

BUS PLANNING, PROCUREMENT AND REGULATION

Implementing a Quality Contract

Technical Note 1

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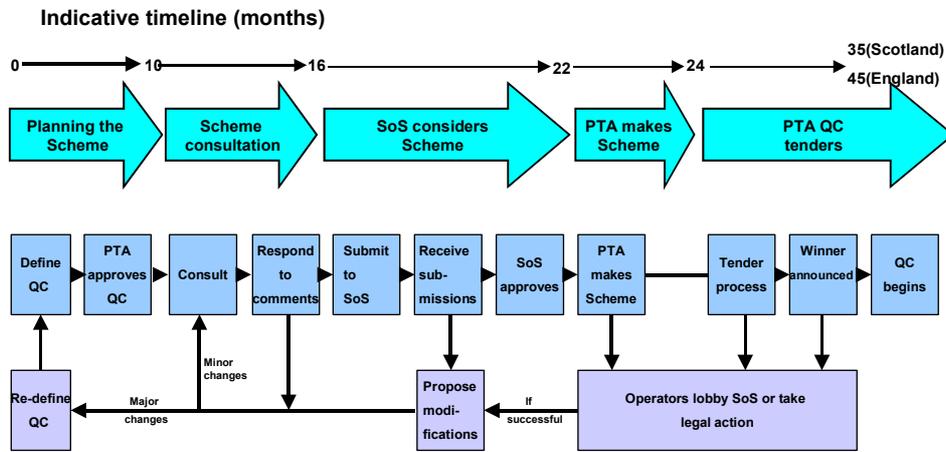
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Summary of a QC Application

1. INTRODUCTION

- 1.1 This note explores the mechanisms for delivering a Quality Contract in a Passenger Transport Authority (PTA) area. It documents research and analysis conducted on behalf of pteg during October and November 2003. It has been prepared by Steer Davies Gleave and its legal adviser for pteg to facilitate debate on this subject. This document has been prepared in collaboration with pteg but the opinions expressed in it are those of the authors. Its contents are intended as general advice and do not constitute legal opinion. No reliance on this document should be made by party other than pteg. Steer Davies Gleave has agreed that this note may be publicly released, but does not and will not assume any responsibility or liability for its use by any third party.
- 1.2 The key stages are set out in individual chapters. The objective of the note is to identify the issues that are likely to arise at each stage in the process and identify the main risks and activities requiring Local Transport Authority (LTA) resources. In particular, it explores the likely responses from operators and legal implications at each stage.
- 1.3 The stages referred to are drawn from the timetable suggested by the current legislation to implement a scheme, namely:
- Planning the scheme
 - Publishing the scheme and consultation
 - National Authority considers the scheme (In England: Secretary of State, in Scotland: Scottish Executive)
 - PTA makes the scheme
 - PTA invites tenders
 - Scheme comes into operation
 - PTA checks services comply with scheme
- 1.4 The process numbers (e.g. 124) given in this document refer to sections in the Transport Act (England and Wales) 2000, rather than the Transport Act (Scotland) 2001. Nonetheless the process is described in respect of both England and Scotland.
- 1.5 A summary of this process with an indicative timeline is shown at Figure 1.1. Gantt charts of the activities within this process, and when it is more streamlined, are shown in Chapter 8.

FIGURE 1.1 THE QC PROCESS – TIMELINE WITHOUT STREAMLINING



2. PLANNING THE SCHEME

The Legal Basis for Quality Contracts

England

2.1 Section 124 of the Transport Act 2000 sets out the legal basis on which an English or Welsh Passenger Transport Authority, County Council or unitary council ("**the promoting authority**") may make a quality contract scheme. Three conditions must be satisfied, before a quality contract scheme is implemented:

- **the scheme must implement the policies set out in the bus strategy which forms part of the promoting authority's local transport plan.** This is an important issue, as a number of bus strategies forming part of the local transport plan which we have reviewed, lack the specific policies which could be used to support a quality contracts scheme and are driven more by inputs which the authority make than the policies underlying those initiatives. Furthermore, where specific areas are intended to be designated quality contract schemes, the bus strategy should provide policies which support the identification of those areas;
- the scheme must be "*the only practicable way*" of implementing the relevant policies in the bus strategy. Some assistance with the term "only practicable way" is provided by the debate on the clause in the Transport Bill which is now section 124. In particular, this makes it clear that quality contracts are to be regarded as a last resort where all other measures have failed. One helpful comment made during the passage of the transport Bill, however, is that the practicalities of such alternative measures to support quality contracts are clearly relevant including the budgetary practicalities. Accordingly, the fact that an authority could conceivably use service subsidies, and more generous concessionary travel provision to achieve the same end as a quality contract, should not preclude the use of a quality contract, if the alternative would not be affordable;
- **the proposed scheme must represent value for money**, in terms of economics, efficiency and effectiveness, so that the authority will need to establish that the adoption of a quality contract scheme represents good value for any expenditure anticipated from adopting such scheme both absolutely, and in comparison to other options available to improve public transport in the relevant area.

2.2 A thorough review of these matters, and clear documentation of this review, will be a key element in establishing that a quality contract is required to the Secretary of State as well as in resisting any legal challenge to the adoption of the quality contract scheme.

Scotland

2.3 In Scotland, the conditions for Strathclyde Passenger Transport Authority or any local authority to make a QC scheme are significantly less onerous namely:

- That they are satisfied that the proposed scheme is necessary for the purpose of implementing their relevant general transport policies in the area to which the scheme relates; and
- That the proposed scheme will implement those policies in a way which is economic, efficient and effective.

2.4 Accordingly the "last resort" element which must be present for English Quality Contracts does not expressly apply to Scottish Quality Contracts. This fact is emphasised in the *Guidance of Part 2 (Bus Services) of the Transport (Scotland) Act 2001* produced by the Scottish Executive where, in paragraph 3.1.3, the following is stated:

"3.1.3 During the Parliamentary stages of the 2001 Act it was made clear that Quality Contracts could have a role to play in the implementation of the Executive's policies for buses. Proposals for QCs need to come to Ministers for consideration and, if appropriate, approval but it is not necessarily the case that QCs will only be approved where QPs have been tried and failed. It should be possible for local transport authorities, if, in the light of this guidance and their own strategies, they believe it is necessary, to look straight to the QC procedures and make the case for a QC to Scottish Ministers".

2.5 Much of the advice in this note is directed at satisfying the more stringent requirements of the English legislation, although on the basis that the Scottish Legislation is generally less stringent, observing it should also satisfy any requirements under the Scottish Legislation. We have, however, sought to indicate where the procedures under the Transport (Scotland) Act 2001 differ from those in the Transport Act 2000.

Process (Clause 124)

Justifying the use of a QC

2.6 Before work on the quality contract itself is commenced, therefore, the promoting authority should:

- Review whether its bus strategy is sufficient, in terms of policy, to support the proposed measures to be taken under the quality contract scheme and, if not, whether the bus strategy needs to be amended in accordance with the provisions for amending bus strategies set out in sections 109 and 110 of the Transport Act 2000 (including the requirement for prior consultation about the proposed amendment with other relevant local authorities, operators of bus services and organisations representing users, under section 111 of the Transport Act 2000);
- Undertake a review to establish whether any other measures could be taken to achieve the same policies through the utilisation of other powers in relation to quality contracts, service subsidies, travel concessions, ticketing schemes etc; and
- Undertake an assessment of whether the proposed terms of the quality contract scheme would represent value for the anticipated additional expenditure which might be incurred in promoting or supporting the quality contract scheme.

A thorough review of the matters referred to above, and clear documentation of this review, will be a key element in establishing that a quality contract is required to the Secretary of State as well as in resisting any legal challenge to the adoption of the quality contract scheme.

Bus strategies that require a QC

2.7 Even when strategies are in place and well documented, they will have been formulated in the context of the Transport Act 2000 (or 2001 in Scotland), and

therefore have attempted to set realistic goals and targets within the constraints of the Acts. Potentially this creates a Catch 22 situation, in which a realistic strategy is set within the constraints of the policy environment without requiring a QC.

- 2.8 It may not be acceptable to define a PTA's bus strategy (or in Scotland the equivalent local transport strategy) in such a way that the **only** way to achieve it is through a QC. For example, the strategy should include the theoretical possibility that the objectives could be achieved through a voluntary partnership with a willing and cooperative operator. These could include strategies to achieve the following:
- Network changes to enhance the accessibility of the network;
 - Increased network stability;
 - Integration with light/ commuter rail; or
 - Enhancement of quality or frequency to meet mode shift objectives, in conjunction, say, with introducing congestion charging.
- 2.9 However, there may well remain other objectives that could only be achieved with a QC, such as:
- Delivering a low fares/integrated fares strategy justified on the basis of established elasticities/benefit measures;
 - Reducing/sharing risks and therefore the operator's required margin; or
 - Ensuring specified frequencies and integrated timetabling.
- 2.10 Where more dramatic changes are desired, such as the above, we believe it would be advisable for authorities promoting a QC scheme to consult with local bus operators in order to establish whether voluntary agreements are possible to achieve the same objectives (with or without subsidy from the promoting authority). This may well be required to explain, at a later stage, why the QC was identified as the only practicable way to deliver the bus strategy policies and to resist future challenges to the exercise of the QC powers.

Planning a QC

- 2.11 After it has been established that the grounds for proceeding with a QC exist, the proposed QC would need to be planned and defined in sufficient detail to take it to consultation (the next stage). Apart from the requirements to describe the proposed scheme, and to state the reasons for making the scheme, the form of the scheme is not defined in legislation and is likely to vary considerably from QC to QC.
- 2.12 In some cases (e.g. to set minimum standards within a geographically well-defined transport catchment) a quality contract might require relatively little planning and could be easy to justify according to current observable failings. A QC which involved detailed changes to networks would be a more labour intensive exercise.
- 2.13 A further consideration is the availability of funding for the QC. If it involves funding substantial investment in vehicles and/or expenditure on higher services levels then it is highly likely to require an enhanced level of authority expenditure, for which an economic and business/investment case will have to be constructed, in order to satisfy

the value for money criteria on which to proceed with such a scheme. A social cost benefit case may be required in any event.

Guidance in relation to Scotland

2.14 In Scotland, there is clear guidance on the analysis which Strathclyde PTA and local authorities should undertake before submitting an application for approval of a Quality Contract scheme. Readers are referred to the more detailed guidance produced by the Scottish Transport Executive in its *Guidance on Part 2 (Bus Services) of the Transport (Scotland) Act 2001* and to the *Scottish Transport Appraisal Guidance* for more detailed information (both are available at www.scotland.gov.uk/library3/transport) but the main stages recommended are:

- An analysis of the specific nature of the problems in the relevant bus market and how these impact on achieving local transport strategy objectives;
- An analysis of the costs and benefits of all practical options to address those problems;
- A reasoned argument for introducing a QC supported by relevant local evidence;
- A full assessment of the likely costs of introducing the QC scheme;
- A full description of the potential advantages of the proposed QC scheme, in terms of stability of services, social inclusion impacts, delivery of specified frequencies, lower fares, increased patronage, reductions in congestion, co-ordination and integration of services, economies of scale achieved by grouping commercial and tender groups and increased competition (to the extent, in each case, applicable);
- An appraisal of the contribution which the QC scheme will make to meeting each local transport scheme objective (e.g. reductions in congestion, or pollution, modal shift, etc);
- An analysis of knock on effects on other routes (e.g increased fare or service levels reflecting the loss of cross subsidy or economies of scale with routes included in the QC scheme);
- The public interest arguments for the scheme, which the guidance suggests, might be approached in similar manners to an application to the OFT for an individual exemption under Part 1 of the Competition Act 1998 and therefore address separately:
 - the gains to efficiency, productivity and service to consumers which will result from the QC Scheme;
 - the benefits which consumers would derive from the QC scheme (lower fares, higher service level or quality);
 - the reasons why any restrictions on operators which will be imposed by the scheme are essential to achieving the objectives of the QC Scheme; and
 - the extent to which the proposal will eliminate or reduce competition in the local bus market and whether the likely reduction in competition is proportionate to the predicted gains to consumers.

2.15 We would view the same issues, and level of analysis, to be appropriate to the initial business case production for English as well as Scottish Quality Contract schemes.

Preliminary consultation

- 2.16 Some advance consultation could take place at this stage- e.g. with operators, DfT and adjacent local authorities. This is likely to cut down the time required for consultation on the detailed scheme later, especially if a consensus can be reached at the planning stage. Cross-boundary issues would need to be considered and addressed at this stage. This would require discussions and agreements with District Councils and the adjoining LAs that were affected, to ensure that they did not object, and/or to include them in the promotion of the QC.

Response of operators

- 2.17 The involvement of bus operators at this stage a matter of choice for applying PTAs. Informal soundings could be taken from operators – especially if they are likely to be sympathetic to a QC application – and this could shorten the consultation stage later. The PTA can request data on patronage from the incumbent operator to assist in detailed planning (section 143 of the Transport Act 2000 and section 43 of the Transport (Scotland) Act 2001), relating to:

- The total number of journeys undertaken by passengers on the local services operated by the operator in the authority's area or any part of its area;
- The structure of fares for those journeys; and
- The total distances covered by vehicles used by the operator in operating those local services;

though it is unlikely that this information alone will greatly assist in any QC that does not cover the whole PTA area and where the application envisages any other than minimal change to the current network.

- 2.18 Any information must be kept confidential to the PTA and accordingly cannot be disclosed to third parties for the purposes of consultation in relation to the QC proposals or any QC tendering process.
- 2.19 Whether involved at the planning stage or not, it is probable that operators would lobby generally against the scheme at this point. If included, some operators may participate in the planning stage in order to gather information on the scheme, and to be better able to mount any judicial challenge later. Indeed, operators could be informed that a Quality Contract is a possible alternative to proceeding with other options (e.g. a Quality Partnership).

Risks and obstacles

- 2.20 Potential obstacles at the QC planning stage would be:
- Demonstrating the case for a QC in the absence of a breakdown in partnership;
 - Demonstrating the advantages flowing from the QC process (compared with a QP);
 - Defining a robust ‘do minimum’ scenario or series of scenarios for the purpose of building a business case;
 - Estimating patronage levels for the planning process without involving operators;

- Deciding on optimal sizes for a scheme;
- Handling cross-boundary services in the QC scheme;
- Funding requirements of new schemes.

2.21 Making the case for a QC is the first step and will require detailed consideration and probably funding for scheme development and legal advice. There does not appear to be a one-size-fits-all solution and any QC would have to be robust enough to demonstrate:

- Consistency with the Bus Strategy (or in Scotland, Local Transport Strategy);
- The indispensability of the proposed QC scheme to achieve the policies set out in that strategy; and
- Value for money.

2.22 There would need to be some definition of the appropriate level of detail needed to produce a business case and the extent to which sensitivity tests were required to consider different ‘futures’. The case would need to be sufficient to satisfy the Secretary of State or Scottish Executive and to defend the scheme against potential legal action.

Output of this stage

2.23 The outputs of this stage would include a fully costed and planned business case for a Quality Contract (which could be used to gain approval to proceed within the sponsoring PTA) and documentation of the proposed QC to form the basis for consultation.

Measures to enhance practicability of QC

2.24 The following measure would help to enhance the practicability of this stage of the QC process:

- Clarification by the National Authority that QCs would be acceptable even if they were not the last resort policy;
- Guidance by the DfT indicating the components of the case for a QC which would normally be expected and the way the criteria for acceptance of a QC input might be interpreted; and
- Transport and bus strategies that were clear in their objectives and the intended route to achieving them.

3. SCHEME CONSULTATION

Process (Clause 125)

- 3.1 The DfT's notes suggest that consultation on a QC could be undertaken in around 6 months. However, it is highly likely that developing the case for a Quality Contract will be an iterative process, with general consultation taking place before and after the "official" consultation period.
- 3.2 The consultation would start with publication of a notice describing the proposed scheme, the reasons for wishing to make the scheme and the location where a copy of the scheme may be inspected. The applying PTA has an obligation to consult widely - in particular with:
- Adjacent local authorities and District Councils;
 - Local bus operators in the area affected and any other holders of PSV operators licences or community bus permits who may be affected;
 - Other transport operators;
 - The Traffic Commissioner;
 - User groups such as local passenger groups;
 - The Police;
 - Other concerned parties (e.g. large local employers, community groups, etc).

Response of operators

- 3.3 Operator soundings and reports in the trade press suggest that the large UK based operators are hostile to development of QCs (although European operators, including some who already operate in the UK and who have experience in their home markets of bus franchising, are more welcoming to the concept).
- 3.4 The passenger transport areas of the PTAs and PTEs are the core businesses for the large UK operators (TN14). Large UK operators would be highly likely to formulate an alternative offer to avoid, or even undermine the case, for a QC. The operator might propose a Quality Partnership arrangement, the exercise of other powers of the promoting authority, or voluntary measures which they and other operators would be agreeable to, to deliver the objectives of the QC, at a significantly lower cost and avoiding the potential disruption of a change in operator. Refuting these claims could be difficult, and introduce significant delays on the consultation for the scheme and the development of its business case, but it would be important to do so, in order to avoid subsequent challenges to the QC scheme on the basis that the consultation had not been conducted in accordance with a fair procedure or that the decision to proceed with the QC scheme was taken without taking into account all relevant factors.

- 3.5 For example, it may be difficult for a sponsoring PTA to respond to a bus operator who proposed a Quality Partnership which delivered (say) 50% of the benefits of the QC at no cost, or (say) 70% at a 10% increase in cost. There are a number of considerations here:
- Could the QC business case be demonstrated as “better value for money” than an operator led QP which provided 70% of the benefits at 10% of the cost?
 - How long would it take to assess an operator proposal on this basis against the envisaged QC?
 - Could a QP be made binding to tie in the operator to their proposal for the whole period of the QC scheme (i.e. 10 years in England and Wales and 7 years in Scotland)?
 - Could all operators in an area be tied into such a proposal, and how would new entrants over the period of the partnership be dealt with?
 - Could a PTA or PTE put significant revenue subsidy into services in the proposed area provided by its partner operators without infringing legislation?
 - Would a QP on this basis be immune to the pressures of the deregulated environment (e.g. competition on some corridors, not necessarily by low quality operators, driving quality down)?
- 3.6 Operators could also claim that any failings in bus provision in a local area are the LA’s fault for not delivering appropriate priorities, poor information, lack of commitment to QP negotiations. etc. In some of these areas (e.g. bus information) the Bus User Surveys may bear out the operator’s claims. The applying LA will have to consider responses in this instance.
- 3.7 Experience from other work we have carried out suggests that small operators and European operators with an interest in the UK market may be more likely to support QC applications and see it as an opportunity to gain entry to a market they are otherwise effectively barred from by the dominance of large operators.
- 3.8 At the end of the day, the behaviour of the listed operators will be driven by the desire to protect their share prices. Share prices become more volatile when there is uncertainty and the potential for shocks. Sometimes possible shocks can be anticipated, such as a significant loss of future turnover through loss of a tendered service, and therefore can be well trailed in advance. They cease to be a surprise and are taken into account over a period of time.
- 3.9 Major institutional investors seek to avoid the potential for shocks and would be likely to seek to use their influence with the groups to avoid them. The large groups are therefore unlikely to take any action that will reduce their share price unnecessarily. Thus we think operators are unlikely to employ “Nuclear” options (e.g. deregistering networks) at the consultation stage, as the PTEs are very valuable territories.
- 3.10 Nonetheless, we believe it is unlikely that the large operators would seek consensus to seek a win-win situation that resulted in a QC. We think they are more likely to seek to slow and frustrate progress towards a QC by resorting to delaying tactics with the Secretary of State or Scottish Executive or the courts. If they lose then they will, in the end, co-operate with the process.

Response of District Councils and adjacent local authorities

- 3.11 District Councils and adjacent local authorities are statutory consultees for a Quality Contract. Their likely concerns could include:
- The implications for their general transport strategies;
 - The implications for the local highway authority of the area, and the degree to which it committed them to deliver – as yet not fully defined – schemes to improve bus services over the life of the QC;
 - Whether a quality contract would adversely affect cross boundary services (e.g. by undermining their commerciality in the QC area);
 - Whether the QC would focus new vehicle investment on the QC area, at the expense of other parts of the PTA area and adjoining areas;
 - Maintaining accessibility for their own populations in the wake of large-scale service revisions.
- 3.12 In some cases, such concerns might be reduced by inviting them to promote and enter into the QC scheme jointly with the promoting PTA.
- 3.13 Clearly, an important feature of the consultation process would be to involve local highways authorities and reassure adjacent authorities that there would not be an adverse affect on their own services.

Other consultees

- 3.14 The applicant would have to consult other groups – such as local bus users. Most PTEs have their own bus user groups and it is anticipated that that these groups would form the nucleus of bus user consultation.
- 3.15 Large local employers, train operating companies and local airports would have to be consulted. Their response should be supportive if the quality of service or the reach of the public transport network were to be improved.
- 3.16 The Traffic Commissioner would have to be consulted, although discussions with them in other projects suggest they wish to maintain a neutral stance, although can provide information on the volume of complaints they have received about operators, any reliability surveys undertaken, information on safety records, etc.
- 3.17 Wider information dissemination to the local population in the QC area may be necessary to explain what is being proposed and to counter any ‘dis-information’ being put about by operators opposed to the QC. This could add significantly to the cost of making a QC application.

Revision of the proposals

- 3.18 If challenges during consultation raised legitimate concerns that had to be addressed, this could lead to changes becoming necessary. If the changes were significant, then it may be possible that the consultation process would have to be extended or repeated.

Risks and obstacles

3.19 There are a number of risks and obstacles at this stage:

- **Timing** - the procedure allows ample scope for delaying tactics, both in the consultation phase, and when the scheme is submitted for approval to the Secretary of State (when any modifications to the scheme which operators successfully argue for with the Secretary of State will need to be re-submitted by the authority for re-consultation - see section 126(5)(b) of the Transport Act 2000 and Section 16(6) of the Transport (Scotland) Act 2001).
- **Action by operators to undermine the grounds for a QC during the process** - If an operator or operators introduce measures which achieve the objectives of the QC scheme, albeit on a non legally binding basis, before the Secretary of State has approved the QC scheme, the legal grounds for introducing it may cease to exist.
- **Negative PR by operators** – negative press briefing and publicity to encourage local residents’ fears that their public transport service was under threat.
- **Reduction in quality of service** - Operators may cut services/service quality or raise fares to undermine public support for the proposals – a particular risk when it will take 2-3 years to deliver a QC.
- **Diversion of resources** - The amount of resources and energy going into promoting (and opposing) the QC application will almost certainly deflect attention from developing partnership proposals. Indeed it is likely that operators would, at least temporarily, withdraw from the development and implementation of partnership-based initiatives elsewhere in the PTA’s area, claiming that effort in developing these is potentially abortive.

3.20 Given these risks and obstacles, it is possibly that this process may take longer than the DfT’s indicative six months. It is likely, for example, that the pilot applications will be seen as “test cases” within the industry and may take significantly longer to get to the “fully-developed-scheme” stage. All sides will be learning new skills in this situation and therefore, even without the “test case” effect, the process for early applications is likely to be elongated. As we have noted above, it will be in the interests of major operators to participate in a way that slows down the process.

Output from this stage

3.21 This note assumes that the output of this stage will be a fully developed scheme which can be submitted to the Secretary of State for approval. It will need to be a fully developed case for the QC which demonstrates that it has the support of majority of consultees, provides greater prospect of net benefit than alternative approaches and is deliverable.

Measures to enhance the practicability of QCs

3.22 The following measures would help to enhance the practicability of introducing a QC by reducing the risks during the consultation stage of the QC process:

- Precede the consultation with public debate and publicity on the standard of service being provided and the need to make a step change and strengthen competition by introducing competition **for** the market;

- Within the consultation documentation, commit to underpin frequencies and networks in a way that builds public confidence but does not unacceptably reduce future flexibility in network/service specification;
- Explore the potential for extended QPs with operators prior to consultation;
- Consult with key stakeholders beforehand to ensure acquiescence or approval in principal; and
- Present a range of options for consultation, as this allows any one of the options to be chosen following feedback, and reduces the risk of needing to amend the proposed scheme and therefore repeat the consultation.

3.23 DfT may be interested in QC applications that include a higher level of revenue subsidy than was currently involved in supporting the network. This could be to pay for improved service levels, better quality and lower fares. However, the would require a sound value for money case for any proposed additional spending. The source of such additional funding has yet to be clarified, although there do not appear to be any insuperable procedural constraints preventing additional central government funding flowing directly to PTEs.

4. NATIONAL AUTHORITY CONSIDERS SCHEME

4.1 The relevant National Authority for consideration of a QC application in England is the Secretary of State. In Scotland the Scottish Minister is the National Authority for determining applications.

Process (Clause 126)

4.2 The published scheme, plus any modifications accepted as a result of the consultation stage, would be used to make an application for QC powers to the National Authority. The application must include the PTA's reasons for wishing to make the scheme, and any other such information as the National Authority may require. At present this information requirement for English QCs is not defined, but it is likely to include a full description of the scheme, the analysis of the need for the scheme, and its benefits and disbenefits as referred to in paragraph 2.16 above and the results of the consultation. This information should all be available from the submissions to gain approval from the PTA.

4.3 During this stage any consultee may make written representations. Local authorities and other consultees could also object to the QC, or seek modifications to it, at this stage. Section 133 of the Transport Act 2000 (England) enables the Secretary of State to make regulations concerning the procedure to be adopted for making, varying or revoking quality contract schemes including provision for the holding of enquiries or hearings, but it is understood that no decision has yet been made to make such regulations. It is, however, possible that the Secretary of State might encourage local authorities to hold formal or informal enquiries or hearings before proceeding with quality contracts at which a wide range of objections could be considered.

4.4 The National Authority may approve the scheme, with or without modifications if he is satisfied that:

- The necessary conditions are met (i.e. demonstrating that it is the only practicable way of delivering the PTA's objectives or in Scotland that it is necessary for the purpose of implementing the PTA's general policies and, in either jurisdiction, that it does so economically, efficiently and effectively); and
- That it is in the public interest.

4.5 The criteria for determining public interest have not been defined and could be set very widely. For instance, it might be argued that any risk of de-stabilising bus services elsewhere as a result of any retaliatory competition would be against the public interest.

4.6 Given the wide range of consultees, the possibility of modifications to a proposed QC being considered by the relevant National Authority is high. Moreover, it is more likely that the National Authority would modify a fundamental aspect of the proposed Scheme than tinker at the edges. Accordingly, if there were to be a modification, it is quite likely to require significant re-consultation and Authorities promoting QC schemes should allow for possible delays.

- 4.7 The DfT guidance suggests this stage will take three months. In our view this would be a minimum, and could be a much longer period if a modification is proposed and an additional round of consultation is required. The National Authority will also be aware of his legal responsibility acting in a quasi-judicial capacity and will want to be fully briefed and to consider carefully the full impacts of decision, particularly for the early applications. It is not unknown for highly contentious decisions relating to transport projects to take many months, though the issuing of clear guidance covering the issues that the National Authority will want to see covered in the application will help in minimising the elapsed time for this stage of the process.

Response of operators

- 4.8 After the application, operators would be able to make representations opposing the QC. They could pursue many angles:
- Arguing that the benefits of the QC have been over-estimated, or the scheme is not financially robust and would require more Government support;
 - Offering the same benefits via the Quality Partnership approach;
 - Seeking to persuade the National Authority that the legal grounds for a QC have not been established or that the consultation conducted by the promoting authority has been inadequate in terms of time, content, or range of consultees;
 - Seeking to demonstrate that the adoption of the scheme will lead to a deterioration in services elsewhere because of the loss of economies of scale/opportunities for cross subsidy;
 - Arguing on the basis of the anti-competitive effects of the proposals and the losses to shareholders, or loss of jobs, in their organisations which could result from adoption of the QC's scheme.
- 4.9 Operators may also seek to change the proposed terms of the quality contract scheme, which may lead to modifications and further consultations.
- 4.10 A challenge through the courts is unlikely at this stage, as the Courts are unlikely to entertain a judicial review challenge whilst the decision of the Secretary of State is outstanding. It is likely to be the Secretary of State's decision, or the making of the scheme by the promoting authority, which triggers any challenge through the Courts.

Risks and obstacles

- 4.11 Key uncertainties of the English QC procedure, relevant at this stage are:
- Lack of detail in information required by the Secretary of State;
 - Difficult to anticipate interpretation of “public interest” criterion.
- 4.12 Key risks at this stage include:
- Successful representations by operators leading to rejection or modification proposals;
 - Additional costs and delay if modifications require further consultation;
 - Rejection on public interest grounds, which the PTA cannot influence;
 - Lack of resourcing to support decision making by the National Authority.

- 4.13 Consideration by the National Authority is likely to take more than 3 months if there is sustained challenge from operators or adjacent authorities. Early schemes, particularly if they are seen as “test cases” within the industry could take significantly longer, especially if there is sustained opposition from operators. A six-month period for the National Authority’s approval process may therefore be more realistic.

Outcomes

- 4.14 If the QC proposal is accepted, the PTA can proceed to make the scheme, invite tenders and so on.
- 4.15 If the QC proposal is rejected, the PTA may abandon the scheme or re-plan it to take account of the reasons for rejection and submit a new application.

Measures to enhance the practicability of QCs

- 4.16 The following measures would help to enhance the practicability of introducing a QC by reducing the risks during the decision making stage of the QC process:
- Guidance issued by the National Authority on the information required for him to consider an application;
 - Definition of the decision-making process, say, including discussion with the applicant concerning any proposed modifications;
- 4.17 Pre-defined criteria to apply to the “public interest” test, at least to cover most cases.

5. PTA MAKES THE SCHEME

Process (Clause 127)

5.1 If the National Authority grants QC powers, the applying PTA has 6 months to make the scheme. The PTA “makes” (or promulgates) the scheme by setting out its key characteristics as specified in the Act. In England and Wales the scheme must specify:

- The area to which it relates;
- Date of first operation (which cannot be earlier than 21 months after the scheme is made in England);
- Period of operation of the scheme (which must not be more than 10 years in England and Wales and 7 years in Scotland);
- An outline of the local services to be provided under the scheme;
- An outline of the features of the proposed invitations to tender for QCs;
- Any local services or class of local services which are to be excluded from the scheme and any conditions attached to that exclusion;
- Any quality partnership schemes which are varied or revoked as a result of the adoption of the scheme.

5.2 The PTA would have to publish a statutory notice that the scheme had been made within two weeks of its making.

Outlining the services and features of the ITT

5.3 We assume that most of the planning work for the scheme will already have taken place at the scheme planning stage (section 2), so, in ideal circumstances, making the scheme will be little more than restating the scheme submitted to the Secretary of State.

5.4 Nonetheless, this would be the time to develop the contractual approach in more detail, since before this time, such work could have been nugatory. The outline of the approach for ITTs may be straightforward, as the authority should have clear idea over what features it wishes to specify, and what risks it wishes to retain and transfer. However the drafting of a contract will not be a trivial matter the first time round, as it will be breaking new ground within the UK. Schemes of incentives for good performance/ penalties of poor performance may need to be formulated. This process may be time consuming and involve extensive specialist advice.

Response of operators

5.5 Any challenge through the Courts is likely to occur at this stage, challenging the decision of the promoting authority to make the scheme or the decision of the National Authority to approve it, on one of the following grounds:

- That the legal conditions for making the scheme have not been satisfied, either in terms of the grounds for the scheme to be made or compliance with the statutory procedure for adopting the scheme;

- That the scheme is perverse (for example because it does not pursue the policies which it is claimed to promote) or, was made on grounds other than those claimed;
- That the consultation procedure did not give those wishing to oppose the scheme adequate opportunity to do so or that in making or approving the scheme the National Authority did not take into account all relevant matters or took into account irrelevant matters;
- That the advantages of the scheme are totally disproportionate to the damage to third parties or departed from a commitment previously given to a complainant;

5.6 The courts are, however, extremely reluctant to second guess the decision of a statutory decision maker, and accordingly other than in cases of clear breach of the Transport Act requirements, or clear procedural impropriety, the prospects of successful challenge through the courts should not be great.

5.7 Section 132(6) of the Transport Act 2000, and section 23(7) of the Transport (Scotland) Act 2001 contains provision for regulations to be made permitting the National Authority to revoke such schemes in prescribed circumstances. It is unclear whether such regulations will be made, and if so, what the prescribed circumstances for exercise of such powers might be.

Uncertainties and risks

5.8 The main risk at this stage will be the impact of any legal action by operators to delay or halt the making of the scheme.

5.9 The main uncertainties will relate to:

- The difficulties of preparing ITTs for the Quality Contracts when the information available to the PTA from operators will be limited to the number of journeys, the structure of fares and distances covered by vehicles (see section 143 of the Transport Act 2000 and section 43 of the Transport (Scotland) Act 2001);
- The advisory costs of developing the ITT and draft contract.

Outputs from this stage

5.10 The main outputs of this stage would be the notice of the scheme being made and the draft details of the services, ITT and contracts.

Measures to enhance the practicability of QCs

5.11 The following measures would help to enhance the practicability of introducing a QC by reducing the risks and time period of the “making” stage of the QC process:

- Clarification by the National Authority on what detail is required to “make” the scheme;
- Development of this information in parallel with National Authority’s deliberations (although this risks nugatory work);
- Development of the detailed network plans and contracts in parallel with the “making” rather than in advance.

6. PTA INVITES TENDERS

Process (Clause 130)

- 6.1 A basic procedure for procuring QC's through tendering is set out in section 130 of the Transport Act 2000. Provision is made for UK regulations to supplement these requirements, but none have been made to date.
- 6.2 Where the relevant thresholds for the operation of the EU Services Directive is exceeded by the payment to be made to the operator by the promoting authority (€200,000, subject to further aggregation rules), the requirements of the EU Services Directive and Public Services Contract Regulations 1993 will apply. In this case, the specified process must be followed. In addition, promoting authorities may also need to take into account draft EU Regulation COM 2002/107 which will contain additional provisions relating to the procurement of public transport contracts.
- 6.3 Whether or not the Services Directive applies, the process is likely to take almost a year with no hitches, although this could be shorter for small QCs:
- Period for expressions of interest in response to Invitation (52 days);
 - Invitation to express interest (1 month);
 - Short-listing (1 month);
 - Indicative bids (3 months);
 - Preferred bidder selection (2 months);
 - Negotiation (2 months)

Detailing the QC

- 6.4 Planning of the QC network will have been included in the first stages of the application process. However, more detailed contract terms will need to be settled in the run up to and during the tendering stages, involving negotiations with potential operators, although promoting authorities will have to be careful to ensure that any such contract terms fall within the terms of the overall QC scheme approved by the relevant National Authority.
- 6.5 The overall approach is likely to be dictated by local circumstances, but key points to consider by this stage will be:
- The frequency of service required under the contract;
 - The extent to which fares are to be regulated under the contract and whether revenue risk is to be transferred;
 - The standard of service to be required under the new contract and whether or not this is to be linked to a performance regime;
 - The vehicle specification to be demanded from participant operators;
 - Size of units of operation;
 - Whether the proposed contract is likely to require a subsidy from the promoting authority and if so how such payments are to be structured;
 - Reporting, monitoring and auditing procedures;

- The arrangements, if any, for vehicles or other assets funded by the promoting authority to transfer to successor operators or for the promoting authority to claw back part of the disposal proceeds from such assets at the end of the initial QC contract;
- Information disclosures and other assistance from the original QC operator with re-letting a replacement QC contract;
- Any provisions relating to staff transfers at the end of the proposed contract (either in terms of staff transferring or in terms of an indemnity from the successful candidate against staff automatically transferring, who are not required by a successor operator, under TUPE).

Succession planning

- 6.6 Some promoting authorities may wish to acquire depots or vehicles themselves, and lease them to the operator under a quality contract for the time being, rather than funding that operator to acquire such assets itself (for which clear grant making powers are conferred on passenger transport authorities under section 56 of the Transport Act 1968), to ensure they are available to successor QC operators.
- 6.7 PTEs have the powers to construct, manufacture, purchase, maintain and repair anything required for the purposes of a business conducted by a person providing bus services in their area under an agreement with the executive (section 10(1)(xiv) and 10(2) of the Transport Act 1968). This gives the PTEs powers to own a depot for example, and within a year it is expected that their powers will also be extended so that they can own and lease (but not operate) buses. However, a QC must be awarded by the PTA (and not the PTE), and it is not clear that PTAs have the statutory power to enter into such ownership arrangements. Accordingly, it may be that PTEs be made party to quality contracts, to get around this issue, but the position is not entirely free from doubt.

The scale of a QC

- 6.8 The key issue in determining scale is likely to concern the use and availability of depots. The availability of garage facilities is a key constraint in the London regime – indeed a lack of garages has meant some London contracts are let with little or no competition. A depot may be a convenient “operating unit” for a single QC, but:
- Use of depots as the operating unit would mean large scale QCs (e.g. Leeds has only 3 large depots in the city);
 - Lack of a depot may discourage new entrants to a market;
 - An operator leaving a market may sell their depot facility for another use – so depot facilities may have to be protected in some way.

Transfer of undertakings

- 6.9 In relation to the Transfer of Undertakings (Protection of Employment) Regulations, it is clear that there can be a transfer of undertaking when an activity formerly carried on by one entity, comes to be carried on by another entity by operation of law, even though there is no contractual link between the two entities.
- 6.10 A recent decision of the European Court of Justice (Oy Liikenne AB v Liskojarvi and Juntunen Case C-172/99) on Council Directive 77/187 (which governs the UK TUPE Regulations) is helpful. It indicates, that where a franchise for local bus services comes to an

end and is replaced by a new local bus service franchise, employees will not automatically transfer to the new franchise operator unless material assets of the business (such as vehicles or a depot) transfer to the new franchise operator at the same time.

- 6.11 The decision could also be different where the local bus services subject to the franchise which is awarded to a new operator represented the **whole** of the business of the original franchise operator. Accordingly, whilst each case depends on its own facts, absent a transfer of buses or other major assets to a new operator, the expiry of a quality contract and replacement by a new quality contract should not trigger a transfer of employment of the original operator's employees.
- 6.12 If TUPE is expected to apply, this may have cost implications in two main areas:
- Unsuccessful incumbents could allege that their employees transfer to the new operator of the QC (with their associated redundancy rights), and this could increase the costs of the new operator (particularly if they were then over-staffed as a result)
 - Bidding operators will not be certain that the QC will be renewed (or that they will win it again) and may therefore price the redundancy risk in their offer to the promoting authority.
- 6.13 If TUPE is not expected to apply, then there is a risk that a shortage of drivers is generated as the losing incumbent re-deploys them elsewhere. This could be mitigated by including a QC contract condition that any employee wishing to transfer had to be taken on under existing terms and conditions.

Response of operators – before award of QC

- 6.14 Operators are under no obligation to submit tenders, or to do so at reasonable price levels. However, given the broadly expansionist objectives of the large British bus groups, interest in quality contracts from smaller operators and general value of the PTA areas to bus operators, operating histories in the PTA areas etc, it is likely that operators will submit tenders.
- 6.15 The extent to which the large UK operators will compete for tenders is not known. Incumbent operators will have access to large amounts of patronage and other financial data, as well as existing depots, workforces etc, and this will give incumbents significant natural advantage (particularly as, even if the PTA has patronage or revenue information, it will not be able to disclose it to other tenderers). It is also entirely possible that large UK operators will not challenge each other at local levels at the risk of upsetting their territorial equilibrium at a national level, but new European entrants (such as Connex and Transdev who have acquired a significant presence in the regulated London bus market) may take a different view.
- 6.16 If the majors decided not to compete, then the smaller independent operators would have to be relied on to provide the spur of competition (as they do in London). If they won the QCs from a major competitor, they could also risk retaliatory aggressive competition in their “home” markets.

The phasing of QC applications could be crucial. If a number of PTAs tendered large networks simultaneously it could create a significant “churn” in the market place.

- 6.17 If networks were tendered one-by-one the likelihood of churn may be reduced. This may make the results of any pilot areas as unrepresentative as the Trial Areas were prior to the 1985 Transport Act.
- 6.18 In evaluating the bids, the PTA will need to consider carefully the costs associated with changing operator. As the following section sets out, there are many risks associated with the period following the nomination of the preferred bidder, should that not be the incumbent. These will impact upon the tenderers' bidding strategies and the PTA's evaluation of the bids.
- 6.19 A situation could arise in which the PTA would be forced to accept a QC bid which provided significantly worse service levels or poorer value for money than existing provision, simply because the incumbent operator was the only one with sufficient data to submit an accurately priced bid and/or can deter other operators from bidding by its market power elsewhere.

Response of operators – after award of QC

- 6.20 In England and Wales there must be a period of at least 21 months between making the scheme and it coming into operation. During this time the contract tendering would be decided. Outgoing operators would have time to leave the market, incoming operators would have to time to train drivers, acquire vehicles, depots etc. In Scotland there is no similar provision, but the tendering process must begin within three months of the making of the scheme.
- 6.21 We understand that this period was introduced to provide time for the incumbent (if they were not awarded the proposed QC) to adjust to the new business circumstances, given that the provision was a material change in the regulatory environment at the time the Act was passed. This would minimise the risk of a claim for compensation though human rights legislation. However, given the passage of time since the measure was introduced in 2000, it may now be practicable for the Secretary of State to reduce this period (for all schemes) by order.
- 6.22 If he were to do this, and reduce the period to a much lower minimum, the question as to the appropriate interval changes from “what is the minimum period to ensure that the incumbent cannot claim compensation?” to “what is the minimum period the winning bidder needs to be able to prepare for taking over the service?” Thus the period could be different for each QC, depending on the circumstances, and the bidders could be asked to state the period which would be acceptable to them as part of their bid.
- 6.23 It is likely that awarding contracts to operators to provide services will take in the region of 9-12 months, with a preferred bidder emerging at the end of this time. Once the preferred bidder has been announced there are a number of potential outcomes, largely dependent on whether the preferred bidder is the current incumbent or not.

Selection of preferred bidder

- 6.24 Unsuccessful bidders may challenge the award of a QC Contract, on the grounds that the tendering procedure did not accord with the requirements of the Act or alternatively that it was conducted in a way which unfairly discriminated against the applicant or in favour of the successful candidate. Any such action would need to be commenced within three months of

the successful candidate being selected, and is likely to require proof of serious procedural improprieties, to have any prospect of success.

New entrant is the preferred bidder

6.25 From the announcement of preferred bidder, the incumbent could start to run down their operation, in advance of leaving the area completely. If the tendering process took around 9 months, this would leave the incumbent at least 12 months to run down their operation. There would be positive incentives for the operators to exit from the market in a way that minimised short-term costs.

6.26 A number of actions are possible which could undermine the business case developed by the successful bidder:

- Deregistration of services;
- Redundancy of staff (especially those about to qualify for greater employment rights after 2 years of service);
- Transferring fleet away and replacement by life expired vehicles;
- Increasing fare levels;
- Withdrawal from voluntary agreements (e.g. integrated ticketing);
- Withdrawal from bidding for tendered services and giving notice of withdrawal from services in line with contract conditions;
- Closing/ selling off depots and other assets.

6.27 The PTA and PTE would need to be prepared to use the powers under Section 131 of the Transport Act 2000, to take action for maintaining services without having to go through the full tendering process. However, this is likely to lead to unplanned additional expenditure by the Authority.

Uncertainties and risks

6.28 Major uncertainties include:

- Operators other than the incumbent being deterred from bidding by lack of revenue and patronage data or potential competitor pressure from the incumbent in other markets;
- The time and cost to draft scheme contracts;
- Events occurring between the date of award of the QC Contract and the date it comes into effect which prevent the successful candidate implementing the QC Contract (insolvency, inability to recruit staff or acquire necessary assets etc);
- Lack of “churn” in market for contracts.

6.29 Major risks include:

- Destabilisation of the bus market in other (non QC areas);
- Legal challenge from unsuccessful candidate;
- Incumbent embarks of 12 month run down of services if they do not win (and increased PTA resources required to maintain services in this instance);
- PTAs having to purchase depots, fleets etc to ensure continuity of service;

- Delay to the start of the scheme as new operator purchases vehicles and staffs its new operation.

Outcome

- 6.30 The successful outcome of this phase is the award of QC, following a competitive process without dispute, and the commencement of services by the new operator following a period of continued stability of services.

Measures to enhance the practicability of QCs

- 6.31 The following measures would help to enhance the practicability of introducing a QC by reducing the time period of the tendering stage of the QC process:
- The Secretary of State reducing the minimum period between making the scheme and start of QC services to a shorter period than 21 months. This standard period could be set as the shortest period possible for a small QC, say 6 months. The period for a specific scheme could then be set by the PTA during the bidding process;
 - The procurement process (starting with OJEC notice requesting expressions of interests) could be started immediately the National Authority has given his approval;
 - PTAs/PTEs could consider the purchase of depots during this phase to reduce the barriers to entry for operators. This strategy would need to have been agreed well in advance to ensure consistency with the PTAs policy and funding capacity;
 - The impact on employees of the incumbent operator could be minimised by requiring the bidders to commit to taking on and honouring the terms and conditions of any employees who wished to transfer employment to the winning operator. The most appropriate mechanism for doing this will need to be identified; and
 - The PTEs may need to be ready to react and contract-in bus services if the incumbent starts to de-register services after failing to win the QC bid.

7. QUALITY CONTRACT SCHEME IN OPERATION

Process

7.1 Once the QC has commenced, the Traffic Commissioners will cease to be responsible for monitoring timetable compliance within the scheme area. The PTA takes over these responsibilities. Incentives to meet service requirements and quality thresholds (and penalties for non-compliance) may be enshrined in the service provision contract. The PTA will therefore need appropriate skills, resources, processes and systems to monitor performance and enforce non-compliance, under the terms of the QC scheme and the Quality Contracts themselves.

7.2 The Quality Contract Scheme can last up to 10 years in England (or between 3 and 7 years in Scotland), but each English Quality Contract must come to an end within 5 years. Therefore PTAs promoting QCs will need to issue a second set of tenders after five years of each QC issued under the scheme have elapsed.

Uncertainties and risks

7.3 The main uncertainties are likely to be:

- Quantifying the level of resources required to monitor the QC;
- The success of the newly designed incentive arrangements to deliver the required service quality;
- Defining a mechanism for the PTA providing an ‘operator of last resort’ in the event of QC holding operator failing or being in gross non-conformity with the terms of the QC.

7.4 The main risks are likely to be:

- The inability of the new operator to deliver the service as required;
- The incumbent is seen as having such a major advantage at re-tendering that few bids are received.

Measures to enhance the practicability of QCs

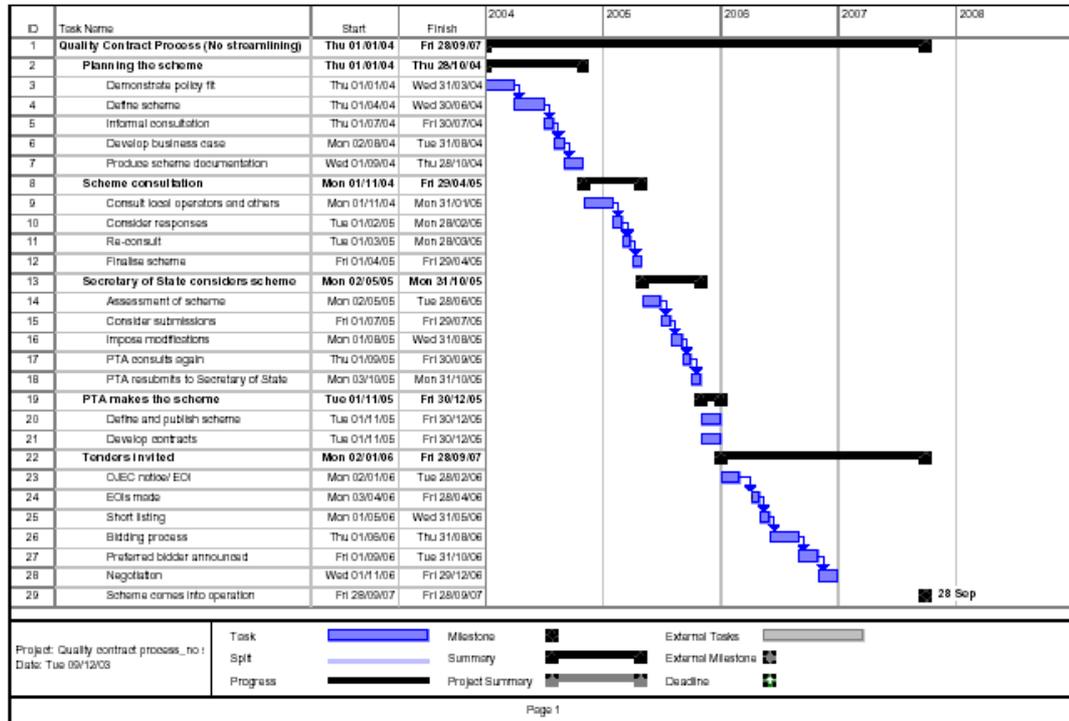
7.5 The following measures would help to enhance the practicability of introducing a QC by reducing the risks of subsequent operation of the contract:

- The PTEs can prepare the regulations etc to revoke a QC if it does not appear to be working.
- PTEs can prepare to procure services without tendering (under Section 131) should this be necessary.
- The terms of the QC should ensure that when the contract is re-bid, barriers to entry can be minimised, for example by ensuring transfer of staff and/or assets, by ensuring that the operator provides the PTA with full commercial information and that this can be released to subsequent bidders.

8. KEY ACTIVITIES IN THE QC PROCESS

Activities without streamlining

FIGURE 8.1 MAIN ACTIVITIES REQUIRED TO APPLY FOR A QC SCHEME



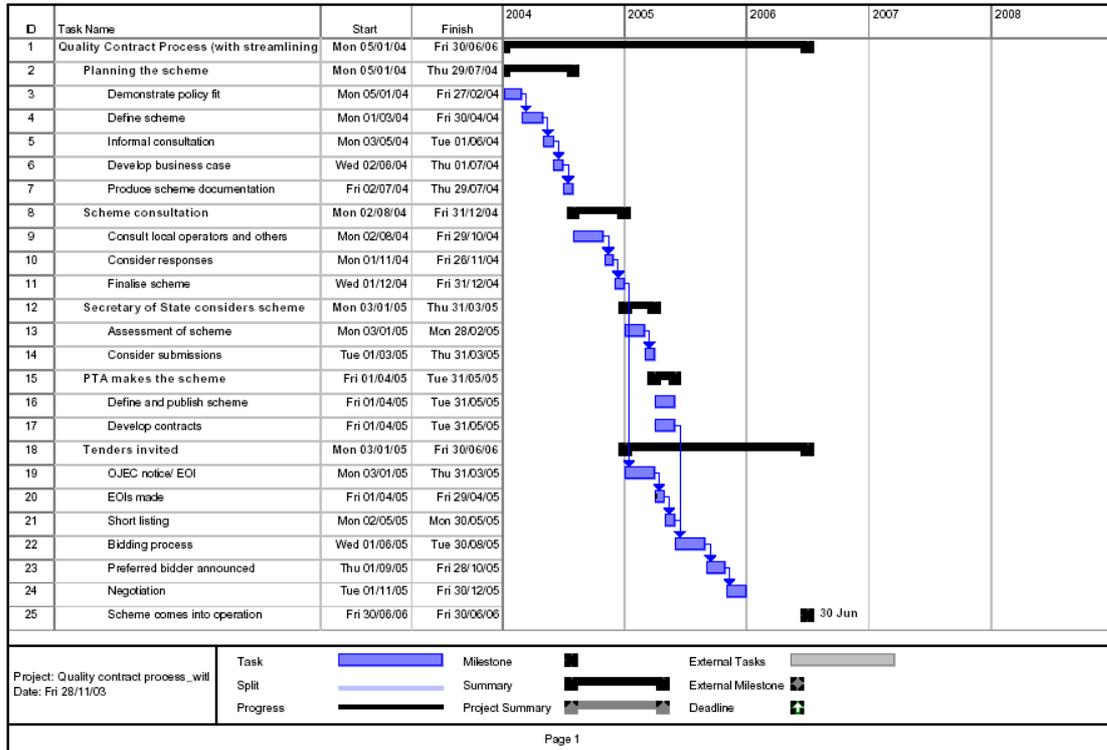
8.1 Figure 8.1 is a Gantt chart showing the main activities required to apply for a QC Scheme and let the subsequent contracts. It shows the situation which we believe applies at present with the way that the QC process is set up under the current legislation for England, and shows a total elapsed time of 45 months. This is made up the following time for each stage:

- Planning the scheme – 10 months
- Publishing the scheme and consultation – 6 months
- National Authority consideration and approval – 6 months
- PTA makes the scheme – 2 months
- PTA tenders and awards scheme – 12 months
- Scheme comes into operation – 9 months

8.2 This period includes time to take account of changes during scheme consultation, modifications proposed by the Secretary of State and the full 21-month period between making the scheme and the start of operations. It also assumes that, to minimise risk of nugatory work, detailed planning awaits the Secretary of State’s decision and the competition process does not begin until after the scheme has been made.

Activities with streamlining

FIGURE 8.2 MAIN ACTIVITIES REQUIRED TO APPLY FOR A QC SCHEME – STREAMLINED



8.3 Figure 8.2 presents the same information, but for a streamlined process assuming:

- Shorter application processing time
- No need to re-consult
- No modifications by Secretary of State
- Initiation of OJEC process when application to Secretary of State is made
- Contract development and shortlisting in parallel with making the scheme
- No delaying action by operators

8.4 It shows a reduced period of 30 months, made up as follows:

- Planning the scheme – 7 months
- Publishing the scheme and consultation – 5 months
- National Authority consideration and approval – 3 months
- PTA makes the scheme – 2 months
- PTA tenders and awards scheme – 12 months (but in parallel for 5 months of this period)

8.5 Scheme comes into operation – 6 months

APPENDIX A

Summary of a QC Application

A1. SUMMARY TABLE

Stage	Timescale	Tasks	Risks	Assessment of risks
<p>PTE draws up QC scheme</p>	<p>None given, but assume between 3 months and 1 year, depending on scale of scheme</p>	<p>Define size and scope of QC (e.g. objectives, area covered, size of individual tenders)</p> <p>Plan QC in some detail (e.g. service levels, fares, integration)</p>	<p>Need to demonstrate advantage of QC over alternative approvals</p> <p>Lack of data for planning</p> <p>Lack of personnel to undertake planning work</p>	<p>Medium – QC schemes will have to focus on things which cannot be delivered otherwise – e.g. lower fares, accessibility strategies, integration benefits or cutting over-bussing</p> <p>High – data held by operators</p> <p>Medium – few skilled bus planners in PTEs or consultants</p>
<p>PTA publishes statutory notices and undertakes consultation</p>	<p>Assume 3 months minimum for consultation and 1 month minimum for consideration of responses</p>	<p>Publish scheme.</p> <p>Consult statutory consultees – e.g. operators, adjacent local authorities, traffic commissioners, bus users' groups, local stakeholders such as large employers</p> <p>Modify scheme in the light of their comments</p>	<p>Large operators may be very hostile or may try to stop scheme by offering concessions.</p> <p>Bus user groups (e.g. NFBU) do not all support QCs.</p> <p>Adjacent local authorities may fear providing better network in QC area will be at expense of their own networks</p>	<p>Very high – PTE areas are for large operators key businesses</p> <p>Medium – probably not a show stopper</p> <p>Medium to high – could water down schemes. Extensive opposition could stop a scheme.</p>

PTA decides to proceed and submits scheme to Secretary of State for approval		SOS considers and evaluates application Opponents make representations SOS proposes modifications PTA re-consults		
S of S considers and approves	Assume 3 months		Operators likely to send representations to S of S to stop scheme Scheme not granted	High – operators will lobby for rejection or modifications Depends on scheme
PTA makes the scheme	Must be made within 6 months of approval		Judicial challenge from operators	Low – unlikely to be successful
PTA publishes statutory notice of made scheme	Must be within 2 weeks of making the scheme			
PTA/PTE invites tenders	Must be invited within 3 months ¹ of making the scheme. QCs	Tender documentation made up and sent out to bidding	Incumbent has all the patronage data etc for existing network – would convey significant benefit in bidding for contracts	High – and difficult to guard against. Under best value legislation you would need a good reason to refuse

¹ Period can be amended by order

	may last up to 5 years	operators	<p>Incomers lack facilities in the markets they will serve – e.g. depots, staff</p> <p>Lack of competition for contracts results in uncompetitive bids</p> <p>Escalation in cost of providing network</p>	<p>bids</p> <p>High – was a big problem in London market – lack of depots can lead to lack of competition for contracts</p> <p>Medium – is likely small operators would bid for contracts as way of gaining entry to new markets</p> <p>Medium to high – especially if a lack of competition for new contracts</p>
Scheme comes into operation	Must not be sooner than 21 months ² from making the scheme		<p>Outgoing operators may be entitled to compensation for damage to/ loss of their businesses</p> <p>Outgoing operators may wind down their operations as they leave markets, leading to bad service performance, lack of investment in fleets and resultant damage to markets</p> <p>No current mechanism for transferring operations between outgoing and incoming operators.</p>	<p>Need to check prevailing EU legislation - DLA</p> <p>Medium – operators may not wish to lose goodwill of PTEs or services in their areas. However, some short-lived disruption in services probably inevitable as depots etc change hands.</p> <p>Medium – mechanism could probably be agreed. PTEs may have to take ownership of depots/ fleets in some circumstances.</p>
LA must keep under review the extent to which the QC scheme is	Scheme may last for up to 10 years		Tender cost inflation at second tendering period after 5 years	Medium – will depend on performance of QC.

² The 21 month period does not apply in Scotland

complied with				

CONTROL SHEET

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