

promoting quality public transport.....

Quality Contracts Schemes Consultation
Buses & Taxis Division
Department for Transport
Zone3/11, Great Minster House
76 Marsham Street
London SW1P 4DR

7th October 2009

Dear Sirs,

QUALITY CONTRACTS SCHEMES

Thank you for the opportunity to respond to your consultation on Quality Contracts Schemes.

We find the guidance overall very helpful, but as indicated in the answers to your questions, think it would be even better if it were to provide guidance (or links to your earlier guidance) on some other related matters (like permitting Local Transport Authorities to make schemes, act as operators of last resort or use their emergency and *de minimis* powers to procure services)

We are also concerned in the NW to note that there seems to be a widespread, and we believe incorrect, impression that a Local Transport Authority needs to first show that it has tried and failed to make a Statutory Quality Partnership Scheme before it proposes a Quality Contract Scheme.

There are also suggestions by some Local Transport Authorities that the Association of Transport Co-ordinating Officers (ATCO) concept of Tendered Network Zones, which they (and we) find superficially attractive, is fully compatible with QCs (which we think it clearly is not).

We urge that your guidance should strongly disabuse both these myths.

The guidance should also seek to re-assure Local Transport Authorities who fear operators making legal challenges to any QC scheme they propose. (see Q11 – Impact Assessment)

Should you require any amplification on this response we will be glad to assist you.

Yours sincerely,

John Moorhouse
Company Secretary

Q1. Do you agree with the proposals contained in the QCS Board Regulations, and why (or why not)?

The replacement in the Local Transport Act 2008 of the necessary approval for Quality Contracts by the Secretary of State by a mechanism of scrutiny by a QCS Board is a welcome amendment which TWNNW believe is more in tune with the local transport governance provisions of the Act.

The impartiality of the Boards will be imperative. They must have the confidence of both the procurers and providers of bus services as well as of passengers.

TWNNW would urge that the panel from which members will be appointed to QCS Boards should include representatives of passengers, and that there should be not less than one such member on every QCS Board. Consideration could be given as to whether members should be chosen from within or beyond the area in which the QC is proposed.

We are disappointed and concerned about the conflict of interest which will arise between Traffic Commissioners chairing Boards and their duty of registering local services in the area, since registration is a function which the Commissioner could lose if the Board published an opinion in favour of the establishment of a QC.

Q2. Do you agree with the proposals contained in the registration regulations, and why (or why not)?

We are in general agreement. Just as there had to be a transitional period before bus de-regulation, so too, re-regulation by Quality Contract will need to be preceded by a similar statutory hiatus. It would be unacceptable, and for Local Transport Authorities, destabilising, for operators who did not win a tender for services on a Quality Contract network to be able to redeploy their vehicles elsewhere in the run up to the transition. The current 56 days notice would be unacceptable, and the proposed 112 days should be the absolute minimum acceptable time.

The inclusion in the Local Transport Act 2009 of a procedure similar to London Local Service Licensing (Transport Act 1985) for the registration (using a clearance certificate mechanism) of local services not provided under a Quality Contract is a sensible measure, but it would be tidier if the proposed 42 days notice was raised to 56 days to conform with the rest of the draft regulations.

Q3. [for interested parties in Wales:] should the proposals in part 2 of the registration regulations also apply in Wales?

This question does not concern TWNNW.

Q4. Do you agree with the proposals contained in the tendering regulations, and why (or why not)?

Tendering for emergency contracts during transition

Contracts for the provision of a subsidised registered local service can be awarded in an emergency (Transport Act 85) for a maximum of three months

(see also below).

If an operator were to deregister a service more than three months before the date of transmission to a Quality Contract the Local Transport Authority would need to award an emergency contract without tendering this. Subsequently after three months the Authority would have to tender again for the time remaining up to the date of transition. That would be both wasteful and poor value for money, and the proposal in the draft regulations to relax this rule and allow the award of emergency contracts within a 12 month transitional period appears both sensible and operable

Tendering for emergency QCs

The Transport Act 2000 provides for the award of Quality Contracts by tender except in emergency, but leaves it to Secondary Legislation to define their maximum duration. The proposal for the draft Regulations to prescribe a period of 12 months in this situation, but for this to be extended to 24 months where no, or no acceptable, tenders are received, appears both sensible and operable.

Q5. Do you agree with the proposals contained in the application of TUPE regulations, and why (or why not)?

Q6. Do you agree with the proposals contained in the pension protection regulations, and why (or why not)?

We cannot agree entirely. The Local Transport Act 2008 should protect employees' continuity of employment as well as their terms and conditions on transfer.

This issue could become critical as many employees could subsequently face redundancy when their compensation would be linked to their continuity of employment.

It has the potential to trigger industrial action which could endanger the establishment of a Quality Contract.

TWNW believe the majority of employees provide an excellent service for passengers and deserve the same protection as employees of other modes (such as rail) or industries.

Q7. Do you agree that the guidance is helpful, and that it should be issued as statutory guidance to LTAs, QCS Boards and the senior traffic commissioner?

Yes. Provided our suggested amendments are made see pre-amble)

Q8. Do you have any specific comments on the draft guidance?

It would be helpful if the draft guidance notes could remind Local Transport Authorities of their *de minimis* powers to award small contracts without tender (Transport Act 1985) and also of their powers to temporarily become an operator of last resort and to own vehicles (See also Q11).

Q9. Bearing in mind the objectives mentioned in paragraph 47 of the consultation document, which tier of the new, unified tribunal system should hear appeals relating to QCSs, and why?

The new top tier of the Unified Tribunal Structure should hear appeals relating to QCs. The Transport Tribunal is highly regarded by the industry and to allow “first instance” appeals in the Administrative Appeals Chamber (even with appeals against their rulings eventually reaching the top tier) would send the wrong message that it was a “watering down” of the current procedures. It would also make the whole process overly protracted.

Q10. What criteria should be used for the appointment of the panel of prospective QCS Board members?

Impartiality will be imperative (see Q1)

Candidates should have a good knowledge and understanding of public passenger transport operation and related legislation. As stated above (Q1) there should be passenger representation.

The posts should be advertised widely in the transport press and selection should be by interview and possibly also by competitive tendering.

Q11. Do you have any comments on the impact assessment, including any quantitative evidence regarding likely costs and benefits?

Impact assessment

A greater worry for Local Transport Authorities is that operators may see “greener grass” beyond the confines of QCs and redeploy their vehicles there, leaving the Authority with a “scorched earth” and far too few small independent operators to bid for their devised QC network.

We are encouraged to note from your Explanatory Notes to the Local Transport Act that you do not see Central or Local government being exposed to legal action by operators under the EU human rights directive (which grants them peaceful enjoyment of their possessions – mainly depots and land as buses can be used elsewhere) because the Act requires Local Transport Authorities to be satisfied that the effects of QCSs on bus operators are “proportionate to the public’s wellbeing”. This advice should be replicated in these guidance notes (see pre-ambles).

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