

# PLANNING ETC. (SCOTLAND) ACT 2006

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## EXPLANATORY NOTES

### THE ACT – SECTION BY SECTION

#### Part 9 – Business Improvement Districts

##### *Section 33 – Arrangements with respect to business improvement districts*

188. **Section 33** enables a local authority to make arrangements for a Business Improvement District (BID) in a defined area within the local authority’s boundary for the benefit of those identified in the BID proposals. In practice, a local authority will be required to supply the information that the persons drawing up the “BID proposals” need to identify the relevant non-domestic properties in the area, and the level of service provision currently provided in that area. Section 33 also makes explicit that a BID project in a local authority area need not involve businesses that are within a discrete geographic area, but can consist of businesses that are linked thematically, or that are near to one another without being wholly adjacent to each other.

##### *Section 34 – Joint arrangements*

189. **Section 34** allows the Scottish Ministers to make regulations outlining the procedure for when a BID proposal covers an area lying within the boundaries of 2 or more local authorities.

##### *Section 35 – Additional contributions and action*

190. **Section 35** allows local authorities, and any other person identified in the “BID arrangements”, to make voluntary financial contributions towards funding a BID project. It also allows such persons and the local authority to undertake any necessary work required for BID projects to be carried out.

##### *Section 36 – Duty to comply with arrangements*

191. **Section 36** places a duty on a local authority to comply with the BID arrangements, once these are in force.

##### *Section 37 – BID Revenue Account*

192. **Section 37** requires a local authority to open an account which is exclusively used to hold all revenues pertaining to a particular BID arrangement. It also gives the Scottish Ministers powers to make further provision relating to the BID account by regulations.

##### *Section 38 – BID proposals*

193. **Subsection (1)** ensures that a BID project will only go ahead if the “BID proposals” have been approved by a ballot of those ratepayers identified in the “BID proposals”, (where only ratepayers are involved), or approved by both ratepayers and other persons defined as “eligible persons”.

194. **Subsection (2)** allows the Scottish Ministers to set out in regulations the persons who can draw up BID proposals, who can be consulted on the proposals, the procedures which a person taking forward a BID arrangement should follow when drawing up BID proposals, what should be outlined in the BID proposals, and when the BID arrangements would commence.
195. **Subsection (3)** ensures that a ballot to approve a BID proposal cannot take place unless the persons who drew up the proposals can demonstrate in an appropriate way to the local authority that the proposals are supported by at least 5% of those ratepayers who are entitled to vote, and that those procedures are conducted in a timely fashion.

### ***Section 39 - Entitlement to vote in ballot***

196. **Section 39** sets out how entitlement to vote on a BID is determined.
197. **Subsection (2)** requires the BID proposer to provide a statement to the local authority that lists all those who will be eligible to participate in the BID ballot.
198. **Subsections (4) and (5)** provide that those eligible to vote are either the eligible ratepayers of the properties in the BID area, or where the proposer for the BID so states, both the eligible ratepayers and other eligible persons, as defined. The BID proposer has the option not to seek the involvement of these other eligible persons, so only ratepayers would be involved. There is also the option to state that only persons in respect of particular property descriptions are involved, for example, all retail shops.
199. **Subsection (8)** allows Ministers to alter, by regulations, who apart from eligible ratepayers are eligible to vote.
200. Where other persons apart from ratepayers are involved, section 39 requires that they are initially a tenant with a lease which has at least 5 years left to run. The "eligible tenant" will be the first tenant up the chain, but not being the ratepayer, because these are mutually exclusive categories. If there are no such tenants, then the real owner, being simply the person with right to the property, will be included. The owner for these purposes will include a heritable creditor (secured lender) in possession of a property.

### ***Section 40 – Approval in ballot***

201. This section sets out the conditions that must be met before a BID ballot can be regarded as approved. It also states that the rateable value of the lands and heritages identified in the BID proposals is as shown on the valuation roll on the day of the ballot. The conditions are:
- (a) A majority of the votes cast are in favour of the BID proposal;
  - (b) At least 25% of those entitled to vote have done so;
  - (c) Those who vote in favour represent a greater aggregate rateable value than those who vote against;
  - (d) At least 25% of the eligible rateable value in the defined BID area is represented by those who have voted.
202. In respect of condition (c), this applies where only eligible ratepayers are involved in a BID. Where eligible ratepayers and other eligible persons are involved, this condition shall be altered by regulations.
203. Subsections (9) and (10) operate in the circumstance when a BID proposal states that both ratepayers and other eligible tenants or owners in the BID area will be entitled to vote and be involved in the arrangements. They do not apply where only ratepayers are involved. One condition of a vote to approve BID arrangements is that the aggregate of the rateable values of the properties in respect of which a person voting has voted in favour must exceed the corresponding aggregate voting against. Where both ratepayers

and other persons are involved in voting, this rateable value element for a property will be distributed between the ratepayer and the other person entitled to vote. In subsection (9) Scottish Ministers may by regulations define how the rateable value element of voting will be distributed between ratepayers and the other person entitled to vote. Alternatively, subsection (10) enables regulations to provide that the BID proposers are to declare within the BID proposals the appropriate percentage allocation of Rateable Value between ratepayers and other persons voting. This enables an appropriate percentage to be specified in respect of each different BID.

#### ***Section 41 – Approval in ballot – alternative conditions***

204. This section allows those who have drawn up BID proposals to set a higher margin of either rateable values, or numbers of votes cast, or both, before a BID ballot can be taken as approved. In addition, the BID Board's proposals submitted to the local authority are required to state whether the alternative voting conditions will apply, so that a greater majority will be required, either of the number of votes cast by persons voting, or of the rateable value element of the vote.

#### ***Section 42– Power of veto***

205. This section requires the local authority to notify the BID proposers whether or not they will use their veto, and to provide reasons for that decision, including where the veto has not been applied. Subsection (4) describes those circumstances in which a veto may be exercised by the local authority, such as conflict with a strategic development plan of a local authority, and subsection (5) explains that Ministers may add to or remove those circumstances by regulations. Where the veto is applied, the ballot will not take place. Local authorities are also required to inform the person drawing up the BID proposals that they have a right of appeal against the veto to the Scottish Ministers. They must also notify them of the details of that right of appeal. A copy of this notification must be sent to the Scottish Ministers.

#### ***Section 43 – Appeal against veto***

206. This section allows any person who would have been entitled to vote in the BID ballot to appeal to the Scottish Ministers against a local authority's decision to veto BID proposals. Ministers will be able to make further provision via regulations as to the process behind an appeal.

#### ***Section 44 – Commencement of BID arrangements***

207. This section provides for the BID arrangements to come into force on the day detailed in the BID proposals. It also places a duty on the local authority to ensure the BID arrangements commence on the relevant day.

#### ***Section 45 – Duration of BID arrangements etc.***

208. This section sets a maximum time limit for BID projects of 5 years. It also provides for BID arrangements to be renewed but only where a further ballot is approved under the same conditions as outlined in section 40.
209. This section also allows the Scottish Ministers to make regulations setting out the procedure for the alteration and termination of BID arrangements.

#### ***Section 46 – Regulations about ballots***

210. This section allows the Scottish Ministers to make regulations governing the ballot process, particularly, but not exclusively, in relation to:
- (a) the timing of ballots,
  - (b) the allocation of votes cast by persons entitled to vote,

- (c) the question to be asked in a ballot,
  - (d) the form that ballots may take,
  - (e) the persons who are to hold ballots,
  - (f) the conduct of ballots,
  - (g) allowing Ministers to declare ballots void in cases of material irregularity,
  - (h) enabling a local authority to recover the costs of a ballot
211. Subsection (2)(b) allows for regulations to make particular provision for the persons entitled to vote in a ballot to alter or renew BID arrangements (Regulations under the Act may not require to provide further for the types of persons entitled to vote in an original ballot to approve BID arrangements, because a BID proposal may state that only eligible persons in respect of properties of a particular description will be involved in a BID (section 39(3)).)
212. Subsection (4) defines a “ballot” for the purposes of the section. A ballot renewing or altering BIDs arrangements is particularly dealt with in section 46(2)(b) (persons entitled to vote in a ballot).

#### ***Section 47 – Further provisions as to regulations under Part 9***

213. This section provides that any regulations made under Part 9 are subject to negative resolution procedure in the Parliament, other than regulations under sections 39(8), 40(9) and 42(5). Affirmative procedure is required (i) for regulations under section 39(8) to amend participation in the BIDs ballot and (ii) for regulations under section 42(5) to amend the circumstances in which the local authority veto may be exercised. Affirmative procedure is also required when provisions are first specified under section 40(9) in respect of the allocation of votes cast between owners / tenants and ratepayers.

#### ***Section 48 – Crown application of Part 9***

214. This section states that Part 9 binds the Crown.

#### ***Section 49 – Interpretation of Part 9***

215. This section defines certain terms included in the Part 9 provisions relating to BIDs.