

EXPLANATORY MEMORANDUM TO
THE PRE-RELEASE ACCESS TO OFFICIAL STATISTICS ORDER 2008
2008 No. Draft

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

2. **Description**

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. These rules will form part of the Code of Practice for Statistics against which key statistics will be assessed by the UK Statistics Authority.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None

4. **Legislative Background**

4.1 This order is made under section 11 of the Statistics and Registration Service Act 2007 (“the Act”) and is the first use of this order-making power. The purpose of the order is to provide for rules and principles relating to the granting of “pre-release access” to official statistics - access to such statistics in their final form prior to publication.

4.2 During the debates on the Act, the Government said that it would “set out principles in secondary legislation to provide guidance for Departments and ensure that access is limited only to those individuals who require data for operational reasons” and that it would “review the operation of the new pre-release system 12 months after it starts” (see for example Commons Hansard 8 Jan 2007: Column 38).

5. **Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

5.2 The order does not apply to wholly devolved statistics. It is for the devolved administrations to set out rules for devolved statistics.

6. **European Convention on Human Rights**

Ed Miliband, the Minister for the Cabinet Office, has made the following statement regarding Human Rights:

In my view the provisions of the Pre-release Access to Official Statistics Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 The Act received Royal Assent in July 2007. It creates 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. This order is being made as part of the implementation of the new system.

7.2 The UK Statistics Authority (the “Authority”) will:

- promote good practice for official statistics, including through the development and dissemination of a Code of Practice for Statistics that will set out the best practice to be followed in producing and publishing official statistics;
- monitor, and report on, the production and publication of official statistics; and
- assess a core set of official statistics against the Code of Practice for Statistics, and publish the results of these assessments. If statistics comply with the Code, the Authority will approve them as “National Statistics”.

7.3 Pre-release access to official statistics is access by mainly Ministers and officials to the final data and the description of that data in their publication form in advance of publication. The purpose of pre-release access is to enable such Ministers and officials to account for the policy implications of statistics at the time of publication and, in certain circumstances, to be in a position to announce policy decisions when the data is released, or take other appropriate action.

7.4 Pre-release access is sometimes cited as a contributing factor to problems around trust and confidence in official statistics, and has been widely discussed, both in debates on the Act and before this, for example during the consultation on the legislation in 2006.

7.5 The Government is committed to tackling any perception of Ministerial interference in official statistics, and therefore gave pre-release a special status in the Act, with the pre-release rules to be set out in secondary legislation made under the affirmative Parliamentary procedure. These rules replace the current rules set out in the non-statutory National Statistics Code of Practice Protocol on Release Practices.

7.6 Under the Act, the Authority has a legal duty to assess compliance with the rules for pre-release, as a part of its assessment of statistics against the Code of Practice. If official statistics comply with the Code, the Authority will approve them as National Statistics. Official statistics that fail to comply

with the Code will not be approved as National Statistics. This work will mean that users of official statistics will have independent confirmation of the quality of official statistics produced by government, with the “National Statistics” badge on a publication becoming a clear assurance to the user that transparent standards for the production of statistics have been met.

7.7 In brief, the rules in the Order require that:

- except in exceptional circumstances, pre-release access be limited to a strict maximum of 24 hours, reduced from up to five working days for certain National Statistics under the current non-statutory rules;
- pre-release access is only granted to a limited class of persons;
- pre-release access be limited to the minimum necessary number of people within that class to ensure Ministers or officials with the relevant policy or operational responsibility are able to respond – whether in words or in action – at the time of release;
- where pre-release access is granted, it shall be done in an open and transparent manner, with details documented and published;
- access to statistics ahead of their release will continue to be allowed in a limited number of special circumstances, reflecting current practice, for example to allow the Monetary Policy Committee of the Bank of England access to statistics relating to interest rates so that it can fulfil its remit efficiently; to allow journalists time to absorb and understand the significance of a given release, particularly complex or compendia releases; and to allow statistics to be included in important third party reports that are to be published at the same time as, or shortly after, those statistics;
- once pre-release access to a statistic in final form has been granted, that statistic will be under embargo – meaning that its contents cannot be shared with others for political advantage, or any other reason, until the point of publication. This does not preclude the preparation of a Ministerial response. Those granted pre-release access to statistical releases would not be allowed to alter or attempt to alter the content or timing of those releases, or the way in which they are presented; and the pre-release access period must not be used for personal gain. A person who is granted pre-release access can share that access with administrative staff who assist that person, such as those providing secretarial support, printers, webmasters, but who do not engage with the statistic in question.

7.8 To supplement the rules in the order the Government has made a number of related undertakings:

- that the need for pre-release access to a publication, and the people granted access, would be reviewed ahead of release of the relevant statistics;
- that the decisions on pre-release access will be led by statistical professionals, with the professional leading the decisions in each department set out in a published pre-release scheme;
- that the reason for pre-release access for each person receiving it should be available on request, though in many cases this should be self-evident from the person’s job title;

- to work in a way that is consistent with the spirit of the Act and the principles and rules set out in the Order. As with the Code of Practice, the rules will apply to all official statistics, but will only be assessed by the UK Statistics Authority in relation to National Statistics;
- that government officials who share access with administrative support staff as mentioned in 7.7 above will ensure compliance with the rules through the line management chain;
- that all breaches of the rules should be reported to the Authority.

7.9 The Government consulted publicly on the rules for pre-release access for a 12 week period from 10 December 2007, as well as consulting the Authority and the devolved administrations as required in the Act. Its consultation document *Limiting pre-release access to statistics*, the fifteen public responses to the consultation and the Government's response to the consultation exercise are available at www.cabinetoffice.gov.uk/consultations

7.10 The consultation document and Government response contain a more detailed explanation of the proposed rules for pre-release access.

7.11 The Cabinet Office will provide more detailed guidance to departments to facilitate the implementation of the new rules.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is broadly comparable to that under the current rules. Please see Annex C of *Limiting pre-release access to statistics: a consultation document* for a more detailed discussion of this impact.

9. Contact

Ian Kemsley at the Cabinet Office Tel: 020 7276 0437 or email: ian.kemsley@cabinet-office.x.gsi.gov.uk can answer any queries regarding the instrument.