

Annex A

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.

An exception under regulation 10(4)(a) of the EIRs (information not held) applies to some of the information you have requested. This exception applies because some of the information you have requested is not held by the Scottish Government, for example links in correspondence you have requested which are held in file locations not owned by or accessible to officials of the Scottish Government.

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 the information requested, clearly we cannot provide information which we do not hold.

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 a third party. The disclosure of the information contained within these documents would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest, thus causing substantial harm to its commercial interests.

That confidentiality is underpinned by Section 105 of the Utilities Act 2000, which acknowledges that licensed electricity network businesses obtain information under their licensed activities (which include the network development and connections processes) and prohibits disclosure of that information by law other than where a specific exception applies (and none applies here). The prohibition in section 105 applies to the disclosure of information provided by ESO to the Scottish Government. ESO also holds contractual relationships with various industry parties which contain confidentiality clauses. This information is also protected by a common law duty of confidence. That confidentiality protects legitimate economic interests, in particular the competitive market for electricity generation and the competitive supply chain for network development, both of which enable the efficient and economic development of our electricity system. Confidentiality would be adversely affected by disclosure of this information.

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, I have concluded that this is outweighed by arguments in favour of maintaining confidentiality. In relation to some of the documents identified, disclosure could prejudice projects, undermining collaboration which will help to drive the development of the most economic and efficient electricity system. Anything that unjustifiably inhibits the competitive development of the electricity system is also very likely to run counter to the achievement of the Government's net zero targets, which would not be in the public interest.

In addition, an exception under Regulation 10(5)(f) of the EIRs (prejudice to interests of person who provided the 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 interests of the provider and thus cause harm to their interests. They:

1. were not under any legal obligation to give us that information;
2. did not supply it in circumstances in which it could, apart from the EIRs, be made available; and
3. have not consented to disclosure.

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 stakeholders who share information in confidence with Scottish Government, including generators and network operators, and in ensuring that such companies and stakeholders are comfortable to do so in the future.