

## **ANNEX A – EXEMPTIONS APPLIED**

---

### Section 38(1)(b) FOISA

Exemptions under Section 38(1)(b) of FOISA applies to some of the information requested. This exemption applies to the names of third parties referenced throughout the documents that have been requested. These exemptions under Sections 38(1)(b) apply to protect the personal data of a third party, i.e. names and contact details, 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. The Scottish Government has a policy of not disclosing the names of officials who are not Senior Civil Servants – therefore, the names of some Scottish Government officials have been redacted. The names of Ernst & Young employees who are not board members have also been redacted to protect their privacy. This exemption 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 exemption.

### Section 33(1)(b) FOISA

An exemption under section 33(1)(b) of FOISA applies to some of the information requested. This exemption applies because disclosure of this particular information would, or would be likely to, prejudice substantially the commercial interests of Ernst & Young LLP. Disclosing this information would be likely to give Ernst & Young LLP competitors an advantage in future similar tendering exercises, which would in turn substantially prejudice Ernst & Young LLP's ability to submit competitive tenders and could therefore significantly harm their commercial business.

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 and transparent government, and to help account for the expenditure of public money. However, there is a greater public interest in protecting the commercial interests of companies that enter into contracts with the Scottish Government, thus ensuring that we are always able to obtain the best value for public money.

### Section 29(1) FOISA

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 development of the Scottish Government's policy position on the subject matter in question – namely Scotland's energy requirements and achieving a just transition to net zero.

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.