

ANNEX A

REASONS FOR NOT PROVIDING INFORMATION

An exception applies – 10(4)(d) - Material in the course of completion, etc.

An exception under regulations 10(4)(d) of the EIRs applies to some of the information you have requested. This is because some of the information you requested is material which is still in the course of completion, or in some cases, unfinished documents. Marine Scotland are currently in the process of finalising a report on the socioeconomic impacts of MPAs. This is expected to be published in September and will be available on the Scottish Government website; officials will send you a link to the report when it is published.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is some public interest in release as part of open, transparent and accountable government and this will be met by our planned publication in September 2020. However, this is outweighed by the public interest in ensuring that unfinished or incomplete information which is still in being worked on is not disclosed when it might misinform the public or give a misleading impression of the Government's view or position on the matter to which the information relates.

An exception applies – 10(4)(e) - Internal communications

While our aim is to provide information whenever possible, in this instance an exception under regulation 10(4)(e) of the EIRs (internal communications) applies to some of the information you have requested. This exception applies because the information is internal communications between Scottish Government Ministers and officials and ministerial briefings.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that Ministers and officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications. Their candour in doing so will be affected by their assessment of whether the discussions on MPA impacts will be disclosed in the near future, when it may undermine or constrain the Government's view on that policy while it is still under discussion and development.

An exception applies - 10(5)(f) – Third party interests

While our aim is to provide information whenever possible, in this instance an exception under regulation 10(5)(f) of the EIRs (substantial prejudice to interests of person who provided the information) applies to some of the information you have requested. This exception applies because disclosure of this particular information would, or would be likely to, prejudice substantially the interests of individuals who were interviewed for the Scottish Marine Protected Areas socioeconomic monitoring published on 06 March 2017. The names of their organisations are outlined in the report

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(link above). When they provided that information to the Scottish Government, they:

- were not under any legal obligation to give us that information;
- did not supply it in circumstances in which it could, apart from the EIRs, be made available; and
- did not consent to disclosure.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is a public interest in disclosing information as part of open and transparent government. However, there is a greater public interest in protecting the interests of anyone, such as individuals who were interviewed for the Scottish Marine Protected Areas socioeconomic monitoring published on 06 March 2017, who provides the Scottish Government with information on a confidential basis. Disclosing such information against the express wishes of the stakeholder is likely to undermine their trust in the Government and make them reluctant in future to share information with us on issues such as participating in future reviews of the socioeconomic impact of MPAs and their management. This would significantly impair the Scottish Government's ability to develop policies and make decisions on the basis of fully informed advice and evidence. This would not be in the public interest.

An exception applies – 12(5)(b) – The course of justice

While our aim is to provide information whenever possible, in this instance an exception under regulation 12(5)(b) of the EIRs (the course of justice) applies to some of the information you have requested. This exception applies because the release of the information would impact the ability of the ability of a person to receive a fair trial or the ability of the public authority to conduct an inquiry of a criminal or disciplinary nature.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in ensuring that its release does not undermine other legal procedures that govern access to court records and information held for inquiries, such as the Civil Procedure Rules and Criminal Procedure Rules'.

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