Dear Meg,

Notification of Contingent Liabilities entered into by the Department for Transport

It is normal practice, when a government department proposes to undertake a contingent liability in excess of £300,000 and for which there is no specific statutory authority, for the Minister concerned:

• to present a departmental Minute to parliament, giving particulars of the liability created and explaining the circumstances; and
• to refrain from incurring the liability until fourteen parliamentary sitting days after the issue of the Minute, except in the cases of special urgency.

I am writing to notify you of contingent liabilities that have been created by the repatriation of Thomas Cook passengers. These liabilities arose on 23 September 2019.

By way of background, the Thomas Cook Group, ceased trading on 23 September. All Thomas Cook flights have been cancelled and the CAA and UK Government are working together to get passengers home as close as possible to their planned date. Normally, the CAA’s responsibility for bringing passengers back would extend only to customers whose trips are covered by the Air Travel Organiser’s Licence (ATOL) scheme, with the costs of assisting those passengers falling to the Air Travel Trust Fund (ATTF) and passengers self-repatriating and claiming back these costs from the Fund. However, due to the unprecedented size of this failure there is insufficient capacity in the commercial aviation market to enable all of Thomas Cook’s non-ATOL passengers to get home on other airlines. Some passengers would have to
wait for a week, or longer, and many would suffer financial and personal hardship while they waited for an available flight with another airline. With tens of thousands of passengers abroad and with no easy means of returning to the UK, I have therefore instructed the CAA to ensure all those currently abroad are offered assistance.

The following contingent liabilities (both uncapped) have been created by my Department:

- Providing an indemnity created by an agreement with the CAA, under Section 16 of the Civil Aviation Act (1982), for the repatriation of non-ATOL-protected Thomas Cook passengers (the **CAA Indemnity**); and
- Providing an indemnity to the Official Receiver (OR), in his capacity as liquidator of the failed Thomas Cook companies (in liquidation) (the **OR Indemnity**).

In both cases, I was unable to refrain from incurring the liabilities, or to provide the normal 14 sitting days’ advance notice of it due to the rapid development of the situation in the days leading up to Thomas Cook’s insolvency (which occurred while the House was not sitting), and the special urgency that resulted. Furthermore, the terms of the contingent liabilities were commercially sensitive at the point they were given.

The **CAA Indemnity** is identical to that which was provided in relation to the Monarch repatriation exercise in October 2017. The indemnity could be called, in respect of any claim against the CAA if there is a successful legal challenge requiring damages to be paid.

The Official Receiver (OR) was appointed liquidator of the Thomas Cook companies on Monday 23 September 2019. The **OR Indemnity** constitutes two elements and based on the precedent of that which was provided by BEIS to the OR in relation to the insolvency of British Steel in May 2019:

1. An indemnity to meet any shortfall in the OR’s costs following the realisation of the assets of the Thomas Cook companies. This would include any unexpected costs arising from a Services Agreement which the CAA has entered into with the Thomas Cook companies (in liquidation) to keep some key elements of Thomas Cook running in liquidation to facilitate a smooth repatriation of UK passengers (e.g. key IT systems containing passenger information and flight booking details). Without this indemnity the OR would not have taken the appointment. This approach is playing an important role in achieving a smooth repatriation of all UK passengers who were overseas at the time of Thomas Cook’s insolvency. In the absence of this SA there would have been a markedly higher risk of Thomas Cook being immediately wound up. This would have had the effect of creating an
extremely disjointed insolvency process, with CAA having no meaningful basis to plan or control the provision of repatriation flights, and no means of informing affected passengers about their new flight arrangements.

2. The OR also requested, and with my authorisation was provided with, an indemnity against any liabilities arising from any claims brought against him as liquidator. This is reasonable in the case of the OR, who although an office-holder, is acting in his personal capacity and, in this case, was being asked to do something which wouldn’t normally be done in a liquidation, which is to maintain part of the Thomas Cook companies running to provide the services under the SA to the CAA, which is crucial to the repatriation exercise.

Authority for any expenditure required under both liabilities will be sought through the normal Supply procedure. HM Treasury has approved the proposal in principle.

I will also lay a Written Ministerial Statement today on this matter.

Yours ever,

Rt Hon Grant Shapps MP

SECRETARY OF STATE FOR TRANSPORT