

### Section 29(1)(a) – formulation or development of government policy

An exemption under section s.29(1)(a) of FOISA (formulation or development of government policy) applies to some of the information you have requested. This exemption applies because some of the information relates to the development of government policy which is not yet finalised.

This exemption recognises the need for Ministers and officials to have a private space within which to discuss and explore options before the Scottish Government reaches a settled public view. Disclosing the content of discussions on the Scottish Government's previous deliberations on pensions in an independent Scotland will substantially inhibit such discussions in the future, particularly because discussions on Scotland's constitutional future are still ongoing and final decisions have not been taken.

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 allowing Ministers and officials a private space within which to explore and refine the Government's policy position on pensions in an independent Scotland, until the Government as a whole 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, so that good policy decisions can be taken. Disclosure is likely to undermine the 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.

### Section 29(1)(b) – Ministerial communications

An exemption under section 29(1)(b) of FOISA (Ministerial communications) applies to the information requested because it relates to communications between Scottish Ministers.

While this paper was produced almost 10 years ago, the content relates to active policy work which is still being undertaken by the Scottish Government on the matter of Scottish independence and the ability to maintain a private space for the Scottish Cabinet to consider such matters remains essential.

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 allowing Ministers a private space within which matters relating to the Scottish Government's policy on independence can be explored and refined, until the Government as a whole can 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. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers, which in turn will undermine the quality of the policy and decision making process.

## Section 30(b)(ii) – the free and frank exchange of views for the purposes of deliberation

An exemption under section 30(b)(ii) (the free and frank exchange of views for the purposes of deliberation) applies to the information that you have requested.

Paragraph 2.1 of the Scottish Ministerial Code provides that "the privacy of opinions expressed and advice offered within the Government should be maintained" at all times. Cabinet papers are essential elements which support and assist collective discussion in the private space which Ministers need to reach agreed positions.

The weekly meeting of the Scottish Cabinet is the highest decision-making forum within the Scottish Government, and it follows that all information considered by Cabinet must be handled with great care. Properly functioning Cabinet processes are generally recognised to be of vital public interest: Cabinet government is based on the principle of collective responsibility, which the Scottish Ministerial Code define in the following terms:

"The principle of collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed and advice offered within the Government should be maintained. ... The internal processes through which a Government decision has been made should not normally be disclosed." (*Scottish Ministerial Code, 2018 edition, paragraphs 2.1 and 2.4*)

Cabinet papers are invariably produced on the assumption that they will not be disclosed until a significant amount of time has elapsed. While this paper was produced almost 10 years ago, the content relates to active policy work which is still being undertaken by the Scottish Government on the matter of Scottish independence and the ability to maintain a private space for the Scottish Cabinet to consider such matters remains essential. Section 30(b)(ii) (the free and frank exchange of views for the purposes of deliberation) recognises the need to allow Ministers some private space for discussion.

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 maintaining the process of achieving collective responsibility within a private space within which policy positions can be explored and refined by Ministers in order that the Government, as a whole, can reach a final decision. This private thinking space also allows for all options to be properly considered, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers, which in turn will undermine the quality of the policy/decision-making process.