



# Planning etc. (Scotland) Act 2006

## 2006 asp 17

### PART 9

#### BUSINESS IMPROVEMENT DISTRICTS

##### *Procedure*

#### **38 BID proposals**

- (1) BID arrangements are not to come into force unless proposals for the arrangements (“BID proposals”) are approved by a ballot.
- (2) The Scottish Ministers may by regulations made by statutory instrument make provision—
  - (a) as to the persons who may draw up BID proposals,
  - (b) as to consultation on BID proposals,
  - (c) as to other procedures to be followed in connection with the drawing up of BID proposals,
  - (d) as to the matters to be included in BID proposals, and
  - (e) as to the date which may be provided under BID proposals for the coming into force of BID arrangements which give effect to the proposals.
- (3) No ballot may be held for the purposes of subsection (1) unless the persons drawing up the BID proposals satisfy the local authority that the proposals are supported by at least 5% of those entitled to vote in the ballot; and regulations under subsection (2) may make provision—
  - (a) as to the procedures to be followed for the purposes of this subsection; and
  - (b) as to the time by which the local authority must be so satisfied.

#### **Commencement Information**

- I1** S. 38 in force at 6.2.2007 for specified purposes by S.S.I. 2007/49, art. 2, Sch.
- I2** S. 38 in force at 1.4.2007 in so far as not already in force by S.S.I. 2007/130, art. 2(2)(3), Sch.

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### 39 Entitlement to vote in ballot

- (1) Entitlement to vote in a ballot held for the purposes of section 38(1) is to be determined in accordance with this section.
- (2) When submitting BID proposals to the local authority, those who have drawn up the proposals are also to submit a statement as to which eligible persons are to be entitled to vote in the ballot.
- (3) The statement—
  - (a) is to specify that the persons entitled to vote are—
    - (i) those who are eligible persons under subsection (4), or
    - (ii) those who are eligible persons under subsections (4) and (5), and
  - (b) may specify that only those who are eligible persons in respect of property of a description set out in the statement are entitled to vote.
- (4) A person is an eligible person under this subsection if on the relevant date that person is subject to the non-domestic rate in respect of relevant property.
- (5) Subject to subsections (6) to (8), a person is an eligible person under this subsection if on the relevant date that person—
  - (a) is an eligible tenant or the owner of relevant property, and
  - (b) is not subject to the non-domestic rate in respect of that property.
- (6) An owner of property is an eligible person under subsection (5) only if on the relevant date there is no eligible tenant of that property.
- (7) Where there is more than one eligible tenant of property on the relevant date, the eligible person under subsection (5) is whichever of those tenants has no eligible tenant as a sub-tenant.
- (8) The Scottish Ministers may by regulations made by statutory instrument make provision altering who is to be an eligible person under subsection (5).
- (9) Subject to subsections (10) and (11), in this section the “owner” of property means the person who has right to the property whether or not that person has completed title.
- (10) If, in relation to property (or, if the property is held *pro indiviso*, in relation to any *pro indiviso* share in the property) more than one person comes within the description of owner in subsection (9), then “owner” means such person as has most recently acquired the right to the property.
- (11) Where a heritable creditor is in lawful possession of security subjects which comprise the property, then “owner” means that heritable creditor.
- (12) In this section—
 

“eligible tenant”, in relation to property, means a tenant or sub-tenant of property under a lease or sub-lease which has at least 5 years to run who is not subject to the non-domestic rate in respect of the property;

“non-domestic rate” is to be construed in accordance with section 7B of the Local Government (Scotland) Act 1975 (c. 30);

“relevant date” means such date as is specified in the statement referred to in subsection (2); and

“relevant property” means lands and heritages—

  - (a) which are within the business improvement district; and

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- (b) in respect of which there is an entry on the valuation roll made up under section 1 of the Local Government (Scotland) Act 1975.

#### Commencement Information

- I3** S. 39 in force at 6.2.2007 for specified purposes by S.S.I. 2007/49, art. 2, Sch.  
**I4** S. 39 in force at 1.4.2007 in so far as not already in force by S.S.I. 2007/130, art. 2(2)(3), Sch.

## 40 Approval in ballot

- (1) BID proposals are not to be regarded as approved by a ballot held for the purposes of section 38(1) unless four conditions are satisfied.
- (2) Except where section 41 applies, the four conditions are those set out in subsections (3), (4), (5) and (6).
- (3) The first condition is that the number of votes cast in favour of the BID proposals exceeds the number of votes cast against those proposals.
- (4) The second condition is that A exceeds B.
- (5) The third condition is that at least 25% of the persons entitled to vote in the ballot have done so.
- (6) The fourth condition is that the total of A plus B is equal to at least 25% of the aggregate of the rateable values of all lands and heritages in respect of which a person is entitled to vote in the ballot.
- (7) Except in the case referred to in subsection (9), “A” is the aggregate of the rateable values of the lands and heritages in respect of which a person voting in the ballot has voted in favour of the BID proposals.
- (8) Except in the case referred to in subsection (9), “B” is the aggregate of the rateable values of the lands and heritages in respect of which a person voting in the ballot has voted against the BID proposals.
- (9) The Scottish Ministers may by regulations made by statutory instrument make provision as to the meaning of “A” and “B” in the case of a ballot following on the submission of a statement which specifies entitlement to vote in accordance with subparagraph (ii) of section 39(3)(a).
- (10) Regulations under subsection (9) may delegate functions in connection with the calculation of “A” and “B” to the persons who have drawn up the BID proposals which are the subject of the ballot.
- (11) For the purposes of subsections (6), (7) and (8), the rateable value of lands and heritages is that shown on the valuation roll on the day of the ballot.

#### Commencement Information

- I5** S. 40 in force at 6.2.2007 for specified purposes by S.S.I. 2007/49, art. 2, Sch.  
**I6** S. 40 in force at 1.4.2007 in so far as not already in force by S.S.I. 2007/130, art. 2(2)(3), Sch.

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#### 41 Approval in ballot – alternative conditions

- (1) This section applies where the persons who have drawn up the BID proposals so specify when submitting those proposals to the local authority in advance of a ballot being held for the purposes of section 38(1).
- (2) Section 40(1) shall have effect in respect of that ballot subject to either or both of the following—
  - (a) the substitution of the condition set out in subsection (3) below for that set out in subsection (3) of section 40,
  - (b) the substitution of the condition set out in subsection (4) below for that set out in subsection (4) of section 40.
- (3) The condition is that the number of votes cast in favour of the BID proposals must exceed the number of votes cast against those proposals by such number or percentage as may be specified by the persons who have drawn up the BID proposals.
- (4) The condition is that A must exceed B by such amount or percentage as may be specified by the persons who have drawn up the BID proposals.
- (5) In subsection (4), “A” and “B” have the same meanings as in subsections (7) and (8) of section 40 or, in the case referred to in subsection (9) of that section, as in regulations under subsection (9).

#### Commencement Information

**I7** S. 41 in force at 6.2.2007 for specified purposes by [S.S.I. 2007/49](#), art. 2, [Sch.](#)

**I8** S. 41 in force at 1.4.2007 in so far as not already in force by [S.S.I. 2007/130](#), art. 2(2)(3), [Sch.](#)

#### 42 Power of veto

- (1) This section applies where a ballot is to be held for the purposes of section 38(1).
- (2) By such date prior to the date of the ballot as may be prescribed, the local authority to which the BID proposals relate are to give to—
  - (a) the persons who have drawn up the proposals, and
  - (b) the Scottish Ministers,
 notice that the authority are or are not vetoing the proposals.
- (3) The authority may veto proposals only in the circumstances specified in subsection (4) and are not entitled to do so after the date prescribed for the purposes of subsection (2).
- (4) Those circumstances are that the local authority consider that the BID proposals are likely—
  - (a) to conflict with any structure plan, local plan, strategic development plan or local development plan which has been approved or adopted under the principal Act and which applies to the proposed business improvement district or any part of it,
  - (b) to conflict to a material extent with any policy formally adopted by and contained in a document published by the authority (whether or not the authority are under a statutory duty to prepare such a document), or
  - (c) to lead to a significantly disproportionate financial burden being imposed on—

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- (i) any person entitled to vote in the ballot on the proposals, or
  - (ii) any class of such persons,
- as compared to other such persons or classes.
- (5) The Scottish Ministers may by regulations made by statutory instrument amend subsection (4) so as to change or add to the circumstances in which a local authority may veto proposals.
  - (6) Where the local authority have vetoed the BID proposals, no ballot shall be held.
  - (7) In deciding whether to exercise the veto, the local authority are to have regard to such matters as may be prescribed.
  - (8) A notice under subsection (2) vetoing the BID proposals must—
    - (a) set out the reasons for the exercise of the veto, and
    - (b) give details of the right of appeal under section 43.
  - (9) Any other notice under subsection (2) must set out the reasons for not exercising the veto.

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**Commencement Information**

**I9** S. 42 in force at 6.2.2007 for specified purposes by S.S.I. 2007/49, art. 2, Sch.

**I10** S. 42 in force at 1.4.2007 in so far as not already in force by S.S.I. 2007/130, art. 2(2)(3), Sch.

#### **43 Appeal against veto**

- (1) Where a local authority veto BID proposals, any person who would have been entitled to vote in the ballot may appeal to the Scottish Ministers.
- (2) The Scottish Ministers may by regulations made by statutory instrument make provision in relation to appeals under this section, including provision—
  - (a) as to the time by which an appeal is to be made,
  - (b) as to the manner in which an appeal is to be made,
  - (c) as to the procedure to be followed in connection with an appeal, and
  - (d) as to the matters to be taken into account in deciding whether to allow an appeal.

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**Commencement Information**

**I11** S. 43 in force at 6.2.2007 for specified purposes by S.S.I. 2007/49, art. 2, Sch.

**I12** S. 43 in force at 1.4.2007 in so far as not already in force by S.S.I. 2007/130, art. 2(2)(3), Sch.

#### **44 Commencement of BID arrangements**

- (1) This section applies where BID proposals are approved by a ballot held for the purposes of section 38(1).
- (2) The local authority concerned must ensure that BID arrangements which give effect to the proposals are made by the time the arrangements are to come into force in accordance with this section.

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- (3) The BID arrangements are to come into force on such day as may be provided under the BID proposals.

**Commencement Information**

**I13** S. 44 in force at 6.2.2007 for specified purposes by S.S.I. 2007/49, art. 2, Sch.

**I14** S. 44 in force at 1.4.2007 in so far as not already in force by S.S.I. 2007/130, art. 2(2)(3), Sch.

**Changes to legislation:**

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