HM TREASURY

Communities and Local Government

Business Rate Supplements:

guidance for Local Authorities

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ISBN 978-1-84532-672-2
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1 Introduction to Business Rate Supplements

1.1 Sir Michael Lyons' Inquiry into Local Government[1] recommended introducing a new local power to set a supplement on the current National Non-Domestic Rate (NNDR), or business rate.

1.2 The Government responded to Sir Michael Lyons' recommendation in both the 2007 Budget and the *Review of sub-national economic development and regeneration.*[2] It supported Sir Michael's proposal and stated that there would need to be adequate protection for business and that any Business Rate Supplement (BRS) would need to command the support of those affected by it.

1.3 In October 2007, alongside the 2007 Pre-Budget Report and Comprehensive Spending Review, the Government published *Business rate supplements: A White Paper.*[3]

1.4 The Government has now taken forward these proposals through the Business Rate Supplements Act 2009.[4] In England the Act provides a discretionary power for county councils, unitary district councils in areas where there is no county council and, in London, the Greater London Authority (GLA) to levy a supplement on the national business rate. Levying authorities will be able to retain the revenue raised from the supplement and use it to invest in additional projects aimed at promoting 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.

1.5 The Act 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.[5]

1.6 The Act sets out the requirements for the prospectus on which the levying authority must consult. 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 Act;
- how the expenditure is additional to the levying authority's existing plans;
- how the levying authority will deal with differences between planned and outturn expenditure for the project being supported by the BRS;

[1] The 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 and Communities and Local Government, October 2007

[4] The Act and its Explanatory Notes can be found at http://www.opsi.gov.uk/acts/acts2009a

[5] The Business Rate Supplements (Rateable Value Condition) (England) Regulations 2009 (SI 2009/2542) prescribed a rateable value threshold of £50,000

- 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; and
- whether the levying authority intends to hold a ballot and an explanation for its intended course of action in those cases where a ballot is not required by virtue of section 7 of the Act.

Purpose of this guidance

1.7 This guidance is provided to those local authorities in England that are considering the use of BRS to fund projects. In accordance with section 26(2) of the Act, the guidance provides supplementary information on:

- the use of BRS, in particular the kinds of projects and expenditure which may, and may not, be regarded as appropriate for funding through a BRS;
- the levying of a BRS, including the involvement of local stakeholders;
- compliance with the condition in section 3(1)(b) of the Act, i.e. that the money raised through a BRS is only used for expenditure that the levying authority would not otherwise have incurred (the 'additionality' requirement); and
- assessing project costs for the purpose of establishing whether a ballot needs to be held on the imposition of a BRS or on a proposal to vary a BRS.

1.8 In May 2009 the Government issued guidance on the additionality and ballot issues.[6] For clarity, this guidance is repeated here in chapters 4 and 5.

1.9 The Act permits two or more authorities to co-operate to raise a BRS together,[7] in order to deliver economic development on a larger geographical scale.[8] Unless otherwise stated, where this guidance refers to a levying authority this may be taken to mean more than one levying authority proposing or taking forward a BRS.

1.10 Section 27 of the Act makes provision ('Special Introductory Provision') about BRS. In particular, subsection (2) of section 27 makes provision to allow a BRS to be levied to fund expenditure on projects started before the coming into force of section 1 of the Act,[9] providing that BRS is levied on or before 1 April 2012.

1.11 Subsection 27(6) of the Act provides that sections 3(1)(b) (the additionality requirement), 7(1) (the ballot requirement) and 10(7) (the requirement for a ballot on a proposal to vary a BRS) do not apply to any BRS levied by the GLA on or before 1 April 2011. In addition, section 27(7) sets out that the Secretary of State may make regulations about the exercise of the GLA's power in these circumstances. Any such regulations may include provision to disapply a provision of the Act or apply it with modifications. Any parts of this guidance that relate to sections of the Act that have been disapplied, by virtue of either section 27(6) of the Act or regulations made under section 27(7), should also be disapplied.

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[6] Business Rate Supplements guidance: additionality and ballots, HM Treasury and Communities and Local Government, May 2009

[7] See section 2(2)

[8] 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"

[9] Section 1 of the Act was brought into force on 19 August 2009 by the Business Rate Supplements Act 2009 (Commencement No.1) (England) Order 2009 (S.I. 2009/2202)

1.12 Section 27 of the Act also anticipates that guidance may be issued prior to the Act coming into force ('pre-commencement guidance') and that in such cases the guidance will later, post-commencement, be treated as guidance issued under section 26 of the Act. Therefore levying authorities can rely on *Business Rate Supplements guidance: additionality and ballots*, published in May 2009, for the purposes of levying a BRS.

2 Use of BRS revenues

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

2.1 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 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.

2.2 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 Regional Development Agency'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 Council and Employment and Skills Boards; and for transport projects, the fit with Local Transport Plans.

2.3 As explained in paragraph 1.9, the Act makes provision for two or more local authorities to fund a joint project using BRS. In such cases, each levying authority will need to meet the requirements for levying a BRS (such as producing the prospectus, and putting in place the specific accounting arrangements required by the Act and regulations). 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.

2.4 If a levying 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. The levying authority must ensure, however, that ratepayers paying more than one supplement are not liable for BRS totalling more than 2p per pound of rateable value.

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

2.5 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.

2.6 The Government's productivity framework[1] sets out five drivers of long-term productivity growth:[2]

- 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.

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

2.8 Box 2.A below gives illustrative examples of projects that a levying 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. As highlighted in the examples below, BRS can be used to fund both revenue and capital expenditure projects. A BRS can also be used by a levying authority to support a loan needed to fund an additional project aimed at promoting the economic development of its local area. If a levying authority uses a BRS in this way it will need to ensure that it adheres to the Prudential Code for Capital Finance in Local Authorities.

[1] See Meeting the economic challenges in every region, HM Treasury, November 2008; the Productivity in the UK series at http://www.hm-treasury.gov.uk/ent_prod_index.htm; and Building Britain's Future – New Industry, New Jobs, April 2009

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

Box 2.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.

2.9 There will, of course, be other projects which do not fall within the illustrative examples above. The key point is that, in deciding whether a project can be funded through a BRS, the levying authority must be satisfied, and able to demonstrate in its BRS prospectus, that (i) there is a clear link between the project and the economic development of the area and (ii) that the supplement will be funding additional expenditure.

2.10 There is no limit on the duration of any BRS. The duration of each BRS will be determined by the levying authority based on the funding needs of each project. Schedule 1 to the Act requires the levying authority to set out the duration of the proposed supplement in the initial prospectus and to finalise the expected duration of the supplement in the final prospectus.

Expenditure which may not be met through BRS

2.11 Where a project is being considered by a levying 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. The costs for undertaking such exploratory work will be met by the levying authority. The Act does not allow levying authorities to reclaim the costs associated with the scoping and feasibility works from the BRS. In addition, levying authorities are not allowed to reclaim the cost of producing the prospectus, running the consultation and, where one is held, running the ballot. These costs should be considered sunk, with any BRS levies being used only to fund project costs incurred following a consultation and successful ballot (where one is held), when approval for taking the project forward is in place.

[3] See http://www.dft.gov.uk/about/strategy/transportstrategy/eddingtonstudy/

3 Levying a BRS and the involvement of local stakeholders

3.1 The involvement of local businesses and other key stakeholders will be central to the success of any BRS. Levying authorities should therefore consider how they can involve local businesses and others, over and above the consultation and ballot requirements set out in the Act. The appropriate engagement will depend on the specific circumstances of the project, as well as the needs and characteristics of the local community. For this reason, the engagement strategy will need to be determined by the levying authority. However, to assist levying authorities in this task, this section highlights some key issues to consider.

Preparing the prospectus

3.2 Sections 4 and 5 of the Act require the levying authority to produce a prospectus, in accordance with the requirements of Schedule 1. If two or more authorities are considering raising BRS to jointly fund a single project, each levying authority must individually approve the prospectus before publication.

3.3 The prospectus is a crucial document as it will provide all those who could be affected by the supplement with a robust basis for assessing the merits of the project and holding the levying authority to account. The prospectus will need to be based on comprehensive and robust project feasibility and scoping work. This is particularly important given scrutiny from local businesses that will want to understand the case the levying authority is presenting for levying a supplement and the amount to be raised. In carrying out this work it is expected that the levying authority will be mindful of existing best practice in business case development. In meeting the statutory requirements of Schedule 1, the levying authority should draw upon best practice guidance contained within HM Treasury's Green Book[1] on the preparation of business cases for the public sector. Best practice guidance should be applied in a way that is proportionate to the costs, benefits and risks involved.

3.4 In addition to following best practice, the levying authority should consider how the prospectus can be developed through discussion with local business, other stakeholders that the authority thinks appropriate and, in two tier areas, the district council. Levying authorities might also consider seeking advice from independent experts – for example, project managers or economists - who could assist in developing the proposal or acting as a 'critical friend'. It will be important that any such expert is independent and therefore able to offer truly impartial advice.

3.5 Any prospectus must include all the information set out in Schedule 1 and levying authorities must ensure that this is given in sufficient detail to enable respondents to properly consider the proposals.

3.6 The requirements set out in Schedule 1 mean that the prospectus will be a detailed and, potentially, long document. Many of those who will be liable for the supplement, or affected by

[1] The Green Book – Appraisal and Evaluation in Central Government, HM Treasury, April 2003, see http://www.hm-treasury.gov.uk/greenbook

the supplement, will want to study the proposals in detail. However, a number will have limited time and therefore will want to be able to quickly identify the key proposals and potential impacts. Levying authorities should use their expertise in running consultations to consider how the prospectus should be presented so that respondents can quickly and easily understand what is being proposed. For example, in addition to the prospectus a summary of the proposals and levying authority's assessment of its impact on the area and local businesses might be provided and/or information could be provided in a Question and Answer format.

Consultation arrangements

3.7 Local businesses, district councils in two-tier areas, and other stakeholders the levying authority considers appropriate will need to be formally consulted on the BRS proposals under sections 4 and 6 of the Act.

3.8 Levying authorities will need to use their expertise and experience in running consultations and knowledge of the local area to determine how the consultation should be run. The consultation should be run in line with best practice. There is also scope for levying authorities to innovate and to make use of existing links with the business community.

3.9 The prospectus will form the basis of the consultation. Therefore those who will be liable for the supplement, and others who will be affected by the proposals, will want to be able to access this key document easily and with minimal inconvenience. The levying authority is required, under section 5(3), to place a hard copy of the prospectus in its principal offices and on its website. Levying authorities should also consider providing copies of the prospectus in other locations. For example, copies of the prospectus could be made available in local libraries; at events run by the levying authority to engage local businesses; and, in two-tier areas, in the principal offices of the billing authorities.

Governance arrangements

3.10 All projects funded, or part funded, through a BRS should be managed in line with best practice. Local businesses, and others paying the BRS, will want to be confident that the project funded through the supplement will be well managed. They will want to be assured that the project will not be subject to undue delays or needless expenditure. They will also want to be assured that their needs will be taken into account in decisions made about the project.

3.11 Paragraph 11 of Schedule 1 requires levying authorities to set out in their prospectus how they intend to keep those liable for the supplement informed about expenditure incurred and the progress made on the project. Levying authorities should also consider if, and how, they might go beyond this requirement. For example, local businesses might be represented on the governance board set up to oversee the project, or they might be involved in delivering certain aspects of the project. The exact nature of the involvement will depend on the project, as well as the needs and aspirations of the local community. However, involving local businesses and others who are liable for the supplement should enable the project to benefit from expertise held outside the levying authority and strengthen the partnership between the levying authority and local stakeholders.

4 Additionality

BRS in the context of other funding mechanisms

4.1 There are a number of funding mechanisms available that enable local authorities and their communities to raise revenue locally to invest in the local area, for example Business Improvement Districts and the Community Infrastructure Levy (from April 2010). BRS can be used alongside other funding mechanisms as part of a wider funding package, or on separate projects. The key point in establishing if a BRS can be used will be whether or not the levying authority can meet the requirements set out in the legislation. In particular, the levying authority will need to satisfy itself that the BRS is being used on a project, or part of a project, that will promote economic development and that the BRS is being used to fund expenditure it would not otherwise have incurred.

BRS and existing services

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

Additional expenditure

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

4.4 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. to spend money which otherwise would not have been spent.

4.5 In relation to a project that the levying authority proposes to fund entirely through a BRS, the levying 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 levying authority proposes to part fund through a BRS, i.e. as part of a wider funding package, the levying 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.

4.6 Section 27 of the Act makes provision for a BRS to be raised for expenditure on projects begun before the power to levy a BRS in section 1 of the Act came 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, it could be used to deliver something extra that could not be achieved in the absence of the BRS.

4.7 Authorities will want to consider whether the project might be more appropriately funded through other mechanisms. These might include, for example, the Community Infrastructure Levy (where appropriate), Business Improvement Districts, voluntary business contributions, grants from central government and its agencies and, potentially, fare revenues in the case of a transport project. If the project is to be funded entirely through BRS, the levying authority will want to be able to demonstrate that the other possible funding streams are not appropriate or available to cover the expenditure for the project. If the supplement is being used as part of a wider funding package, the levying authority will want to show that the BRS will pay for an additional element of the project that cannot be funded through the other means.

4.8 If a BRS is used as part of a wider funding package, 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.

Demonstrating compliance

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

4.10 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 levying 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 may be 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 levying authority has set full three-year budgets, these provide a useful benchmark. If a levying 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 a levying 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.

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

5 The ballot requirement

5.1 Where the revenue raised by a levying authority towards a given project supported by a BRS exceeds one third of the estimated total cost of the project, the Act requires that a ballot of those businesses that would be liable to the BRS be undertaken.[1] A ballot may also need to be held where the BRS is varied under section 10 of the Act. A ballot will need to be held if one was held on the imposition of the original BRS, or if the revenue raised by a levying authority towards the project by the BRS as varied exceeds one third of the estimated total costs of the project.

5.2 Authorities can also voluntarily decide to hold a ballot where project costs funded by the BRS do not exceed one third of the total. In cases where a ballot is not required to be held under section 7, paragraph 19 of Schedule 1 to the Act requires the levying authority to set out in its initial prospectus whether or not it intends to hold a ballot and explain its intended course of action. Where, subsequently, the authority decides either to hold a ballot or not to hold a ballot, paragraph 20 of Schedule 1 requires it to explain that decision in its final prospectus.

5.3 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. The time at which the levying authority is in a position to properly assess whether a ballot should be held would normally be at a stage of project development which is sufficient to give an appropriate level of cost certainty, for example at the point of option selection.

5.4 HM Treasury's Green Book contains guidance on valuing the direct 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

5.5 The project prospectus should be based on a full assessment of direct 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 contingency[3] risks and overruns.

5.6 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.

[1] See section 7 of the Act (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 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

Project costs

5.7 The definition of what should be included in project costs will vary depending upon the nature of the project. For example, some projects may include a construction phase or the procurement of assets that will be used for the delivery of a public service over a subsequent operating phase. Where a project includes both construction and operating phase(s), project costs may include both the upfront capital costs, the cost of assets essential to the delivery of the scheme, and ongoing running costs over the project life. For projects which do not have a construction phase or require infrastructure or assets for the provision of ongoing operations or services, project costs would be likely to relate only to running costs over the project life.

5.8 Some projects, in particular those with significant upfront capital costs, are likely to raise external borrowing to fund upfront costs. This borrowing may be raised against the BRS and/or other future revenue streams. In this case, the assessment of ongoing running costs should include the financing costs associated with externally raised debt.

5.9 Financing costs are a component of the whole life costs of delivering a project where debt is to be raised to fund the project. In all cases, the 'one third' test should be calculated on a present value basis, applying the Green Book methodology to calculate the present value of both the project costs and the BRS to be raised (i.e. both numerator and denominator). In this context, external financing costs should be included in assessment of total project costs.

Defining acceptable project costs

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

5.11 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 section 6(6) of the Act, a levying authority must publish a revised prospectus where the results of consultation lead the levying 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.

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ISBN 978-1-84532-672-2

9 781845 326722