

Summary of review

Contingent Liabilities			
Business Area	Response received	Updates to CL schedule made?	Assurance Received
Scottish Enterprise	Yes	N/A	Yes
Covid Business Resilience and Support	Yes	Yes	Yes
Performance and Strategic Outcomes	Yes	N/A	Yes
Mental Wellbeing and Social Care	Yes	N/A	Yes
Scottish Housing Regulator	Yes	N/A	Yes
External Affairs	Yes	N/A	Yes
Crown Office and Procurator Fiscal Service	Yes	Yes	Yes
Transport Scotland	Yes	Yes	Yes
Equality, Inclusion and Human Rights	Yes	N/A	Yes
Local Government and Communities	Yes	N/A	Yes
Advanced Learning and Science	Yes	N/A	Yes
Communications, Ministerial Support	Yes	N/A	Yes
Budget and Public Spending	Yes	N/A	Yes
Economic Development	Yes	N/A	Yes
Test and Protector	Yes	N/A	Yes
Internal Audit and Assurance	Yes	N/A	Yes
International Trade and Investment	Yes	N/A	Yes
Learning	Yes	N/A	Yes
Scottish Procurement and Property	Yes	N/A	Yes
EU	Yes	N/A	Yes
Transformation	Yes	N/A	Yes
National Records	Yes	Yes	Yes
Revenue Scotland	Yes	N/A	Yes
Forestry & Land Scotland	Yes	N/A	Yes
Clinical	Yes	N/A	Yes
Directorate for Children & Families	Yes	N/A	Yes
Covid Co-ordination	Yes	N/A	Yes
Digital	Yes	N/A	Yes
Regeneration Unit	Yes	NA	Yes
Vaccines Policy and Strategy	Yes	Yes	Yes
Energy and Climate Change	Yes	N/A	Yes
Housing	Yes	Yes	Yes
Fair Work and Employment	Yes	Yes	Yes
NRS	Yes	Yes	Yes
Agriculture and Rural economy	Yes	Yes	Yes
South of Scotland Enterprise	Yes	Yes	Yes
Social Security	Yes	N/A	Yes
Marine Scotland	Yes	N/A	Yes
Early Learning and Childcare Directorate	Yes	N/A	Yes
People Directorate	Yes	Yes	Yes
Tax and Fiscal Sustainability	Yes	N/A	Yes
Environment and Forestry Directorate	Yes	N/A	Yes
Health Finance	Yes	N/A	Yes
Justice Directorate	Yes	Yes	Yes
Food Standards Scotland	Yes	Yes	Yes
Scottish National Investment Bank	Yes	N/A	Yes
Highlands and Islands Enterprise	Yes	Yes	Yes

Significant and Complex Transactions			
Business Area	Response received	Updates	Assurance Received
Legal Services	Yes	N/A	Yes
Scottish Enterprise	Yes	N/A	Yes
Highlands and Islands Enterprise	Yes	Yes	Yes
Housing Innovation and Place Initiatives	Yes	Yes	Yes
International Trade & Investment	Yes	Yes	Yes
South of Scotland Enterprise	Yes	N/A	Yes
Health Finance and Governance	Yes	N/A	Yes
Energy & Climate	Yes	N/A	Yes
Scottish Procurements and Property	Yes	Yes	Yes
Scottish National Investment Bank	Yes	N/A	Yes
Marine Scotland	Yes	N/A	Yes
Scottish Futures Trust	Yes	N/A	Yes
Covid Business Resilience and Support	Yes	N/A	Yes
Transport Scotland	Yes	Yes	Yes
Tax & Fiscal Sustainability	Yes	N/A	Yes
Economic Development	Yes	N/A	Yes
Regeneration Unit	Yes	N/A	Yes
Housing and Social Justice	Yes	N/A	Yes

From: [REDACTED]
To: [REDACTED]
Subject: FW: Commission in respect of back to back transactions and commercial interventions
Date: 09 February 2022 12:59:16
Attachments: [image001.jpg](#)

From: [REDACTED]
Sent: 01 September 2021 13:18
To: Aitken R (Reuben) [REDACTED]; Chief Executive Transport Scotland
[REDACTED]; Twyman K (Kerry) [REDACTED]
[REDACTED] Laing SG (Shirley) [REDACTED]
Cc: Rooney M (Maureen) [REDACTED]; Hogg A (Andrew) [REDACTED];
Brown J (Joe) [REDACTED]; [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Subject: Commission in respect of back to back transactions and commercial interventions

All

We have been asked to provide assurances to the PAO and to the Deputy First Minister in respect of Indemnities, Guarantees and Contingent Liabilities across the Scottish Government.

Back to back transactions

One aspect of this is to commission key business areas to identify, report and provide assurance in respect of any historic 'back-to-back' transactions of which they are aware. A 'Back-to-back' transaction is where the Scottish Government inserts itself into a private sector transaction by purchasing and then immediately selling a business and/or its assets. This type of transaction has been identified as having the potential to expose the Scottish Government to the types of liability outlined above.

Whilst we are not aware of any back to back transactions, other than those that have already been reported by business areas, we are seeking assurances in this respect **and a confirmation from the Directors** of relevant business areas in this regard. Please can you respond to this email and complete the attached back-to-back transactions schedule by **12pm Friday 10th September** and provide:

- Details of all back to back transactions of which you are aware
- An assessment of the potential liabilities that might adhere to the Scottish Government in respect of each back-to-back transaction
- Confirmation as to whether or not the potential liabilities have been appropriately recognised and disclosed in line with the Scottish Public Finance Manual.

Complex and significant commercial interventions

In addition to this review of 'back-to-back' transactions, your business area has been identified as one that has increased activity in the commercial intervention space. Therefore, we would ask that you also perform an assessment of historic significant and/or complex interventions for the presence of any previously undisclosed indemnities, guarantees or other contingent liabilities. This should include seeking appropriate assurances from the instructed legal advisors at the time as to the existence and extent of any potential liabilities.

We would specifically request a review of the following transactions (in addition to any others you might consider relevant):

1. Ferguson Marine – COBRAS
2. BiFab – COBRAS
3. Lochaber – Economic Development
4. Peel Ports/Govan Shipyard – Economic Development
5. Prestwick Airport – Transport Scotland
6. Winchburgh - Housing

Whilst we are not aware of any contingent liabilities, other than those that have already been reported by business areas, we are seeking assurances in this respect **and a confirmation from the Directors** of relevant business areas in this regard. Please can you respond to this email and complete the attached significant and complex interventions schedule by **12pm Friday 17th September** and provide:

- Confirmation that there are no previously undisclosed contingent liabilities in respect of the above transactions or any other significant and/or complex intervention in your area.

Responses and further information

We have included relevant definitions below and an link to the relevant section of the SPFM. If you require any further clarification, or would like to discuss a particular transaction in detail, please do not hesitate to contact [REDACTED] or your regular Finance Business Partner in the first instance.

Please direct responses to this commission directly to [REDACTED]

Definitions

What is the difference between contingent assets, contingent liabilities, guarantees, indemnities, letters of comfort and other financial commitments?

The accounting standard definition of a **contingent asset/ liability** is as follows:

- a possible asset/obligation that arises from past events and whose existence will be confirmed only by the occurrence of one or more uncertain future events not wholly within the entity's control; or
- a present asset/obligation that arises from past events but is not recognised because it is not probable that a transfer of economic benefits will be required to settle the obligation; or the amount of the obligation cannot be measured with sufficient reliability.

i.e. it is an asset/obligation based on a past event where it either unclear if it will occur (future set of circumstances will set it in motion) or the amount of the obligation is unclear.

Where this obligation is under contract and is for a specified payment to a specified debtor then this may meet the definition of a **financial guarantee**.

A **letter of comfort** is where there is communication confirming the intention to form contract confirming an arrangement. The objective is to create a morally binding but not legally binding assurance.

Scottish Public Finance Manual

[Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Kind regards

Jackie

Jackie McAllister
Chief Financial Officer
The Scottish Government



Cc: [REDACTED]
[REDACTED]

Subject: Commission in respect of contingent liabilities

All

We have been asked to provide assurances to the PAO and to the Deputy First Minister in respect of Indemnities, Guarantees and Contingent Liabilities across the Scottish Government. Please note that this ask is in addition to the separate requests for assurance on back-to-back transactions and complex commercial interventions that was issued to some of you earlier this week.

As you are aware a commission was issued in April 2021 to review contingent liabilities and assets, guarantees, indemnities, letters of comfort and other financial commitments. The logs which contain a list of these financial commitments should be updated throughout the financial year as new information becomes available.

The attached workbook details the information we currently hold and disclose for all business areas. We are seeking assurances that the log is complete and captures all financial commitments listed above and require **a confirmation from all Directors** in this regard. We also ask as part of this process that you obtain assurance from your sponsored public bodies that all of their contingent liabilities are appropriately recorded within the attached schedule.

Please can you respond to this email by **12 noon Friday 17th September** providing assurances that you have reviewed the log and confirm it is complete with all relevant items. If the log requires additional information please update and send the completed log as an attachment with the confirmation email. Please flag in this e-mail any changes you have made to the log.

We have included relevant definitions below and a link to the relevant section of the SPFM. If you require any further clarification, or would like to discuss a particular transaction in detail, please do not hesitate to contact [REDACTED] or your regular Finance Business Partner in the first instance.

Please direct all returns in this regard to [REDACTED]

Kind regards

Jackie

Definitions

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Jackie McAllister
Chief Financial Officer
The Scottish Government



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