

EXPLANATORY MEMORANDUM TO
THE OFFICIAL STATISTICS ORDER 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order specifies the statistics produced, or to be produced, by certain persons as “official statistics” under the Statistics and Registration Service Act 2007 (“the Act”). The effect of this designation is set out in paragraph 4.2 below.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 Section 1 of the Act established the Statistics Board, whose function it is to promote and safeguard the production and publication of official statistics that serve the public good (section 7 of the Act). Under section 6(1)(a) of the Act, all statistics produced by the Statistics Board, government departments, the Scottish Administration, a Welsh ministerial authority, a Northern Ireland department and other Crown bodies are “official statistics”. This Order is made under section 6(1)(b) and (2) of the Act, which allows orders to be made to specify statistics produced or to be produced by other persons or descriptions of persons as official statistics.

4.2 The effects of being specified as “official statistics” are as follows:

- The production and publication of official statistics are subject to monitoring and reporting by the Statistics Board (section 8 of the Act);
- At the request of the “appropriate authority” (defined in section 12(7) of the Act) the Statistics Board must assess and determine whether the Code of Practice for Statistics (issued by the Board under section 10 of the Act) has been complied with in relation to any official statistics and, if so, designate those statistics as “National Statistics” (section 12 of the Act);
- If official statistics have been designated as National Statistics, the producers of those statistics must continue to comply with the Code of Practice for Statistics in order to maintain those statistics’ designation (sections 13 and 14 of the Act). For other official statistics, compliance with the Code is not a formal requirement but is best practice; and

- The producers of official statistics must comply with the relevant rules and principles relating to the granting of pre-release access to official statistics to the extent applicable to them (see S.S.I. 2008/399, S.I. 2008/2998, S.R. 2009 No. 71 and S.I. 2009/2818 (W. 244)) and, in relation to National Statistics, must do so as if these rules and principles were part of the Code of Practice (section 11 of the Act).
- 4.3 This Order is made under section 6(1)(b) and (2) of the Act and is the fifth use of this order-making power by a Minister of the Crown. The last such use of the power was in May 2013 when the Official Statistics Order 2013 (“the 2013 Order”) was made. The 2013 Order had in turn been amended by S.I. 2013/2329, S.I. 2014/549 and S.I. 2017/1250, each removing one body (namely the National Lottery Commission, Competition Commission and Independent Police Complaints Commission respectively) and the third also adding one (namely the Independent Office for Police Conduct). The 2013 Order is revoked by this Order. This Order updates the list of (non-Crown body) producers of important, national-level statistics which the Minister for the Cabinet Office considers should be specified as official statistics.

5. Extent and Territorial Application

- 5.1 This instrument extends to all of the United Kingdom.
- 5.2 The Order does not apply to wholly Scottish devolved statistics or wholly Northern Ireland devolved statistics. The terms “Scottish devolved statistics” and “Northern Ireland devolved statistics” are defined in section 66 of the Act. The Official Statistics (Scotland) Order 2008 (S.S.I. 2008/131, amended by S.S.I 2010/448 and S.S.I. 2012/196) specifies the wholly Scottish devolved statistics produced by certain persons as official statistics. Similarly, the Official Statistics (Northern Ireland) Order 2012 (S.R. 2012 No. 2) specifies the wholly Northern Ireland devolved statistics produced by certain persons as official statistics. The terms “wholly Scottish devolved statistics” and “wholly Northern Ireland devolved statistics” are further used in section 11 of the Act.
- 5.3 This Order does, on the other hand, apply to all other statistics produced by the persons listed in the Order’s Schedule (subject to the limitation in Article 3(1) of the Order). This includes any wholly Welsh devolved statistics they produce or will produce. Separately, the Official Statistics (Wales) Order 2017 (S.I. 2017/1142 (W. 284)) specifies additional wholly Welsh devolved statistics as official statistics.

6. European Convention on Human Rights

- 6.1 The Minister for the Cabinet Office has made the following statement regarding Human Rights:

“In my view the provisions of the draft Official Statistics Order 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 From December 2007, the Act established the Statistics Board (a non-ministerial department which has chosen to operate under the name “UK Statistics Authority”) to promote and safeguard the production and publication of official statistics that serve the public good. The definition of official statistics in the Act allows flexibility to add

or remove non-Crown bodies from the Statistics Board's remit by order. This Order provides an updated list of bodies whose statistical activities will be monitored, scrutinised and reported on by the Board.

7.2 The Statistics Board:

- promotes good practice for the production and publication of official statistics, including through the development and dissemination of a Code of Practice for Official Statistics;
- monitors and reports on the production and publication of official statistics; and
- assesses the treatment by producers of official statistics against the Code of Practice for Official Statistics and publishes the results of these assessments. If statistics comply with the Code, the Board will designate them as "National Statistics".

7.3 This Order specifies the statistics produced, or to be produced, by the persons listed in the Schedule as official statistics. It revokes the 2013 Order and revises the list of persons set out in the Schedule to that Order. Bodies included in the list are those which produce, or will produce, national-level statistics which (a) inform the public about the social or economic position of the country, (b) are likely to be used to judge government performance or targets or (c) the government considers it is otherwise important that the public has particular trust in.

7.4 The Schedule adds 4 new bodies to the list contained in the 2013 Order. These are Monitor, the National Health Service Trust Development Authority, the Office for Students and the Service Complaints Ombudsman.

7.5 The Schedule alters the name of 1 body contained in the 2013 Order, following a legal change to the body's name. The Rail Passengers' Council was renamed the Passengers' Council by The Passengers' Council (Non-Railway Functions) Order 2010 (S.I. 2010/439). The body named on the Schedule is: Passengers' Council.

7.6 Without this Order, there would be a number of public bodies producing what the Government considers to be important, national-level statistics but over which the Statistics Board would have no control or power to make assessments against its Code and whose statistics would not enjoy the status of official statistics. Further, there would be one body whose entry did not reflect its new legal name. This Order is needed to update the list of specified persons in order to assist the Board in fulfilling its duty to build and maintain trust in official statistics.

7.7 The Order contains the legal names of public sector bodies, some of which are also known by other names. For clarity, these current other names, together with the detail of two companies included in the instrument, are set out below:

- The English Sports Council is known as Sports England.
- The Health and Social Care Information Centre is known as NHS Digital.
- Her Majesty's Inspectors of Constabulary is known as Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services.
- The Higher Education Statistics Agency Ltd is a company incorporated under the Companies Act 1985 with the registration number 02766993.
- The Historic Buildings and Monuments Commission for England is known as Historic England.

- The Homes and Communities Agency refers to itself as the Regulator of Social Housing in undertaking the functions of its Regulation committee. Homes England is the trading name of the Homes and Communities Agency’s non-regulation functions.
- The National Health Service Litigation Authority operates as NHS Resolution.
- The National Health Service Commissioning Board is known as NHS England.
- The Student Loans Company Limited is a company incorporated under the Companies Act 1985 and the Companies Act 2006 with the number 02401034.

7.8 An order under section 6(1)(b) and (2) of the Act may be made by any Minister of the Crown, but the Government thinks the most efficient use is made of Parliamentary time, and that the legislation is clearer and more accessible if, in general, a Cabinet Office Minister makes such an order on a regular basis, producing a consolidated list of bodies including those sponsored by other government departments.

8. Consultation outcome

8.1 As required by section 6(3) of the Act, the Statistics Board has been consulted on this Order. The formal consultation took place in May 2018. The Board confirmed by letter dated 15 May 2018 that it was content for the Government to proceed the proposed Order.

8.2 Bodies that have been newly included in the Order have been consulted. That consultation has been carried out by the statistical Head of Profession (or the statistical team) in each relevant Government department contacting those bodies which are sponsored by that department. The bodies listed in the Order which were also listed in the 2013 Order were consulted at the time they were first added to the list and so have not necessarily been consulted again for the purposes of this Order.

9. Guidance

9.1 The Statistics Board published its Code of Practice for Official Statistics in January 2009, and updated it in February 2018, with the Code of Practice for Statistics. Producers of official statistics – including those bodies specified in this Order – are expected to follow the Code as a matter of good practice. Producers of National Statistics (that is those official statistics which the Statistics Board designates as “National Statistics” under section 12(2) of the Act) are required to follow the Code in full in relation to those statistics. It is the responsibility of the Board to maintain, update and enforce this Code.

9.2 The National Statistician, who is the Chief Executive of the Statistics Board, has published guidance for producers of official statistics on various aspects of the Code (for example on the use of administrative data in producing official statistics: see *National Statistician’s Guidance: Management Information and Official Statistics*, version 1.1, 22 February 2018).

10. Impact

10.1 This Order does not impose any additional impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is expected to be negligible because the organisations newly named in the Order will have to make only very small changes to their

operations – if any – in order to comply with greater scrutiny from the Board. The costs associated with these changes will also be negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 This instrument is intended to allow the Statistics Board to fulfil its duties, in particular with regard to improving public trust in official statistics. The Government expects to update the list of (non-Crown body) producers of official statistics by order as required. In doing so the Government will take advice from the Board and will also consider comments on the scope of the Board's remit made by other bodies (for example comments made by Parliament as part of its scrutiny of the Board's activities).

13. Contact

13.1 Tom Haswell at the Cabinet Office Tel: 020 7276 0004 or email: tom.haswell@cabinetoffice.gov.uk can answer any queries regarding the instrument.