

Constitutional consultation - 9 May 2022

Agenda

**[Redacted]**

- Timetable
- Agree next steps

Attendees

First Minister  
Lord Advocate  
Solicitor General  
Douglas Ross QC  
("DR")  
Tom Hickman QC  
Paul Reid, Advocate  
Ruaraidh Macniven  
Graham Fisher

**[Redacted]**

**[Redacted]**

David Rogers

**[Redacted]**

Colin McAllister

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**[Redacted]**

## REASONS FOR NOT PROVIDING INFORMATION

### S.36(1) (Confidentiality in Legal Proceedings)

An exemption under Section 36(1) of FOISA (Confidentiality in Legal Proceedings) applies to some of the information requested because it is legal advice and disclosure would breach legal professional privilege.

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 some public interest in release as part of open and transparent government, and to inform public debate. However, this is outweighed by the strong public interest in 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, like any other public or private organisation.

### S.38(1)(b) (Personal Information)

We are unable to provide some of the information you have requested because an exemption under section 38(1)(b) (Personal Information) of FOISA applies to that information. This is because it is personal data of a third party, specifically the personal details of individuals below Senior Civil Service grade, 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 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.