



Ministry
of Defence

PERMANENT SECRETARY

[REDACTED]

D/PUS/11/7/1(1)

04 January 2018

Meg Hillier MP
Chair of the PAC
Sent electronically

Dear Chair,

DE&S CONTINGENT LIABILITIES

Thank you for your letter of 19th December 2017 which requested additional information on the DE&S contingent liabilities identified in their review, ahead of the forthcoming oral evidence session on 10th January. You will have noted in the previous letter that we are also currently finalising a wider Departmental review. Although the bulk of relevant contracts reside with DE&S, work is ongoing to confirm the position in other parts of the MOD and I will write to you again to provide an update on the outcome of this. Contingent liabilities identified through the DE&S or the wider review will be reported in our Annual Report and Accounts 2017-18.

The contingent liabilities arising against these contracts should have been approved by HM Treasury and, where necessary, reported to Parliament ahead of contract award and the contract start dates are provided in the attached table. In all cases, the failure to seek HM Treasury approval and notify Parliament of reportable contingent liabilities was only confirmed in December last year following the DE&S review. DE&S is continuing to work with HM Treasury to regularise the position.

Details of the 12 contracts and associated contingent liabilities identified in the DE&S review are attached. You will note that in eight out of twelve of the contracts, the value of the contingent liability has been judged as unquantifiable. In these instances, the nature of the contingent liability means that we are unable to predict a series of scenarios with which to accurately cost the liability. In the case of two of the contracts identified as part of the review (serials 1 and 2 in the attached table), further work has confirmed that, although HM Treasury approval for the granting of aggregate caps should have been obtained prior to contract award, there is no requirement to report any contingent liability to Parliament.

I am copying this letter to the Comptroller and Auditor General and to the Chair of the House of Commons Defence Committee.

Yours sincerely,

A handwritten signature in blue ink that reads "Stephen Lovegrove". The signature is written in a cursive style with a large initial 'S'.

STEPHEN LOVEGROVE

ANNEX A - DE&S CONTINGENT LIABILITIES REVIEW

Ser	Business Area	Contract Description	Contract Start Date	Contract End Date	Contract Value	HM Treasury Approval Required	Parliamentary Disclosure Required	Nature and Value of Contingent Liability
1	Helicopters - Merlin	CB/JPT/0015 RTM322 Future Support Arrangement	Apr-14	31/03/2019	£370M	Y	N	Nature: Aggregate Cap on Defence Condition 76 (Contractor's Personnel at Government Establishments) in the event of damage to MOD facilities or equipment. Value: There is no contingent liability as the most likely risk assessed cost would fall under the contractor's limit of liability. HM Treasury approval is required for the Aggregate Cap.
2	Helicopters - Merlin	SKC/0016 Sea King Integrated Operational Support Phase 2 (SKIOS 2)	Nov-07	30/09/2018	£815.1M	Y	N	Nature: Aggregate cap on Defence Condition 76 (Contractor's Personnel at Government Establishments) in the event of damage to MOD facilities or equipment. Value: There is no contingent liability as the most likely risk assessed cost would fall under the contractor's limit of liability. HM Treasury approval is required for the Aggregate Cap.
3	Land Equipment - Vehicle Support	LECOM/1006 Land Equipment Service Provision and Transformation Contract	Apr-15	31/03/2025	£1Bn	Y	Y	(a) Nature: Breach of Intellectual Property Rights. Value: £6.8M at contract start; current value £1.4M until 31 Mar 18 - there is nil exposure to MOD thereafter. (b) Nature: Breach of environmental liability. Value: The contingent liability is assessed as very low risk but unquantifiable as the level and nature of a potential environmental breach is unknown, as is the financial impact of addressing it. HM Government is best placed to hold this remote risk.

Ser	Business Area	Contract Description	Contract Start Date	Contract End Date	Contract Value	HM Treasury Approval Required	Parliamentary Disclosure Required	Nature and Value of Contingent Liability
4	Land Equipment - Soldier Training and Special Programmes	JBTSC/0147 Support to Combined Arms Tactical Training System	Mar-08	28/02/2018	£116M	Y	Y	Nature: Narrative Condition based on Defence Condition 76 (Contractor's Personnel at Government Establishments) in the event of damage to MOD property. Value: £7M – assessed as very low risk.
5	Land Equipment - Vehicle Demonstration and Manufacture	FRES/0075 The Supply of CT Cannon and Ammunition	Jun-09	09/07/2018	£105.5M	Y	Y(b)	(a) Nature: Aggregate Cap on Defence Condition 76 (Contractor's Personnel at Government Establishments) in the event of damage to MOD property. Value: There is no Contingent Liability but HM Treasury approval is required for the aggregate cap. (b) Nature: Exclusion of contractor's liability for Consequential and Indirect Losses. Value: The Contingent Liability is assessed as very low risk but unquantifiable as it is not possible to accurately estimate the level of exposure. HM Government is best placed to hold this remote risk.
6	Land Equipment - Vehicle Demonstration and Manufacture	MATT/CCAP/003 CTAI - Common Cannon & Ammunition Project 40mm Telescope Cannon and Ammunition Qualification Programme	Feb-10	03/06/2019	£15.4M	Y	Y(b)	(a) Nature: Aggregate Cap on Defence Condition 76 (Contractor's Personnel at Government Establishments) in the event of damage to MOD property. Value: There is no Contingent Liability but HM Treasury approval is required for the aggregate cap. (b) Nature: Exclusion of contractor's liability for Consequential and Indirect Losses. Value: The Contingent Liability is assessed as very low risk but unquantifiable as it is not possible to accurately estimate the level of exposure. HM Government is best placed to hold this remote risk.

Ser	Business Area	Contract Description	Contract Start Date	Contract End Date	Contract Value	HM Treasury Approval Required	Parliamentary Disclosure Required	Nature and Value of Contingent Liability
7	Land Equipment - Vehicle Demonstration and Manufacture	CCAP/004 Design Authority Support for CTCA	Apr-16	31/03/2019 Option 1 year, plus 1 year	£3.4M	Y	Y(b)	<p>(a) Nature: Aggregate Cap on Defence Condition 76 (Contractor's Personnel at Government Establishments) in the event of damage to MOD property. Value: There is no Contingent Liability but HM Treasury approval is required for the aggregate cap.</p> <p>(b) Nature: Exclusion of contractor's liability for Consequential and Indirect Losses. Value: The Contingent Liability is assessed as very low risk but unquantifiable as it is not possible to accurately estimate the level of exposure. HM Government is best placed to hold this remote risk.</p>
8	Land Equipment - Vehicle Demonstration and Manufacture	CCAP/001 Supply of 40mm Cased Telescoped Cannon (CTC)	Mar-15	15/07/2022	£186.5M	Y	Y(b)	<p>(a) Nature: Aggregate Cap on Defence Condition 76 (Contractor's Personnel at Government Establishments) in the event of damage to MOD property. Value: There is no Contingent Liability but HM Treasury approval is required for the aggregate cap.</p> <p>(b) Nature: Exclusion of contractor's liability for Consequential and Indirect Losses. Value: The Contingent Liability is assessed as very low risk but unquantifiable as it is not possible to accurately estimate the level of exposure. HM Government is best placed to hold this remote risk.</p>

Ser	Business Area	Contract Description	Contract Start Date	Contract End Date	Contract Value	HM Treasury Approval Required	Parliamentary Disclosure Required	Nature and Value of Contingent Liability
9	Submarine Delivery Agency - Future Submarines	FSM/032 BAES Dreadnought Design Contract	Apr-11	26/04/2023	£1.63Bn	Y	Y	<p>Nature: Negligent performance in submarine design work.</p> <p>Value: Unquantifiable. There is no insurance market available in this sector. The inability of the contractor to gain necessary insurances would have driven significant risk based cost into the contract had it not been bought out. The risk is assessed as very low.</p>
10	Submarine Delivery Agency - Future Submarines	FSM/033 Babcock Design Contract	Apr-11	26/04/2023	£81M	Y	Y	<p>Nature: Aggregate Cap on Defence Condition 76 (Contractor's Personnel at Government Establishments).</p> <p>Value: Unquantifiable. The incidence or circumstances leading to the creation of a liability event cannot be anticipated to a degree of certainty. As work is mainly desk based the risk is assessed as very low.</p>
11a	Submarine Delivery Agency (DG Nuclear) - Strategic Weapons	UK/France Test Facilities (2010)	Jan-10	50 year Treaty out to 2065	£800M	Y	Y	<p>Nature: UK liability under 2010 Anglo-French Treaty</p> <p>Value: Unquantifiable. Costs associated with dismantling and decommissioning facilities cannot be anticipated to a degree of certainty.</p>
11b	Submarine Delivery Agency (DG Nuclear) - Strategic Weapons	NUC41a/5001 UK/France Test Facilities	Mar-16	31/03/2025	£800M	Y	Y	<p>Nature: UK liability under 2010 Anglo-French Treaty</p> <p>Value: Unquantifiable. Costs associated with dismantling and decommissioning facilities cannot be anticipated to a degree of certainty.</p>