



National Audit Office

Memorandum

to the House of Commons
Committee of Public Accounts

Department for Transport

The award of contracts for additional freight capacity on ferry services

FEBRUARY 2019

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Introduction

1 In December 2018, the Department for Transport (the Department) awarded three businesses with contracts to provide additional freight capacity on ferry services between the UK and mainland Europe. These arrangements form part of the Department's plans to mitigate the impact on the transport system if the UK leaves the European Union (EU) without a deal ('no deal'). The additional freight capacity is intended to allow government to prioritise the flow of critical goods into the UK and to enable imports to flow as freely as possible in the event of no deal.

2 This memorandum has been prepared to support the Committee of Public Accounts (the Committee) in its inquiry into the award of the contracts by the Department, in particular the award of a contract to Seaborne Freight (UK) Limited. The factual material in this document is based on a review of papers kept by the Department. We have not evaluated or concluded on the approach taken by the Department. For example, we have not examined the extent to which these contracts fit with the government's broader planning should no deal be agreed with the EU before the UK's exit. In the time available we have not been able to consult thoroughly with the third parties who may be working with the Department or relying on the arrangements the Department is putting in place to mitigate the effects of no deal.

3 This memorandum sets out:

- why the Department has sought additional freight capacity on ferry services;
- how the Department procured the additional freight capacity; and
- the terms of the contracts with the three ferry operators.

4 A timeline of key events is set out in Appendix One. Our scope and approach are outlined in Appendix Two.

Part One

Why the Department has sought additional freight capacity on ferry services

1.1 In July 2018, we reported on the Department for Transport's (the Department's) preparations for exit from the European Union (EU).¹ We identified the significant and complex challenges facing the Department in delivering the wide range of actions required of it to support the UK's exit from the EU. When we reported, securing additional freight capacity was not one of the Department's EU Exit projects.

1.2 In September 2018, the Department began work to secure additional freight capacity. In December 2018, it awarded three businesses with contracts to provide additional freight capacity on ferry services between the UK and mainland Europe. This is part of the Department's plans to mitigate the impact on the UK's transport system if the UK were to leave the EU without a deal (no deal).

1.3 This part outlines:

- the Department's assessment of the impact of a no deal exit on the flow of goods; and
- the Department's business case for intervention.

The Department's assessment of the impact of exiting the EU without a deal on the flow of goods

1.4 Over the summer of 2018, government departments stepped up their contingency preparations for no deal. As part of this, departments have been preparing for potential disruption to the flow of goods across the border.

1.5 During autumn 2018, the government updated its planning assumptions relating to freight crossing the border following cross-government analysis. The Border Delivery Group informed us that while government has designed its customs, agri-food and other control arrangements to ensure goods can flow through the UK border without significant delays, EU Member States will have to impose third country controls on UK goods entering EU, with potential to create significant delays for goods flowing through short Channel crossings in both directions. The updated planning assumptions described a range of possible scenarios, including the 'reasonable worst case' scenario required for contingency planning.

¹ Comptroller and Auditor General, *Implementing the UK's Exit from the European Union: Department for Transport*, Session 2017–2019, HC 1125, National Audit Office, July 2018.

1.6 The previous reasonable worst-case assumption had been that the transport of goods through the short Channel crossings would be significantly disrupted for around six weeks. By the end of October, departments agreed a revised worst-case assumption that normal flow of goods could be reduced by up to 87% across the short Channel crossings, with the most severe disruption lasting for up to six months. Government agreed it as a basis for contingency planning purposes, although the Border Delivery Group informed us it was not considered likely at the time. The Border Delivery Group informed us that since October, the French authorities have launched preparations for enabling flow at the border and therefore the government currently believes that the likelihood of the worst case scenario has reduced since the previous assessment.

1.7 The Department estimates that around 22% of goods travelling between the UK and the EU are transported by lorry on 'roll-on roll-off' (RORO) services through the Port of Dover and the Channel Tunnel. This movement of goods through Dover and the Channel Tunnel (the short straits) accounts for 89% of all UK RORO traffic.² RORO refers to the way the freight is loaded and unloaded. It is usually driven on and off the ferry, allowing for quick movement of goods. The speed and flexibility of RORO services are integral to the operation of 'just-in-time' supply chains across Europe.³

1.8 The Department understands that the Channel crossings are "relied on for the movement of time critical products such as perishable goods, medicines and manufacturing components used in just-in-time supply chains". The Department does not have detailed information on the exact cargo on RORO services. The Department therefore prepared estimates based on input from three departments and information available from industry on what cargo is currently transported.⁴

The Department's November 2018 business case supporting intervention

1.9 During September and October 2018, the Department developed its options for mitigating risks to the freight transport system across the short straits. Its intention was to take steps to "ensure that capacity and flexibility exists for government to prioritise the flow" of certain critical goods and to enable imports to flow as freely as possible into the UK. While the Department would secure the additional freight capacity, it would agree with other departments the process for how this space would be used so that it supports the no deal contingency planning underway across government. This process has not yet been finalised. The Department expects that it will replicate market practices where possible, and that space will be sold to all users at the market rate.

2 There are three short strait routes: Dover to Calais and Dover to Dunkirk via ferry routes, and Folkstone to Coquelles via the Channel Tunnel.

3 We discuss RORO services further in our report: Comptroller and Auditor General, *The UK border: preparedness for EU Exit*, Session 2017–2019, HC 1619, National Audit Office, October 2018.

4 These were: the Department for Business, Energy & Industrial Strategy; the Department for Environment, Food & Rural Affairs; and the Department of Health & Social Care.

1.10 In November 2018, the Department set itself the following objectives in its business case:

- to minimise the negative economic impact on the UK of this event on the day after EU Exit (referred to by government as ‘day one no deal’) by creating new UK–EU freight capacity to reach current flow levels as closely as possible;
- to ensure that capacity and flexibility exist for government to enable the prioritisation of the flow of certain goods if this course of action is considered necessary; and
- to potentially create longer-term resilience for the UK economy by identifying and kick-starting alternatives to the current short strait routes.

1.11 In November 2018, the Department completed its business case for securing additional freight capacity. It estimated that the total cost to the UK economy of six months’ disruption without intervention would be £5.25 billion. This figure included the impact on central and local government, as well as on businesses and people. It based its estimates on the impact of disruption to freight services during 2015, when capacity was reduced by around 8% due to a strike by French ferry workers.

1.12 The Department assessed nine options for action it could take. These are set out in **Figure 1** overleaf. Creating extra maritime freight capacity on new and existing routes was the only option recommended for immediate action, because it was expected to take three to four months to put in place.

1.13 The Department, based on earlier engagement with ferry operators, decided to obtain the extra freight capacity by procuring ‘anchor tenancies’ on additional ferry services. This would involve the Department creating enough demand for a ferry operator to put on a new service. It predicted that offering to buy 20% of freight tickets (capacity) on a new service would achieve this. It could also have the option of purchasing the other freight tickets or, if it decided not to, the ferry operator would have the option of selling the tickets on the open market. Under this plan, for every ticket bought by the Department, another four tickets would become available.

1.14 The Department assessed that this approach would allow it to secure freight capacity equivalent to 25% of normal freight flows. This would increase the flow of goods in a no deal scenario from 13% of normal flows to 38%. It based its assessment on discussions with ports and operators during September and October 2018.

1.15 The Department’s business case suggested that the wider economic costs avoided as a result of contracting ferry services would greatly exceed the costs incurred by the Department and that the value for money obtained would be ‘economically positive’. The Department estimated that the benefit of its planned intervention would be around £1.3 billion, at a total cost to government of £270 million. This benefit would only occur if the UK left the EU without a deal. The Department recognised that estimating the potential impact of no deal on freight transport was very uncertain and sought to reflect this uncertainty in its calculations and its assessment of the value for money case.

Figure 1

In November 2018 the Department assessed nine options for intervention

Option	Department's recommendation	
Do nothing	●	Not recommended
Use communications and soft influencing to encourage the market to prioritise critical imports	●	Recommended as part of a wider package of cross-government measures
Work with EU to improve border checking processes and prioritisation	●	Recommended that this option is pursued, recognising it will be dependent on political context
Use of military vehicles	●	Recommended that Department explores this, recognising that Ministry of Defence may have limited spare capacity
Intervention to shift demand to other forms of freight transport through incentives	●	Recommend that this option is explored but cost-effective delivery is highly uncertain
Intervention to maximise utilisation of existing assets	●	Not recommended at this point but could form part of actions taken closer to day one no deal
Create new freight capacity on new and existing routes – maritime, rail and air freight	●	Maritime – Recommended – delays in taking a decision would reduce chances of securing capacity for day one no deal
	●	Rail and air freight – Recommended, but reserve for decisions at later date due to shorter lead times
Government to purchase spare capacity on existing sailings	●	Not recommended for government intervention at this time as should form part of industry response
Government to purchase and operate vehicles	●	Not recommended

Source: National Audit Office analysis of Department for Transport information

1.16 The Department's business case identified strategic constraints and dependencies in the action it proposed. Some of these are outlined in **Figure 2**.

1.17 The Department's Board Investment and Commercial Committee (BICC) sub-committee on Maritime Freight Resilience gave the go-ahead to proceed as set out in the business case. The BICC is the Department's highest investment board, chaired by the Permanent Secretary, and delegated the investment decision to this sub-committee. A sub-committee was used to make the investment decision due to the shortened timescales for approval. The membership of the maritime sub-committee consists of the Permanent Secretary, the Director General responsible for maritime, the Director General for resources and strategy, as well as the finance director and legal director.

Figure 2

Strategic constraints and dependencies identified in the Department's November 2018 business case

The Department identified key issues which could limit the value of securing additional freight capacity

Issue	Description
Availability of road transport in the UK	Spare haulage vehicles could be sourced, but their use might be constrained by the number of available drivers.
Border checks in UK and EU	The UK can control what checks take place on the UK side of the border. European countries might institute third-country customs checks for UK imports, causing delays. Ferry journeys to the Netherlands and Belgium are less frequent than across the short straits, so it is unlikely that there would be significant queueing at UK east coast ports, even if their capacity is increased.
Any change from accompanied to unaccompanied traffic	<p>Unaccompanied traffic is the transport of wheeled freight without the driver and cab, so requires a driver and cab at each end of its journey. All sea freight on the short straits is accompanied traffic. Roll-on roll-off businesses would need to make changes if capacity was secured with operators offering unaccompanied traffic.</p> <p>Unaccompanied traffic is unsuitable for some goods, including: goods with short shelf lives; some hazardous cargo; goods (such as medicines) that require heightened security; and live animals.</p>
Road capacity	<p>If there are delays around Dover and the Channel Tunnel, the road network in Kent is likely to become congested.</p> <p>Heavy Goods Vehicles serving Kent ports away from Dover may be able to avoid delays if they avoid the strategic road network used for 'Operation Brock'.¹</p> <p>Other UK ports may experience delays and congestion if significant volumes of UK-EU traffic divert from the short straits. The road networks serving these ports may not be able to accommodate increased traffic, but this will depend on the volumes of traffic going through the port.</p>

Note

1 Operation Brock is the Department's plan to mitigate the effects of disruption to cross-border traffic at the Port of Dover following EU Exit.

Source: National Audit Office analysis of Department for Transport information

1.18 On 15 November 2018, the Department submitted its proposal to HM Treasury and received approval for the outline business case on 28 November. Approval was required from HM Treasury as it represented new spending on EU Exit. On 19 November, the Department's Secretary of State wrote to the cross-government European Union Exit and Trade (Domestic Preparedness, Legislation and Devolution) Sub-Committee to seek collective agreement on the proposal, which it received on 30 November.

Part Two

How the Department procured the additional freight capacity

2.1 This part outlines:

- the Department for Transport's (the Department's) consideration of legal issues in the procurement process;
- how the Department tested the market; and
- the Department's evaluation and due diligence process.

The Department's consideration of legal issues in the procurement process

2.2 The Department does not typically act in the freight market and recognised the unusual nature of its project. It sought to satisfy itself that there was a "respectable legal argument" for its actions. It took legal advice in early November, before completing its business case, on whether its actions were within the Department's powers and consistent with procurement regulations.

2.3 The Department relied on common law powers to contract to acquire shipping capacity. There is no specific primary legislation that would allow it to purchase shipping capacity.

2.4 The purchase of any good or service by a department requires a decision about the procurement process. The Public Contracts Regulations 2015 (the Regulations) outline the approaches available and the different circumstances in which they can apply.

2.5 During October and November 2018, the Department considered how to undertake the procurement. It had to decide how to balance the need to act quickly to complete procurement, so services could be ready by 29 March 2019, against the greater legal risks associated with some of the options. Based on its engagement with the industry, the Department had determined that:

- the lead time for new ferry services was three to four months;
- the availability of ferry capacity on the global market was diminishing; and
- if it made its actions public it could prompt a reaction by freight operators in the global market, resulting in less ferry capacity being available to procure for UK routes.

2.6 Typically, public contracts are awarded through a transparent process, with prior notification of the competition being published. The Regulations also allow for the award of a contract through a “negotiated procedure without prior publication”. This allows procurement to be completed more quickly. This can only be done in certain circumstances. The criteria for exemption from a transparent process is “for reasons of extreme urgency brought about by events unforeseen by the contracting authority, the time limits for [other procedures]... cannot be complied with”.⁵

2.7 In this instance, the Department decided to use the exemption for a negotiated process without prior publication. It took the view that it only became clear in late October that its intervention in the market would be needed, for the following reasons.

- Government policy was for a deal with the European Union (EU) to be reached and the expectation was that a deal would be reached and ratified. It was only at this point that no deal became a realistic possibility.
- The likely approach of European countries to border control was better known.
- The Department concluded that there were “unexpected and unforeseeable limitations on the extent to which the market had by that date been able to respond to these circumstances by putting in place contingency plans to deal with this scenario”.

⁵ The Public Contracts Regulations (2015), Section 32 (2) (c).

How the Department tested the market

2.8 Although the Department took a non-transparent procurement route, it proposed to mirror as far as possible a transparent procurement. It used what it referred to as a 'hybrid' approach. This involved pursuing direct awards with ferry operators, while seeking as far as possible to replicate the conditions of a transparent and competitive process by approaching ferry operators and encouraging bids that could be assessed against each other.

2.9 The Department's maritime directorate is responsible for policy issues relating to the UK maritime sector. The Department informed us that through its normal work it has built up an understanding of UK ports and freight operators, including those looking to expand or break into the market. It used this knowledge to identify the operators that could potentially provide additional roll-on roll-off (RORO) freight services.

2.10 Between 16 and 27 November 2018, the Department approached nine operators under non-disclosure agreements. These operators included:

- seven freight companies running from RORO ports;
- one freight company that could potentially run from a port (Sheerness) needing work to develop the necessary port infrastructure; and
- one new freight company (Seaborne Freight (UK) Ltd), that could potentially operate from a port (Ramsgate) needing work to develop the necessary port infrastructure.

2.11 The nine operators were issued with an invitation to tender to provide additional RORO freight capacity. They were asked to submit bids by 14 December.⁶ Invitations to tender are used in competitive procurement processes to generate bids from competing providers. The Department provided potential suppliers with documents used in transparent procurement processes, such as: specification of the services required; the methodology used to evaluate bids; the draft contractual terms; and a questionnaire for suppliers to enable them to assess whether they met any of the grounds for exclusion set out in the Regulations.

2.12 The Department received three bids, which was fewer than it had expected. It informed us that the market had reacted quickly to the wider political climate. There had been an expectation that the draft withdrawal agreement and political declaration on the future of the UK–EU relationship would be finalised at the EU summit in October, or shortly afterwards. The Department informed us that by early December operators were reacting to the increased risk of no deal and were less willing to provide more UK freight services.

⁶ The Department initially ran the procurement over the first weekend of December, with a deadline of 3 December 2018. The Department informed us that because the operators were unfamiliar with government procurement processes, no compliant bids were received. The Department spoke to the operators and re-ran the procurement between 6 and 14 December 2018.

2.13 The Department took the three bids it received through to contract. An overview of the three ferry operators who submitted bids is given in **Figure 3**. The three companies are:

- Bretagne Angleterre Irlande S.A. (Brittany Ferries);
- DFDS A/S (DFDS); and
- Seaborne Freight (UK) Ltd (Seaborne).

Figure 3

Overview of the three ferry operators

Ferry operator ¹	Percentage of UK roll-on roll-off (RORO) market by capacity ² (%)	UK ports RORO freight services currently sail from ³
Brittany Ferries “Brittany Ferries is an established enterprise based in France, with interests in transport, tourism and retail. Ferry services include both passenger and freight ferry, with operations in France, UK, the Republic of Ireland and Spain.”	10	Three Plymouth, Poole and Portsmouth
DFDS “DFDS is a significant and long-established freight ferry and logistics company based in Denmark, with ferry operations in the North Sea, English Channel and the Mediterranean.”	25	Five Dover, Felixstowe, Immingham, Newcastle and Newhaven
Seaborne “Seaborne Freight is a proposed new freight-only ferry service operation between the Port of Ramsgate and Port of Ostend in Belgium.”	0	None Ramsgate proposed

Notes

- 1 Descriptions are taken from the advice the Department commissioned from Mott MacDonald. Where we refer to “Brittany Ferries” we mean Bretagne Angleterre Irlande S.A., where we refer to “DFDS” we mean DFDS A/S and where we refer to “Seaborne” we mean Seaborne Freight (UK) Ltd.
- 2 These are the Department’s figures on the relative size of each operator by share of UK RORO capacity.
- 3 Operators may run additional non-RORO freight services not listed here. Information from the ferry operators’ freight shipping websites, available at: www.brittanyferriesfreight.co.uk/; www.dfds.com/en-gb/freight-shipping; and <https://seabornefreight.com/>. Accessed 29 January 2018.

Source: National Audit Office analysis of Department for Transport information and ferry operator freight shipping websites

2.14 The routes they agreed to put on are shown in **Figure 4**. The Brittany Ferries and DFDS bids were for extra ferry services on existing routes. The Seaborne bid was for a ferry service on a new route from Ramsgate. Ferry services have not used this port since 2013.

2.15 Together these routes provide extra freight capacity in the event of no deal equivalent to around 11% of normal flows across the short straits. This fell short of what the Department expected to achieve through the procurement process. The Department had envisaged that enough providers would come forward to provide capacity equivalent to around 25% of normal flows.

Figure 4
The routes agreed with ferry operators

This map sets out the routes where ferry operators have agreed to run new or additional services, in comparison to the short straits route



- Seaborne
- DFDS
- Brittany Ferries

Note

1 Where we refer to “Brittany Ferries” we mean Bretagne Angleterre Irlande S.A., where we refer to “DFDS” we mean DFDS A/S and where we refer to “Seaborne” we mean Seaborne Freight (UK) Ltd.

Source: National Audit Office analysis of Department for Transport information

The Department's evaluation and due diligence process

2.16 The Department evaluated the bids against a range of criteria. The main criteria and the scoring method used are set out in **Figure 5**. The evaluative criteria were weighted towards the price elements of bids, which accounted for 80% of the potential overall scoring. The remaining 20% of the score addressed the quality of bids. The bids were scored against each other for price and compared against a 'reasonable' price benchmark (**Figure 6** overleaf). The Department also used a series of pass/fail criteria relating to economic and financial standing, as well as compliance with areas such as the Modern Slavery Act 2015 and General Data Protection Regulation.

2.17 The Department also commissioned professional advisers to undertake work to look at the technical, financial and commercial aspects of the three ferry operators. The work the Department asked advisers to undertake is summarised in Figure 6. For work relating to the procurement process up to the end of December 2018, the Department spent approximately £800,000 on its external consultants: Slaughter & May; Deloitte; and Mott MacDonald.

Figure 5
Key elements of the Department's evaluative criteria

Criteria	Description	Scoring method
Economic and financial standing	Assess whether bidders have the necessary economic and financial standing to deliver the services.	Pass/fail
Pricing	Pricing questions include: <ul style="list-style-type: none"> ● price per linear metre of space;¹ ● minimum payment the Department would need to commit to; ● discounts for bulk capacity purchase; and ● cost of any advance payments. 	Pricing section scored out of 80
Quality	Aims of quality questions are to be confident that: <ul style="list-style-type: none"> ● bids meet the strategic requirements of procurement; ● bidders have a clear and effective delivery plan; ● project team in place is capable of delivery; ● the bidder has considered risks and mitigations; ● the bidder has ability to procure vessels; ● suitable and qualified crew will be in place; ● ports on the route possess the necessary infrastructure or bidder will arrange for this to be provided; ● ports on the route possess necessary services and security; and ● appropriate pilotage arrangements will be made. 	Quality section scored out of 20

Note

¹ Freight capacity is often charged per metre length of vehicle (linear metre).

Source: National Audit Office analysis of Department for Transport information

Figure 6

Technical, financial and commercial advice on the bids

Advisory firm	Areas examined
Deloitte	<p>Financial stability: A review of financial information on the ferry operators to assess their financial robustness, including profitability, solvency and liquidity. The assessment was provided as a numerical score.</p> <p>The standard tests could not be completed on Seaborne given a lack of existing financial information due to it only being incorporated in April 2017. Deloitte therefore did not make a formal assessment of Seaborne financial stability.</p> <p>Pricing benchmarks: A benchmarking exercise on market pricing, which compared the projected cost of new services with public information on prices on existing routes.</p> <p>The review indicated that fair market prices were being achieved across the three bids.</p>
Mott MacDonald	<p>Technical: Provision of comfort to the Department that the identified ferry operators have the technical capacity to provide additional freight capacity, above the capacity they currently provide.</p> <p>This identified that Brittany Ferries and DFDS, as established ferry operators, could provide additional capacity. The review flagged “significant execution risks” relating to the Seaborne bid.</p>
Slaughter & May	<p>Commercial and legal risks: Assessment of how commercial and legal risks are dealt with through the negotiated contracts.</p> <p>Background check: Undertook a basic background check on Seaborne and its management to ensure they passed a basic ‘blush’ test. These checks included, for example, Seaborne’s filing history with Companies House, that no winding-up orders had been made against it and that its directors were not disqualified.</p>

Note

- 1 Where we refer to “Brittany Ferries” we mean Bretagne Angleterre Irlande S.A., where we refer to “DFDS” we mean DFDS A/S and where we refer to “Seaborne” we mean Seaborne Freight (UK) Ltd.

Source: National Audit Office analysis of Department for Transport information

2.18 The Department required all bidders to complete a self-assessment against the mandatory and discretionary grounds for exclusion set out in procurement regulations. Grounds for mandatory exclusion include, for example, convictions for certain offences. The grounds for discretionary exclusion include grave professional misconduct, a conflict of interest, or where the bidder has sought to unduly influence the decision-making process. The Department informed us that none of the three ferry operators reported any grounds for exclusion.

2.19 The Department assessed that two of the three bids were non-compliant with the requirements set out in the invitation to tender. As a new business without significant financial history, Seaborne were unable to satisfactorily meet the requirements of the economic and financial standing assessment. DFDS’s pricing was non-compliant, as the initial pricing response did not include all costs as required in the invitation to tender, and the bid was subsequently priced in euros. The Department, considering the information it held on the bidders and the due diligence it had undertaken, decided to award contracts to all three bidders.

2.20 The Department's Accounting Officer recognised that the Department was taking forward a 'novel and exceptional proposition' requiring careful judgement. As such, the Accounting Officer completed, on 20 December 2018, a formal review against the standards of regularity, propriety, value for money and feasibility expected by Parliament for the use of public resources. The Accounting Officer took account of the Department's legal advice. The Accounting Officer concluded that failure to act would mean government would lose the ability to secure ferry capacity that could protect critical goods under a no deal exit. The Accounting Officer judged that the Department had put in place "reasonable measures" to ensure value for money. On 20 December 2018, following the changes to the scope of the Department's initial proposal, HM Treasury approved the Department's request to proceed with the purchase of additional freight capacity.

The Department assessed the Seaborne bid as high risk

2.21 The Department identified that the bid from Seaborne was a high-risk proposition, requiring a different approach to the other operators. It identified material risks to consider ahead of signing the contract.

- Seaborne was a new operation: "although they have an experienced management team, this is a new operation and any new organisation has the potential to face teething troubles". Seaborne does not currently operate from Ramsgate or Ostend and had yet to enter into binding contracts to use those ports.
- Seaborne did not have ships: "they have identified ships for use but need to finalise contracts. The contracting itself is straightforward as long as the ships stay available and we cannot be comfortable until they are chartered".
- Port of Ramsgate: "the port requires a programme of work to get it ready, as at present it can only accommodate occasional RORO use". The Department has entered discussions to provide support and funding to Thanet District Council of up to £3 million for work at the port. On 20 December 2018, the Chancellor of the Exchequer wrote to the Department's Secretary of State asking that officials work to identify the approach to funding this.
- UK Border Force: putting in place what the Border Force requires at the port has a 14-week lead time.

2.22 The Department decided to proceed with the Seaborne bid but put in place additional protections in the contract to reflect the risk that the Seaborne service might not be ready when it is needed. The details of the contracts with all the ferry operators are set out in Part Three.

2.23 On 17 December 2018, the Department asked its legal advisers to do a basic background check on Seaborne. These checks included, for example, Seaborne's filing history with Companies House and that no winding-up orders had been made against it.

2.24 The Department was not aware at the time of contracting of allegations that were made in the press during January 2019 about the directors of Seaborne. The Department informed us that these allegations of impropriety about Seaborne and its Directors were not substantiated by checks (referred to in Figure 6) that the Department had undertaken prior to contract award.

2.25 Issues were also raised in the press about Seaborne's website, such as the terms and conditions of service referring to delivery drivers and meal orders. Seaborne informed us that these terms and conditions were a draft place-holder that contained errors and that its booking system, available only to approved trade customers, will include the actual terms and conditions of sale. They did not reflect the terms and conditions agreed with the Department.

Part Three

The terms of the contracts with the three ferry operators

3.1 This part outlines:

- the contracts with the three ferry operators;
- how the contract conditions differ from each other; and
- whether the Department for Transport (the Department) may sell the capacity it has bought or end contracts early.

Overview of the contracts with the three ferry operators

3.2 The Department negotiated and signed contracts with the ferry operators during December 2018. The Department has stated that the total value of the three contracts is around £103 million. The exact number is uncertain as the Department will pay DFDS A/S (DFDS) in euros, which will be subject to fluctuations in exchange rates. The Department will bear an exchange rate risk on this cost. **Figure 7** overleaf provides an overview of the contracts. Together these routes provide extra freight capacity in the event of no deal equivalent to around 11% of normal flows across the short straits. The Department had expected that enough providers would come forward to provide capacity equivalent to around 25% of normal flows.

3.3 During contract negotiations the three providers asked the Department to increase the amount of capacity it would purchase on each service. The Department informed us that bidders argued that this reflected the level of risk they were taking on. The Department initially planned to purchase 20% of the additional capacity on routes. In the final contracts this was increased to:

- 83% for routes operated by Brittany Ferries (Bretagne Angleterre Irlande S.A.);
- 100% for routes operated by DFDS (DFDS A/S); and
- 50% for routes operated by Seaborne (Seaborne Freight (UK) Ltd).

The operators are free to sell the capacity not bought by the Department.

Figure 7

Overview of the three contracts

Contract details¹	Brittany Ferries	DFDS	Seaborne
Value of contracts ²	£46.6m	€47.3m (£42.1m) ³	£13.8m
Deposit paid by the Department	£0.8m	None	None
Payments monthly in arrears	Yes	Yes	Yes
Number of routes	4	3	1
Number of contracts	8 – separate contracts for each leg of each route	3 – contracts cover both legs of each route	2 – separate contracts for each leg of each route
Extra capacity provided (additional percentage points compared with normal flows)	3.3 percentage points of which the Department has purchased 83%	3.7 percentage points of which the Department has purchased 100%	3.8 percentage points of which the Department has purchased 50%
Accompanied or unaccompanied traffic ⁴	Accompanied	Unaccompanied	Accompanied
Date service must be operational by	29 March 2019	29 March 2019	26 April 2019 or other date as agreed
End of initial period of contract	30 September 2019	30 September 2019	6 months after service commences
Can contract be extended?	Yes	No	Yes
End of possible extension period	29 March 2020	N/A	12 months after service commences

Notes

- 1 Where we refer to “Brittany Ferries” we mean Bretagne Angleterre Irlande S.A., where we refer to “DFDS” we mean DFDS A/S and where we refer to “Seaborne” we mean Seaborne Freight (UK) Ltd.
- 2 The value of the contracts is as published by the Department in contract award notices to the Official Journal of the European Union. The contract values for Brittany Ferries and DFDS are exclusive of VAT, and the contract value for Seaborne is inclusive of VAT.
- 3 The Department used an exchange rate of €1:£0.89.
- 4 Unaccompanied freight is the transport of wheeled freight without the driver and cab, so requires a driver and cab at each end of its journey.

Source: National Audit Office analysis of Department for Transport information

3.4 The Department decided there was a strong case to proceed under revised terms. The Department recalculated a benefit–cost ratio and determined that the changes to the terms compared with those assumed in the original business case did not alter the value for money judgement. The Department received approval from HM Treasury for spending on these contracts. The Accounting Officer undertook an Accounting Officer Assessment on 20 December, as set out in paragraph 2.20, and decided to proceed.

How the contract conditions differ from each other

3.5 The contracts with Brittany Ferries and DFDS are broadly similar. They contain conditions that the operators must meet for the contract to remain valid. These focus on operators showing that the service will be in place by the expected start dates. If the conditions are not met, the Department can end the contracts without incurring any costs itself and seek damages from the operators.

3.6 The Seaborne contract includes conditions to mitigate the risks to the Department. As with the Brittany Ferries and DFDS contracts, if these conditions are not met the Department can end the contract and seek damages. The conditions the Department has put in place for Seaborne include:

- Milestones that allow the Department to track how work is progressing, with termination rights if Seaborne is off course. These include demonstrating by specific dates that Seaborne has: detailed business plans; a clear plan for procuring vessels; entered into binding contracts with Ramsgate and Ostend for use of the ports; and contracted with Thanet District Council for the enabling works that Seaborne will pay for.
- An implementation date at the end of April 2019 rather than the end of March 2019. Seaborne informed the Department that it believed it could be ready by late March. The Department's due diligence suggested that the end of April was more manageable and lower risk. The contract allows for the timeline to move back towards 29 March 2019 if work proceeds ahead of schedule.
- A Department sponsorship team to engage with the work across all the partners. This team has 11 staff.

3.7 The contract with Seaborne also includes a clause that the contract will only come into force if the Department provides up to £3 million in funds to Thanet District Council. These funds are to enable the completion of works required at Ramsgate port so that Seaborne can operate from it by April 2019.

The Department may sell the capacity it has bought or end contracts early

3.8 In the event of a no deal exit the Department plans for government to use the extra freight capacity it has bought. This may allow the movement of priority goods. If government needs to use less of the capacity than is available, the Department has the option of selling the capacity it does not need. Alternatively, the Department could end some contracts early.

3.9 If a deal with the European Union (EU) is agreed and ratified by the end of March 2019, the Department may decide to either use the capacity it has bought or to trigger termination clauses. The Department's agreements with the ferry operators are split across multiple contracts, as shown in Figure 7. The Department could decide to keep some of the routes and end others. The Department might keep some routes if government could use the capacity or if there is market demand and it could be sold.

3.10 If the Department ends contracts early it will need to pay compensation to the ferry operators, as long as they have met their contractual obligations. The termination clauses are different across the three ferry providers. The amount that would be paid to each ferry operator depends on the date at which the Department terminates the contract. We estimate that the maximum early termination charge the Department would pay, which is if it cancelled all contracts ahead of 29 March 2019, is £56.6 million.

3.11 If the date of the UK's Exit from the EU changes, and there is still the possibility of a no deal EU Exit, the Department will need to decide how it wishes to proceed with the contracts. There is no provision for the start date to be delayed, but the Department may seek to negotiate this with the operators.

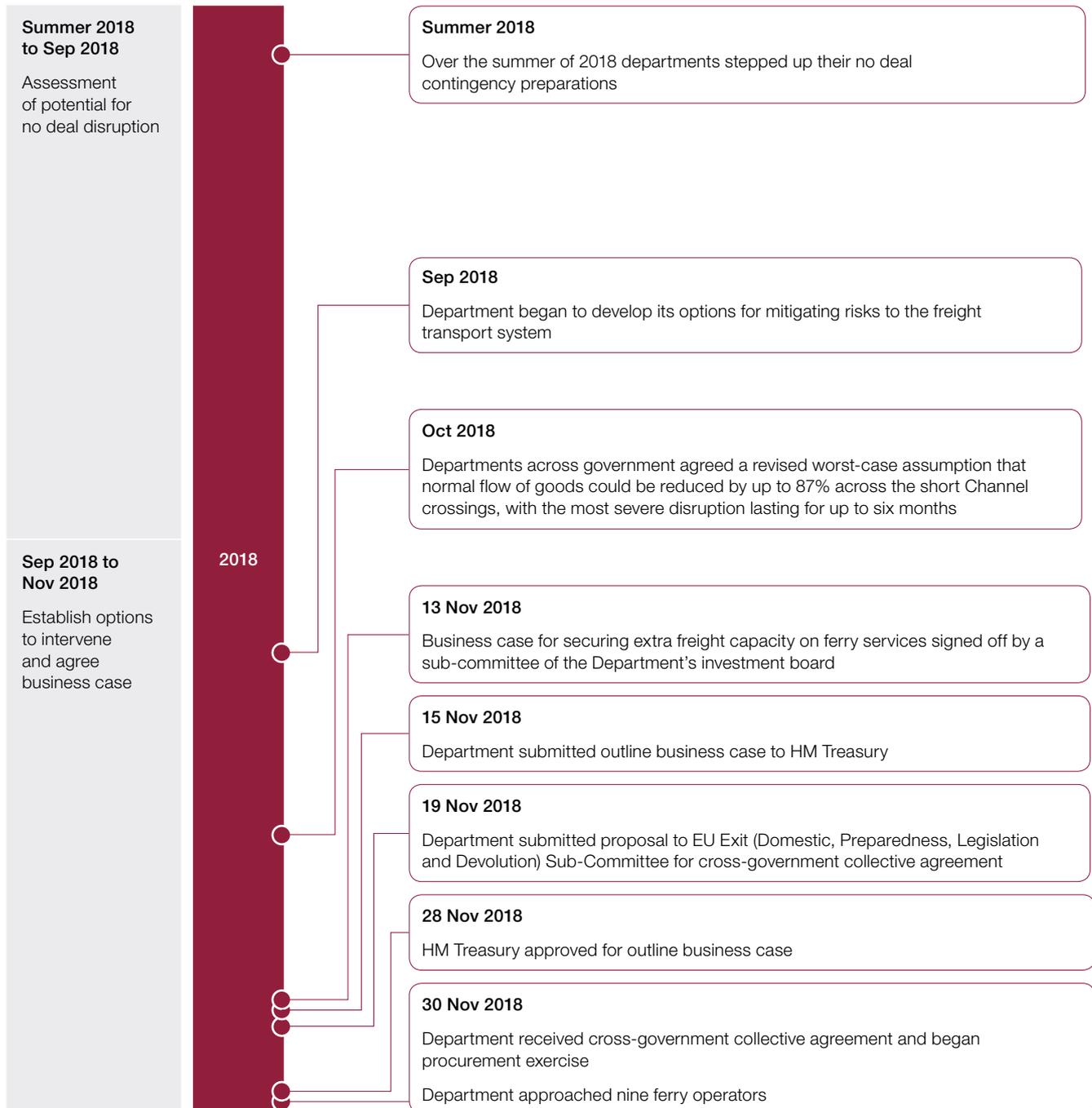
Appendix One

Timeline of key events

- 1 See **Figure 8** overleaf.

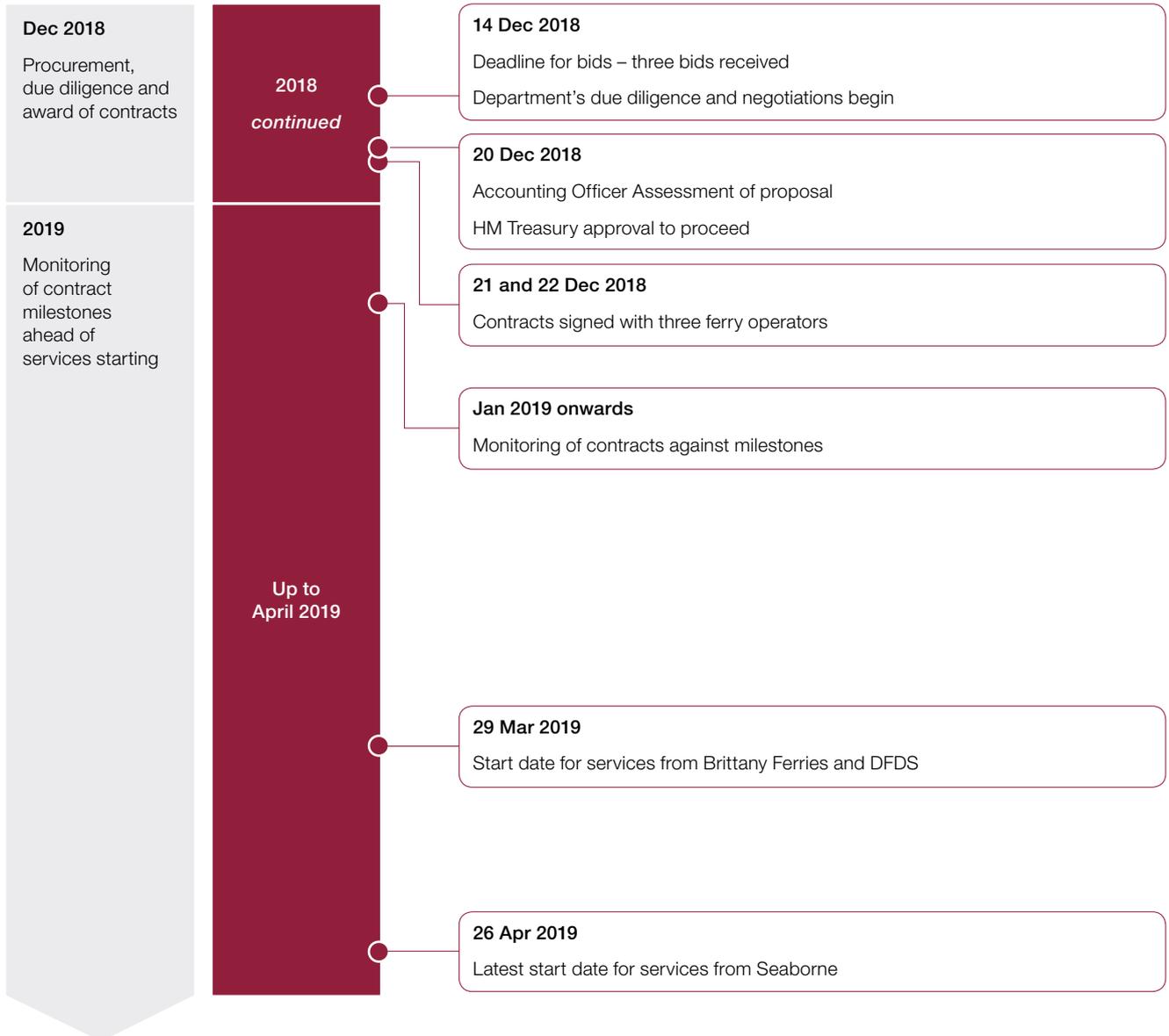
Figure 8

Timeline of key events in the Department for Transport’s award of contracts



Note

1 Where we refer to “Brittany Ferries” we mean Bretagne Angleterre Irlande S.A., where we refer to “DFDS” we mean DFDS A/S and where we refer to “Seaborne” we mean Seaborne Freight (UK) Ltd.



Appendix Two

The scope and evidence base for this memorandum

Scope

1 This memorandum has been prepared to support the Committee of Public Accounts (the Committee) to consider the approach the Department for Transport (the Department) has taken in awarding contracts to three ferry operators.

2 This memorandum is intended to provide the Committee with a factual account of the steps taken by the Department in awarding these contracts. We have not evaluated or concluded on the approach taken by the Department. We have examined:

- why the Department decided additional freight capacity on ferry services was required;
- the process the Department followed in awarding the contracts; and
- the contractual arrangements agreed with the three providers.

Evidence base

3 We have produced this memorandum after reviewing evidence collected between 21 and 29 January 2019. We:

- interviewed officials involved in the award of the three ferry contracts, to understand the decision-making process; and
- reviewed key documentation held by the Department. This included: the Department's business case; documentary evidence of the procurement process; and the signed contracts.

The Department confirmed to us that it provided all relevant documentation to us during our review.

4 The material in this document is based on a rapid review of papers kept by the Department. We have not, for example, had sufficient time to examine the extent to which these contracts fit with the government's broader planning in the event of no deal being agreed with the European Union prior to the UK's exit. We have also not had time to thoroughly consult with the third parties who may be working with the Department or relying on the mitigations the Department is putting in place.

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