

ANNEX A – EXEMPTIONS

Section 30(b)(ii) – free and frank exchange of views for the purposes of deliberation [in relation to communications/meetings with external stakeholders]

An exemption under section 30(b)(ii) of FOISA (free and frank exchange of views) applies to some the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exemption recognises the need for officials to have a private space within which to discuss issues and options with external stakeholders before the Scottish Government reaches a settled public view. Disclosing the content of free and frank exchange of views with NHS Greater Glasgow and Clyde and NHS Lothian on developments surrounding endocrine interventions within NHS Health Boards for children and young people experiencing gender dysphoria/gender incongruence will substantially inhibit such discussions in the future. This is because these stakeholders will be reluctant to provide their views fully and frankly if they believe that those views are likely to be made public, particularly while the information relates to drafts and considerations while decision making was still ongoing and were subject to change and these relate to sensitive issue such as gender identity healthcare provision for under 18s.

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 Ministers and officials a private space within which to communicate with appropriate external stakeholders as part of the process of exploring and refining the Government’s position This private space is essential to enable all options to be properly considered, so that good policy decisions can be taken based on fully informed advice and evidence, such as that provided by NHS Greater Glasgow and Clyde and NHS Lothian. Premature disclosure is likely to undermine the full and frank discussion of issues between the Scottish Government and these stakeholders, which in turn will undermine the quality of future decision making processes, which would not be in the public interest.

Section 38(1)(b) – Personal information

An exemption under section 38(1)(b) of FOISA (personal information) applies some of the information requested because it is personal data of a third party, ie 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.