

## 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 we do not hold any information on the following points: details of SAIC's funded CleanTreat project and technology and correspondence with Benchmark as well as some other parties which you name in your request, namely Nature Scotland, VMD, Salmon Scotland (SSPO), Mowi, Leroy, Scottish Sea Farms on the subject of CleanTreat and Imidacloprid (BMK08/Ectosan Vet).

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 we hold relating to the points listed above, clearly we cannot provide information which we do not hold.

However, we are aware that the Scottish Aquaculture Innovation Centre has supported Benchmark with regards to trials which will consider the efficacy of the CleanTreat as applied to the use of a specific medicine which is already authorised for use in this country. BMK08, or any imidacloprid based treatments do not feature in the trials. Marine Scotland does not hold information of the details of the trials, but we are aware that SEPA has been liaising with participants and may be able to offer you further detail.

#### Exceptions apply

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

Regulation 11(2) – To the extent that environmental information requested includes personal data of which the applicant is not the data subject and in relation to which either the first or second condition set out in paragraphs (3) and (4) is satisfied, a Scottish public authority shall not make the personal data available. An exception under regulation 11(2) of the EIRs (personal information of a third party) 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.

#### **An exception under Regulation 10(4)(d) – material in course of completion, unfinished documents or incomplete data applies to some of the information you have requested.**

An exception under regulation 10(4)(d) of the EIRs (unfinished or incomplete information) applies to some of the information you have requested because it is material which was still in the course of completion and was unfinished when attached to an email exchange which has been released. However, the final complete document has been released.

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 release as part of open, transparent and accountable government and this has been met by the release of the completed document. However, this is outweighed by the public interest in ensuring that incomplete information which is still in being worked on or is under active

consideration is not disclosed when it might give a misleading impression of the Government's view or position on the matter to which the information relates.

**An exception under Regulation 10(4)(e) (internal communications) of the EIRs applies to some of the information you have requested.**

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, 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 in briefing for lines to take.

It is clearly in the public interest that Ministers can properly answer Parliamentary questions, 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.

Premature 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.