

## **ANNEX – EXEMPTIONS**

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

An exemption under section 29(1)(a) of FOISA (formulation or development of government policy) applies to some of the information requested because it relates to the development of the Scottish Government's policy on gender identity healthcare delivery and associated improvement, particularly related to ongoing policy work related to specialist care for children and young people.

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 high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that Ministers and officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications. Their candour in doing so will be affected by their assessment of whether the discussions on development, options and sensitivities surrounding improvement in delivery of specialist gender identity healthcare for children and young people will be disclosed in the near future, when it may undermine or constrain the Government's view on that policy while it is still under discussion and development.

### **Section 30(b)(i) – free and frank provision of advice[in relation to Cabinet/ Ministerial/official discussions and policy formulation/development]**

An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. This exemption recognises the need for officials to have a private space within which to provide free and frank advice to Ministers and senior officials before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice on recent developments surrounding endocrine interventions within NHS Health Boards for children and young people experiencing gender dysphoria/gender incongruence will substantially inhibit the provision of such advice in the future, particularly because these discussions relate to a sensitive issue i.e. provision of gender identity healthcare to children and young people via NHS Health Boards.

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 a private space within which officials can provide full and frank advice to both Ministers and senior officials, as part of the process of exploring and refining the Government's position on developments surrounding endocrine interventions within NHS Health Boards for children and young people experiencing gender dysphoria/gender incongruence 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, based on the best available advice, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank 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.

### **1. Section 38(1)(b) – Personal information**

An exemption under section 38(1)(b) of FOISA (personal information) applies to some of the information requested because it is personal data of a third party e.g. names and contact details of individuals, 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.