keeping of the BID Revenue Account, as follows —

- (a) Part 1 — Credits to the account;



(b) Part 2 — Debits to the account.

(2) Where the billing authority has more than one BID it shall ensure a separate BID Revenue Account is kept for each of the BIDs.

(3) This paragraph applies where BID arrangements come to an end (whether by reason of termination under regulation 18 or otherwise) and there is a credit to the BID Revenue Account which, after deducting a reasonable sum for the cost of administering the arrangements for crediting or refunding the amount, would provide a credit or refund of at least £5 for each person who was liable to pay the BID levy immediately prior to the end of the BID arrangements (in this regulation, a “previous levypayer”).

(4) Where paragraph (3) applies the billing authority shall—

- (a) calculate the amount of the credit to the BID Revenue Account (after the deduction referred to in paragraph (3) has been made) which is to be credited or refunded to each previous levypayer;
- (b) ensure the amount to be credited or refunded to each previous levypayer is calculated by reference to the amount of the BID levy each previous levypayer was liable to pay for the last chargeable period of the BID arrangements; and
- (c) make arrangements for the amount so calculated to be credited against any liability by way of non-domestic rates of each previous levypayer or, where there is no liability for that person by way of non-domestic rates, for the amount to be refunded to that person.

(5) Where paragraph (3) does not apply, the billing authority shall carry the credit balance in the BID Revenue account to the credit of its general fund.

#### **Administration of the BID levy etc.**

15. The billing authority shall, by the commencement date, provide for the imposition, administration, collection, recovery and application of the BID levy and Schedule 4 shall have effect with respect to those matters.

#### **Alteration of BID arrangements without an alteration ballot.**

16.(1) Subject to paragraphs (2) to (4), BID arrangements may be altered without an alteration ballot where the arrangements include a provision to that effect.

(2) No provision mentioned in paragraph (1) may alter—

- (a) the geographical area of the BID; or
  - (b) the BID levy in such a way that would—
    - (i) cause any person to be liable to pay the BID levy who was not previously liable to pay; or
    - (ii) increase the BID levy for any person.
- (3) Where paragraph (1) applies, the BID arrangements must include a provision describing the procedure to make the alteration.
- (4) The procedure referred to in paragraph (3) must include—
- (a) where there is a BID body, a consultation between the BID body and the billing authority; and
  - (b) where a billing authority BID body is responsible for implementing the BID arrangements, a consultation between the billing authority and such representatives of the business community for the geographical area of the BID as the authority considers appropriate.
- (5) Where the BID arrangements are altered pursuant to this regulation—
- (a) the billing authority shall ensure the BID arrangements (as altered) are made by the time those BID arrangements (as altered) are to come into force and shall send a notice in writing explaining the reason for and the effect of the alteration to each person liable for the BID levy; and
  - (b) sections 6 to 9 of the Act, regulations 14 to 18 and Schedules 3 and 4 shall have effect from the date the BID arrangements (as altered) come into force as if a reference in each of those provisions to “BID arrangements” were a reference to the BID arrangements (as altered).

**Alterations of the BID arrangements following a ballot.**

17.(1) Where there is a proposal to alter—

- (a) BID arrangements and those arrangements do not include a provision allowing for the arrangements to be altered without a ballot;

- (b) the geographical area of the BID; or
- (c) the BID levy in such a way that would—
  - (i) cause any person to be liable to pay the BID levy who was not previously liable to pay; or
  - (ii) increase the BID levy for any person,

the BID body or, where a billing authority BID body is responsible for implementing the BID arrangements, the billing authority may alter the BID arrangements in accordance with this regulation.

(2) An alteration of the BID arrangements under this regulation is not to come into force unless the alteration proposals are approved by a ballot of the non-domestic ratepayers who are to be liable for the BID levy under the BID arrangements (as altered) (“an alteration ballot”) and they are not to be regarded as approved by an alteration ballot unless—

- (a) a majority of the persons voting in the alteration ballot have voted in favour of the alteration proposals; and
  - (b) the aggregate of the superficial area of each hereditament in respect of which a person voting in the alteration ballot has voted in favour of the alteration proposals exceeds the aggregate of the superficial area of each hereditament in respect of which a person voting in the alteration ballot has voted against the alteration proposals.
- (3) Where BID arrangements are altered pursuant to this regulation—
- (a) the billing authority shall ensure the BID arrangements (as altered) are made by the time those BID arrangements (as altered) are to come into force; and
  - (b) sections 6 to 9 of the Act, regulations 14 to 18 and Schedules 3 and 4 shall have effect from the date the BID arrangements (as altered) come into force as if a reference in each of those provisions to “BID arrangements” were a reference to the BID arrangements (as altered).

#### **Termination of BID arrangements.**

18.(1) The billing authority may terminate BID arrangements where—

- (a) in the opinion of the authority, the BID body will have insufficient finances to meet its liabilities for the current chargeable period and the authority has—

- (i) offered the BID body a reasonable opportunity to arrange for financing the shortfall or for a reduction in the works or services under the BID arrangements which is sufficient to offset the shortfall; and
    - (ii) given those persons who are liable to the BID levy an opportunity, at a public meeting, to make representations in relation to the termination of the BID arrangements; or
  - (b) the authority is unable, due to any cause beyond the control of the authority, to provide works or services which are necessary for the BID to continue and the authority has—
    - (i) where there is a BID body, consulted the BID body and conducted a consultation with such representatives of the business community for the geographical area of the BID as the authority considers appropriate; and
    - (ii) where a billing authority BID body is responsible for implementing the BID arrangements, conducted a consultation with such representatives of the business community for the geographical area of the BID as the authority considers appropriate.
- (2) Subject to paragraph (3), the BID body or, where a billing authority BID body is responsible for implementing the BID arrangements, the billing authority may terminate the BID arrangements where—
- (a) the works or services to be provided under the BID arrangements are no longer required; or
  - (b) the BID body or billing authority BID body, as the case may be, is unable, due to any cause beyond its control, to provide works or services which are necessary for the BID to continue.
- (3) The BID body or, where a billing authority BID body is responsible for implementing the BID arrangements, the billing authority shall take no steps to terminate the BID arrangements until—
- (a) where there is a BID body, it has consulted the billing authority and conducted a consultation with such representatives of the business community for the geographical area of the BID as the authority considers appropriate; and
  - (b) where a billing authority BID body is responsible for implementing the BID arrangements, the billing authority has conducted a consultation with such

representatives of the business community for the geographical area of the BID as the authority considers appropriate.

(4) The billing authority shall notify the BID body in writing of its intention to terminate the BID arrangements under paragraph (1) or (2) at least 28 days before the date of the termination.

(5) The BID body shall notify the billing authority in writing of its intention to terminate the BID arrangements under paragraph (2) at least 28 days before the date of the termination.

(6) Where BID arrangements are terminated under this regulation the billing authority shall, as soon as is reasonably practicable, give notice of the termination in writing to each person liable for the BID levy and the notice shall include an explanation of whether a repayment under regulation 14(4) is to be made.

**Information.**

19. The billing authority shall supply to the ballot holder any information he requires for the purposes of carrying out his functions under these Regulations.

**Expenses of the ballot holder.**

20. All expenditure properly incurred by the ballot holder in relation to the holding of a ballot under these Regulations shall be paid by the billing authority.

**Electronic communication of requests, applications or notices.**

21.(1) Subject to paragraph (2), a requirement in these Regulations that any request, application or notice should be in writing is satisfied where (apart from the usual meaning of that expression) the text of it—

- (a) is transmitted by electronic communication;
- (b) is received in legible form; and
- (c) is capable of being used for subsequent reference.

(2) Paragraph (1) shall not apply to any notice required or authorised to be given to or served by the billing authority on any person by Schedule 4 or any information required by paragraph 3(2) of that Schedule.

**Overriding instruments.**

**2021-12**

## Business Improvement Districts

**2021/317**

### **Business Improvement Districts Regulations 2021**

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22.(1) These Regulations must be construed in accordance with the instruments set out in paragraph (2), and in all matters in which there is any conflict or variance between these Regulations and those instruments, those instruments shall prevail.

(2) The instruments referred to in subparagraph (1) are:

- (a) the Data Protection Act 2004; and
- (b) GDPR.

**SCHEDULE 1**

**CONTENT OF BID PROPOSALS, RENEWAL PROPOSALS OR ALTERATION PROPOSALS**

(Regulation 4)

1.(1) Subject to sub-paragraphs (2) and (3), the matters which shall be included in BID proposals are—

- (a) a statement of the works or services to be provided, the name of who will provide them (the name of the BID body or billing authority BID body) and the type of body the provider is (whether the billing authority, a company under the control of the authority, a limited company or a partnership);
- (b) a statement of the existing baseline services (if any) provided by the billing authority or other public authority;
- (c) a description of the geographical area (including a map showing that area) in which the proposed BID arrangements are to have effect;
- (d) a statement of whether all non-domestic ratepayers in the geographical area or a specified class of them are to be liable to the BID levy, an explanation of how the amount of the BID levy to be levied is to be calculated and an explanation of whether any of the costs incurred in developing the BID proposals, holding of the ballot or implementing the BID are to be recovered through the BID levy;
- (e) a statement of the specified class of non-domestic ratepayer (if any) for which and the level at which any relief from the BID levy is to apply;
- (f) a statement of whether the BID arrangements may be altered without an alteration ballot and, if so, which aspects of the BID arrangements may be altered in this way;
- (g) a statement of the duration of the BID arrangements; and
- (h) a statement of the commencement date of the BID arrangements.

(2) In relation to sub-paragraph (1)(c), the geographical area in which BID arrangements are to have effect shall not include part only of a whole hereditament.

(3) In relation to sub-paragraph (1)(h), the BID proposer shall specify how many days after the notice of the result is published pursuant to paragraph 17 of Schedule 2 it proposes the BID arrangements will commence and such commencement date shall be no later than a year after the date of that notice.

2. The matters which shall be included in renewal proposals are—

- (a) a statement of the proposed period (not exceeding 5 years) of the renewed BID arrangements; and
- (b) a summary of the BID arrangements (including the geographical area of the BID, the works or service provided, an explanation of who is liable for the BID levy, the level of the BID levy and how it is calculated).

3.(1) Subject to sub-paragraph (2), the matters which shall be included in alteration proposals are a description of how it is proposed the BID arrangements are to be altered in relation to each of the following—

- (a) the works or services to be provided or the person to have responsibility for implementing the BID arrangements;
- (b) a summary of the existing baseline services (if any) provided by the billing authority;
- (c) the geographical area (including a map showing that area) in which the proposed BID arrangements are to have effect;
- (d) the non-domestic ratepayers in the geographical area who are to be liable to the BID levy, an explanation of how the amount of the BID levy to be levied is to be calculated and an explanation of whether any of the costs incurred in developing the BID proposals, holding of the ballot or implementing the BID are to be recovered through the BID levy;
- (e) the category of non-domestic ratepayer (if any) for which and the level at which any relief from the BID levy is to apply;
- (f) whether the BID arrangements may be altered without an alteration ballot and, if so, which aspects of the BID arrangements may be altered in this way; and
- (g) a statement of the commencement date of the alterations to the BID arrangements.



(2) In relation to sub-paragraph (1)(c), the geographical area in which BID arrangements are to have effect shall not include part only of a whole hereditament.

(3) In relation to sub-paragraph (1)(g), the BID body or billing authority BID body, as the case may be, shall specify how many days after the notice of the result is published pursuant to paragraph 17 of Schedule 2 it proposes the alterations to the BID arrangements will come into force and such commencement date shall be no later than a year after the date of that notice.

## SCHEDULE 2

RULES FOR BID BALLOTS, RENEWAL BALLOTS AND ALTERATION  
BALLOTS

(Regulation 7)

Part 1  
Provisions as to time**Timetable.**

1. The proceedings of the ballot shall be conducted in accordance with the following Table.

<b>Proceeding</b>	<b>Time</b>
The billing authority instructs the ballot holder	In accordance with regulation 5
Publication of notice of ballot	At least 42 days before the day of the ballot (paragraph 3).
Day of the ballot	The day determined in accordance with paragraph 2.
Declaration of the result	In accordance with paragraph 17

Part 2  
Rules for ballots**Day of the ballot.**

2.(1) Subject to sub-paragraph (2), the ballot holder shall secure that the day of the ballot is—

- (a) a working day;
- (b) at least 28 days after the date on which the ballot papers were sent to voters (or, where the ballot papers were sent on more than one date, the last such date); and
- (c) no later than 90 days from the date on which he published the notice required by paragraph 3(a).

(2) No later than 42 days before day of the ballot, the ballot holder may postpone the day of the ballot by up to 15 working days.

(3) Where the ballot holder postpones the ballot under sub-paragraph (2), he shall notify the billing authority and the BID proposer or BID body, as the case may be, in writing of the

new day of the ballot and the reasons for the postponement and he shall take reasonable steps to publicise the new day of the ballot.

**Ballots—preliminary procedures.**

3. The ballot holder shall, at least 42 days before the day of the ballot—

- (a) publish notice of the ballot stating—
  - (i) the day of the ballot; and
  - (ii) that the ballot will be taken entirely by post, with votes to be returned by 5p.m. on the day of the ballot;
- (b) prepare a list of persons entitled to vote and proxies (if any);
- (c) send to each person entitled to vote or, if applicable, his proxy a statement which—
  - (i) explains the arrangements for the ballot;
  - (ii) explains that regulation 4(3) allows that person to request a copy of the BID proposals from the BID proposer; and
  - (iii) provides the name and address of the BID proposer; and
- (d) send to the Minister a copy of the notice referred to in sub-paragraph (a).

**Ballots – general.**

4.(1) Each ballot shall be a postal ballot.

(2) Each person entitled to vote in a BID ballot, renewal ballot, alteration ballot or re-ballot, as the case may be, shall have one vote in respect of each hereditament occupied or (if unoccupied) owned by him in the geographical area of the BID.

**Proxy voting.**

5.(1) Subject to the provisions of this paragraph, any person is capable of being appointed proxy to vote for another in a ballot and may vote in pursuance of the appointment.

(2) The person entitled to vote cannot have more than one person at a time appointed as proxy to vote for him in a ballot.

(3) Where the person entitled to vote applies to the ballot holder for the appointment of a proxy to vote for him in a particular ballot, the ballot holder shall make the appointment if the application meets the requirements of this paragraph and that the proxy is capable of being, and willing to be, appointed.

(4) An application for the appointment of a proxy shall—

- (a) state the full name and address of the person whom the person entitled to vote (the applicant) wishes to appoint as his proxy;
- (b) state the address of the applicant's hereditament;
- (c) be signed by the applicant; and
- (d) contain a statement by him that he has consulted the proxy so named and that that person is capable of being and willing to be appointed.

(5) An application to appoint a proxy shall be refused for the purposes of a particular ballot if it is received by the ballot holder after 5p.m. on the tenth day before the day of the ballot.

(6) Where the ballot holder grants an application for the appointment of a proxy, he shall—

- (a) confirm by notice in writing to the person entitled to vote that the proxy has been appointed, his name and his address; and
- (b) include the proxy's details on the list referred to in paragraph 3(b).

(7) Where the ballot holder refuses an application to appoint a proxy, he shall notify the applicant in writing of his decision and of the reason for it.

(8) Subject to sub-paragraph (9), the appointment shall remain in force for that ballot only.

(9) The appointment may be cancelled by the person entitled to vote giving notice to the ballot holder or by the proxy giving notice to the ballot holder that he no longer wishes to act as proxy.

(10) A notice under sub-paragraph (9) by any person entitled to vote cancelling a proxy's appointment shall be disregarded for the purposes of a ballot if it is received by the ballot holder after 5p.m. on the fifth day before the date of the poll at that election.

(11) Where the appointment of a proxy is cancelled under sub-paragraph (9), the ballot holder shall—

- (a) notify the person entitled to vote in writing that the appointment has been cancelled;
- (b) notify the person whose appointment as proxy has been cancelled in writing, unless the ballot holder has previously been notified by that person that he no longer wishes to act as proxy; and
- (c) remove the name of the proxy from the record kept under paragraph 3(b).

**Requirement of secrecy.**

6.(1) Every person attending the proceedings in connection with the issue or the receipt of ballot papers shall maintain and aid in maintaining the secrecy of the voting and shall not attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the way in which any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

(2) Every person attending at the counting of the votes shall maintain and aid in maintaining the secrecy of voting and shall not communicate any information obtained at the counting of the votes as to the way in which any vote is given on any particular ballot paper.

(3) Nothing in this paragraph shall prevent the ballot holder and his clerks ascertaining the address and superficial area of each hereditament in respect of which a vote is cast.

**Notification of requirement of secrecy.**

7. The ballot holder shall make such arrangements as he thinks fit to ensure that every person attending at proceedings in connection with the issue or receipt of ballot papers or the counting of the votes has been given a copy in writing of the provisions of paragraph 6.

**The ballot paper.**

8.(1) Nothing is to be printed on the ballot paper except in accordance with this paragraph.

(2) Each ballot paper may have a number or barcode printed on the back.

(3) The box in which a vote may be marked on the ballot paper shall not be less than 1.5 centimetres square.

(4) All of the words on the ballot paper shall appear in the same size type.

(5) Each ballot paper for a BID ballot, or a re-ballot in relation to a BID ballot, shall include the wording set out in Part 3 of this Schedule.

(6) Each ballot paper for a renewal ballot, or re-ballot in relation to a renewal ballot, shall include the wording set out in Part 4 of this Schedule.

(7) Each ballot paper for an alteration ballot, or re-ballot in relation to an alteration ballot, shall include the wording set out in Part 5 of this Schedule.

**Prohibition of disclosure of vote.**

9. No person who has voted shall, in any legal proceeding to question the BID ballot, renewal ballot, alteration ballot or re-ballot, be required to state the way in which he voted.

**Procedure on issue of ballot paper.**

10.(1) One ballot paper shall be issued in respect of each person entitled to vote in the BID ballot, renewal ballot, alteration ballot or re-ballot, as the case may be, in respect of each hereditament for which he is entitled to vote.

(2) The address to which the ballot paper is to be sent is—

- (a) the address of the hereditament or the principal place of business within Gibraltar of the person entitled to vote; or
- (b) in the case of a proxy, the address shown for the proxy on the list prepared under paragraph 3(b).

(3) At the same time there shall be issued to each person entitled to vote or, if applicable, his proxy—

- (a) a statement prepared by the ballot holder providing an explanation of the BID arrangements and the arrangements for the ballot; and
- (b) an envelope for the return of the ballot paper (referred to in this Schedule as the “return envelope”).

(4) For the purpose of delivering the ballot papers, the ballot holder may use any means of conveyance or delivery, which would be deemed acceptable for the purposes of the Postal Voting (Procedure) Rules.

(5) Postage shall be prepaid on envelopes in which the ballot paper is issued and return postage shall be prepaid on all return envelopes.

(6) No person other than the ballot holder and his clerks may be present at the issue of ballot papers, unless permitted by the ballot holder to attend.

**Spoilt ballot papers.**

11.(1) If a voter has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper (referred to as “a spoilt ballot paper”) he may return (either by hand or by post) to the ballot holder the spoilt ballot paper.

(2) On receipt of the spoilt ballot paper, the ballot holder shall issue another ballot paper, except where those documents are received later than 3 working days before the day of the ballot.

(3) The spoilt ballot paper shall be immediately cancelled.

(4) Where a voter applies in person, the ballot holder may hand a replacement ballot paper to him instead of delivering it in accordance with paragraph 10.

**Lost ballot papers.**

12.(1) Where a voter has not received his ballot paper by the fourth working day before the day of the ballot, he may apply (whether or not in person) to the ballot holder for a replacement ballot paper.

(2) Such an application shall include evidence of the voter’s identity.

(3) Where the application is received by the ballot holder later than 3 working days before the day of the ballot and the ballot holder—

(a) is satisfied as to the voter’s identity; and

(b) has no reason to doubt that the voter did not receive the original ballot paper;

he shall issue another ballot paper.

(4) Where a ballot voter applies in person, the ballot holder may hand a replacement ballot paper to him instead of delivering it in accordance with paragraph 10.

**Receipt of return ballot papers.**

13.(1) A postal ballot paper shall not be taken to be duly returned unless it is received by the ballot holder (either by hand or by post) or at any place for delivery specified in the notice of ballot as being a place of delivery before 5pm on the day of the ballot.

(2) On receipt of a returned ballot paper the ballot holder shall arrange for it to be kept in a secure receptacle until the votes are counted.

(3) No person other than the ballot holder and his clerks may be present at the receipt of the ballot papers, unless permitted by the ballot holder to attend.

**The count.**

14.(1) As soon as practicable after the day of the ballot, the ballot holder shall make arrangements for counting the votes cast on such of the ballot papers as have been duly returned (in accordance with paragraph 13(1)) and record the number counted.

(2) No person other than the ballot holder and his clerks may be present at the counting of the votes, unless permitted by the ballot holder to attend.

**Rejected ballot papers.**

15.(1) Where a ballot paper is received which bears the same number or barcode as a ballot paper already received, both that ballot paper and the other ballot paper bearing the same number or barcode (as the case may be) shall be void and not counted.

(2) Any ballot paper which is unsigned, unmarked or void for uncertainty shall, subject to sub-paragraph (3), be void and not counted.

(3) A ballot paper on which the vote is marked—

- (a) elsewhere than in the proper place; or
- (b) otherwise than by means of a cross; or
- (c) by more than one mark,

shall not for such reason be deemed to be void if the voting intention appears clear.

**Decisions on ballot papers.**

16. The decision of the ballot holder on any question arising in respect of a ballot paper shall be final.

**Declaration of result.**

17.(1) The ballot holder shall certify—



- (a) the total number of votes cast in the ballot excluding any votes given on ballot papers rejected under paragraph 15;
- (b) the aggregate superficial area of each hereditament in respect of which a person voted in the ballot;
- (c) the total number of votes cast in favour of the question asked in the ballot; and
- (d) the aggregate superficial area of each hereditament in respect of which a person voting in the ballot has voted in favour of the question asked.

(2) , The ballot holder, having made the certification under sub-paragraph (1), shall—

- (a) forthwith make a declaration of the matters so certified; and
- (b) as soon as reasonably practicable give public notice of the matters so certified.

**Validity.**

18.(1) No BID ballot, renewal ballot, alteration ballot or re-ballot, as the case may be, shall be declared invalid by reason of any act or omission of the ballot holder or any other person in breach of the provisions of this Schedule, if it appears to a court considering the question that—

- (a) the BID ballot, renewal ballot, alteration ballot or re-ballot, as the case may be, was so conducted as to be substantially in accordance with the provisions of this Schedule; and
- (b) the act or omission did not affect its result.

(2) A BID ballot, renewal ballot, alteration ballot or re-ballot, as the case may be, unless proceedings are started in relation to it before the commencement date of the BID arrangements, renewed BID arrangements or altered BID arrangements (as the case may be), shall be deemed to have been to all intents a good and valid ballot.

**Retention of ballot papers.**

19. The ballot holder shall retain the ballot papers for six months after the day of the ballot and then, unless otherwise directed by order of the Supreme Court, shall cause them to be destroyed.

**Part 3**  
**Wording for BID ballot**

Are you in favour of the Business Improvement District proposals for *[insert a list of the names of the streets in the geographical area covered by the BID proposals]*?

Place a cross (X) in the box of your choice.

YES		NO	
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This vote is in respect of –

*[insert address of the hereditament of the person entitled to vote]*

I confirm that I am entitled to vote in respect of this hereditament

Signed .....

Name (in block capitals).....

Position.....(NB where the person entitled to vote is a company or partnership, please state the position held by the person signing)

Note: for your vote to be valid this ballot paper must be signed and returned to the ballot holder at *[insert address for return of ballot papers]* by 5p.m. on *[insert the day of the ballot]*

**Part 4**  
**Wording for renewal ballot**

Are you in favour of renewing the Business Improvement District arrangements for *[insert a list of the names of the streets in the geographical area covered by the BID]* for a further period of *[specify duration of the proposed renewed BID arrangements]*?

Place a cross (X) in the box of your choice.

YES		NO	
-----	--	----	--

This vote is in respect of –

*[insert address of the hereditament of the person entitled to vote]*

I confirm that I am entitled to vote in respect of this hereditament

Signed .....

Name (in block capitals).....

Position.....(NB where the person entitled to vote is a company or partnership, please state the position held by the person signing)

Note: for your vote to be valid this ballot paper must be signed and returned to the ballot holder at *[insert address for return of ballot papers]* by 5p.m. on *[insert the day of the ballot]*

**Part 5**

**Wording for the alteration ballot**

Are you in favour of the alteration of the Business Improvement District arrangements for *[insert a list of the names of the streets in the geographical area covered by the BID]*?

Place a cross (X) in the box of your choice.

YES		NO	
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This vote is in respect of –

*[insert address of the hereditament of the person entitled to vote]*

I confirm that I am entitled to vote in respect of this hereditament

Signed .....

Name (in block capitals).....

Position.....(NB where the person entitled to vote is a company or partnership, please state the position held by the person signing)

Note: for your vote to be valid this ballot paper must be signed and returned to the ballot holder at *[insert address for return of ballot papers]* by 5p.m. on *[insert the day of the ballot]*.

**SCHEDULE 3**

**THE KEEPING OF THE BID REVENUE ACCOUNT**

(Regulation 14)

**Part 1  
Credits to the Account**

1. For each year, the billing authority (which is required to keep a BID Revenue Account (“the account”) pursuant to Regulation 14), shall carry to the credit of the account amounts equal to the items listed in this Part of this Schedule.

**Item 1: BID revenues**

Sums paid for the year under sections 5 and 7 of the Act.

**Item 2: Income from BID services and facilities**

Sums received by the authority for the year in respect of services or facilities provided by it (excluding contributions made by it to the BID under section 5(2)(a) of the Act) under the BID arrangements.

**Item 3: reduced provision for bad or doubtful debts**

The following, namely—

- (a) any sums debited to the account for a previous year under sub-paragraph (a) of item 3 of Part 2 of this Schedule which have been recovered by the authority during the year; and
- (b) any amount by which, in the opinion of the authority, any provision debited to the account for a previous year under sub-paragraph (b) of that item should be reduced.

**Item 4: credit balance from previous year**

Any credit balance shown in the account for the previous year.

**Part 2  
Debits to the Account**

2. For each year, the billing authority (which is required to keep a BID Revenue Account (“the account”) pursuant to Regulation 14), shall carry to the debit of the account amounts equal to the items listed in this Part of this Schedule.

**Item 1: BID cost of collection**

The cost to the authority for the year in respect of collecting the BID levy.

**Item 2: BID expenditure**

The expenditure of the authority for the year in respect of the BID arrangements (including sums paid to a third party to undertake the works or services under the BID arrangements).

**Item 3: provision for bad or doubtful debts**

The following, namely—

- (a) any sums credited to the account for the year or any previous year under item 1 or 2 of Part 1 of this Schedule which, in the opinion of the authority, are bad debts which should be written off; and
- (b) any provision for doubtful debts which, in their opinion, should be made in respect of sums so credited.

**Item 4: debit balance from previous year**

Any debit balance shown in the account for the previous year.

**SCHEDULE 4**

**IMPOSITION, ADMINISTRATION, COLLECTION, RECOVERY  
AND APPLICATION OF THE BID LEVY**

(Regulation 15)

**Interpretation.**

1.(1) In this Schedule “relevant period” in relation to a notice means the chargeable period to which the notice relates.

(2) Where references are made in this Schedule to the day on which a notice is issued, they shall be taken to be references—

- (a) if the notice is served in the manner described in sub-paragraph (4) below by being left at, or sent by post to, a person’s place of business or proper address, to the day on which it is so left or posted, or
- (b) in any other case, to the day on which it is served.

(3) Where any notice which is required or authorised by this Schedule to be given to or served on a person relates to a hereditament which is (or, where such a notice relates to more than one hereditament, one or more of which is) a place of business of that person, it may be given or served by leaving it at, or by sending it by post to him at, the place of business (or, as the case may be, one of those places of business).

(4) Without prejudice to sub-paragraph (3) above and subject to sub-paragraphs (5) to (8) below, any notice required or authorised to be given to or served by the billing authority on any person by this Schedule, or any information required by paragraph 3(2) of this Schedule to be supplied to any person when a demand notice (within the meaning of this Schedule) is served—

- (a) may be so given, served or supplied by sending the notice or information to that person by electronic communication to such address as may be notified by that person for that purpose; or
- (b) shall be treated as given, served or supplied to that person where—
  - (i) the billing authority and that person have agreed for that purpose that any documents containing the notice or information may be accessed by that person on a website;

- (ii) the document is a document to which that agreement applies;
- (iii) the billing authority has published the document on a website; and
- (iv) that person is notified, in a manner for the time being agreed for those purposes between him and the billing authority, of—
  - (aa) the publication of the document on a website;
  - (bb) the address of that website; and
  - (cc) the place on the website where the document may be accessed.

(5) For the purpose of any legal proceedings, a notice given by a means described in paragraph (4) shall, unless the contrary is proved, be treated as served on the second business day after—

- (a) it was sent in accordance with sub-paragraph (4)(a); or
- (b) notification of its publication was given in accordance with sub-paragraph (4)(b)(iv).

(6) A person who has notified an address for the purpose of sub-paragraph (4)(a) shall, by notice in writing to the billing authority, advise the billing authority of any change in that address; and the change shall take effect on the third business day after the date on which the notice is received by the billing authority.

(7) A person who has notified an address for the purpose of sub-paragraph (4)(a) may, by notice in writing to the billing authority, withdraw that notification; and the withdrawal shall take effect on the third business day after the date on which the notice is received by the billing authority.

(8) A person who has entered into an agreement with the billing authority under sub-paragraph (4)(b)(i) may, by notice in writing to the billing authority, inform the authority that he no longer wishes to be a party to the agreement; and where such notice is given, the agreement shall be treated as revoked on the third business day after the date on which the notice is received by the billing authority.

**The requirement for demand notices.**



2.(1) For each chargeable period the billing authority shall, in accordance with paragraphs 4 to 6, serve a notice in writing on every person who is liable for the BID levy in relation to the BID arrangements for the period.

(2) Different demand notices shall be served for different chargeable periods.

(3) A demand notice shall be served with respect to the amount payable for every hereditament as regards which a person is liable for the BID levy, though a single notice may relate to the amount payable with respect to more than one such hereditament.

(4) If a single demand notice relates to the amount payable with respect to more than one hereditament the amounts due under it, and the times at which they fall due, shall be determined as if separate notices were issued in respect of each hereditament.

**Content of demand notices.**

3.(1) A demand notice shall contain the following matters—

- (a) a statement of the address and description of each hereditament to which the notice relates;
- (b) a statement explaining how the BID levy is calculated for each hereditament to which the notice relates; and
- (c) a statement of the days (if any) on which, for the purposes of calculating the payments required to be made under the notice, it was understood that the person who is liable for the BID levy in respect of the hereditament fell within the description in the BID arrangements of persons who are to be liable for the BID levy for the chargeable period in question.

(2) The billing authority must when it serves a demand notice supply to the person to whom the notice is served the following information—

- (a) the revenue from the BID levy the billing authority was due to receive in the previous year;
- (b) the amount spent on the BID arrangements in the previous year;
- (c) a description of the matters on which it was spent; and
- (d) a description of the matters on which it is intended to spend the revenue from the BID levy in the financial year.

**Invalid notices.**

4.(1) Where—

- (a) a demand notice is invalid because it does not comply with paragraph 3;
- (b) the failure so to comply was due to a mistake; and
- (c) the amounts required to be paid under the notice were demanded in accordance with paragraph 3(1),

the requirement to pay those amounts shall apply as if the notice were valid.

(2) Where a requirement to pay an amount under an invalid notice subsists by virtue of sub-paragraph (1), the billing authority shall as soon as practicable after the mistake is discovered issue to the person who is liable for the BID levy concerned a statement of the matters which were not contained in the notice and which should have been so contained.

**Service of demand notices.**

5.(1) Subject to sub-paragraph (2), a demand notice shall be served on or as soon as practicable after—

- (a) except in a case falling within paragraph (b), the first day of the relevant period; or
- (b) if the person falls within the description of person to be liable to the BID levy specified in the BID arrangements as regards the hereditament concerned later in the relevant period, the first day after that day in respect of which he falls within that description.

(2) A demand notice may be served before the beginning of the relevant period on a person who, on the day it is issued, the billing authority considers will fall within the description of person to be liable to the BID levy specified in the BID arrangements as regards the hereditament to which it relates; and if it is so served, references in this Schedule to a person who is liable for the BID levy shall, in relation to that notice and so far as the context permits, be construed as references to that person.

**Payments under demand notices.**

6.(1) If a demand notice is issued before or during the relevant period and it appears to the billing authority that the person falls within the description of person to be liable to the BID levy specified in the BID arrangements in respect of the day on which the notice is issued as

regards the hereditament to which it relates, the notice shall require payment of an amount equal to the billing authority's estimate of the amount payable for the period.

(2) In making an estimate under sub-paragraph (1) the billing authority shall assume, as respects a period which falls after the issue of the notice, that the person will continue to fall within the description referred to in sub-paragraph (1).

(3) If a demand notice is issued during the relevant period but sub-paragraph (1) does not apply, the notice shall require payment of an amount equal to the amount payable for the period in the period up to the day on which the person last fell within the description of person to be liable to the BID levy specified in the BID arrangements as regards the hereditament concerned.

(4) If, after a notice is served to which sub-paragraph (3) applies, the person again falls within the description of person to be liable to the BID levy specified in the BID arrangements in the relevant period as regards the hereditament concerned, a further notice shall be served on him requiring payments with respect to the amount payable in relation to the hereditament for the period in the relevant period beginning with the day in respect of which the person so falls within the said description again.

(5) Where a further notice is issued under sub-paragraph (4), paragraphs 5 to 8 shall apply to the further notice with respect to the period referred to in sub-paragraph (4) as if it were a demand notice and the person had not previously fallen within the description of person to be liable to the BID levy specified in the BID arrangements.

(6) If a demand notice is issued after the end of the relevant period, it shall require payment of the amount payable for the period.

**Payments under demand notices: further provision.**

7.(1) Unless an agreement under sub-paragraph (3) in relation to the relevant period has been reached before the demand notice is issued, a notice to which paragraph 6(1) applies shall require the estimate of the amount payable on expiry of such period (being not less than 14 days) after the day of issue of the notice as is specified in it.

(2) If an agreement under sub-paragraph (3) in relation to the relevant period has been reached before the demand notice is issued, a notice to which paragraph 6(1) applies shall require the estimate of the amount payable to be paid in accordance with that agreement.

(3) The billing authority and a person who is liable for the BID levy may agree that the estimate of the amount payable which is required to be paid under a notice to which paragraph 6(1) applies should be paid in such manner as is provided by the agreement.

(4) Notwithstanding anything in the preceding provisions of this paragraph, such an agreement may be entered into either before or after the demand notice concerned is issued, and may make provision for the cessation or adjustment of payments, and for the making of fresh estimates, in the event of the estimate mentioned in paragraph 6(1) turning out to be wrong; and if it is entered into after the demand notice has been issued, it may make provision dealing with the treatment for the purposes of the agreement of any sums paid before it was entered into.

(5) A notice to which paragraph 6(3) or (5) applies shall require payment of the amount payable on the expiry of such period (being not less than 14 days) after the day of issue of the notice as is specified in it.

(6) No payment in respect of the amount payable by a person who is liable for the BID levy in relation to a hereditament for any chargeable period need be made unless a notice served under this Schedule requires it.

**Demand notices: final adjustment.**

8.(1) This paragraph applies where—

- (a) a notice has been issued by the billing authority under this Schedule requiring a payment or payments to be made by a person who is liable for the BID levy in respect of the amount payable in relation to a hereditament for a chargeable period or part of a chargeable period;
- (b) the payment or payments required to be paid are found to be in excess of or less than the amount payable in relation to the hereditament for the period or the part; and
- (c) provision for adjusting the amounts required under the notice and (as appropriate) for the making of additional payments or the repaying or crediting of any amount overpaid is not made by any other provision of this Schedule or of any agreement entered into under paragraph 7(3).

(2) The billing authority shall as soon as practicable after the expiry of the period or the part of a period serve a further notice on the person who is liable for the BID levy stating the amount payable for the period or part in relation to the hereditament, and adjusting (by reference to that amount) the amounts required to be paid under the notice referred to in sub-paragraph (1)(a).

(3) If the amount stated in the further notice is greater than the amount required to be paid under the notice referred to in sub-paragraph (1)(a), the amount of the difference for which such other provision as is mentioned in sub-paragraph (1)(c) is not made shall be due from

the person who is liable for the BID levy to the billing authority on the expiry of such period (being not less than 14 days) after the day of issue of the notice as is specified in it.

(4) If there has been an overpayment in respect of any liability of the person who is liable for the BID levy under this Schedule, the amount overpaid for which such other provision as is mentioned in sub-paragraph (1)(c) is not made—

- (a) shall be repaid if the person who is liable for the BID levy so requires; or
- (b) in any other case shall (as the billing authority determines) either be repaid or be credited against any subsequent liability of the person who is liable for the BID levy to pay anything to it by way of the BID levy or non-domestic rate.

#### **Enforcement.**

9. (1) Where a sum has become payable by a person under this Schedule and that person fails to pay the amount payable within a space of fourteen days after the same has been demanded, or if any person quits or is about to quit any premises without payment of the amount payable due from him in respect of such premises and refuses to pay the amount payable after demand thereof, the billing authority may, notwithstanding anything contained in the Criminal Procedure Act, at any time make a complaint thereof to a justice and the justice shall thereupon summon the defaulter to appear before the magistrates' court to show cause why the amount payable in arrears should not be paid; and if the defaulter fails to appear, or if no sufficient cause for non-payment is shown, the court may make an order for the payment of the amount payable, and, in default of compliance with such order, may by warrant cause the same to be levied by distress of the goods and chattels of the defaulter.

(2) The costs of the levy of arrears of any liability may be included in the warrant for such levy.

(3) Where any amount payable under Schedule is payable under the provisions of these Regulations by the owner of any premises and the owner fails to pay the amount payable when due and for a space of fourteen days after the same has been demanded, the billing authority may, at any time, whether any warrant of distress has been issued or not, apply to the Court of First Instance (such notice being given as the court may direct) for an order, which the court is hereby authorized to make, that the amount payable together with the expenses occasioned by the non-payment thereof being ascertained by the court, and the costs of such application shall be a first charge on the premises, for the recovery of which the billing authority shall have all the rights and remedies of the first judgment creditor upon such premises, and against all persons having or claiming to have, any right, title or interest therein saving nevertheless the paramount rights only of Her Majesty.

(4) Where any amount payable under this Schedule is, by virtue of paragraph 12, payable by two or more persons jointly and severally, the powers conferred by this paragraph on the billing authority, the magistrates court and the Court of First Instance in relation to any person shall be deemed to have been conferred on the billing authority, the magistrates court and the Court of First Instance in relation to all those persons who are, by virtue of paragraph 12, jointly and severally liable for the amount payable.

**Outstanding liabilities on death.**

10.(1) This paragraph applies where a person dies and at any time before his death he was (or is alleged to have been) subject to a BID levy.

(2) Where—

- (a) before the deceased's death a sum has become payable by him under this Schedule or by way of relevant costs in respect of a BID levy but has not been paid; or
- (b) after the deceased's death a sum would, but for his death (and whether or not on the service of a notice) become payable by him under this Schedule in respect of a BID levy,

his executor or administrator shall, subject to sub-paragraph (3) and to the extent that it is not in excess of the deceased's liability (including relevant costs payable by him) in respect of the BID levy, be liable to pay the sum and may deduct out of the assets and effects of the deceased any payments made (or to be made).

(3) Where sub-paragraph (2)(b) applies, the liability of the executor or administrator does not arise until the service on him of a notice requiring payment of the sum.

(4) Where before the deceased's death a sum in excess of his liability (including relevant costs payable by him) in respect of a BID levy has been paid (whether the excess arises because of his death or otherwise) and has not been repaid or credited under this Schedule, his executor or administrator shall be entitled to the sum.

(5) Costs are relevant costs for the purposes of sub-paragraphs (2) and (4) if an order or warrant (as the case may be) was made by the court in respect of them under paragraph 9.

(6) A sum payable under sub-paragraph (2) shall be enforceable in the administration of the deceased's estate as a debt of the deceased and accordingly the liability of the executor or administrator is a liability in his capacity as such.

(7) Insofar as is relevant to his liability under this paragraph in the administration of the deceased's estate, the executor or administrator may institute, continue or withdraw proceedings.

**Application of BID administration provisions to the Crown.**

11.(1) No contravention by the Crown of any provision of this Schedule shall make the Crown criminally liable; but the Supreme Court may, on the application of the billing authority, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(2) Notwithstanding anything in sub-paragraph (1), the provisions of this Schedule shall apply to the Crown as it applies to other persons.

(3) No power of entry conferred by this Schedule shall be exercisable in relation to any hereditament occupied, or, if unoccupied, owned by Her Majesty in her private capacity.

**Joint occupiers and owners.**

12.(1) This paragraph applies in any case where (apart from this paragraph) there would at a particular time be more than one person who is liable for the BID levy for a hereditament, or of part of such a hereditament.

(2) Where this paragraph applies—

- (a) as regards any time in a chargeable period when there is only one such person who is liable for the BID levy, that person shall be liable to pay the amount payable by way of the BID levy with respect to that time; and
- (b) as regards any time in a chargeable period when there is more than one such person who is liable for the BID levy, those persons shall be jointly and severally liable to pay the amount that would have been payable by way of the BID levy with respect to that time if there were only one such person.

(3) This Schedule shall have effect to accord with sub-paragraph (2); and in particular a notice which falls to be given under this Schedule which relates to a time when paragraph (2)(b) applies may be given—

- (a) severally to each or any of the persons who is liable for the BID levy concerned from whom payment is demanded; or
- (b) where the persons concerned are jointly and severally liable as partners or trustees, jointly to the partnership or trust (in which case only a single notice

need be given in respect of them and references to “the person who is liable for the BID levy” in this Schedule shall be construed as regards the notice as references to the partners or trustees jointly).

- (4) A notice given to a partnership or trust pursuant to paragraph (3)(b) may be served—
- (a) in the case of a partnership, by being served on a partner or a person having the control or management of the partnership business; or
  - (b) in the case of a trust, by being served on one of the trustees;

and where such a notice falls to be served on a partnership, a person having control or management of the partnership business or a trust under this paragraph, the proper address of the partnership, person or trust (as the case may be) shall include:

- (i) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;
- (ii) in the case of a partnership or a person having the control or management of the partnership business, it shall be that of the principal office of the partnership; and
- (iii) any place of business which is a hereditament to which the notice relates.

(5) Where a notice is given pursuant to paragraph (3)(a) to more than one person in respect of the same amount, the billing authority shall notify that fact to each person to whom notice is so given.

(6) Where a notice given pursuant to paragraph (3)(a) to a person who is liable for the BID levy relates to a time in the relevant year when paragraph (2)(a) applies and a time when paragraph (2)(b) applies, any payment made by the person under the notice shall be treated as being made towards satisfaction of the amount for which he is solely liable unless and until his liability in respect of that amount is discharged.

(7) For the purposes of any time to which paragraph (2)(b) applies, where the description of the person who is to be liable for the BID levy in the BID arrangements under section 8 of the Act requires that the ratepayer should be a charity or trustees for a charity this shall be treated as met if one or more of the persons jointly and severally liable is a charity or (as the case may be) some or all of them are trustees for a charity.

(8) Where any sum paid in respect of an amount calculated by reference to paragraph (2)(b) falls to be repaid, it may be repaid to such of the persons concerned as the billing authority considers appropriate.



(9) Subject to sub-paragraph (10), any payment or repayment in respect of a liability under paragraph (2)(b) shall be due between the persons who are liable for the BID levy as will secure that in respect of a liability falling within paragraph (2)(b) the burden or benefit of the payment or repayment accrues to them in equal shares.

(10) Paragraphs (2)(b) and (8) are without prejudice to any right or duty in law or equity of a person who is liable for the BID levy who has made a payment, or receives a repayment, in respect of a liability under paragraph (2)(b) to recover all or part of the payment from, or to account for all or part of the repayment to, the other persons who are liable for the BID levy or any beneficiaries interested in the hereditament.