

Annex A – Justification for the application of exceptions

Information withheld under regulation 10(4)(e)

The exception under regulation 10(4)(e) of the EIRs (internal discussions) has been applied to a some of the information you have requested. This relates to:

- 1) discussions between officials and between officials and ministers in relation to the provision of advice and to protect the space for free and frank discussion
- 2) information which is subject to professional legal 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 some public interest in the release of this type of information as part of an open, transparent and accountable government and to inform public debate. However, there is greater public interest in protecting the space to allow open, free and frank discussions between officials and ministers to formulate, establish and implement quality policy and decision-making. In addition, the public interest lies in favour of withholding legal advice in the interests of 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, as is the case in other public and private organisations.

Information withheld under regulation 10(5)(f)

An exception under regulation 10(5)(f) of the EIRs (substantial prejudice to interests of persons who provided the information) applies to some of the information you have requested. Specifically, this relates to:

- A letter email communication expressing the opinion from the W&R Logan concerning financial impact information from a potential abstraction ban.
- Representations from producers who would be effected by a suspension of abstraction licenses and
- Financial Information provided by several third party organisations to SEPA.

This exception applies because disclosure of this particular information would, or would be likely to, prejudice substantially the interests of the individuals who provided that information to the Scottish Government. This is because the three tests of the relevant exception have been met, namely that the individuals who provided information:

- were not legally obliged (and could not be legally obliged) to supply the information;
- did not supply it in circumstances such that it could be made available except by making a request for it under the EIRs; and
- have not consented to the information being disclosed.

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. However, there is a greater public interest in protecting the interests of individuals, such as stakeholders who provide the Scottish Government with information on a confidential basis. Disclosing such information against the express wishes of the stakeholder is likely to undermine their trust in the Government and make them reluctant in future to share information with us on issues such as the impact of an abstraction ban. This would significantly impair the Scottish Government's ability to develop policies and make decisions on the basis of fully informed advice and evidence. This would not be in the public interest. All consultation responses were reviewed by officials and summarised in a submission to the Cabinet Secretary. This submission has been released through this review response as detailed above.