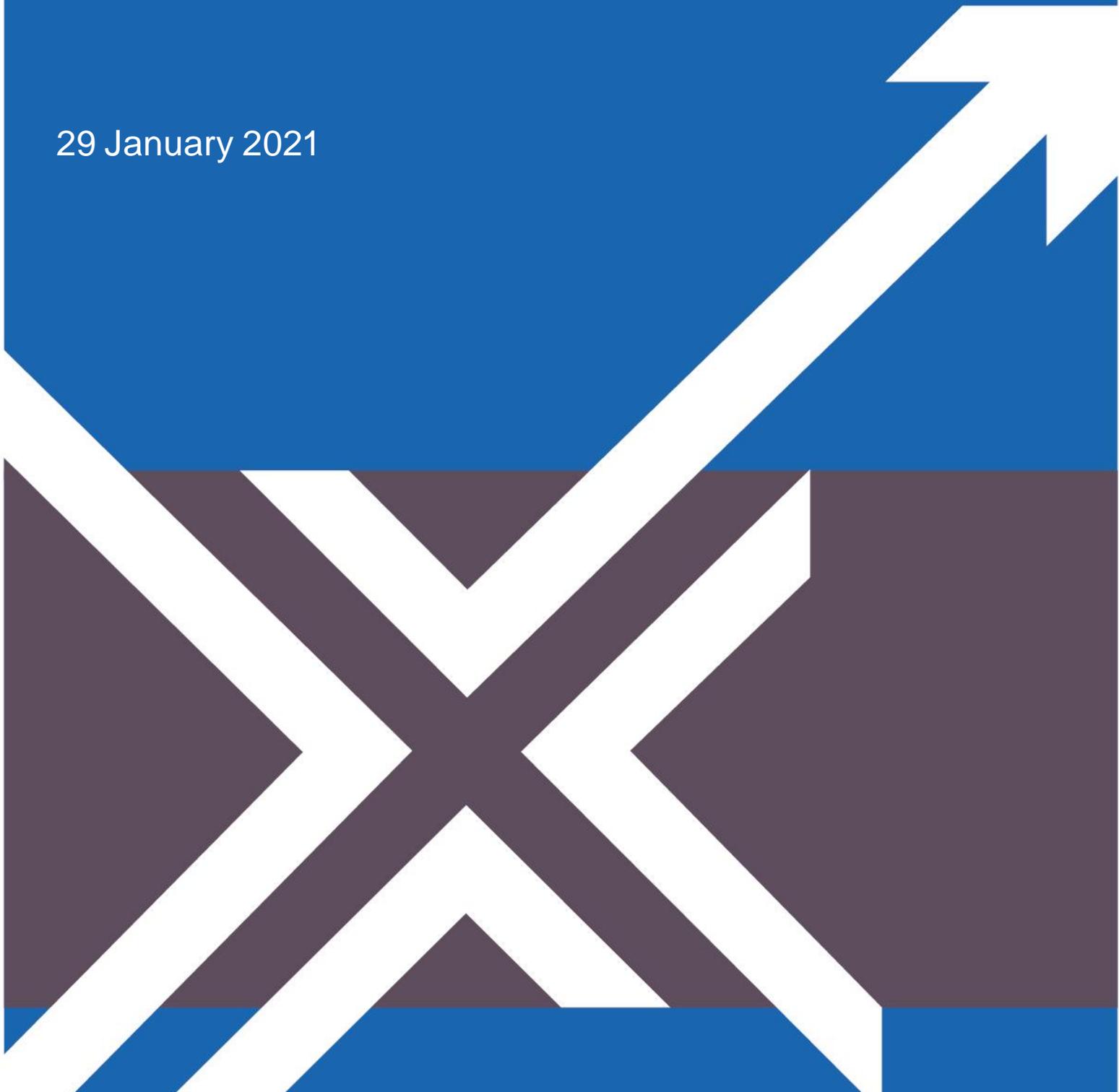




# Business Improvement Districts Advice On Renewal Ballots In 2021

29 January 2021



**This short paper sets out Scottish Government advice to BIDs on renewal ballots for those BIDs due to undertake a ballot in 2021. The note is not formal guidance; however, it should enable a consistent approach on advice to BIDs.**

## Which BIDs require Scottish Government support in 2021?

Provisions in the Coronavirus (Scotland) Act 2020 on COVID-19 have the effect that existing BID arrangements due to expire before 31st March 2021 should continue in effect until that date. However, several BIDs due to renew after March 2021 may need continued support due to risks relating to achieving successful ballots because of the effect of the pandemic. These are: Clarkston, Barrhead, Aberdeen Inspired, Crieff, St. Andrews, Living Lerwick, Falkirk and East Lothian Food & Drink.

## What are the legal issues for BIDs undertaking renewal ballot outwith operational dates?

A renewal ballot is normally undertaken within the operational dates of the BID, i.e., within the duration of BID arrangements, which must not exceed 5 years. For there to be no break in the BID arrangements and therefore the chargeable period, a renewal ballot should take place within the existing five-year operational period.

BIDs normally hold their renewal ballot on or around the five-year anniversary date of the previous ballot. BIDs that did not start to prepare for a renewal ballot in sufficient time, or for reasons outwith their control, can hold a ballot outwith their operational end date, in agreement with their Local Authority (LA), as soon as it is practicable to do so. For those BIDs, we believe the primary legal issues are around levy collection (clearly, a BID that has not renewed cannot issue new levy invoices) and the BID drawing funds from the BID Revenue Account, as set out below.

## What should BIDs do if they are planning a ballot outwith operational dates?

There is precedent for holding a renewal BID ballot outwith the BID term operational dates however, the occurrence was in extraordinary circumstances.

The recommendation is, should a BID decide to go to ballot outwith its operational term, due to the prevailing COVID-19 measures, the BID adopts the rules and advice detailed below, until a ballot can be held: -

- Informing LA of their decision and reasons for holding a ballot after their five-year term;
- As soon as the BID moves outwith its operational term, LA immediately ceases levy collection and suspends all payments from the BID Revenue Account to the BID;
- Unspent levy not allocated to redundancy or renewal ballot costs should be transferred to LA and can be later returned to BID (if ballot successful) or levy payers (if unsuccessful);
- The BID cannot embark on or fund any new initiatives funded through the BID levy;
- If its constitution allows the BID body to continue to operate, on a non-statutory basis, it can undertake new initiatives or projects funded from non-levy funding streams e.g., LA, Scottish Government, UK Government, National Lottery, Visit Scotland, Keep Scotland Beautiful etc.
- During the time the BID body is operating outwith its operational term, and intends to return to operating as a BID, it should be focussed on preparations to hold a ballot at the earliest opportunity with everything possible in place to provide a competent ballot;
- Any BID submitting BID Proposals which are later withdrawn, prior to the notice of ballot being published by the ballot holder, is required under the legislation to resubmit amended BID proposals to SG and the LA at least 98 days prior to the revised ballot date.

STP will work with individual BIDs and provide guidance on processes for balloting outwith operational dates. [If there are **unpaid levy invoices and bad debt**, the LA is still legally obliged to collect, unless the BID chooses to write the debt off in accordance with its financial management practices].

## What are the options for those BIDs that do not wish to ballot due to the likelihood of a negative outcome, but wish to continue running 'out of term'?

Provisions within the Companies Act and/or with the BID Memorandum and Articles (M&A) may allow the BID Board of Directors to continue running the company following the end of the BID operating term, as long as there are funds to do so. In these circumstances, BIDs ought to discuss their plans with their relevant LA and would be unable to undertake BID activities such as issuing levy invoices or undertaking recovery action for debt due to the BID. Once a successful Ballot is achieved, the BID would be a constituted BID again and would

restart operating as a BID. There are established precedents of this happening both in Scotland and England.

Each BID should check its M&A, take legal advice; and subject to the legal advice given, the M&A, if required, may be able to be amended by resolution.

## What are the options for BIDs that have significant concerns about their ability to effectively run and win a ballot, or operating 'out of term' due to the lack of non-levy funds to enable them to function as a company?

Initially, discuss options with STP: -

- 1. Termination:** Under Regulation 19 of the Business Improvement Districts (Scotland) Regulations 2007, if the BID wishes to terminate before the date on which its BID is due to end OR
- 2. Create a dormant Company:** STP advise that this is straightforward and, when conditions are right, BIDs can make an application for SG seedcorn funding to develop new proposals.

## What are the procedures for formally winding up BIDs after an unsuccessful renewal ballot?

If a BID fails at renewal, it ceases at the operational end date and is formally wound up. This is done by the BID Company itself with advice from STP to ensure legal and financial commitments are ended correctly. Two BIDs have failed to renew to date – Dunfermline and South Queensferry. The norm for the BID company is to spend or allocate the bulk of the BID funds prior to the renewal ballot, leaving a budget sufficient to legally close the BID company down i.e., produce final accounts, close bank account, cancel existing contracts, if applicable pay, redundancy. By doing so, all funding is spent within the BID area and there is no need for the LA to refund BID levy. For this reason, it is normally considered good practice to hold the renewal ballot well in advance of the operational end date, to allow much of this work to be completed or planned for in case of an unsuccessful ballot.