



HM TREASURY



Business Rate Supplements:

summary of consultation responses on
draft guidance

January 2010



HM TREASURY



Business Rate Supplements:

summary of consultation responses on
draft guidance

January 2010



Official versions of this document are printed on 100% recycled paper. When you have finished with it please recycle it again.

If using an electronic version of the document, please consider the environment and only print the pages which you need and recycle them when you have finished.

© Crown copyright 2010

The text in this document (excluding the Royal Coat of Arms and departmental logos) may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

For any other use of this material please write to Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU or e-mail: licensing@opsi.gsi.gov.uk

ISBN 978-1-84532-676-0
PU914

Contents

		Page
Chapter 1	Introduction	3
Chapter 2	Summary of consultation responses	5
Annex A	List of respondents	11

1

Introduction

1.1 The Government published *Business Rates Supplements: a consultation on draft guidance to local authorities*¹ in January 2009. The Government's response to the consultation is set out below. In providing this response, our aim is to make clear how the feedback received during the consultation informed policy development and contributed towards the publication of the final guidance on BRS.

1.2 Following the consultation, the Government published its revised guidance on additionality and ballots in May 2009, with the aim of providing clarity on as many issues as early as possible.

1.3 The final version of the guidance incorporates the chapters on additionality and ballots published in May 2009. It also covers the use of BRS revenues and levying a BRS and the involvement of local stakeholders.

1.4 It should be noted that there were a number of issues raised during the passage of the Business Rate Supplements Bill through Parliament that the Government committed to reflecting in the guidance. The key issues raised by Members and Peers referred to the involvement of businesses before a BRS is levied and during the lifetime of a BRS funded project (for further details please refer to the Hansard records on the Parliament website at www.parliament.uk). In revising the guidance we have sought to give effect to these comments, as well as the responses received during the consultation.

Overview of the consultation

1.5 The consultation sought views on four main issues: the guidance on the use of BRS revenues; the guidance on additionality; the guidance on ballots; and the setting up of a National Project Panel (NPP). Respondents were invited to give their responses on these topics via nine consultation questions, which are set out below:

Guidance on the use of BRS revenues

- 1 Regarding the use of BRS revenues, are there issues not set out in the draft guidance which should be covered? If so, please provide an explanation.
- 2 Does the guidance provide enough explanation as to the type of expenditure that is, or is not, suitable for BRS funding?
- 3 Are there any other issues regarding the use of BRS revenues on which further clarification would be useful?

¹ Business Rates Supplements: a consultation on draft guidance to local authorities, HM Treasury & Communities and Local Government, January 2009

Guidance on additionality

- 4 What further details would be useful in setting out what is meant by the additionality requirement in clause 3(1), and how to assess and demonstrate compliance with it?

Guidance on ballots

- 5 Are there any other issues you think a local authority should need to consider when determining when a ballot needs to be held?
- 6 Would any further details on when to hold a ballot be useful?

National Project Panel (NPP)

- 7 Do you think that a NPP would be useful in developing BRS proposals? And will it provide assurance to local authorities, local businesses and the wider community that BRS proposals will be robust?
- 8 If no, please explain why, and indicate whether you think any alternatives could be more usefully provided.
- 9 If yes, please set out what functions you think a panel could most usefully serve and how they could most usefully be structured.

2

Summary of consultation responses

2.1 We received a total of 36 responses (please see Annex A for a list of respondents). Comments came from a mix of organisations and individuals.

2.2 Almost half of the responses came from local authorities. Of these, over two thirds came from levying authorities. Just under a quarter of the responses came from business representative bodies. This included both local and national bodies. We also received comments from organisations representing rating surveyors and lawyers working in the commercial property market.

2.3 In general, respondents asked for additional guidance on specific issues. For example, respondents asked for greater clarity on how to treat projects where alternative funding sources are available or where BRS is being used as part of a wider funding package. Bearing in mind the detailed nature of most of the comments, we decided that a radical revision of the guidance was not necessary. Instead, we focused on providing greater clarity on those issues where we received recurring requests for further explanation.

Overview of the Government's response

2.4 The Government's response to the consultation is split up in to four sections, reflecting the four main topics on which respondents were invited to give their comments.

A: Use of BRS revenues (Q1-3)

B: Additionality (Q4)

C: Assessing when a ballot needs to be held (Q5-6)

D: Project governance (Q7-9)

2.5 For each section we have summarised the comments we received and set out the changes that we have made to the guidance as a result. In addition, we have explained our approach in those cases where the guidance has not been amended as requested.

A: Use of BRS revenues (Q1 to 3)

2.6 Twelve respondents provided comments on the guidance on the use of BRS funds. Of these seven asked for clarification on what was meant by set up costs. In particular, whether the revenue raised through a BRS can be used to recover the cost of preparing the prospectus and running the consultation and ballot. In response to this, we have revised the guidance to make clear that levying authorities should not recover the cost of preparing the prospectus or running the consultation and ballot from any supplement revenues that may come on stream following the consultation and/or ballot.

2.7 In addition to this, two respondents asked whether or not BRS could be used for both revenue and capital projects. The Act does not put this type of limit on how BRS funds can be

used; BRS can therefore be used to fund capital or revenue projects. We have clarified this in the final version of the guidance.

2.8 Two respondents asked for further guidance on the potential implications of using BRS revenues to support borrowing. If a levying authority uses a BRS for this purpose it will need to comply with the legislation and the *Prudential Code for Capital Finance in Local Authorities* in place at the time. However, there will not be additional rules in place for borrowing funded through BRS. Therefore the Government does not intend to provide guidance on the use of BRS for borrowing.

2.9 One respondent asked for greater clarity on whether there is a limit on the duration of BRS set by levying authorities. The Act does not limit the length of time a BRS can be levied for; it is for the levying authority to determine how long its BRS will last. However, paragraph 15 of Schedule 1 of the Act does require the levying authority to set out the duration of the supplement in its BRS prospectus (both initial and final versions), thereby ensuring that all those liable for the BRS are clear how long the supplement will be levied for. The guidance has been revised to clarify the position.

B: Additionality (Q4)

2.10 Twelve respondents commented on draft guidance on additionality.

2.11 Five respondents asked for further guidance on how to treat projects where alternative funding sources are available or where a BRS is being used as part of a wider funding package. In particular, respondents requested that the guidance states more clearly the Government's policy that BRS should not be used as a substitute for other funding streams. In light of this, the final guidance confirms that BRS should only be used to fund expenditure the levying authority would not otherwise have incurred. In addition, the guidance sets out that the levying authority will need to explain in its BRS prospectus what other funding sources have been considered and the reasons why these are not sufficient or appropriate.

2.12 Two respondents also asked for further clarification on what is meant by additionality when dealing with existing projects. The final guidance makes clear that in such cases, the levying authority will need to demonstrate that the BRS is being used to fund a part of the project that otherwise would not have been possible.

2.13 Six respondents asked for greater explanation of the relationship between BRS and other funding mechanisms such as Business Improvement District levies and the Community Infrastructure Levy. In response to this, the final guidance sets out more clearly the issues levying authorities need to consider when thinking about the possible use of BRS where other funding mechanisms might be used, or are already contributing towards the cost of a project.

C: Assessing when a ballot needs to be held (Q5 to 6)

2.14 Seven respondents provided comments on the draft guidance on ballots. Two of these said that the guidance was sufficient.

2.15 Three respondents asked for guidance on when levying authorities should hold a ballot when not required by section 7 of the Act. However, the Government considers that levying authorities are best placed to decide whether or not a ballot would be appropriate in situations where it is not mandatory. Following amendment during the Bill's passage through Parliament, paragraph 19 of Schedule 1 requires levying authorities to set out whether they intend to hold a ballot where one is not required by virtue of section 7 and to set out their reasons for their proposed course of action. This will ensure that the levying authority's decision-making process

is transparent and will allow those who will be liable for the proposed supplement to hold the authority to account.

2.16 Four respondents asked for more guidance on assessing project costs, including the duration over which forecasts have to be made. In the final guidance we have provided more detail on calculating the anticipated costs of both revenue and capital projects, and where there is a combination of the two. The guidance also now covers the duration over which the project costs should be calculated.

D: Project governance (Q7 to 9)

2.17 At the end of the draft guidance, the Government set out its proposals for a National Project Panel and asked for views about the potential usefulness of any such panel. The Government proposed setting up a NPP for levying authorities who want advice on their plans and to give those who will be liable for BRS confidence in levying authorities' plans.

2.18 Twenty-four respondents provided comments on the proposed NPP. There was a mix of views on its possible role. Three respondents thought the panel should be responsible for approving each BRS. Six respondents objected to the idea of a NPP in principle. A further three stated that the use of any panel ought to be voluntary. However, two respondents suggested that while a NPP might be set up for use on a voluntary basis, levying authorities would feel compelled to use it, irrespective of whether it would provide any real benefit to their particular project.

2.19 The other responses did not express a particularly strong view on the potential usefulness of a NPP. Five respondents thought the main benefit of a NPP would be in terms of providing expert advice to levying authorities in assessing the likely impact of a proposed project and in project management. Five respondents thought that the panel would be more useful if it consisted of people with knowledge of the local area. On the other hand, two other respondents thought there could be a lack of consistency in the advice given to levying authorities if the membership of the panel varied.

2.20 The benefits of involving those with relevant expertise and local knowledge in developing BRS proposals were also highlighted by Members and Peers during the passage of the Bill through Parliament. In addition, they stressed the importance of involving local businesses and stakeholders in the governance of BRS funded projects.

2.21 Taken together, the consultation responses and points raised during the passage of the Bill suggest that BRS proposals will most benefit from relevant expertise and input from local stakeholders. While this could be achieved through a NPP, the potential benefits of a panel highlighted by respondents could also be achieved by involving local businesses and others with relevant expertise on a local basis - without the need for a national structure.

2.22 As with a NPP, local arrangements will enable a levying authority to seek relevant expertise and will open its plans up to external scrutiny. In addition, the input of experts and key stakeholders should foster confidence in the levying authority's plans, as it will provide independent advice and external scrutiny of the levying authority's plans in the same way as a NPP.

2.23 Local arrangements have two other benefits. Firstly, they enable levying authorities to tailor their approach to the individual project. Secondly, they avoid the creation of a panel that might be of little benefit to some projects but that levying authorities feel obliged to use thereby resulting in an unnecessary layer of bureaucracy.

2.24 For these reasons, the Government has decided not to proceed with a NPP at this stage. Instead, the guidance makes clear that levying authorities should consider how they can involve key stakeholders and others with relevant expertise in the development of BRS proposals.

2.25 As highlighted above, two respondents said there was a risk that if the membership of the panel changed there would be a lack of consistency in the way that BRS are implemented. This is also a risk of relying on governance arrangements that have been designed locally. However, the Government is of the view that the BRS Act sets out a framework that should be tailored to the circumstances of each project and the local community. Providing the levying authority is satisfied, and can demonstrate to those who will be liable for the supplement, that the BRS meets the requirements set out in the Act and regulations there is flexibility in terms of how BRS can be used. This ensures that BRS can be used in a way that will most effectively promote the economic development of an area.

2.26 The guidance also has been revised to cover more fully the issues levying authorities should consider when thinking about how they can involve key stakeholders in the governance of BRS funded projects. The final guidance also reflects suggestions made in Parliament on improving the accessibility of the prospectus and encouraging levying authorities to consider how they present the prospectus.

Other comments received during the consultation

2.27 There were a number of issues raised by respondents that were outside the scope of the consultation. Respondents asked:

- for greater clarity on the role of billing authorities in terms of collecting the supplement;
- whether or not the costs of collecting BRS can be recouped and how this would work;
- for greater clarity on the accounting arrangements for BRS; and
- for more information on the process of running a ballot.

2.28 These issues will be covered by regulations. Therefore, we have not covered these issues in the guidance.

2.29 Other issues raised in the consultation included:

- **Use of BRS:** Five respondents suggested that the use of BRS should be more limited – either with a tighter definition of economic development or limited to particular kinds of projects. Three said that there should be more flexibility in terms of the potential use of BRS.
- **Additionality:** Two respondents argued that the additionality test should not be applied too strictly, providing the link to economic development can be demonstrated and the project is acceptable to stakeholders.
- **Ballots:** Seven respondents said they thought there should be a ballot in all cases. Four expressed their opposition to any ballot requirement, arguing that instead the decision to hold a ballot should be left to the discretion of the levying authority.
- **National upper limit:** Five respondents thought that the 2p upper limit is overly restrictive.

- **The £50,000 threshold:** Two thought that levying authorities ought to have power to levy BRS on properties with a rateable value of £50,000 or below. Another said that the threshold would not provide adequate protection for smaller businesses.
- **Opposition to a potential increase in business rates:** Two respondents raised concern about the proliferation of local taxes on businesses and two raised concerns about the introduction of BRS in the current economic climate.

2.30 These comments related to the BRS policy in general, rather than the draft guidance on that policy. Therefore, while these comments have been noted, they have not been reflected in the guidance.

Concluding remarks

2.31 In general, the consultation responses on guidance on the use of BRS, additionality and ballots asked for more clarity on specific issues. The comments on the use of BRS focused on the types of expenditure that BRS can be used to support. Most of the comments on additionality sought clarification on how to determine whether a BRS can be used when looking at a project in its wider context. And the comments on ballots asked for clarification on how to cost projects. We have responded to these requests, adding detail or strengthening the messages in the guidance as required.

2.32 The comments on the NPP were varied. However, the key benefits of a NPP identified by respondents can also be achieved by levying authorities seeking the input of expertise and stakeholders on a local basis. Making these arrangements locally also avoids the potential disadvantages of a NPP. For these reasons, we have provided guidance on the governance of BRS projects and the involvement of experts and key stakeholders in the development, and running of, BRS funded projects.

A

List of respondents

Basingstoke and Deane Borough Council
Birmingham City Council
British Chambers of Commerce
British Council of Shopping Centres
British Retail Consortium
Business In Sport and Leisure Ltd
Chartered Institute of Taxation
Chief Economic Development Officers Society and County Surveyors Society
County Councils Network
Derbyshire and Nottinghamshire Chamber of Commerce
East Riding of Yorkshire Council
Federation of Small Businesses
Fitness Industry Association
Gateshead Council
Greater London Authority
Hertfordshire County Council
Hull City Council
Institute of Revenues Rating and Valuation
Leeds City Council
Liverpool City Council
London Borough of Islington
Luton Borough Council
Mishcon de Reya Solicitors
North Dorset District Council
North East Chamber of Commerce
Nottinghamshire County Council
Oxfordshire County Council
Rating Surveyors' Association
Royal Borough of Kingston upon Thames
Royal Institute of Chartered Surveyors
Sandwell Metropolitan Borough Council
Surrey County Council
Sussex Enterprise
Three responses from individuals

HM Treasury contacts

This document can be found in full on our website at:
hm-treasury.gov.uk

If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

Correspondence and Enquiry Unit
HM Treasury
1 Horse Guards Road
London

SW1A 2HQ

Tel: 020 7270 4558

Fax: 020 7270 4861

E-mail: public.enquiries@hmtreasury.gov.uk

ISBN 978-1-84532-676-0



9 781845 326760 >