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WELSH STATUTORY INSTRUMENTS

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**2009 No. 2818 (W.244)**

**OFFICIAL STATISTICS**

**The Pre-release Access to Official Statistics (Wales) Order 2009**

*Made - - - - 20 October 2009*

*Coming into force in accordance with article 1*

The Welsh Ministers make this Order in exercise of the powers conferred by sections 11(2), (4), (5) and (6) of the Statistics and Registration Service Act 2007<sup>(1)</sup>.

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

In accordance with section 65(7) of that Act, a draft of this Order has been laid before and approved by resolution of the National Assembly for Wales.

**Title and commencement**

1. The title of this Order is the Pre-release Access to Official Statistics (Wales) Order 2009 and it comes into force on the day after the day on which it is made.

**Interpretation**

2. In this Order—

“the Act” (“*y Ddeddf*”) means the Statistics and Registration Service Act 2007;

“the Code” (“*y Cod*”) means the Code of Practice for Statistics under section 10 of the Act; and

“market-sensitive statistics” (“*ystadegau sy'n sensitif i'r farchnad*”) means statistics which when disclosed would, in the opinion of the person responsible, be reasonably likely to have a significant effect on the value of any investment or on the amounts traded of any investment.

**Statistics to which pre-release access rules and principles apply**

3.—(1) Subject to paragraph (4), the Schedule applies to the statistics referred to in paragraph (3).

(2) For the purposes of the Code, the Schedule provides for rules and principles relating to the granting of pre-release access<sup>(2)</sup> to those statistics.

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(1) 2007 c. 18.

(2) “pre-release access” is defined in section 11(8) of the Statistics and Registration Service Act 2007 c. 18 (“the Act”).

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- (3) The statistics are official statistics<sup>(3)</sup> that are wholly Welsh devolved statistics<sup>(4)</sup> and—
- (a) have been designated as “National Statistics” under section 12(2) of the Act, and that designation has not been cancelled;
  - (b) are regarded by virtue of section 12(8) of the Act as having been designated as “National Statistics”, and that designation has not been cancelled; or
  - (c) a request under section 12(1) of the Act has been made in respect of them, and no determination has been made under section 12(2) of the Act.
- (4) The Schedule does not apply where the statistics are released only for the purpose of producing an electronic or hard copy publication in which the statistics are to be published.

20 October 2009

*Andrew Davies*  
Minister for Finance and Public Service  
Delivery, one of the Welsh Ministers

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<sup>(3)</sup> “official statistics” is defined in section 6(1) of the Act.  
<sup>(4)</sup> “Welsh devolved statistics” is defined in section 66(3) of the Act.

## SCHEDULE

Article 3

### Rules and principles relating to pre-release access

#### **Individuals to whom, and circumstances in which, pre-release may be granted**

1.—(1) Subject to the provisions of this Order, the person responsible<sup>(5)</sup> may grant pre-release access in respect of statistics only to the extent that they consider it is necessary to grant access to a particular identifiable individual in order to—

- (a) enable an individual mentioned in sub-paragraph (3) to comment publicly on the statistics based on a correct understanding of them;
- (b) enable an individual mentioned in sub-paragraph (3) to consider the implications of the statistics for the policies and programmes of the Welsh Ministers so as to ensure that any public comments made by an individual mentioned in sub-paragraph (3) about those policies and programmes at or after the time of publication of the statistics reflect a correct understanding of them;
- (c) ensure that other statistics available to an individual mentioned in sub-paragraph (3), about the same subject-matter as the statistics to which pre-release access may be granted are not relied on by such an individual to the detriment of—
  - (i) the exercise of any functions of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, or
  - (ii) any public comment an individual mentioned in sub-paragraph (3) makes relating to those other statistics,without their being informed of the statistics to which pre-release access may be granted;
- (d) ensure, where a publication or other material is being prepared by or on behalf of any public body, public office or holder of such an office for publication at the same time or shortly after the statistics to which pre-release access may be granted, that any statistics contained in that publication or material are correct or that the publication or material is otherwise properly informed by the statistics to which pre-release access may be granted;
- (e) enable one of the following to make public comments in connection with the publication of the statistics based on a correct understanding of them—
  - (i) a Minister of the Crown;
  - (ii) the head of a United Kingdom government department;
  - (iii) a member of the Scottish Executive;
  - (iv) a junior Scottish Minister;
  - (v) a Northern Ireland Minister, including the First Minister and Deputy First Minister in Northern Ireland;
  - (vi) a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998<sup>(6)</sup>;
  - (vii) an individual who advises any of those mentioned in sub-paragraphs (i) to (vi).
- (f) enable a public body, public office or holder of such an office, to whose functions the statistics are relevant, to comment publicly on the statistics based on a correct understanding of them;

<sup>(5)</sup> “the person responsible” is defined in section 67 of the Act.

<sup>(6)</sup> 1998 c. 47.

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- (g) enable a body which represents a public body, public office or holder of such an office to whose functions the statistics are relevant, to comment publicly on the statistics based on a correct understanding of them;
  - (h) achieve any other purpose if the person responsible considers that the public interest is significantly better served by granting pre-release access (rather than not granting it) for that purpose having regard to any harm which the pre-release access would be likely to cause to—
    - (i) public trust in the integrity of official statistics generally; or
    - (ii) public trust in the integrity of particular official statistics.
- (2) The person responsible may grant pre-release access only where they are satisfied that there are arrangements in place to inform an individual to whom they grant pre-release access of the following information—
- (a) the ground in sub-paragraph (1) under which access is granted; and
  - (b) the requirements of paragraph 5.
- (3) The individuals mentioned in this sub-paragraph are—
- (a) a Welsh Minister appointed under section 48 of the Government of Wales Act 2006(7);
  - (b) the First Minister for Wales;
  - (c) the Counsel General to the Welsh Assembly Government;
  - (d) a Deputy Welsh Minister appointed under section 50 of the Government of Wales Act 2006;
  - (e) an individual who advises any of those mentioned in sub-paragraphs (a) to (d).

### **Pre-release access to be granted to particular identifiable individuals**

2. Where the person responsible grants pre-release access they must make that grant to a particular identifiable individual.

### **Information to accompany statistics to which pre-release access has been granted**

3. The person responsible must ensure that the following information accompanies the release of statistics in respect of which they have granted pre-release access—

- (a) in the case of market-sensitive statistics, that they are “Confidential Statistics”;
- (b) in the case of statistics that are not market-sensitive statistics, that they are “Restricted Statistics”;
- (c) in all cases—
  - (i) that pre-release access in respect of the statistics has been granted under this Order;
  - (ii) that paragraph 5 of this Schedule contains certain requirements; and
  - (iii) details of how to inform the person responsible in the event that the statistics are or might be disclosed otherwise than is permitted by this Order.

### **Timing of access**

4.—(1) Subject to sub-paragraphs (2) to (6)—

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(7) 2006 c. 32.

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- (a) in the case of market sensitive statistics, where granting pre-release access the person responsible must not give access to those statistics earlier than 24 hours before the intended time of their publication;
  - (b) in the case of other statistics, where granting pre-release access the person responsible must not give access to those statistics earlier than the fifth day before the intended date of their publication;
  - (c) in all cases, the person responsible must not give access earlier than they consider is necessary to fulfil the purpose for which they are granting access.
- (2) Where the person responsible grants pre-release access under the ground in paragraph 1(1)(d), sub-paragraphs (1)(a) and (b) do not apply.
- (3) Where granting pre-release access the person responsible may give access earlier than is provided for in sub-paragraphs (1)(a) and (b) provided that the following conditions are met—
- (a) they consider that such earlier access is necessary to fulfil the purpose for which they are granting pre-release access; and
  - (b) they consider that the public interest is significantly better served by giving such earlier access (rather than not giving it) having regard to any harm which such earlier access would be likely to cause to—
    - (i) public trust in the integrity of official statistics generally; or
    - (ii) public trust in the integrity of particular official statistics.
- (4) Where the person responsible gives pre-release access earlier than is provided for in sub-paragraphs (1)(a) and (b) they must, as soon as is reasonably practicable, inform the Statistics Board<sup>(8)</sup> of—
- (a) the fact that they have done so;
  - (b) the name of the statistics in respect of which such earlier access has been given;
  - (c) the name and position of the individual to whom such earlier access has been given;
  - (d) the date and time from which access was given;
  - (e) the ground in paragraph 1(1) under which access was granted; and
  - (f) an explanation of the reason for granting such earlier access.
- (5) The requirements set out in sub-paragraph (4) apply in cases where the person responsible has granted pre-release access under the ground in paragraph 1(1)(d) as if the restrictions in sub-paragraph (1) did apply to grants under that ground.
- (6) The periods of time mentioned in sub-paragraph (1) (“24 hours” and “day”) exclude any period of time which falls within a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a Bank Holiday under the Banking and Financial Dealings Act 1971<sup>(9)</sup> in any part of the United Kingdom.

### **Requirements where pre-release access has been granted**

5.—(1) This paragraph applies where an individual has been granted pre-release access under paragraph 1 in respect of statistics, or where statistics have been disclosed to an individual under paragraph 6.

(2) Without prejudice to paragraph 6, the individual must not disclose the statistics, or any indication of their content or of what they may show.

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<sup>(8)</sup> The Statistics Board (“*Y Bwrdd Ystadegau*”) was established by section 1(1) of the Act.

<sup>(9)</sup> 1971 c. 80.

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(3) In the case of an individual who has been granted pre-release access under paragraph 1, that individual must use the statistics only for the purpose for which such access was granted.

(4) In the case of an individual to whom the statistics have been disclosed under paragraph 6 by a person who has been granted pre-release access to them under paragraphs 1(1)(a) to (g), that individual must use the statistics only for the purpose of providing that person with administrative or technical support.

(5) The individual must take reasonable steps towards ensuring—

- (a) that the statistics are not disclosed otherwise than is permitted by this Order; and
- (b) that no indication of their content or of what they may show is disclosed.

(6) The individual must not use the statistics for personal gain.

(7) If the individual has reasonable grounds for believing that—

- (a) the statistics have been disclosed otherwise than is permitted by this Order; or
- (b) an indication of the content of the statistics, or of what they may show, has been disclosed;

or

(c) there is a risk that a disclosure mentioned in sub-paragraph (a) or (b) will be made, the individual must comply with sub-paragraph (8).

(8) As soon as is reasonably practicable the individual must take all reasonably practicable steps to inform the person responsible of the disclosure or possible disclosure.

(9) The individual must not seek to change the format, content or timing of the publication of the statistics, except in accordance with sub-paragraph (10).

(10) If the individual identifies errors in, or wishes to comment on the format, content or timing of the publication of the statistics, the individual may communicate that to the person responsible.

#### **Disclosure of statistics for purposes of receiving administrative or technical support**

6. An individual who has been granted pre-release access under a ground in paragraphs 1(1)(a) to (g) may disclose to another particular identifiable individual the statistics in respect of which they have been granted access, provided that the disclosure is necessary for, and solely for the purpose of, enabling that other individual to provide them with administrative or technical support.

#### **Notification to Statistics Board where pre-release access is granted under the ground in paragraph 1(1)(h)**

7. Where pre-release access is granted under the ground in paragraph 1(1)(h) the person responsible must as soon as is reasonably practicable notify the Statistics Board of—

- (a) the name of the statistics in respect of which access was granted;
- (b) the name and position of the individual to whom access was granted;
- (c) the date and time from which that individual was given access; and
- (d) an explanation of the reason for granting access.

#### **Breach of the requirements of paragraph 5**

8. Where deciding whether or not to grant pre-release access to an individual under this Order, the person responsible must take into account any evidence of which they are aware which, in their opinion, indicates any of the following—

- (a) that the individual has, or may have, previously failed to comply with the requirements of paragraph 5;

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- (b) that another individual to whom that individual has previously disclosed statistics under paragraph 6 has, or may have, failed to comply with the requirements of paragraph 5;
- (c) that a previous grant to that individual under this Order of pre-release access in respect of statistics has, or may have, given rise to a disclosure of those statistics which was not permitted by this Order;
- (d) that a previous grant to that individual under this Order of pre-release access in respect of statistics has, or may have, given rise to a disclosure of an indication of the content of those statistics or of what they may have shown.

### **Record-keeping**

9.—(1) In relation to any statistics in respect of which the person responsible has granted pre-release access under this Order, the person responsible must make, as soon as is reasonably practicable, records of—

- (a) the name of the statistics;
- (b) the name, position and contact details of any individual to whom they have granted access;
- (c) the date and time from which that individual was given access;
- (d) the ground in paragraphs 1(1)(a) to (h) under which access was granted;
- (e) where access has been granted under the ground in paragraph 1(1)(h), the purpose to be achieved by the access;
- (f) any discussions or correspondence with the individual about the format, content or timing of the publication of the statistics;
- (g) any information which they have notified to the Statistics Board under paragraphs 4(4) or 7;
- (h) any information given to them under paragraph 5(8), along with the details of when and by whom that information was given to them;
- (i) any information received by them about a possible failure by any individual to comply with the requirements of paragraph 5, along with the details of when and by whom that information was given to them;
- (j) any information received by them about any disclosure of the statistics which was not one which was permitted by this Order, along with the details of when and by whom that information was given to them; and
- (k) any information received by them about any disclosure of an indication of the content of the statistics or of what they may have shown, along with the details of when and by whom that information was given to them.

(2) The records must be retained by the person responsible for a period of no less than 7 years from the date of the publication of the statistics to which they relate.

### **Publication**

10.—(1) The person responsible must ensure that each year, on 1 January or as soon as is reasonably practicable after that date, there is published a list of the names of the statistics to which they have granted pre-release access in the twelve months immediately prior to that date.

(2) The person responsible must ensure that there are arrangements in place towards ensuring that statistics in respect of which they are the person responsible, and to which this Schedule applies, are dealt with in accordance with this Order.

(3) The person responsible must ensure that, as soon as is reasonably practicable, there is published an explanation of the arrangements mentioned in sub-paragraph (2).

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(4) If the arrangements mentioned in sub-paragraph (2) are revised, the person responsible must ensure that, as soon as is reasonably practicable after those revisions are made, there is published an explanation of the revised arrangements.

### **Provision of information**

**11.—(1)** Subject to sub-paragraph (3), the person responsible must, if a request is received by them for information which meets the criteria in sub-paragraph (2), provide the requester with that information no later than the twentieth working day after the day on which they receive the request.

(2) The criteria are that the information is contained in records which the person responsible has made for the purposes of any of paragraphs 9(1)(a) to (g) and are not contact details recorded for the purpose of paragraph 9(1)(b).

(3) For the purposes of this paragraph a request means a request which—

- (a) is in writing;
- (b) is received in legible form;
- (c) states the name of the requester and an address for correspondence; and
- (d) adequately describes the information requested.

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order sets out rules and principles to be followed in respect of allowing certain people to have advance sight of certain types of statistics before they are officially published. This type of access is referred to in this Order, and in the Act under which the Order is made, as pre-release access.

This Order is made under section 11 of the Statistics and Registration Service Act 2007 (c. 18) (“the Act”). That section allows the “appropriate authority” to provide, for the purposes of the Code of Practice for Statistics under section 10 of the Act, for rules and principles relating to the granting of pre-release access to official statistics.

The Code of Practice for Statistics under section 10 of the Act is prepared and published by the Statistics Board (“*Y Bwrdd Ystadegau*”). The effect of section 11(1) of the Act is that the Code is not itself allowed to deal with rules and principles relating to the granting of pre-release access. Those rules and principles are to be set by the appropriate authority making an Order under section 11.

Section 11(6)(c) of the Act provides that the Welsh Ministers are the “appropriate authority” in relation to official statistics that are wholly Welsh devolved statistics. “Official statistics” is defined in section 6(1) of the Act and “Welsh devolved statistics” is defined in section 66(3).

“Pre-release access” in relation to official statistics is defined in section 11(8) and means access to the statistics in their final form prior to publication.

The rules and principles provided for by the Order are set out in the Schedule. Article 3 of the Order provides that, subject to the exception set out in article 3(4), the Schedule applies to statistics which meet all of the criteria of being official statistics, wholly Welsh devolved statistics and either designated as National Statistics or awaiting a determination as to whether they are designated as



National Statistics. The exception in article 3(4) applies where statistics are released for the sole purpose of producing the publication in which they are to be published.

The Statistics Board has the function under section 12(2) of the Act of designating official statistics as National Statistics. The Board was established by the Act. Prior to the establishment of the Board and the commencement of section 12, the Office for National Statistics designated official statistics as National Statistics. Section 12(8) of the Act provides that official statistics which were designated as National Statistics before the commencement of section 12 are to be regarded for the purposes of Part 1 of the Act as if they had been designated as National Statistics under section 12(2).

Paragraph 1(1) of the Schedule provides that, subject to the provisions of the Order, the person responsible may grant pre-release access only to the extent that, they consider it necessary to grant access to a particular identifiable individual in order to achieve a purpose which is one of those mentioned in paragraphs 1(1)(a) to (h). The “person responsible” is defined in section 67 of the Act.

Paragraph 1(2) provides that, before granting pre-release access, the person responsible must be satisfied that arrangements are in place to inform the individual to whom they grant pre-release access of the ground in paragraphs 1(1)(a) to (h) under which access is granted, and of the requirements set out in paragraph 5 to which that individual will be subject.

Paragraph 1(3) is for the purposes of the meaning of paragraphs 1(1)(a) to (c).

Paragraph 2 provides that where the person responsible grants pre-release access they must make the grant to a particular individual who can be identified. For example, a grant to “the First Minister for Wales” would meet this requirement, but a grant to “the Welsh Local Government Association” would not.

Paragraph 3 requires the person responsible to ensure that when statistics to which they have granted pre-release access are released, the statistics must be accompanied by the information as set out in paragraphs 3(a) to (c).

Subject to the remainder of the provisions in paragraph 4, paragraphs 4(1)(a) and (b) impose maximum limits on how far in advance of their publication the person responsible may release statistics under the Order.

In the case of market-sensitive statistics, the statistics must not be released earlier than 24 hours before the time at which it is intended they will be published. “Market-sensitive statistics” is defined in article 2 of the Order.

In the case of statistics which are not market-sensitive, they must not be released earlier than the fifth day before the date on which it is intended they will be published.

The effect of paragraph 4(1)(c) is that in the case of statistics which are market sensitive and those which are not, they must not be released earlier than the person responsible considers is necessary to fulfil the purpose for which pre-release access is granted.

Paragraph 4(6) applies for the purposes of calculating the earliest point at which the statistics can be released. Its effect is that certain days, such as those which fall on weekends, are to be disregarded in carrying out the calculation.

Paragraph 4(2) disapplies the maximum time limits where pre-release access is granted under paragraph 1(1)(d).

Paragraph 4(3) has the effect of allowing the person responsible to release statistics earlier than the maximum periods provided for in paragraphs 4(1)(a) and (b). However, the person responsible can do so only if the conditions set out in paragraphs 4(3)(a) and (b) are met.

Paragraph 4(4) requires the person responsible to notify the Statistics Board, and to provide the Board with certain information, if the person responsible gives access earlier than the maximum periods provided for in paragraphs 4(1)(a) and (b).

The effect of paragraph 4(5) is that, if the person responsible grants pre-release access under paragraph 1(1)(d), and gives access earlier than the maximum periods provided for in paragraphs

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4(1)(a) and (b), the person responsible has to comply with the notification requirement in paragraph 4(4), even though paragraph 4(2) has disapplied the maximum periods in paragraphs 4(1)(a) and (b) to cases where access has been granted under paragraph 1(1)(d).

Paragraph 5 imposes requirements on individuals who have been granted pre-release access by the person responsible, and on those who have had statistics disclosed to them under paragraph 6 (disclosure for the purposes of enabling the provision of administrative and technical support.) These requirements relate mainly to prohibiting further disclosures of the statistics, limiting their use, requiring reasonable steps to be taken to safeguard their security and requiring all reasonably practicable steps to be taken to notify the person responsible if that security is breached.

Paragraph 6 permits an individual who has been granted pre-release access to statistics under one of paragraphs 1(1)(a) to (g) to disclose those statistics to an individual who provides them with administrative or technical support. However, the disclosure must be one which is necessary to enable that support to be provided, and must be made solely for that purpose. An individual who has been granted access under paragraph 1(1)(h) cannot make a further disclosure of the statistics using this provision.

Paragraph 7 requires the person responsible to notify the Statistics Board, and provide the Board with certain information, where the person responsible has granted pre-release access under paragraph 1(1)(h).

Paragraph 8 requires the person responsible, where they are considering granting pre-release access to a particular individual, to take into account in their decision any evidence of which they are aware which, in their opinion, indicates any of the matters set out in paragraphs 8(a) to (d). The matters relate to previous non-compliance with the requirements of paragraph 5, and previous disclosures of statistics or their content.

Paragraph 9(1) requires the person responsible to make, as soon as is reasonably practicable, records relating to grants of pre-release access made by them. Those records must contain information as set out in paragraphs 9(1)(a) to (k).

Paragraph 9(2) requires the person responsible to retain the records for at least 7 years from the date of the publication of the statistics to which they relate.

Paragraph 10(1) requires the person responsible to ensure that each year, on 1 January or as soon as is reasonably practicable after that date, there is published a list of the names of the statistics to which they have granted pre-release access in the twelve months immediately prior to that date.

Paragraph 10(2) requires the person responsible to ensure that there are arrangements in place towards ensuring that statistics in respect of which they are the person responsible, and to which the Schedule to this Order applies, are dealt with in accordance with this Order.

Paragraphs 10(3) and (4) require the person responsible to ensure that there is a published explanation of the arrangements mentioned in paragraph 10(2), and that the published explanation is updated to reflect changes to those arrangements.

Paragraph 11(1) places a requirement on the person responsible to provide information, within a specified time limit, in response to certain requests for certain information contained within records they have made for the purposes of paragraph 9. In order for this obligation on the person responsible to arise, the requested information must meet the criteria set out in paragraph 11(2) and the request must meet the criteria set out in paragraph 11(3).