

QUALITY CONTRACTS: MINIMUM TIME BETWEEN MAKING A SCHEME AND IT COMING INTO FORCE

***pteg* RESPONSE to DfT CONSULTATION**

The DfT Published a consultation in March considering whether changes should be made to Transport Act 2000 using the Order making powers of the Secretary of State in order the facilitate the introduction of quality contract schemes. Specifically the DfT has invited views on:

- whether the current 21 month minimum period between the making of a quality contracts scheme and its coming into force should be shortened;
- if so, whether the substituted minimum period should be:
 - six months,
 - nine months,
 - twelve months, or
 - fifteen months;
- whether the 3 month maximum period between making the scheme and inviting tenders should also:
 - be reduced to one month,
 - be reduced to two months, or
 - remain unchanged at three months.

A partial Regulatory Impact Assessment was annexed to the document and consultees are invited to comment on it. Any attempt to assess the regulatory impact of this change is necessarily tentative because no quality contracts schemes have progressed beyond consultation stage and none has been submitted for approval:

- Do you agree with our assessment of potential benefits?
- Can you identify any burdens or costs that these changes are likely to generate?

General Comments

pteg has been lobbying consistently for many years that the barriers to the use of the quality contract procedures are too high. The process is complex, bureaucratic and time consuming, and the 'tests' applied to applications are too severe. As a consequence, no applications being submitted despite major shortcomings of the partnership approach favoured by the legislation. As recent research undertaken by *pteg* has demonstrated, the process is fraught with uncertainties and, as Centro's recent experience has demonstrated, the process can be much longer than the minimum times our research has shown may be possible with the full co-operation of all parties.

We therefore welcome DfT proposals to shorten the timescales associated with the introduction of quality contracts. *pteg* also welcomes the proposal to issue guidance on the implementation of quality contracts. These two aspects were sought in recent discussions with Ministers and DfT officials. However, whilst the proposals are a step in the right direction, they are by no means an adequate response to the problems caused by the current deregulated regime. The key barrier to implementation – the 'only practicable way' test – remains, and the involvement of the Secretary of State, the requirements for consultation (potentially including re-consultation) together with representations during the process will continue to make this a difficult procedure to apply in practice.

Specific consultation questions

Shortening of the period between making the scheme and it coming into force

– We fully support the proposal to reduce ‘the lead-in period’, and believe that as the consultation document notes, a 6 month period for small schemes may be entirely appropriate. pteg recognises that for larger schemes the process of procurement and handover of services may take 12 months or more. Much will depend upon the scale of work a promoter wishes to undertake prior to the decision of the Secretary of State. However, it is our view that the Order should nominate 6 months in order to accommodate smaller schemes. This will allow the benefits of the schemes to be enjoyed by passengers more speedily and assist the promoter in managing the risks associated with any handover between operators that may be required.

We also propose that the consultation process should seek views about the appropriate period required by operators to prepare for implementation and that this should form part of the application submitted to the Secretary of State. The promoter would then implement in a timescale that was reasonable, taking into account consultation responses. We would be happy to see this issue covered in the draft guidance the DfT proposes to publish.

Shortening the period between making the scheme and inviting tenders –

Section 127 allows up to 6 months to elapse between the Secretary of State’s decision and the making of the Order, and this period cannot be changed other than by primary legislation. If implementing a small scheme, assuming our suggestion of a six month lead-in time was being applied, then we envisage that promoters would want to move ahead well within the three months currently allowed for. On this basis we would be quite relaxed about the maximum time between making and tendering the scheme being reduced to one month.

However, for large and complex projects, which may require significant tender preparation activity following the Secretary of State’s decision (particularly if he makes amendments to the scheme), we consider that the current three month period may be necessary. As we argue above, for such schemes the ‘lead-in’ period is likely to be 12 months or more. In the context of these schemes, a three month period for the preparation of tenders is entirely appropriate.

Since the period between making the scheme and inviting tenders is a maximum period, fixed for all types and scales of quality contracts, we are reluctant to see the period reduced, even though we are confident that for most schemes it will be possible to deliver projects well within the maximum allowed. We would therefore support the proposal to maintain the maximum period at three months.

Partial regulatory assessment

Assessment of potential benefits – We agree with the assessment of potential benefits, and welcome the recognition of the ‘observed imperfections in the current deregulated system of bus provision’. It is primarily to deal with these major imperfections in many PTE areas that pteg has sought to promote changes to the Transport Act 2000.

Identification of any burdens or costs that these changes are likely to generate

– We again agree with this element of the assessment and note the DfT’s intention to monitor and review the impact of the procedural changes. This notes the limited changes that are possible without primary legislation. It remains pteg’s view that,

whilst the changes being proposed are welcome, it will not be possible to achieve the changes necessary to allow buses to play their full role in delivering improved local transport to which both national and local government aspires without further primary legislation.

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