

Business Rates Supplements: a consultation on draft guidance to local authorities

January 2009



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1

Introduction

Guidance to local authorities

1.1 The *Lyons Inquiry into Local Government*¹, published in March 2007, noted the important role of local government in promoting the well-being and interests of their areas and the people living there. A key element of this is to support, and encourage the economic development of the local area.

1.2 The Inquiry identified the need for local authorities to have greater flexibility to raise revenues to invest in their areas. Sir Michael Lyons recommended introducing a new local flexibility to set a supplement on the national business rate. The Government responded in the *Review of sub-national economic development and regeneration*², saying “supplementary business rates have the potential to provide a powerful new tool for local authorities to invest in infrastructure to support long-term growth in their areas, backed by mechanisms to ensure that there is a strong voice for business”.

1.3 The Government set out its proposals for Business Rate Supplements (BRS) in a White Paper³, published in October 2007. The Government is now taking forward these proposals through the Business Rate Supplements Bill⁴. In England, the Bill will provide county councils, unitary district councils (in areas where there is no county council), and the Greater London Authority (GLA) with a new power to levy a supplement on the national business rate. The Bill requires authorities wishing to levy a BRS to consult on proposals set out in a prospectus and to hold a ballot of business where revenue from the BRS is expected to amount to more than a third of the total cost of the project to be funded. It sets an upper limit for BRS of 2p per pound of rateable value, and enables the Secretary of State to prescribe a rateable value threshold for triggering liability for BRS.

1.4 Clause 26⁵ of the Bill makes provision for guidance to be issued to levying authorities, relating to:

- the kinds of projects which may, and may not, be regarded as appropriate ones in relation to which to levy a BRS;
- the carrying out by a levying authority of an assessment for the purposes of paragraph 5 of Schedule 1 to the Bill (economic assessment);
- the discharge of the duty imposed by clause 3(1) ('additionality'), in particular, its discharge in a case within clause 27 ('Special Introductory Provision');
- the types of expenditure which may, and may not, be regarded as appropriate use of money raised through a BRS, within a given project;

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

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

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

⁴ More information on the Bill can be found at: <http://services.parliament.uk/bills/2008-09/businessratesupplements.html>

⁵ All clause numbers in this document refer to the Bill as introduced to the House of Commons

- the contents of an initial or final prospectus or a document required to be published for the purposes of clause 10(2)(a) or (d) (proposals to vary a BRS), in particular the level of detail to provide; and
- the holding of a ballot on the imposition of a BRS or on a proposal to vary a BRS.

1.5 This consultation document sets out draft guidance to be issued under clause 26 (3) for the consideration of local authorities, businesses and business representatives, and any other stakeholders. The draft guidance sets out:

- the purpose of the guidance
- an introduction to business rate supplements
- when it might be appropriate to fund a project through BRS
 - ensuring a fit with local, sub-regional and regional plans and other Government policies
 - the types of projects it might and might not be appropriate to fund
 - BRS and existing services
 - expenditure which may not be met through BRS
- levying a BRS
 - project prospectus
 - the additionality requirement
- assessing when a ballot needs to be held
 - assessing project costs for the 'one-third' test

1.6 The Government would welcome any views on this guidance, to help to clarify and improve it ahead of publication of final guidance.

1.7 Specifically, the Government would welcome views on the following questions, which are also presented alongside the relevant text in chapter 3:

Box 1.A: Draft guidance consultation questions

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

The National Project Panel

1.8 The BRS White Paper (paragraph 2.31) set out that “local authorities may wish to seek expert advice on their plans, including on the reliability of the cost-benefit analysis and the assumptions on which the plans are based. Expert input will foster local community and business confidence in those plans. The Government will establish a national project panel to assist authorities in this respect.” This consultation document (chapter 4) seeks views on whether a national project panel would be useful in developing any proposals to levy a BRS and provide assurance for local authorities, local businesses, and the wider community that BRS proposals will be robust. It also outlines, for comment, how a panel might be constructed and its broad remit.

1.9 The Government would welcome views on this issue, and specifically:

Box 1.B: National Project Panel consultation questions

- 7 Do you think that a National Project Panel 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 more usefully be 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

The consultation process

PROCESS AND TIMETABLE FOR CONSULTATION

2.1 The Government welcomes comments on the proposals in this consultation paper. Any comments should be sent to:

BRS consultation
Room 1/29
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Alternatively, please email: brsconsultation@hm-treasury.gov.uk

Telephone enquiries: 020 7270 4945

2.2 Comments should be received by **17 April 2009**.

Confidentiality disclosure

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

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

2.5 HMT and CLG will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

About the consultation process

2.6 This consultation is being conducted in accordance with the consultation criteria in the Cabinet Office Code of Practice (see box 2.A). If you wish to access the full version of the Code you can obtain it at:

<http://bre.berr.gov.uk/regulation/consultation/code/index.asp>

Box 2.A: The consultation criteria

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- Be clear about who may be affected, what questions are being asked, and the timescale for responses.
- Ensure that your consultation is clear, concise and widely accessible.
- Give feedback regarding the responses received and how the consultation process influenced the policy.
- Monitor your department's effectiveness at consultation, including through use of a designated consultation co-ordinator.
- Ensure your consultation follows better regulation best practice, including carrying out an impact assessment if appropriate.

3

Business Rates Supplements: draft guidance, England

Purpose of Guidance

3.1 This guidance is provided to those local authorities in England that are considering the use of Business Rate Supplements (BRS) to fund projects. In accordance with clause 26(2) of the Business Rate Supplements Bill¹ (the Bill), the guidance provides supplementary information on:

- the kinds of projects and expenditure which may, and may not, be regarded as appropriate for funding through a BRS;
- the prospectus;
- how to demonstrate that a BRS levied by an authority complies with the condition in clause 3(1) of the Bill, i.e. that the money raised through the BRS is only used for expenditure that the authority would not otherwise have incurred (the additionality requirement); and
- when a ballot needs to be held on the imposition of a BRS or on a proposal to vary a BRS.

3.2 Clause 27 of the Bill makes provision ('Special Introductory Provision') for a BRS to be raised for expenditure on projects begun before the power to levy a BRS in clause 1 of the Bill comes into force, providing that the BRS is levied on or before 1 April 2012. Clause 27(6) sets out that the Secretary of State may make provision, by regulations, about the exercise of the Greater London Authority's power in these circumstances, including provision disapplying a provision of the Bill or applying it with modifications. To the extent that any regulations made under clause 27 disappplied any parts of the BRS Bill, it should be noted that the guidance relating to those aspects of the Bill would also be disappplied.

⁶ See <http://services.parliament.uk/bills/2008-09/businessratesupplements.html> for a copy of the Bill as introduced to Parliament and the Bill's Explanatory Notes.

Introduction to Business Rate Supplements

3.3 Sir Michael Lyons' Inquiry into Local Government² recommended introducing a new local power to set a supplement on the current National Non-Domestic Rate (NNDR), or business rate.

3.4 The Government responded to Sir Michael Lyons' recommendation in both the Budget 2007 and the *Review of sub-national economic development and regeneration*³. It supported Sir Michael's proposal and stated that there would need to be adequate protection for business and that any BRS would need to command the support of those affected by it.

3.5 In October 2007, alongside the 2007 Pre-Budget Report and Comprehensive Spending Review, the Government published *Business rate supplements: A White Paper*⁴.

3.6 The Bill gives effect to the Government's proposals set out in the White Paper. In England, it will introduce a new tool for county councils, district councils in areas where there is no county council, and the Greater London Authority (GLA) to undertake additional investment aimed at promoting the economic development of their areas. The BRS legislation recognises the important role that local authorities play in supporting and encouraging the economic development of their local area. BRS will ensure that local areas have further choices over investing in their own economic success, with local authorities working in partnership with their business communities to drive local economic progress.

3.7 The Bill requires that any authority wishing to levy a BRS will have to prepare and consult publicly on a prospectus setting out the details of the proposed supplement and the project it will fund. Amongst other things, the prospectus will include details on:

- the amount to be levied;
- the duration of the supplement;
- any exemptions or reliefs that will apply on top of those provided for by the Bill;
- how the expenditure is additional to the authority's existing plans;
- how the authority will deal with differences between the planned and outturn expenditure for the project being supported via the BRS; and
- the assessment of the impact of the supplement on local businesses and how this relates to the economic benefits that will be delivered from the project supported by the BRS.

3.8 The requirements for the prospectus, in particular how an authority might assess the costs and benefits of the proposed BRS and demonstrate additionality, are discussed in more detail in the section 'Levying a Business Rate Supplement'.

3.9 All authorities will be required to hold a statutory consultation, in line with current best practice, on their proposals to levy a BRS through the publication of their prospectus. Local authorities should consider how to involve businesses in developing their BRS proposals, prior to consulting formally on the prospectus.

3.10 Where a BRS will fund more than a third of the total cost of a project, the authority will be required to ballot those ratepayers who will be liable for the supplement. Where a ballot is held, the authority will need the support of a simple majority of those businesses which voted, both in

² The Lyons Inquiry into Local Government, *Place Shaping: a shared ambition for the future of local government*, Sir Michael Lyons, March 2007

³ *Review of Sub-National Economic Development and Regeneration*, HM Treasury, Department for Business Enterprise and Regulatory Reform and Communities and Local Government, July 2007

⁴ *Business rate supplements: a White Paper*, HM Treasury and Communities and Local Government, October 2007

terms of rateable value and the number, before a supplement can be levied. Ballot arrangements are discussed in more detail in the section 'Assessing when a ballot needs to be held'.

3.11 The Bill permits two or more authorities to co-operate to raise a BRS together⁵, in order to deliver economic development on a larger geographical scale⁶. Unless otherwise stated, for the purposes of this guidance, where the document refers to a local authority or levying authority, this may be taken to mean more than one authority proposing or taking forward a BRS.

⁵ See clause 2(2)

⁶ As noted in the Review of sub-national economic development and regeneration, "Many people and economic flows overlap local authority boundaries, so that the functional economic areas over which key economic markets operate are typically much larger than the administrative units of Local Authorities, and broadly correspond to sub-regions or city-regions".

When it might be appropriate to fund a project through BRS

Ensuring a fit with local, sub-regional and regional plans and other Government policies

3.12 Local authorities, along with key local partners, set out their long-term vision for the local community within their Sustainable Community Strategy (SCS), the priorities of which are reflected in that area's Local Area Agreement (LAA). In considering potential projects, local authorities may wish to use the SCS, the LAA and, subject to Royal Assent of the Local Democracy, Economic Development and Construction Bill, their local economic assessment, as a starting point. In addition local authorities will need to consider the fit with existing Regional Economic Strategies, Regional Spatial Strategies and any emerging single regional strategies. As set out in the *Review of sub-national economic development and regeneration*, these strategy documents will allow regions and localities to work together to produce a comprehensive plan for the development of their local area. In particular, they will provide a clear framework for investment for local, regional and central government partners to work towards.

3.13 Local authorities will also need to consider their proposals in light of relevant existing or emerging policy frameworks. For example, in the case of business support plans, authorities will need to consider the fit with Solutions for Business (the portfolio of government funded support products to help businesses start, grow and thrive); for place-marketing, the fit with the relevant RDA's regional objectives and the work of UK Trade and Investment; for skills, the fit with the priorities identified in the strategies produced by bodies such as the Learning and Skills Councils and Employment and Skills Boards; and for transport projects, the fit with Local Transport Plans.

3.14 As explained in paragraph 3.11, the Bill makes provision for two or more local authorities to fund a joint project using BRS; in such cases, each authority will need to meet the requirements for levying a BRS (such as the prospectus, and the specific accounting arrangements). Where local authorities are part of a Multi Area Agreement (MAA) area, they may wish to consider the economic development priorities of the MAA when considering a project for which they would wish to use BRS funding. Local authorities may wish to consider whether a multi-area BRS could support the MAA to take forward economic development priorities across the area. However, the use of BRS for joint projects is not limited to those authorities which are part of a MAA.

3.15 If an authority is involved in a joint project funded using BRS, either as part of a MAA, or outside such an agreement, they are not prohibited from proposing a separate BRS specific to their local area, providing the 2p limit is not exceeded for those ratepayers liable for more than one supplement.

The kinds of projects it might and might not be appropriate to fund

3.16 The Government recognises the need to maintain local flexibility over what specific projects will best promote long term economic development in an area. In general, it may be considered that projects to promote economic development are likely to be focused on supporting the productivity and prosperity of the area.

The Government's productivity framework¹ sets out five drivers of long-term productivity growth²:

¹ For more information see, for example, the *Review of sub-national economic development and regeneration*, HM Treasury, Department for Business, Enterprise and Regulatory Reform and Communities and Local Government, July 2007; *Meeting the economic challenges in every region*, HM Treasury, November 2008; and the *Productivity in the UK* series at http://www.hm-treasury.gov.uk/ent_prod_index.htm

² See http://www.hm-treasury.gov.uk/d/pbr08_ukeconomy_594.pdf

- Investment: Increased investment by businesses, for example in IT capital, directly influences the productivity of workers. Investment, for example by public bodies, in infrastructure is a necessary pre-condition to economic activity. For example, communications and transport infrastructure can improve productivity by facilitating trade and competition in goods and services.
- Skills: Improving skills can contribute directly to higher productivity and help to generate new innovations and technologies.
- Innovation: The transformation of ideas into new products or processes has benefits for individual firms and the economy as a whole.
- Enterprise: The creation and growth of firms increases ideas and skills and acts as an incentive for others to innovate.
- Competition: This drives firms to increase their productivity by developing new or improved products and services.

There may also be employment benefits associated with projects to enhance productivity growth. As Local Authorities consider projects to support long-term economic development, they should consider how they fit within the productivity framework set out above.

3.17 Box 3.A below give illustrative examples of projects that a local authority may consider funding, in whole or in part, through a BRS. It should not be assumed that, because a project relates to these areas of expenditure, a sound economic case for the intervention can always be made.

Box 3.A: Illustrative examples

- BRS could provide a useful tool in facilitating the investment required to bring forward physical infrastructure projects, such as transport schemes. This accords closely with the *Eddington Transport Study*³, which found that a high performing transport system is an important enabler of sustained economic prosperity.
- A levying authority may identify a business support or vocational skills programme in a local area, where the benefits of skills development would support the economic development of the area.
- It may be considered appropriate to levy a BRS to fund a place-marketing programme to attract investment into a local area, where increased economic activity and other associated benefits resulting from the programme would lead to sustained economic development.

3.18 There will, of course, be other projects which do not fall within the illustrative examples above. The key test for local authorities, in deciding whether a project may be funded through a BRS, is whether the levying authority is satisfied, and can demonstrate in their prospectus to those who will be liable for the supplement, the link to promoting the economic development of the area.

BRS and existing services

3.19 A BRS is not a new means to fund existing expenditure or a resource to support general service expenditure. Clause 3(3) lists key services that a local authority has an obligation to

³ See <http://www.dft.gov.uk/about/strategy/transportstrategy/eddingtonstudy/>

provide which the Government does not consider appropriate to be funded through a BRS. However, there may be other projects – such as the provision of major physical infrastructure – connected to the provision of those services which might be suitable to be funded through a BRS, provided, of course, that the link to economic development can be demonstrated and that the expenditure would be additional. Levying authorities may wish to work with businesses and stakeholders in their area to consider whether the flexible use of BRS in this way would be appropriate.

Expenditure which may not be met through BRS

3.20 Where a project is being considered by a local authority, it will be necessary to undertake preliminary scoping works in order to establish its feasibility. It follows that where a BRS is being considered, the scoping and feasibility work would form the basis of any project prospectus published for consultation by the levying authority. During these initial stages, the costs for undertaking such exploratory work will be met by the levying authority. It is not expected that the levying authority, following any successful consultation or ballot, would retrospectively reclaim the costs associated with the scoping and feasibility works through levies received via a BRS. These costs should, in that sense, be considered sunk, with any BRS levies being used only to fund project costs incurred after a successful consultation and ballot has taken place (where necessary), and approval for taking the project forward is in place.

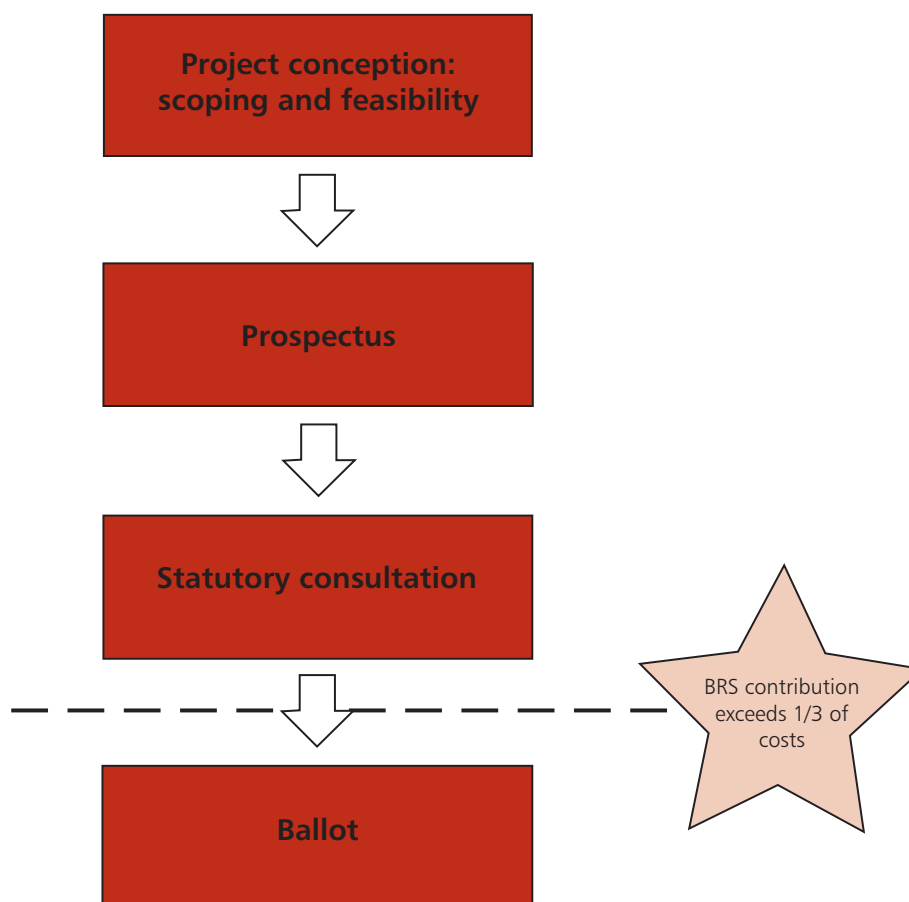
Box 3.B: Consultation questions

- 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 types 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?

Levying a Business Rate Supplement

3.21 The power for local authorities to raise and retain a BRS is subject to accountability requirements to those who will be affected by the proposed project, in particular those who will be liable to pay, through a consultation and in some cases a ballot of those who will be liable for the supplement. Businesses are likely to have a good knowledge and understanding of the local economy to inform the development of BRS proposals and will want to have confidence that the impact of a supplement on them will be taken fully into account.

3.22 In this section, the process to be followed by a local authority that is considering levying a BRS is explained, in accordance with the legislation and accepted best practice. The diagram below shows the key stages which a local authority would need to consider:



Project prospectus

3.23 Clauses 4 and 5 of the Bill require the levying authority to produce a prospectus, in accordance with the requirements of Schedule 1. Any prospectus must include all the information set out in that Schedule and authorities must ensure that this is given in sufficient detail and in a suitable form to enable businesses and other stakeholders to properly consider their proposals. If two or more authorities are considering raising BRS to jointly fund a single project, each authority must individually approve the prospectus before publication. The prospectus should be developed through discussion with the local business community, other stakeholders that the levying authority thinks appropriate and, in two-tier areas, the district councils.

3.24 Businesses, district councils in two-tier areas, and other stakeholders the levying authority considers appropriate will be formally consulted on the BRS proposals under clauses 4 and 6 of the Bill, with the prospectus forming the basis of that consultation.

3.25 The prospectus is a crucial document as it will provide all those affected with a robust basis for assessing the merits of a project and allow local authorities to be held clearly to account.

3.26 The prospectus will need to be based on comprehensive and robust project feasibility and scoping work, particularly given scrutiny from the business community who will seek assurance for the case for levying a supplement and the amount to be raised. In carrying out this work it is expected that levying authorities will be mindful of existing best practice in business case development. In meeting the statutory requirements of the Schedule, the levying authority should draw upon best practice guidance contained within HM Treasury's Green Book¹ and its associated guidance on development of the proposed business case (according to HM Treasury's Five Case model). Such an assessment should be applied in a way that is proportionate to the costs, benefits and risks involved.

The 'additionality' requirement

3.27 Clause 3(1) requires that the levying authority uses BRS revenues only for expenditure that would not otherwise have been incurred. Schedule 1 to the Bill requires local authorities to provide an explanation in the prospectus of how the requirement will be discharged.

3.28 In practice, the additionality requirement means that local authorities cannot use revenues from supplements to deliver on existing spending plans and commitments. The revenue should therefore either be spent on new projects or to add something extra to a project already underway, i.e. spend money which otherwise would not have been spent.

3.29 In relation to a project that the authority proposes to fund entirely through a BRS, the local authority should be able to demonstrate that no expenditure would be incurred in the absence of the BRS. In relation to a project that the authority proposes to part-fund through a BRS, the authority should be able to demonstrate how the BRS would add to existing available funding to make the project viable or to extend its scope.

3.30 Clause 27 of the Bill makes provision for a BRS to be raised for expenditure on projects begun before the power to levy a BRS in clause 1 of the Bill comes into force, providing the BRS is levied on or before 1 April 2012. In those circumstances, it will be necessary to demonstrate how the levying of a BRS would add to the existing project plans, for example by delivering the project quicker or with something extra that could not be achieved in the absence of the BRS.

3.31 In considering additionality, a local authority will need to consider how supplementary revenue from a BRS would fit with other available funding packages. In particular, it will be necessary for local authorities to understand what proportion of the maximum levy would need to be applied to raise required levels of project funding, given the other funding streams available. Authorities will also want to consider whether the project might be more appropriately funded through other mechanisms. These might include, for example, developer contributions through the planning regime, such as the Community Infrastructure Levy, Business Improvement Districts, voluntary business contributions, grants from central government and its agencies and, potentially, fare revenues in the case of a transport project.

Demonstrating compliance

3.32 In practice, demonstrating additionality may be complex. The development of regional strategies and the proposed local economic development assessment duty should support the evidence base, particularly since business will have had strong input into all such work.

¹ HM Treasury – *Appraisal and Evaluation in Central Government*, April 2003, see <http://www.hm-treasury.gov.uk/greenbook>

A number of checks are likely to be necessary in order to provide an effective test. In particular:

- Existing spending and service levels could be benchmarked in areas affected by spending from the supplement. The authority could then assess how new service provision will be additional. This is more difficult in the case of capital investment, where by definition expenditure is one-off rather than recurrent and there is no meaningful baseline;
- Local authorities should consider setting out the funding routes that have been explored, and the reasons that they are not sufficient or appropriate;
- Where a local authority has set full three-year budgets, these provide a useful benchmark. If an authority is prepared to commit to given levels of service expenditure across the range of its responsibilities whether or not a supplement is levied this implies that supplement revenue is not being used to finance those services; and/or
- In cases where an authority intends to use a supplement to support borrowing, they could set out their borrowing plans, distinguishing between those that will only be undertaken if they levy a supplement and the remainder.

3.33 Ultimately, stakeholders at the consultation and possible ballot stages (see next section) will take a view on whether the prospectus makes a convincing case for the additionality of the project being proposed.

Box 3.C: Consultation questions

- 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?

Assessing when a ballot needs to be held

3.34 Where the contribution towards a given project supported by a BRS exceeds one third of the estimated total cost of the project, the Bill requires¹ that a ballot of those businesses that would be liable to the BRS be undertaken. A ballot may also need to be held where the BRS is varied under clause 10 of the Bill. A ballot will need to be held if one was held on the imposition of the original BRS, or if the contribution towards the project by the BRS as varied exceeds one third of the estimated total costs of the project as varied. Authorities can also decide to hold a ballot where project costs funded by the BRS do not exceed one third of the total.

Assessing project costs for the 'one-third' test

3.35 Assessing the future costs and funding requirements of major projects can be complex given the variable internal and external factors that can impact upon project delivery. HM Treasury's Green Book contains further guidance on valuing the costs of project options including, for example, how to take account of costs (and benefits) that are incurred over an extended period of time. Local authorities that are assessing the need to undertake a business ballot should consider the following.

Cost overruns or underspends

3.36 The project prospectus should be based on a full assessment of project costs. This should be done in accordance with existing best practice as identified in this guidance and include within estimates of project costs an assessment of 'optimism bias'² and/or a margin for contingency³ risks and overruns.

3.37 For the purposes of assessing project costs and the one third requirement, optimism bias adjustments and contingency costs, as they can be most accurately defined at the point of assessment, should be included within the total project cost figure.

Net costs

3.38 It is considered that the cost of a project, net of any anticipated revenues, (for example, from road tolls or transport system fares) are the relevant costs for assessment of the funding requirement (to cover both upfront capital costs and ongoing net running costs where an infrastructure project is being considered).

3.39 However, where predicted revenues are factored into whole life costing, usage volumes, unit pricing and therefore the revenue assumptions included in an assessment of the funding requirement are likely to be subject to change, which may give rise to a funding shortfall over the infrastructure life. Again, as required by Schedule 1, a levying authority will be required to outline in the prospectus how it will meet any shortfall in the funding requirement and possible associated financial repayments.

Defining acceptable project costs

3.40 Developing and delivering successful economic development projects using BRS will require effective partnership working between the public sector (in particular the levying authority), local businesses and other stakeholders. In making an assessment of the project costs, levying

¹ See section 7 (Holding of ballot)

² Optimism bias is the demonstrated systematic tendency for appraisers to be over-optimistic about key project parameters, arising particularly in relation to: capital costs; works duration; operating costs; and under-delivery of benefits. Further information about optimism bias and its mitigation is provided in the Green Book (HM Treasury – Appraisal and Evaluation in Central Government, April 2003) and in its supplementary guidance available at <http://www.hm-treasury.gov.uk/greenbook>

³ Contingency being defined as an allowance of cash or resources to cover unforeseen circumstances.

authorities should be mindful of this relationship and pay regard to the fact that the assessment undertaken by the authority as part of early stage scoping and feasibility work may not accord with the perspective of local businesses.

3.41 Ultimately, business will have the scope to challenge prospectus assumptions at the consultation stage and for that reason it is in the levying authority’s best interests to ensure the robustness of its business case and to ensure work on the preparation of the prospectus involves detailed discussions with local business and other interested parties. Under clause 6(6) of the Bill, a levying authority must publish a revised prospectus where the results of consultation lead the authority to think it is necessary or appropriate to do so, including where consultation leads to a re-assessment of project costs. In such cases, it is the re-assessed project costs that are relevant to the determination of whether a ballot is required. Local authorities must take responsibility for managing the relationship with their business stakeholders, to develop a funding and delivery solution that meets overall economic development objectives.

Box 3.D: Consultation questions

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

4

The National Project Panel

4.1 For local authorities that are considering raising a BRS to fund projects to support economic development, it will be vital to develop a comprehensive assessment of the proposal's economic costs and benefits and overall impact on the local area, including local businesses, as set out in the BRS Bill and guidance. This will ensure that the local authority's plans are properly developed and that they can consult local stakeholders, including businesses, on the basis of full information and analysis.

4.2 The Government believes that it would be best practice for local authorities to expose their thinking to external scrutiny, and to make use of external advice, to provide constructive challenge to the local authority's assumptions. The Government proposed, in the BRS White Paper¹, to establish a national project panel to provide expert advice on local authority's BRS plans, including their cost-benefit analysis and assumptions.

4.3 The Government is keen to hear the views of local authorities and others on whether a panel would be useful to provide advice to local authorities on their draft prospectuses, ahead of formal consultation with businesses and other interested parties. If a panel were to be established, the Government proposes that it would be structured broadly as follows.

Status of the panel

4.4 Consultation with any panel would not be mandatory. The panel, if established, would be available to those local authorities which wished to make use of it on a voluntary basis, to provide external scrutiny and help foster local community and business confidence in their plans. The establishment of a project panel would not, of course, prevent a local authority from seeking views and expertise on their proposals from other sources. For example, a local authority may wish to discuss their proposals with other authorities that have undertaken similar projects in the past, to learn from their experiences. A local authority may also want to use private sector expertise to help to develop their business case, or consult with existing bodies that can provide expertise on project management and procurement.

4.5 The panel would be an independent body, offering impartial advice. The Government proposes that any panel would not have powers to veto a local authority proposal, only to offer advice and guidance in a 'critical friend' capacity.

When to consult the panel

4.6 The Government believes that a panel, if established, could provide most value before the local authority puts its proposals out to consultation with businesses and other stakeholders. This would enable the local authority to take account of the advice of the panel before finalising proposals – this could include, for example, re-assessing the underlying assumptions within the business case for the project, or undertaking further research or stakeholder engagement.

¹ *Business Rate Supplements: a White Paper*, October 2007, HM Treasury and the Department for Communities and Local Government

Membership of a panel

4.7 The Government recognises that there may be a wide range of projects which could be supported using a BRS, varying in scale and type. Local authorities may therefore seek different levels and types of support from a project panel. It is also likely that sometimes there would be no projects seeking support, while at other times several local authorities could find the advice of a panel useful. For these reasons the Government believes that, should consultation show support for the idea of a project panel, it would be sensible to convene separate panels as and when required, rather than to establish a standing panel with fixed membership. This would allow panels to be adapted to fit the particular needs of each project and remove the need for a panel when no projects are under consideration. Under this model it is of course possible that some individuals would be able to lend their expertise to more than one panel. Where this is the case, the Government sees no reason why an individual should not be able to sit on more than one panel, providing they can devote sufficient resources to each. Indeed, this could provide valuable continuity between panels and promote the sharing of experience from previous business rate supplement proposals.

4.8 The membership of a panel would depend on the size and complexity of the project under consideration. For smaller projects it may be appropriate to establish a relatively small and informal group, which could meet with the local authority to provide 'constructive challenge' and to feed back experience from similar projects. For larger and more complex projects, some of which will have very few or no direct comparisons, a larger group would probably be necessary to bring together the skills to provide proper scrutiny. It is also likely that the panel would need to convene more times to discuss different aspects of the business plans.

4.9 In drawing together an appropriate panel membership, it would be beneficial to take into account the views of the local authority on what they would find most useful. For example, a local authority may think that certain aspects of their project would benefit from particular scrutiny and challenge, because the local authority lacks their own capacity or experience on that aspect.

4.10 The Government believes it is important for the panel for each project to include a range of different skills and perspectives, both to ensure that all aspects of the local authority proposal can be understood and challenged where necessary, and to ensure the panel transparently provides a fair view of the proposal. The Government proposes that each panel would need to, as a minimum, include members from the local government sector (who should not be associated with the proposal under consideration or the local authority making the proposal) and from the business community. This would not, of course, preclude members from other groups, for example academics or those with an understanding of a sector relevant to the project, where they can offer specialist expertise. The Government believes that individuals with skills in major project planning, procurement and delivery, project financing, and economic development would be useful for most project panels.

4.11 The Government is clear that no individual would be able to sit on a panel if they have a vested interest in seeing the project under consideration succeed or fail.

Responsibilities of the panel

4.12 The Government believes that, should this consultation show that local authorities would find a panel useful, it would be helpful to leave some flexibility in the panel's remit to take account of the particular needs of each local authority. As an indication, panels could offer constructive advice and feedback on the following issues:

- the suitability of the proposed project or programme for funding through a BRS, given the requirements that BRS should only be used for projects that support economic development and are additional to the local authority's normal activities.
- the economic rationale for the project, and.
- the overall quality of the business case, including the underlying assumptions and options analysis, and
- the total costs of the project, including the local authority's assumptions on optimism bias and contingency.

Box 4.A: Consultation questions

- 7 Do you think that a National Project Panel 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 more usefully be 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.

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