

PRE-RELEASE ACCESS TO OFFICIAL STATISTICS ACT 2021

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are published in order to assist the reader of the Pre-release Access to Official Statistics (Scotland) Act. They have been prepared by the Scottish Parliament's Non-Government Bills Unit on behalf of the Economy, Energy and Fair Work Committee, whose convener, Gordon Lindhurst MSP, introduced the Bill for this Act in the Parliament. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation, none is given.

THE ACT

3. The purpose of the Act is to further restrict what is known as “pre-release access” to official statistics. Pre-release access is where certain persons, in particular Ministers, are given access to official statistics in their final form in advance of publication. The Act's restrictions on pre-release access are limited to official statistics on Scotland's gross domestic product (GDP) and retail sales, and to other economic statistics; it does not affect other, non-economic, official statistics.
4. The Act achieves this purpose by adding a new section 11A into the Statistics and Registration Service Act 2007 to restrict the provision about pre-release access that the Scottish Ministers may make (using their powers under section 11 of that Act). It also amends the existing order (made in 2008, in exercise of those section 11 powers)¹. In relation to certain economic statistics, the effect is to restrict, permanently, the maximum period of pre-release access that may normally be granted to one working day. In relation to statistics on GDP and retail sales, the effect is first to restrict the maximum period to one working day, then to reduce it to four hours and finally to remove it altogether, but with this reduction and removal subject to an independent review.
5. The Act consists of five sections. Section 1 amends the 2007 Act; section 2 amends the order made (in 2008) under that Act; section 3 provides for the review; and sections 4 and 5 deal with commencement and the Act's short title.

COMMENTARY ON SECTIONS

Section 1

6. Section 1 amends the Statistics and Registration Service Act 2007 (the 2007 Act).

¹ The [Pre-release Access to Official Statistics \(Scotland\) Order 2008 \(S.S.I. 2008/399\)](#).

The 2007 Act

7. The 2007 Act established the Statistics Board (also known as the UK Statistics Authority) as a body corporate with general functions that include monitoring the production and publication of official statistics throughout the UK. Official statistics are defined (in section 6 of the Act) to include statistics produced by the Scottish Government and its agencies (as well as those produced by the Board itself, the UK Government and the other devolved administrations).
8. Section 10 of the 2007 Act requires the Board to prepare, adopt and publish a Code of Practice for Statistics. Section 11 prohibits the Code from dealing with any matter relating to pre-release access, but enables “the appropriate authority” to make provision, by order, for rules and principles relating to pre-release access. Such rules and principles are then to be treated as if they formed part of the Code.
9. The Scottish Ministers count as “the appropriate authority” in relation to official statistics that are “wholly Scottish devolved statistics” (section 11(6)(b)). Under the definition in section 66(1) of the 2007 Act, “Scottish devolved statistics” includes statistics that relate to devolved matters so long as they are not produced in the exercise of a function that relates to a reserved matter, together with statistics that relate to reserved matters but are produced in the exercise of a function that relates to a devolved matter; it also includes statistics produced by the Scottish Ministers in the exercise of functions devolved to them under section 63(1)(a) of the Scotland Act 1998.
10. Rules and principles made under section 11 of the 2007 Act may govern (among other things) the circumstances in which pre-release access may be granted, the persons to whom it may be granted, and the maximum duration for which it may be granted.

Amendments to the 2007 Act

11. Subsection (2) of section 1 makes relevant provisions of section 11 (of the 2007 Act) subject to the new section 11A, inserted by subsection (3).
12. New section 11A(1) prevents the Scottish Ministers using their section 11 power to make an order authorising pre-release access to two specific categories of official statistics – those on Scotland’s gross domestic product (GDP) and those on Scottish retail sales (whether by volume of sales, or the value of those sales). This does not affect the continued application (after section 11A comes into force) of the provisions in the 2008 order (as amended by section 2 – see paragraphs 17-20 below) which authorise pre-release access to GDP and retail sales statistics, since that order was made prior to section 11A coming into force.
13. New section 11A(2) provides an exception to the prohibition on pre-release access to GDP and retail sales statistics if such access has been recommended in a report required by section 3 (see paragraph 21 below).
14. New section 11A(3) limits to one working day the pre-release access that may be allowed to what section 11A(4) defines as “economic statistics”. A non-exhaustive list of matters included within this definition is set out at paragraph (a). Paragraph (b) of the definition excludes statistics made by the Scottish Ministers in the exercise of a function that has been transferred to them by order under section 63(1)(a) of the Scotland Act 1998, a component of the definition of “Scottish devolved statistics” (section 66(1) (c) of the 2007 Act). Accordingly, the Act does not change the position for statistics produced in the exercise of functions executively devolved to the Scottish Ministers further to section 63(1)(a) (functions that would otherwise relate to reserved matters).
15. Subsection (5) of new section 11A ensures that subsections (1) and (3) of that section – which prohibit pre-release access to official statistics on GDP or retail sales, and restrict to a maximum of one working day pre-release access to economic statistics – do not prevent pre-release access being given where the condition set out in new section 11A(6) is met. As a result, pre-release access may still be granted if this is

considered necessary to ensure that the statistics have been accurately reflected in a document which is to be published alongside the statistics or shortly afterwards. Section 11A(6) reflects the terms of paragraph 2(1)(e) of the Schedule to the Pre-release Access to Official Statistics (Scotland) Order 2008 (the 2008 order).

16. Subsection (7) of new section 11A ensures that the restrictions set out in the rest of that section do not prevent Ministers authorising pre-release access to anyone whose role includes printing or producing those statistics. This reflects the terms of paragraph 1(2) of the Schedule to the 2008 order.

Section 2

17. Section 2 amends the 2008 order. That order, made under section 11 of the 2007 Act, currently governs pre-release access to wholly Scottish devolved statistics (see paragraph 9 above). The rules and principles for that access are set out in the Schedule to the order. Under paragraph 4 of the Schedule, the maximum period of pre-release access that may normally be granted is one working day for “market-sensitive statistics” and five working days for other official statistics. “Market-sensitive statistics” are defined in article 2 of the order to mean “official statistics which when disclosed would, in the opinion of the person responsible, be reasonably likely to have a significant effect on the value or traded volume of any investment”. This is currently understood to include statistics on Scotland’s gross domestic product (GDP), the retail sales index for Scotland, Scotland’s quarterly national accounts and Government Expenditure and Revenues Scotland (GERS).
18. Subsection (3)(a) amends paragraph 4 (of the Schedule to the 2008 order) so that the statistics that are subject to a one-working-day maximum period for pre-release access includes “economic statistics” as well as “market-sensitive statistics”. Subsection (2) adds into article 2 of the 2008 order the same definition of “economic statistics” that section 1(3) includes in new section 11A of the 2007 Act (see paragraph 14 above).
19. Subsection (3)(b) also amends the Schedule to the 2008 order, by adding a new paragraph 4A. That paragraph restricts the maximum period of pre-release access that may be allowed to official statistics on Scotland’s gross domestic product and Scottish retail sales (whether by volume or value). The new limit is one working day during the first year after Royal Assent (in practice, the same as the current limit), reduced to four hours during the next-following year, after which pre-release access to such statistics is prohibited altogether (subject to the outcome of the independent review required under section 3 – see paragraph 21 below).
20. Accordingly, the maximum periods of pre-release access that could generally be authorised would be as follows:

<i>Category of official statistics</i> <i>Period</i>	<i>Statistics on GDP or retail sales</i>	<i>Economic statistics</i>	<i>Market-sensitive statistics</i>	<i>Other official statistics</i>
Up to and including the day of Royal Assent	5 working days (except where market-sensitive)		1 working day	5 working days
Year 1 (beginning on day after Royal Assent)	1 working day			5 working days
Year 2	4 hours	1 working day		5 working days
Year 3	None	1 working day		5 working days

<i>Category of official statistics Period</i>	<i>Statistics on GDP or retail sales</i>	<i>Economic statistics</i>	<i>Market-sensitive statistics</i>	<i>Other official statistics</i>
After Year 3	None (unless recommended by the independent reviewer)	1 working day		5 working days

Section 3

21. Section 3 requires the Scottish Ministers to commission an independent review of the impact of the reduction and removal of pre-release access to GDP and retail sales statistics. The review is to be commissioned as soon as practicable after a 3-year period (starting with Royal Assent), so that, by the time the review begins, there will have been one year's experience of each of the following: pre-release access capped at one working day, pre-release access capped at four hours, and a ban on pre-release access. The person or organisation appointed to conduct the review must report to Ministers, who in turn must publish the report and lay a copy before the Parliament.
22. As noted above (paragraph 13), if the report recommends that Ministers should be entitled to authorise pre-release access to GDP or retail sales statistics, Ministers could then make an order (under section 11 of the 2007 Act) to give effect to that recommendation, and this would not be prohibited by the operation of new section 11A(1). By virtue of section 65(6) of the 2007 Act, any such order would require to be laid in draft before, and approved by resolution of, the Parliament.

PARLIAMENTARY HISTORY

23. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, and references to the Official Report of those proceedings. It also shows the dates on which Committee reports and other papers relating to the Bill were published, and gives references to those reports and other papers.

<i>PROCEEDINGS AND REPORTS</i>	<i>REFERENCE</i>
BEFORE INTRODUCTION	
Proposal by Economy, Energy and Fair Work Committee – published 6 June 2019	7 th Report, 2019 (Session 5)
Debate in the Parliament – 19 September 2019	Columns 61-97
INTRODUCTION	
Bill (as introduced) – 8 September 2020	SP Bill 81, Session 5 (2020)
STAGE 1	
(a) Finance and Constitution Committee	
Report on Financial Memorandum – published 29 October 2020	12 th Report, 2020 (Session 5)
(b) Consideration by the Parliament	
Stage 1 debate – 12 November 2020	Columns 62-90

These notes relate to the Pre-release Access to Official Statistics Act 2021 (asp 11) which received Royal Assent on 21 April 2021

PROCEEDINGS AND REPORTS	REFERENCE
STAGE 2	
Committee of the Whole Parliament	
Stage 2 proceedings – 27 January 2021	Column 77
STAGE 3	
Consideration by the Parliament	
Stage 3 proceedings – 4 March 2021	Columns 35-44
ROYAL ASSENT	
21 April 2021	Pre-release Access to Official Statistics Act 2021 (asp 11)