EXPLANATORY MEMORANDUM TO

THE QUALITY CONTRACTS SCHEMES (QCS BOARDS) (ENGLAND) REGULATIONS 2009

2009 No. 3243

THE QUALITY CONTRACTS SCHEMES (TENDERING REQUIREMENTS) (ENGLAND) REGULATIONS 2009

2009 No. 3244

THE PUBLIC SERVICE VEHICLES (REGISTRATION OF LOCAL SERVICES) (QUALITY CONTRACTS SCHEMES) (ENGLAND AND WALES) REGULATIONS 2009

2009 No. 3245

THE QUALITY CONTRACTS SCHEMES (APPLICATION OF TUPE) REGULATIONS 2009

2009 No. 3246

AND

THE QUALITY CONTRACTS SCHEMES (PENSION PROTECTION) REGULATIONS 2009

2009 No. 3247

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instruments

2.1 These instruments relate to bus quality contracts schemes ("QCSs"). The instruments make provision about:

- the constitution, practices and procedures of "QCS boards" (independent boards whose remit is to provide an opinion on local transport authorities' proposals for QCSs in England);
- special arrangements for the registration and procurement of local bus services, in particular during the period of transition to a QCS; and
- employment protections for bus company employees affected by QCSs.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 These five instruments are being made to give full effect to provisions relating to QCSs in the Transport Act 2000 ("the 2000 Act"), as amended by the Local Transport Act 2008 ("the 2008 Act"). Provisions in the Transport Act 1985 ("the 1985 Act") are also relevant during the period of transition to a QCS.

4.2 Two further instruments are also being made alongside these five instruments (and will come into force on the same day):

- the Local Transport Act 2008 (Commencement No. 2 and Transitional Provision) Order 2009, which (among other things) brings into force, as respects England, the relevant amendments made by the 2008 Act to the legislation governing QCSs in the 2000 Act; and

- the Quality Partnership Schemes (England) (Amendment) Regulations 2009, which are covered by a separate Explanatory Memorandum.

4.3 The making of the Quality Contracts Schemes (Pension Protection) Regulations 2009 fulfils an obligation imposed on the Secretary of State by new section 134B(9) of the 2000 Act (which is inserted by the 2008 Act).

5. Territorial Extent and Application

5.1 The five instruments extend to England and Wales, but are expressed to apply as follows:

Instrument	Application
Quality Contracts Schemes (QCS Boards) (England) Regulations 2009	England only
Quality Contracts Schemes (Tendering Requirements) (England) Regulations 2009	England only
Public Service Vehicles (Registration of Local Services) (Quality Contracts Schemes) (England and Wales) Regulations 2009	England and Wales
Quality Contracts Schemes (Application of TUPE) Regulations 2009	England and Wales
Quality Contracts Schemes (Pension Protection) Regulations 2009	England and Wales

5.2 Where the instruments apply in England only, the power to make the relevant provision as respects Wales rests with the Welsh Ministers rather than the Secretary of State.

5.3 The three instruments which apply in Wales come into force, in Wales, on the date to be appointed by the Welsh Ministers for the coming into force of the relevant

provisions in the 2008 Act or, in the case of the Public Service Vehicles (Registration of Local Services) (Quality Contracts Schemes) (England and Wales) Regulations 2009, the relevant provisions in the 2000 Act.

6. European Convention on Human Rights

6.1 Sadiq Khan MP, Minister of State, has made the following statement regarding Human Rights in relation to two of the instruments (which modify the application of primary legislation):

"In my view the provisions of the Quality Contracts Schemes (Tendering Requirements) (England) Regulations 2009 and the Public Service Vehicles (Registration of Local Services) (Quality Contracts Schemes) (England and Wales) Regulations 2009 are compatible with the Convention rights."

6.2 As the other three instruments covered by this Memorandum are subject to negative resolution procedure and do not amend or modify the application of primary legislation, no statement is required in respect of those three instruments.

7. Policy background

- ***What is being done and why***

7.1 A QCS is a scheme made by a local transport authority (or two or more such authorities acting jointly), under which the authority defines the local bus network that is to operate within the area of the scheme. Subject to certain exceptions, local services within that area may be provided only under exclusive contracts ("quality contracts") awarded by the authority. The effect of a QCS is to suspend in that area the existing deregulated market for local bus services that operates outside London.

7.2 The 2008 Act makes various amendments to the existing legislation under which QCSs may be made in England and Wales, aimed at making QCSs a more realistic option for local authorities where they are in the public interest. The five instruments covered by this Memorandum supplement and give full effect to the relevant primary legislation (as amended) in England and, so far as it is within the power of the Secretary of State, in Wales. Key aspects are discussed in the following paragraphs.

7.3 The 2008 Act amends various procedures to be followed before a local transport authority may make a QCS. In particular, authorities in England will no longer require the approval of the Secretary of State before making a QCS. Instead, they will be required to submit their proposals to an independent board, known as a "QCS board", whose remit will be to provide an opinion on whether statutory notice and consultation requirements have been fulfilled and whether the proposed scheme meets certain criteria set out in the 2000 Act. The purpose of the *Quality Contracts Schemes (QCS Boards) (England) Regulations 2009* is to make detailed provision about the constitution, practices and procedures of QCS boards. The policy intention is to ensure proper independent scrutiny of proposed QCSs in England, while avoiding undue delay to the implementation of schemes that are in the public interest.

7.4 Local authorities and interested parties have expressed concern about the risk of disruption to bus services during the period of transition to a QCS, particularly if an existing bus operator withdraws services during that transitional period. Similar concerns were expressed in Parliament during the passage of the Local Transport Bill. The main purpose of the *Quality Contracts Schemes (Tendering Requirements) (England) Regulations 2009* and the *Public Service Vehicles (Registration of Local Services) (Quality Contracts Schemes) (England and Wales) Regulations 2009* is to increase the scope for the local authority, where such a situation arises, to make arrangements for another operator to provide replacement services. The instruments seek to achieve this by:

- increasing the period of notice that an operator must give before withdrawing existing services (or varying them to the significant detriment of passengers) during the transitional period, thereby allowing the local authority more time to arrange for replacement services to be provided; and

- relaxing certain requirements on the local authority to invite tenders before entering into service subsidy agreements with operators during that period, thereby enabling the authority to arrange for replacement services to be provided more quickly.

7.5 The 2000 Act (as amended) also provides certain protections for bus company employees who may be affected by the coming into force of a QCS. The *Quality Contracts Schemes (Application of TUPE) Regulations 2009* supplement the relevant provisions in the 2000 Act with a view to ensuring that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") take effect where they are deemed by the 2000 Act to apply in relation to QCSs.

7.6 The 2000 Act also requires the Secretary of State to make regulations to protect the pension rights of certain employees who, by virtue of TUPE, transfer from one operator to another on the coming into force of a quality contract. That obligation is fulfilled by the *Quality Contracts Schemes (Pension Protection) Regulations 2009*.

- ***Consolidation***

7.7 These are new instruments, which make only minor consequential amendments to existing instruments. Consolidation is not therefore considered appropriate at this time.

8. Consultation outcome

8.1 Drafts of the five instruments covered by this Memorandum, and of accompanying guidance, were published for public consultation in July 2009. 25 responses were received, including from local authorities and bus operators (and their representative bodies), bus passenger representative groups and trade unions. The responses largely supported the proposals, though bus operators were strongly opposed to the proposal to increase the notice period for withdrawing or varying existing local services during the period of transition. However, most other

respondents supported this proposal, taking the view that it would help to protect the interests of passengers who depend on the services in question.

8.2 Respondents offered various suggestions for further improvement to the draft Regulations. Principal changes made in light of consultation responses include:

- a revised definition of "principally connected" in the *Quality Contracts Schemes (Application of TUPE) Regulations 2009*. This definition is important because it determines which employees affected by the coming into force of a quality contracts scheme are entitled to transfer to a new operator under TUPE; and

- a shortening of the period within which local authorities can provide a "clearance certificate" permitting the registration or variation of a local service operating within the area of a QCS otherwise than under a quality contract.

8.3 The Administrative Justice and Tribunals Council was also consulted in accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007. The Council offered no comment.

8.4 A full summary of responses, and the Government's response to the consultation, are available at www.dft.gov.uk/localtransportact.

9. Guidance

9.1 Draft guidance was published as part of the consultation package referred to above. Respondents largely felt that the guidance was helpful and comprehensive, and offered comments on a number of specific issues. Revisions to the guidance have been made in the light of those comments and a final version will be available at www.dft.gov.uk/localtransportact.

9.2 Parts of the guidance are issued as statutory guidance to local transport authorities in England, QCS boards and the senior traffic commissioner. The effect is that they are required to have regard to the guidance in so far as it is expressed to apply to them. The guidance will also be of interest to bus operators, though they are under no statutory obligation to have regard to it.

10. Impact

10.1 The impacts on bus operators include the safeguards provided for their interests by independent scrutiny by QCS boards, potential redundancy cost savings for existing operators where staff transfer to a new operator by virtue of TUPE, the costs of providing workforce information in connection with TUPE, and a reduction in commercial freedom to scale back services during the period of transition to a QCS.

10.2 The impacts on the public sector include the costs involved in constituting and running QCS boards, though there will also be savings as a result of removing the requirement for approval by the Secretary of State. Costs associated with the employment protection provisions will be reflected in the contract prices paid by local authorities, but those protections deliver important benefits to bus company workers

and the transfer of experienced staff to operators of services under a quality contract should ease the transition to the new system. Other benefits arising from the instruments include the potential for reduced service disruption for passengers during the transitional period and reduced costs for local authorities who would need to act in response to such disruption.

10.3 An impact assessment covering the five instruments is attached to this Memorandum.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 Small businesses could be particularly affected by the implementation of a QCS, but may find it harder to get their views heard. Accordingly, the scrutiny role played by QCS boards could be particularly important to smaller operators.

11.3 It is acknowledged that other aspects of the instruments will affect small businesses, but this is considered necessary in order to protect the interests of the travelling public and bus workers.

12. Monitoring & review

12.1 The impact of the 2008 Act provisions about QCSs, including the related regulations, is expected to be the subject of post-legislative scrutiny in due course.

13. Contact

Matt Tyler at the Department for Transport (tel: 020 7944 2284 or email: Matt.Tyler@dft.gsi.gov.uk) can answer any queries regarding the instruments.

Summary: Intervention & Options

Department /Agency:	Title:	
Department for Transport	**Impact Assessment of Regulations giving full effect to Local Transport Act 2008 provisions re quality contracts schemes**	
Stage: Final		**Date:** 7 December 2009
Related Publications: Local Transport Act 2008		

Available to view or download at:

http://www.opsi.gov.uk (with the Explanatory Memorandum accompanying the Regulations)

Contact for enquiries: Matt.Tyler@dft.gsi.gov.uk **Telephone:** 02079442284

What is the problem under consideration? Why is government intervention necessary?

The Government identified a need to empower local authorities to secure better-quality local bus services, to deliver benefits to passengers and provide more people with a realistic alternative to the private car. The Local Transport Act 2008 contains various measures designed to achieve this end, including reforms to existing legislation to make quality contracts schemes ("QCSs") a more realistic option. These provisions need to be supplemented by secondary legislation before they can be brought into force. The Act places an obligation on the Secretary of State to make certain Regulations.

What are the policy objectives and the intended effects?

The purpose of these Regulations is to give full effect to the reforms to QCSs and to provide certain protections for bus passengers, operators and employees. In particular, they aim (i) to minimise the risk of disruption to services, and consequent detriment to passengers, during the period of transition to a QCS; (ii) to make provision about the constitution of "QCS boards" which will provide an independent opinion about proposed QCSs, and about the procedures and practices of these boards; and (iii) to provide suitable protections for bus company employees who would be affected by a QCS.

What policy options have been considered? Please justify any preferred option.

There is not a realistic "do nothing" option: the Act places a statutory duty on the Secretary of State to make regulations about pension protection, and more generally it is unrealistic to expect the desired outcomes to be secured in the absence of regulation. The need for further regulation in this area was agreed by Parliament during the passage of the Local Transport Act 2008. The intention is to issue statutory guidance about the QCS legislation, but that would not by itself be sufficient to guarantee the necessary protections.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? As part of wider post-legislative scrutiny of the Local Transport Act 2008, in accordance with "Post-Legislative Scrutiny - The Government's Approach" (March 2008, Cm 7320).

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Sadiq Khan .....Date: 7th December 2009

Summary: Analysis & Evidence

Description: **Make regulations to give full effect to provisions in the Local Transport Act**

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ none monetised	
Average Annual Cost (excluding one-off)	
£ none monetised	

Description and scale of **key monetised costs** by 'main affected groups' Although this assessment does not monetise the costs and benefits arising specifically from the Regulations, the impact assessment published alongside the Local Transport Bill included broad estimates of costs and benefits that might arise from the implementation of a typical quality contracts scheme.

Total Cost (PV) **£ none monetised**

Other **key non-monetised costs** by 'main affected groups' Costs to operators include reduced commercial freedom to reduce services in the transitional period, and of providing workforce information in connection with TUPE. Costs arising more generally from the employment protections will be reflected in the contract price paid by the local authority.

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£ none monetised	
Average Annual Benefit (excluding one-off)	
£ none monetised	

Description and scale of **key monetised benefits** by 'main affected groups' See under 'costs' above. It is not possible meaningfully to distinguish the impact of the Act from that of the Regulations that are the subject of this impact assessment.

Total Benefit (PV) **£ none monetised**

Other **key non-monetised benefits** by 'main affected groups' Bus passengers benefit from reduced disruption to services in the transitional period; bus workers benefit from the employee protections; and bus operators benefit from an explicit right to give oral evidence to QCS boards about proposed schemes.

Key Assumptions/Sensitivities/Risks The extent of any costs and benefits will depend on the number of authorities choosing to make QCSs, and the nature of any schemes that are made.

Price Base Year	Time Period Years	**Net Benefit Range** (NPV) **£ n/a**	**NET BENEFIT** (NPV Best estimate) **£ n/a**

What is the geographic coverage of the policy/option?			England and Wales	
On what date will the policy be implemented?			11 Jan 2010 (in Eng)	
Which organisation(s) will enforce the policy?			see evidence base	
What is the total annual cost of enforcement for these organisations?			£ n/a	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£ n/a	
What is the value of changes in greenhouse gas emissions?			£ n/a	
Will the proposal have a significant impact on competition?			Yes	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ n/a Decrease of £ n/a **Net Impact** **£** n/a

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

1. In Great Britain (outside London), bus services are operated in a deregulated market by private-sector bus operators. The Transport Act 2000 ("the 2000 Act") contained provisions allowing local transport authorities in England and Wales to make "quality contracts schemes" (QCSs), which follow essentially the London-style model of bus contracts. Under a QCS, the local authority defines the network of bus services to be provided in the area of the scheme and those services are operated by private-sector operators under contract to the authority. This approach has the potential to offer substantial benefits to passengers as it enables the local authority to procure a bus network that takes into account the social benefits arising from high-quality bus service provision (e.g. environmental benefits, reduced road congestion and enhanced access to goods and services including for vulnerable or disadvantaged households) as well as the commercial benefits (e.g. revenue).
2. No QCSs have yet been made under the 2000 Act. Various reasons for this were identified in the Government's bus policy review conducted in late 2006 (see *Putting Passengers First,* Department for Transport, December 2006). Those reasons included the legislative hurdles that local authorities had to meet under the 2000 Act: first, a requirement that a QCS must be the "only practicable way" to meet the authority's policies and, secondly, a requirement that any scheme in England must be approved by the Secretary of State. The Local Transport Act 2008 ("the 2008 Act") reforms the existing legislative provisions about QCSs, with a view to making them a more realistic option for local authorities where they are demonstrably in the public interest.
3. The impact assessment for that legislation outlined the rationale for those changes, including the likely benefits and costs. In summary, benefits accrue to passengers (in the form of higher-quality services) and to society more widely (by meeting a social need for public transport, helping to tackle congestion and improving the environment), and also potentially to operators (through increased patronage). Many of the costs of those improvements will fall in the first instance to bus operators but will be passed on to some combination of the local authority (through the contract price) and to passengers (through fares). The allocation of costs between authorities and passengers will depend on the terms of the quality contracts. Incumbent operators who fail to win quality contracts will lose business.
4. The reforms contained in the 2008 Act deliberately left a number of more detailed matters to be dealt with in secondary legislation and cannot be brought into force until that secondary legislation is in place. The Government has therefore consulted on five sets of Regulations which will come into force at the same time as the 2008 Act reforms. These Regulations are the subject of this impact assessment and can usefully be divided into three groups:

- Provisions to ease the potentially difficult transition from the current deregulated market, to a QCS;
- provisions about the constitution, procedures and practices of the "QCS boards" which will provide an impartial opinion about proposed QCSs in England (in place of the requirement for Secretary of State approval); and
- provisions to protect the interests of bus company employees who would be affected by a QCS.

5. The Regulations will apply in England and in some cases (consistent with the devolution arrangements) in Wales. To the extent that they will apply in Wales, they will come into force there on a date to be appointed by the Welsh Ministers for the coming into force of certain provisions in the primary legislation.

6. In many cases, the Regulations add detail to the primary legislation and it is therefore not meaningful to seek to disaggregate the impacts of the Regulations from those of the primary legislation. Rather, they are best viewed as a coherent whole.

7. It is important to emphasise that the Regulations do not, of themselves, impose any immediate costs on business: it is only when local authorities choose to implement QCSs that costs arise from the Regulations. The primary legislation provides the *option* for local authorities to choose to make QCSs and, where they do so, they have substantial discretion in terms of scheme design. Because the impact of the legislation will depend crucially on future decisions taken by local authorities, it is not practicable to provide detailed estimates of costs and benefits arising – but some very broad estimates of potential impacts were reported in the impact assessment for the Local Transport Bill. Local authorities are obliged to consult on any proposals and would need to evaluate carefully the costs and benefits arising from any proposed QCS in order to show that the statutory "public interest" criteria, which include a requirement for the authority to demonstrate that the proposed scheme will implement local transport policies in a way which is economic, efficient and effective, are met.

Prior consultations

8. The proposals relating to QCSs originate from a bus policy review carried out in late 2006 (mentioned above). This review involved extensive discussions with bus operators, local authorities, bus passenger representatives and other interested parties. The draft Local Transport Bill was subject to pre-legislative scrutiny by the House of Commons Transport Committee and a full public consultation during 2007, and proposals were revised in the light of that scrutiny and consultation.

9. The Regulations covered by this impact assessment were brought forward in response to points raised during the consultation on the draft Bill, during its Parliamentary passage, and in other discussions with interested parties. The Regulations themselves have also been subject to a full public consultation.

Costs and benefits of quality contracts schemes

10. The impact assessment published alongside the Local Transport Bill provided an assessment of the potential costs and benefits that are likely to arise from the implementation of quality contracts schemes. It is difficult to quantify with any certainty the costs and benefits that might arise from different schemes, because so much will depend on the local circumstances and on local scheme design. Nevertheless, the impact assessment presented an estimated range of costs and benefits that might arise from a QCS covering a single conurbation, concluding that such a scheme could deliver net annual benefits of £33 million to £71 million. Smaller schemes would, of course, be expected to deliver more modest net benefits. But it is important to re-emphasise that these estimates are sensitive to assumptions about the scale and nature of any scheme, and it would be inappropriate to attach too much weight to these estimates. Individual scheme proposals would need to be accompanied by a careful analysis of benefits and costs.

11. In qualitative terms, the costs likely to arise from a scheme include:

- damage to or loss of business where operators fail to win quality contracts;
- costs of designing, tendering, implementing and administering a QCS;
- costs to bus operators and local authorities of tending for quality contracts and of meeting their obligations under the contracts they enter into (which would include the costs of delivering service enhancements); and

- potential for disruption to the network during the period of transition.

12. Benefits are likely to include:

- benefits to bus passengers of enhanced service quality, better integration with other modes, etc;
- savings arising from a reduction in unnecessary duplication of services and "over-busing" on corridors where this currently exists;
- environmental benefits; and
- modal shift from car (and other modes) to buses, reducing congestion and improving local air quality.

13. Operators have pointed out that because bus networks are inter-related, impacts could extend beyond the area of the scheme itself.

The transitional period

Options considered

14. During previous consultation, local authorities and bus passenger representatives have highlighted the risks that could materialise during the period of "transition" from the deregulated market to a QCS. In particular, it is possible that an existing bus operator might be unsuccessful in bidding for quality contracts, and might therefore decide to wind down his existing services at the earliest opportunity.

15. Operators are normally required to give a minimum of 56 days' notice before withdrawing an existing service. Even so, withdrawal in the transitional period could leave a substantial gap between the existing operator's withdrawal and the coming into operation of the QCS. Passengers who depend on the withdrawn services would therefore be left stranded, unless the local authority took action to "fill the gap".

16. A number of options have been proposed for addressing this concern:

- preventing existing bus operators from withdrawing or scaling back their services during the transitional period;
- extending the current 56-day notice period;
- preparing a voluntary Code of Conduct about how existing operators and local authorities might work together during the transitional period; or
- doing nothing.

17. The Government considers that the first of these options would impose an unacceptable constraint on existing operators, as it would require them to continue operating services – for a period that local authorities suggest could be over 12 months in some circumstances – even if changing circumstances meant that those services were running at a significant loss.

18. Equally, doing nothing is not judged to be an acceptable option, as it would fail to address the risk of existing passengers being left stranded with no service for a period. Given that many people rely on bus services as their only way of getting to school, work, shops and other destinations, the Government considers that some action is needed.

19. Some interested parties have suggested that a voluntary Code of Conduct could help to address the risk. The Government invited views on whether such a Code could be helpful; the majority view was that it would not, as a voluntary Code was felt unlikely to be sufficiently powerful to override an operator's commercial considerations. Some of those who suggested that a Code could be beneficial felt that it would need to be binding in some way, though it is not obvious how this would be achieved short of regulation.

20. The focus of the Government's proposals, then, is to balance the interests of private-sector operators (which militate against excessive restriction on their commercial freedom) with those of passengers and local authorities (where the key concern is to ensure continuity of service provision). The Public Service Vehicles (Registration of Local Services) (Quality Contracts Schemes) (England and Wales) Regulations 2009 and the Quality Contracts Schemes (Tendering Requirements) (England) Regulations 2009 therefore contain provisions aimed at ensuring that, once an operator has given notice of his intention to withdraw or scale back existing services, the local authority has time to put in place arrangements for another operator to "fill the gap" by the time the existing operator actually stops or cuts back his services.

21. The specific provisions include:

- increasing the notice period for withdrawals and some variations, from 56 days to 112 days. The intention is to allow enough time for the local authority to find another operator to step in before the expiry of the notice period, while not constraining operators' commercial freedom more than necessary.
- relaxing certain statutory requirements that could otherwise prevent the local authority from making alternative arrangements in time to avoid any gap in service provision.

Costs

22. The main cost is the reduction in commercial freedom for existing bus operators during the period of transition to a QCS, resulting from the proposal to increase the notice period for service withdrawals and certain variations. Operators noted in response to consultation that it could be difficult for them to maintain services during the transitional period if their workforce began seeking alternative employment.

23. Different operators also expressed differing views on how operators might respond to a QCS: some felt that services would be retained for as long as they remained profitable, while others took the view that operators would want to withdraw their services at the earliest opportunity once it became apparent that a QCS was likely to be made.

24. A further potential risk is that, where an operator does serve out the full 112-day notice period, it may be in their long-term commercial interests to redeploy high-quality vehicles elsewhere, instead using lower-quality vehicles in the QCS area during the transitional period – with consequent detriment to passengers.

Benefits

25. The main benefit of the proposal is that, where an operator does opt to withdraw or scale back services, it should be possible for the local authority to make arrangements to "fill the gap". This will benefit the passengers who depend on those services, many of whom would otherwise have had no other way of getting around.

Constitution, procedure and practice of QCS boards

26. The primary legislation replaces the old requirement, in England, for QCS proposals to be approved by the Secretary of State with new arrangements for scrutiny by "QCS boards". A QCS board will be constituted in respect of each proposed scheme; each board will consist of a traffic commissioner (the chairperson) and two independent experts from a panel appointed by the Secretary of State. Schemes in Wales will continue to require the approval of the Welsh Ministers.

27. It is left to secondary legislation to prescribe the detailed arrangements for the appointment of the board members, and to make provision about the procedure and practice of QCS boards. The main provisions in the Quality Contracts Schemes (QCS Boards) (England) Regulations 2009:

- set out the arrangements for designating the board members (including the time by which the designations are to be made);

- require that procedural advice provided by QCS boards be published;
- empower QCS boards to invite interested parties to give evidence to them, to inform their deliberations;
- set out protections for genuinely confidential or commercially sensitive information being made available to QCS boards;
- require QCS boards not to disclose confidential information, or commercially sensitive information, which is supplied to them on an understanding of confidence (unless they would be required to disclose it under the Freedom of Information Act 2000); and
- set a six-week time limit within which QCS boards would normally be expected to publish their opinion and any recommendations.

28. Alternative options would be either to do nothing, or to rely on guidance or other voluntary mechanisms to secure the desired outcomes. Doing nothing is not a realistic option because the primary legislation needs to be supplemented in some respects (e.g. to provide clarity about who appoints the QCS board members), and because the desired outcomes are sufficiently important (e.g. respecting confidentiality or granting a right for certain interested parties to give evidence orally to a QCS board) that they cannot be left to voluntary mechanisms. Failure to prescribe a time limit for QCS boards would risk their deliberations becoming unduly protracted, creating unnecessary costs and uncertainty for bus operators and local authorities in particular.

Costs

29. The costs associated with these Regulations are not expected to be substantial. Some of the costs fall on the public sector (e.g. designating QCS board members and giving notice of the designation). Bus operators, local authorities and other interested parties would incur some modest costs in giving evidence to QCS boards, though such evidence would normally be restating what had already been said to (or by) the local authority during the earlier public consultation period.

Benefits

30. The benefits of these Regulations include:

- clarity about how the primary legislation is to operate (e.g. as regards appointment of QCS board members);
- openness and transparency in the giving of procedural advice by QCS boards, so that the same information is available to all;
- affording interested parties with a suitable opportunity to submit evidence to QCS boards. Bus operators in particular have emphasised the value they attach to having an opportunity to give evidence in person, notwithstanding the costs involved in doing so;
- protecting confidential information, including that supplied by bus operators; and
- avoiding the QCS board process becoming unnecessarily protracted, so helping to minimise costs for all concerned.

Employee protections

31. The primary legislation includes some provisions aimed at ensuring an appropriate degree of protection for bus company employees who would be affected by a QCS. They provide for certain situations to be treated as “relevant transfers” for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“the TUPE Regulations”) which means that bus company employees will benefit from the protections afforded by those Regulations. The primary legislation also requires the Secretary of State to make Regulations to secure pension protection for certain bus company employees who, by virtue of the TUPE Regulations, transfer to a new employer in connection with a QCS.

32. Following consultation on the draft Local Transport Bill, the Government accepted that doing nothing was not an option, as this would leave considerable doubt as to whether the TUPE Regulations would apply, and bus company employees could therefore be substantially disadvantaged by the coming into operation of a QCS. Employee protections were therefore inserted into the Bill following the consultation, and those protections were further enhanced in response to Parliamentary debates on the Bill. Costs and benefits identified in the Regulatory Impact Assessment for the TUPE Regulations themselves (see http://www.berr.gov.uk/files/file23163.pdf) are therefore also relevant.

33. The provisions in the 2008 Act require further detail to be set out in Regulations, in order to give full effect to them. The Government considers, consistent with the view expressed by Parliament when debating the Local Transport Bill, that non-statutory options would fail to provide adequate protection to bus company employees. Accordingly, the Quality Contracts Schemes (Application of TUPE) Regulations 2009 and Quality Contracts Schemes (Pension Protection) Regulations 2009 (which fulfil the obligation placed on the Secretary of State to regulate to provide pension protection for particular employees) include various provisions to give full effect to the primary legislation. This includes provisions designed to help ensure that the TUPE Regulations are workable in the context of QCSs, and to provide a right to pension protection for employees who could otherwise be significantly disadvantaged by the implementation of a QCS.

Costs

34. The principal costs arising from these Regulations are those associated with providing continuity of existing terms and conditions, and pension protection, to employees who transfer by virtue of the TUPE Regulations. The cost is, in effect, the difference between the cost of employing staff on the terms and conditions they are entitled to by virtue of the TUPE Regulations and the proposed pension protection, and the cost of employing staff on whatever terms and conditions the operator would otherwise have offered.

35. Although these costs would be borne in the first instance by the quality contract operator, it is expected that (as in any situation where the TUPE Regulations apply) the costs will be reflected in the contract price and are in effect passed on to the local authority. The local authority will therefore need to factor in those costs when considering whether a QCS would offer better value for money than alternative policy options.

36. Existing operators within the area of a new QCS that has not yet come into operation would also incur some cost in responding to local authority requests for information about those of their employees who would be likely to transfer by virtue of the TUPE Regulations. These are costs that would nevertheless arise later in the process as a result of the TUPE Regulations themselves (which also impose requirements as to consultation with affected workers), but as a result of the Quality Contracts Schemes (Application of TUPE) Regulations 2009 such costs would also arise earlier in the process than in a normal TUPE transfer.

37. This is necessary in order to make TUPE and pension protection workable in practice: the local authority will need to include information (suitably anonymised) about existing operators' workforce when they issue invitations to tender for quality contracts. Without such information, operators would be unable to price their bids and local authorities would be unable to judge the likely affordability or value for money of proposed schemes. The Government does, however, recognise the need to keep the costs of these additional information requests to a minimum; the Regulations empower local authorities to request only such information as is necessary to enable bidders or the local authority to calculate the costs and liabilities that are likely to be involved. This point is also reinforced in the statutory guidance. The Regulations provide for information to be requested only in connection with the first round of quality contracts in a particular area. In relation to second and subsequent rounds, the local authority would need to ensure that the preceding contracts required the operator to provide the necessary information at the necessary time, and the associated costs would be reflected in the price of the relevant contract.

Benefits

38. The principal benefit arising from these Regulations would be the employment protections afforded to bus company employees. In the absence of the Regulations, affected employees could find themselves being made redundant where their existing employer failed to win quality contracts and perhaps employed by a different operator on materially worse terms and conditions. This benefit is the corollary of the principal cost outlined above – employees benefit from better terms and conditions than they might have received in the absence of these protections; the cost of better terms and conditions is met initially by the bus operator but is passed on to the local authority in the contract price.

39. Existing operators also benefit from the application of the TUPE Regulations to situations relating to QCSs. If an existing operator fails to win quality contracts, then he may have no alternative but to make existing staff redundant – and hence to bear the associated redundancy costs. By contrast, where such staff transfer to a new operator by virtue of the TUPE Regulations, the existing operator will not need to bear these redundancy costs. This benefit is likely significantly to outweigh the cost to the same operators of supplying workforce information (mentioned above).

40. Finally, the TUPE Regulations and pension protections mean that whichever operator wins quality contracts they can expect to have access to an existing, trained workforce. This should help to ensure that a good standard of service will be provided under the QCS. It should also help to promote fair, healthy competition in the tendering process, helping to promote value for money from the local authority's perspective.

Competition assessment

41. In effect, a QCS substitutes "competition for the market" in place of "competition within the market". In practice, there is generally little on-road competition at the level of individual routes in the current deregulated market; only a small fraction of routes are subject to competition at any point in time. It is envisaged that tendering for quality contracts would normally be attractive to a number of different operators, providing genuine competition for the market. However, the design of any QCS will be a key determinant of its impact on long-term competition: where a QCS is made up of a number of separate contracts (rather than just a single contract), it is more likely that there will remain a number of different operators in the local area, helping to preserve competition in future tendering rounds.

42. The Regulations covered by this impact assessment could affect competition in a number of ways. First, the provisions about the "transitional period" relieve the local authority of certain requirements to tender for contracts in certain situations. Competition for those contracts is therefore potentially suppressed. However, the provisions apply only in situations where there is an urgent need to take action to preserve services for passengers, and where contracts will be short and temporary (because a QCS is shortly to come into force).

43. Secondly, the proposal to increase the notice period for service de-registrations and variations in the transition to a QCS could affect competition. However, the effect is judged to be marginal, because (i) it is likely that competition within the market will be weaker during the transitional period (because there is little incentive to enter the market when a QCS is in the offing), and (ii) the existing 56-day period will continue to apply for new service registrations (so there is no suppression of new entry to the market in any case).

44. Thirdly, the provisions about TUPE and pension protection will help to ensure a level playing field and hence promote competition in the tendering process for quality contracts. In the absence of these provisions, potential new entrants to the market would be at a significant disadvantage if they did not have a readily-available pool of existing staff to operate services.

45. Provisions about QCS boards are not judged to have any impact on competition.

Impact on small firms

46. The impact assessment for the Local Transport Bill acknowledged that small firms operating within the area of a QCS could be particularly affected by it. This is a feature of QCSs generally; not specifically of the Regulations covered by this impact assessment. For the most part, it is not anticipated that these Regulations would have a disproportionate impact on small firms. Scheme design may be important in reducing the impact on small firms: where a scheme is made up of several different contracts, or where sub-contracting of contracts is an option, there would be greater opportunity for small firms to bid for and win such contracts. Schemes could also help small operators by excluding certain types of services from their scope (e.g. school transport) so leaving some opportunity for smaller operators to remain active in their local niches even if they do not win quality contracts. Alternatively small operators could join together to submit consortium bids.

47. However, it is recognised that smaller firms may be less well placed to absorb the impact of longer service deregistration periods in the period of transition to a QCS, should they find themselves required to continue operating services that have ceased to be commercially viable. This impact needs to be weighed against the benefit to passengers of continuity of service, which is important whether services happen to be provided by small or large operators.

48. To the extent that there are fixed costs involved in supplying workforce information to local authorities under the Quality Contracts Schemes (Application of TUPE) Regulations 2009, smaller firms may be particularly affected.

49. The provisions giving affected operators a right to request an oral evidence session before QCS boards offer an important protection for all operators, but especially for smaller operators whose perspective might otherwise not be heard. In the absence of such a right, there could be a temptation for local authorities and QCS boards to focus their attention more on the views of larger operators, who may have greater capacity to submit detailed written responses.

Other impacts – race, disability, gender equality

50. By themselves, these Regulations are not judged to have any meaningful impact on the other kinds of impacts listed in the ‘checklist’ at the end of this impact assessment.

51. More generally, however, QCSs could have significant (positive) impacts on the environment, and on race, disability and gender equality. This is because:

- better-quality bus services should encourage modal shift away from private car use, so reducing emissions of greenhouse gases and local air quality pollutants; and
- ethnic minority groups, disabled people and women are, on average, proportionately more reliant on local bus services, and will therefore particularly benefit from measures that improve the quality of those services.

52. These issues were considered more fully in the impact assessment accompanying the Local Transport Bill (http://www.dft.gov.uk/pgr/regional/localtransportbill/govresponse).

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

Annexes

None.