

ANNEX

REASONS FOR NOT PROVIDING INFORMATION

1. An exception under regulation 10(4)(a) (information not held) of the EIRs applies to some of the information you have requested

Under the terms of the exception at regulation 10(4)(a) of the EIRs (information not held), the Scottish Government is not required to provide information which it does not have. The Scottish Government does not hold the information you have requested regarding Discharge Returns for 2019 & 2020.

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. While we recognise that there may be some public interest in the Discharge Returns, clearly we cannot provide information which we do not hold.

2. (i) An exception under regulation 10(4)(a) (information not held) of the EIRs applies to some of the information you have requested

Under the terms of the exception at regulation 10(4)(a) of the EIRs (information not held), the Scottish Government is not required to provide information which it does not have. The Scottish Government does not hold the information you have requested relating to discussions of wellboat data on chemical use by salmon farms via 'Scotland's Aquaculture' and dialogue with chemical companies or salmon farmers.

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. While we recognise that there may be some public interest in discussions the Scottish Government has had regarding wellboat data on chemical use by salmon farms via 'Scotland's Aquaculture' Aquaculture' and dialogue with chemical companies or salmon farmers, clearly we cannot provide information which we do not hold.

2. (ii) & 5. (i) An exception under regulation 11(2) (personal information of a third party) of the EIRs applies to some of the information you have requested

Regulation 11(2) – To the extent that environmental information requested includes personal data of which the applicant is not the data subject and in relation to which either the first or second condition set out in paragraphs (3) and (4) is satisfied, a Scottish public authority shall not make the personal data available.

An exception under regulation 11(2) of the EIRs (personal information of a third party) applies to some of the information requested because it is personal data of a third party and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018.

This exception is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information

outweighs the public interest in applying the exception.

5. (ii) An exception under regulation 10(4)(d) (Material in course of completion, unfinished documents or incomplete data) of the EIRs applies to some of the information you have requested

The exception under regulation 10(4)(d) of the EIRs (material in course of completion, unfinished documents or incomplete data) applies to some of the information you have requested because it is material still in the course of completion.

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. However, this is outweighed by the public interest in ensuring that unfinished or incomplete information which is still being worked on or is under active consideration 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.

The intention on the basis of the current Parliamentary timescales is that the finalised Order will come into force in November 2020.

5. (ii) An exception under regulation 10(4)(e) (internal communications) of the EIRs applies to some of the information you have requested

An exception under regulation 10(4)(e) of the EIRs (internal communications) applies to some of the information you have requested because it is internal communication between Scottish Government Ministers and/or officials about an amendment to the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011, which is required in order to transfer responsibility for the authorisation of discharges of chemical treatment residues to the water environment via a well boat from marine licensing to CAR licensing.

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 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 these rigorously, to fully understand their possible implementations. Their candour in doing so will be affected by their assessment of whether the discussions on the amendment to the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 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.

5. (ii) An exception under regulation 10(5)(d) (Confidentiality of proceedings) of the EIRs applies to some of the information you have requested

An exception under regulation 10(5)(d) of the EIRs (Confidentiality of proceedings) applies to some of the information you have requested because it is internal legal advice and disclosure would breach legal professional privilege.

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, this is outweighed by the strong public interest in maintaining the right to confidentiality of communications between legal advisers and clients, to ensure that Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation.

