

EXECUTIVE NOTE

THE PRE-RELEASE ACCESS TO OFFICIAL STATISTICS (SCOTLAND) ORDER 2008 (SSI 2008/399)

This statutory instrument will, if approved, be made in exercise of the powers conferred by section 11(2), (4) and (5) of the Statistics and Registration Service Act 2007 (“the 2007 Act”). It is subject to affirmative resolution procedure.

Policy Objectives and Background

1. The Order sets out the rules and principles relating to the granting of pre-release access to official statistics in their final form prior to publication.
2. It implements one of the special devolved provisions for Scotland in the 2007 Act which enables the Scottish Ministers to set rules on access to Scottish devolved official statistics in advance of publication by Order.

Pre-release access and assessment of official statistics as National Statistics

3. “Pre-release access” to official statistics means access by Ministers and others to final statistical publications, in advance of publication.
4. The 2007 Act created a new non-ministerial department, the UK Statistics Authority (legally known as the Statistics Board), to promote and safeguard the production and publication of official statistics that serve the public good. The UK Statistics Authority (the Authority) is accountable to the Scottish Parliament for the devolved aspects of its work on Scottish official statistics. The Finance Committee has placed scrutiny of the Authority on its work programme.
5. The Authority will assess compliance with the rules for pre-release access as part of its assessment of statistics against the Code of Practice for Statistics. If official statistics comply with the pre-release access rules and the Code, the Authority will approve them as National Statistics.
6. The rules and principles in the Order will replace the current rules set out in the non-statutory *National Statistics Code of Practice Protocol on Release Practices*. Pre-release access is currently set at a maximum of 40.5 hours for market sensitive statistics and 5 working days for non-market sensitive statistics.
7. The new rules and principles in the Order will apply to Scottish devolved statistics. For the most part that is official statistics produced by the Scottish Administration, though Scottish Ministers can designate other bodies as official statistics producers by order under section 6 of the 2007 Act. The first such Order came into force on 19 March 2008¹.
8. The main producers of Scottish official statistics are the Scottish Government, the General Register Office for Scotland (GROS) and the Information Services Division of the NHS National Services Scotland (NSS:ISD).²

¹S.S.I. 2008/131 - http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080131_en_1

²Lists of official statistics produced by these bodies can be found at: <http://www.statisticsauthority.gov.uk/uk-statistical-system/organisations/a-z-of-organisations/index.html>

9. The new rules will apply to all Scottish official statistics but will only be assessable by the Authority for those official statistics that have already been designated as National Statistics, or are put forward by Ministers to be designated as official statistics.

Policy objectives

10. The objective of pre-release access is to enable statisticians to manage the release of statistical publications effectively. The pre-release access period is used by statisticians to ensure that those who need to comment on the statistics, at the time that statistics are released, can do so on an informed basis without misinterpretation.

11. Pre-release access is important from a statistical integrity point of view. Ministers can react to statistics whether they have seen them in advance or not, and may often be called on or wish to comment on the policy issue at any time. It is better for Ministers and others to be involved in the orderly release of the official statistics than to be commenting on out-of-date or incorrect figures near the publication time of the statistical publication as this would be confusing for the public, and could damage confidence in official statistics.

12. There are risks associated with pre-release access in terms of trailing of statistics, selective early release and perceptions that Ministers influence the statistical publication.

13. However, rather than reduce where pre-release access happens, the time available and the people involved – all of which could threaten the objective of pre-release access. Scottish Ministers have decided to place the decision making on pre-release access in the hands of the statisticians and formalise the framework in which they work, which includes appropriate safeguards to reduce the risks associated with pre-release access.

14. This desire to give the decision-making powers to statistical staff, independent from Scottish Ministers, for the statistics which the Scottish Administration produce, is not incorporated in the Order itself as a matter of law because the 2007 Act does not give statisticians that legal responsibility. However, the intention is that decisions on how pre-release access works in practice - including determining who gets pre-release access, when they get access and ensuring awareness of the rules - are taken by the Scottish Statistical Heads of Profession. The Scottish Ministers therefore propose to accept these officials' professional advice in all cases, subject to their legal duties to properly exercise their own functions. The Scottish Statistical Heads of Profession are:

- the Chief Statistician for statistics produced by the Scottish Government;
- the Registrar General for statistics produced by the GROS; and
- the Director of NSS:ISD for ISD health statistics.

15. Only the person responsible can grant pre-release access. In practice the person responsible will be the Scottish Statistical Heads of Profession and their staff. The Order sets out a broad Framework for the person responsible to make decisions within.

Review

16. There is a lack of information on pre-release access regimes followed by government departments that produce official statistics around the world as internationally there tends to be a focus on the pre-release access rules followed by National Statistics Institutes (NSIs). NSIs do not produce the full range of government statistics and Ministers have a reduced role, and therefore have a reduced need to be well briefed on their activities. Hence the pre-release access regimes followed by NSIs are not necessarily appropriate for government.

17. Given this lack of information on pre-release access arrangements for comparable systems, the Scottish Government intend to review the new pre-release access arrangements 12 months after implementation. This review will include:

- an appraisal of how other countries manage pre-release access, especially statistics produced by governments from management information, such as hospital waiting times and school examination results.
- how the Scottish Order, and arrangements in the rest of the UK, have been implemented.

18. The UK Statistics Authority has committed to carrying out an independent review of implementation of the new rules also.

Consultation

Statutory consultation

19. In accordance with section 11(7) of the 2007 Act Scottish Ministers have consulted the Minister for the Cabinet Office, the Welsh Ministers, the Department for Finance and Personnel for Northern Ireland and the UK Statistics Authority.

20. The Cabinet Office, Welsh Ministers and Department for Finance and Personnel for Northern Ireland did not raise any concerns with the Order. The UK Statistics Authority provided a detailed response - this and the Scottish Government's reply can be found at the web link below.

Public consultation

21. The first public consultation on pre-release access in Scotland was carried out in December 2006. The consultation paper proposed "that pre-release access has several legitimate benefits and there should be less concern about arbitrary time limits and more about what happens in the pre-release access period".

22. None of the respondents to the consultation paper objected to the principle of pre-release access. Nor was the timing of the pre-release access period the key issue for respondents. Transparency and clarity of the rules were seen to be paramount.

23. A further short consultation on the draft Order was carried out in August 2008. This consultation was targeted at statistical users via ScotStat, which is the network for users of Scottish Official Statistics.

All the consultation documents and responses can be found at:

<http://www.scotland.gov.uk/StatisticsReform/Consultation>

Financial Effects

The Order has no financial effects on the Scottish Government, local government or on business.

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Scottish Government

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