

ANNEX

REASONS FOR NOT PROVIDING INFORMATION

An exemption applies, subject to the public interest test

An exemption under section 29(1)(a) of FOISA (formulation or development of government policy) applies to some of the information requested because it relates to the formation and development of the Scottish Government's policy and approach to the Business Regulatory Impact Assessment (BRIA) for the Restricting Foods Promotions Bill.

This exemption 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 exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. 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 do so will be affected by their assessment of whether the discussions on the development of the BRIA for the Restricting Foods Promotions Bill 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.

Sections 30(b)(i) (free and frank provision of advice) and 30(b)(ii) (free and frank exchange of views for the purposes of deliberation) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice and exchange of views for the purposes of deliberation. These exemptions recognise the need for officials to have a private space within which to provide free and frank advice to Ministers and other officials and to discuss and explore options before the Scottish Government reaches a settled public view. Disclosing the content of free and frank discussions and advice on the development of the BRIA will substantially inhibit the provision of such discussions and advice in the future, particularly because these discussions are still ongoing and relate to a sensitive issue, and final decisions have not been taken.

These exemptions are 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 exemptions. We have found that, on balance, the public interest lies in favour of upholding the exemptions. 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 allowing a private space within which officials can discuss and explore options and provide full and frank advice to Ministers and other officials as part of the process of exploring and refining the Government's approach and policy position in relation to the BRIA for the Restricting Foods Promotions Bill, until the Government can adopt a policy that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, based on the best available advice, so that good decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers and officials, which in turn will undermine the quality of the policy making process, which would not be in the public interest.