

## ANNEX

### REASONS FOR NOT PROVIDING INFORMATION

The Scottish Government does not have the information

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 have the information you have requested because this information has not been shared with us. 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 information pertaining to points 1 and 2 of your request above, clearly we cannot provide information which we do not hold.

Exceptions apply

**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 communications:

- (i) in relation to general policy and decision-making; and/or
- (ii) in relation to Ministerial briefings
- (iii) in relation to Cabinet information and/or communications between Ministers;

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. Please see below the public interest test considerations for any information withheld:

(i) 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 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 policy remains in development and references future decisions of Cabinet. 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 ScotWind will be disclosed, when it may undermine or

constrain the Government's view on that issue.

(ii) 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 allowing a private space within which officials can provide free and frank advice and views to Ministers within internal ministerial briefings. It is clearly in the public interest that Ministers can properly provide sound information to Parliament (to which they are accountable), and robustly defend the Government's policies and decisions. They need full and candid advice from officials to enable them to do so. Disclosure of this type of information could lead to a reduction in the comprehensiveness and frankness of such advice and views in the future, which would not be in the public interest.

(iii) 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 to inform public debate. However, there is a greater public interest in allowing Cabinet/Ministers a private space within which policy positions can be explored and refined, until the Government as a whole can reach a decision/adopt a policy that is sound and likely to be effective. This private thinking space also allows for all options to be properly considered, so that good policy decisions can be taken. Disclosure is likely to undermine the full and frank discussion of issues between Cabinet/Ministers, which in turn will undermine the quality of the policy and decision making process.

#### **Regulation 10(5)(e) – substantial prejudice to confidentiality of commercial or industrial information**

An exception under regulation 10(5)(e) of the EIRs (substantial prejudice to confidentiality of commercial 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 confidentiality of commercial information provided by Crown Estate Scotland and thus cause substantial harm to their commercial interests. At this stage in the ScotWind process, which is not yet complete (with lease option offers still to be signed and a heightened risk of challenge) they could lead to legal challenge and therefore compromise delivery of the whole ScotWind round and cause economic damage to Scotland.

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

#### **An exception under regulation 11(2) (personal information of a third party) of the EIRs applies to some of the information you have requested.**

An exception under regulation 11(2) of the EIRs (personal information) 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.