

## BACKGROUND NOTE FOR S6O-01686

### Working Capital Loan:

- Scottish Enterprise provided working capital support to Liberty Steel Dalzell through a £7 million commercial loan in 2017, saving 140 jobs as a result which demonstrated how important our intervention was.
- The SE loan was provided at market rates in order to comply with State Aid.
- The business has restarted interest payments on the loan as there had been forbearance on the payments since early 2021.
- The current loan balance, amount of accrued interest to date, loan default/reservation of rights and extent of interest payments received is commercially sensitive listed below is not public knowledge.
- [REDACTED]
- [REDACTED]
- [REDACTED]
- When first provided in 2016, the SE loan was structured and priced in order to be compliant with Market Economy Operator Principle; this is the appropriate point at which an assessment is made regarding whether provision of support would represent a subsidy or not. Once provided, the loan is managed commercially by Scottish Enterprise, based on the professional knowledge, expertise and experience of its staff. [REDACTED]
- SG Officials have fortnightly calls with Dalzell site management and SE colleagues as part of our ongoing monitoring of the business.
- Mr Rennie recently submitted a written question (S6W-12259) specifically on the £7 million loan which was as follows:
  - Further to the ministerial statement by the Cabinet Secretary for Rural Economy and Tourism on 24 March 2021,*
    - *what the £7 million loan from the Scottish National Investment Bank to Liberty Steel Dalzell Ltd was for;*
    - *what the terms of this loan were;*
    - *how much of this loan has been paid back;*
    - *whether repayments of the loan were made on time, and,*

- *when the full amount of the loan is due to be paid back by Liberty Steel Dalzell Ltd.”*

This was answered by Mr McKee on 2 December 2022:

*The £7m loan provided to Liberty Steel Dalzell Ltd in March 2017 was in fact provided by the Scottish Investment Bank. This was a Scottish Enterprise scheme that pre-dated the launch of the Scottish National Investment Bank (November 2020). I have written to the Presiding Officer to highlight this error and request an amendment to the Official Report.*

*The terms of the loan provided are commercially sensitive and therefore confidential. However, I can confirm that the loan was provided to cover general working capital.*

*Repayments of the loan have not been made on time, however debt forbearance is not uncommon in the current market and the company is meeting the current interest payments. The current capital balance owed on the loan is £7 million and Scottish Enterprise remains in negotiation with the company over repayment.*

A further Written PQ has been lodged from Willie Rennie on 8 December 2022:

*To ask the Scottish Government, further to the answer to question S6W-12259 by Ivan McKee on 2 December 2022, on what specific dates repayments of the loan should have been made by Liberty Steel Dalzell Ltd; when the last repayment was made, and what its position is regarding the length of time that long debt forbearance would usually be tolerated by a lender.*

Expected answer date is 22 December 2022.

### **Environmental Liabilities:**

- A Ministerial Statement was delivered to Parliament on 15 December 2021 by Mr McKee regarding new information on the 2016 steel rescue deal.
- The development relates to a single clause in the arrangement with Tata Steel, via its former subsidiary Longs Steel UK, under which the Scottish Government facilitated the ownership transfer of the Dalzell and Clydebridge steelworks. There is no impact on the wider agreement or Liberty Steel’s current ownership and operation of the plants.
- The review considers that Scottish Ministers’ commitment to indemnify Tata Steel, as the previous owner, from certain past, present or future liabilities arising from the sites may not comply with State aid rules and would therefore be unenforceable. This would mean that in the unlikely event of the indemnity being called upon, **no money would be paid out by the Scottish Government.**

- The position of the Scottish Government has not changed since the delivery of this statement

**Possible questions on the Environmental Liabilities:**

**1) Why did Mr McKee not tell parliament of Tata Steel's position at the statement? Will he now apologise and give a statement to parliament?**

- On 15 December 2021, we advised that TATA Steel were informed of the matter and were provided prior notice of the statement that was delivered in the Scottish Parliament on 15 December 2021, to allow them to consider any commercial implications for the business, and, to ensure they had time to notify their head office in Mumbai. At the time the statement was delivered, it was understandable that TATA Steel would need time to reflect and consider their position. As previously stated, we will continue to have supportive dialogue with TATA and the company have access to our officials as they require.

**2) Does the government believe there is a risk of legal action around this given Tata's statement that they believe a determination in the courts should be the final judge of the issue?**

- There has been no call on this indemnity to date and the circumstances where this would have been called upon are, in our view, unlikely to materialise. At the time of the deal, a parent company guarantee was signed with Liberty House, meaning that if that part of the company at Liberty Steel Dalzell ceases to exist then the liabilities then pass to the wider group. Our contingency planning and recent reports on the wider group have highlighted that the Lanarkshire plant is operating well considering the current conditions they have faced. [REDACTED]

- [REDACTED]

**Will Scottish Government seek a court ruling against Tata?**

- SG is not seeking a court ruling against Tata.

[REDACTED]

**Could SG be left with the full clean-up costs if Liberty collapses?**

- Liberty Steel Dalzell continues to operate and trade against the current wider economic issues, we should all be supporting a Scottish workforce striving to produce high quality Scottish Steel. Scottish Ministers are not in the business of wishing the demise of a company supporting a Scottish Workforce.
- Any future land remediation requirements would be a matter for Scottish Environmental Protection Agency to advise on.
- [REDACTED]
  
- [REDACTED]

**What was the last engagement had with Tata Steel UK.**

- Scottish Government officials met with representatives as recent as Monday 5<sup>th</sup> December to discuss recent publication of Freedom of Information requests. Officials from both sides committed to maintain an open dialogue during this meeting.

**Environmental Costs:**

- A desk top review on the environmental Liabilities titled 'Soil and Groundwater Contamination Liability Assessment' was carried out by advisers in 2016 and this document was published in July 2022 in a Freedom of Information request (202100216003). Indicative costs relating` to remediation were however redacted under commercial sensitivities.
- [REDACTED]
  
- To have an accurate and up to date assessment of clean-up costs, a site investigation would however be required and would therefore need commissioned.
- There has been no intended change of use of the site to date, and therefore there is no requirement at this time to procure an up-to-date environmental survey report.

## WHO IS RESPONSIBLE FOR CONTAMINATED LAND?

### Responsibility for Regulation:

1. The local authority is the lead regulator for contaminated land. They are tasked with inspecting their areas in order to identify contaminated land and to bring about its remediation. *It is the local authority who has responsibility for deciding whether or not a site is contaminated land. The local authority is also responsible for designating a contaminated land site as a special site. It must consult with SEPA on this matter. Once a site is designated as special, it's regulation falls to SEPA.*
2. SEPA also has a number of duties and powers and in particular has responsibility for a sub-set of contaminated land called 'Special Sites'. There are 11 categories of special sites which are defined in the [Regulations](#). These are sites where SEPA would be considered to have a particular interest or expertise (e.g. a former refinery site or particular types / levels of water pollution).
3. Where land contamination is being dealt with through the planning and development regime, the Local Authority is again, the lead regulator.

### Responsibility for Remediation:

4. Part IIA is based on the 'polluter pays' principal so wherever possible the person(s) who has caused or knowingly permitted the contamination is identified and required to remediate the land. However because the regime deals with historic contamination the original 'polluter' may no longer be in existence. In these cases the guidance provides a hierarchy in terms of responsibility as shown below:

Causer / Knowing Polluter



Owner / Occupier of the Land



Orphan Site = Regulator (Local Authority or SEPA)

## HOW IS CONTAMINATED LAND DEALT WITH?

5. Underpinning principals for dealing with contaminated land include;
  - Site Specific Risk Assessment
  - Suitable for Use Approach – ensuring land is suitable for its current use.
  - Proportionate Remediation - limiting the requirements for remediation to the work necessary to prevent unacceptable risks to human health or the environment. Consideration is also given to reasonableness and seriousness of pollution.
6. The Part IIA Statutory Guidance provides a detailed framework setting out the stages involved in dealing with contaminated land. The stages are as follows;
  - Identification of Contaminated Land (inspection, risk assessment, determination and keeping records of determination)

- Remediation (securing remediation, standard of remediation and considerations of reasonableness and seriousness)
- Apportionment of Liability for Remediation (and exclusion from liability)
- Recovery of Costs of Remediation.

Contact Name: [REDACTED]  
Mobile: [REDACTED]

**From:** [REDACTED]  
**To:** [Minister for Business, Trade, Tourism & Enterprise](#)  
**Cc:** [Deputy First Minister and Cabinet Secretary for Covid Recovery](#); [DG Economy](#); [Director of Economic Development](#); [Hall K \(Kate\)](#); [Rhatigan D \(Dermot\)](#); [Hannaway K \(Kenneth\)](#); [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [Pearce H \(Hilary\)](#); [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [Matheson C \(Catriona\)](#)  
**Subject:** Submission - Recent Engagement with Tata Steel UK  
**Date:** 12 December 2022 16:33:43  
**Attachments:** [COMMS - RRU - 003 - HT Update - Submission to Ministers - Final - December 2022.doc](#)

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Minister for Business, Trade, Tourism and Enterprise,

Please find attached a submission relating to recent engagement officials have had with Tata Steel UK.

The Minister is answering an oral PQ on 14 December and this information would be helpful to see ahead of this.

Please get in touch if there are any questions.

Many thanks,

[REDACTED]

[REDACTED] | **Business Resilience - Rapid Response Unit | The Scottish Government**

T: [REDACTED] | M: [REDACTED]

[REDACTED]

Strategic Commercial Assets Division  
12 December 2022

Minister for Business, Trade, Tourism and Enterprise

## **HISTORICAL TRANSACTION UPDATE**

### **Purpose**

1. To update and inform the Minister on;
  - Recent correspondence received via our advisors (MacRoberts LLP) from Tata Steel UK in relation to the “back to back” sales transaction in 2016 for Liberty Steel Dalzell; and
  - ongoing engagement between Tata and officials.

### **Priority**

2. Routine – For Information. The Minister is answering an oral PQ on 14 December and this information would be helpful to see ahead of this.

### **Background**

3. Tata Steel UK has issued a letter on the subject of the sale of the Dalzell and Clydebridge site to Scottish Ministers, through our advisors MacRoberts LLP on 5 July 2022. The letter is embedded at annex A of this submission. [REDACTED]

### **Letter From TATA Steel UK**

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]



7. [REDACTED]

8. Officials are working with SGLD and will provide Ministers with further advice on the proposed response in due course.

9. [REDACTED]

**Engagement with TATA Steel UK**

10. Scottish Government officials had a virtual meeting with representatives from Tata Steel UK on Monday 5 December 2022 which focussed on future engagement with the business on FOI requests following recent political and media attention. The meeting was helpful to explain the FOI position and approach and the relationship remains productive.

**Recommendation**

11. Ministers are asked to note the contents of this submission and that officials will continue to keep them informed on developments.

[REDACTED]

12 December 2022

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Deputy First Minister and Cabinet Secretary for Covid Recovery			X		

DG Economy Colin Cook Kate Hall Dermot Rhatigan Kenney Hannaway [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Hilary Pearce [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Catriona Matheson
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