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See Michael,

9 July 2008

CONSULTATION ON PRE-RELEASE ACCESS ORDER

Firstly, I would like to thank you, and the members of your Board, for attending the Statistics Reform event at Holyrood on 19 June. I hope that you agree that it was a successful evening and I look forward to seeing you again, perhaps when your Edinburgh office is operational.

Secondly, I would welcome your views on the draft Pre-release Access to Statistics (Scotland) Order 2008, a copy of which is enclosed. I would very much appreciate it if you would give me any views on the draft order by 31 August 2008, as I plan to put the order to the Scottish Parliament for approval after the summer recess.

The Scottish Government is currently consulting publicly on the draft order, and as such changes may be made, so I will keep the Authority updated on substantive developments.

Our approach to the draft Pre-release Access to Statistics (Scotland) Order 2008, which itself is informed by an earlier consultation, recognises that pre-release access is needed for good governance and to ensure the integrity of the statistics.

The draft Order sets out explicitly the legitimate uses of pre-release access:

- to ensure that Ministers, public bodies and others understand the statistics and are able to comment on them properly at the time of release without misinterpretation;
- to ensure that where Ministers already have access to data for management purposes, this is not used in a way which would damage public trust or the business of government. For example, where statisticians are preparing official statistics publications they might identify errors in other related figures that are available directly from the source of the figures e.g. health boards or local authorities. Statisticians should be able to make Ministers aware of such issues - especially where these figures are intended to be used in decision making or in public statements;
- to ensure that publications or other material being prepared for release at the same time as the statistics (or shortly after) are properly informed by the correct figures; and

- to allow access where necessary in exceptional cases provided this would not damage public trust in official statistics.

Scottish Ministers have publicly committed that the professional statistical staff will manage the pre-release access arrangements. Unfortunately, this desire to give the decision-making powers to statistical staff, independent from Ministers, as a matter of law cannot be incorporated in the draft order itself because the Statistics and Registration Service Act does not give Chief Statisticians or Statistical Heads of Profession a legal status. However, the intention is that the decisions on how pre-release access works in practice - including determining which statistics are eligible for pre-release access, who gets pre-release access and ensuring awareness of the rules - will be taken by the Scottish Statistical Heads of Profession.

The draft Order sets a workable time norm to allow all the legitimate uses to be carried out efficiently - a normal maximum of 5 working days but a maximum of 1 working day for market sensitive statistics to reduce the risk of leaks. This is in line with current practice, which works well in Scotland. The statistical Heads of Profession can decide to vary these periods if, in their opinion, more or less time is required to fulfil the purpose of pre-release access. Where a statistical Head of Profession increases the maximum he/she must publish that fact.


The draft Order contains important conditions to prevent Ministers, officials and others from commenting on the statistics before the public release.

Further to the terms of the draft order itself, we have committed to review the pre-release access arrangements 12 months after implementation. This review will include:

- an appraisal of how other countries manage pre-release access to statistics, especially those produced by government departments from management information, such as hospital waiting times and school examination results.
- how the rules in the Pre-release Access order for Scotland, and the arrangements in the rest of the UK, have been implemented.

You'll be aware that we have not been able to find evidence on the pre-release access standards (if any) followed by other countries for the types of government statistics that we produce. The review of pre-release access arrangements, proposed above, will look to address this lack of information - and I look forward to hearing about the Authority's response to previous correspondence from John Elvidge on whether this is a research project that we can consider together.

I hope that you recognise the importance of the commitment made by Ministers that the professional statistical staff should control the arrangements for pre-release access within the legal framework proposed. I look forward to receiving your views on the draft order by 31 August 2008.

Yours sincerely

JIM MATHER

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2008 No.

OFFICIAL STATISTICS

The Pre-release Access to Statistics (Scotland) Order 2008

Made - - - - - *2008*

Coming into force in accordance with article 1(1)

The Scottish Ministers make the following Order in exercise of the powers conferred by section 11(2), (4) and (5) of the Statistics and Registration Service Act 2007⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 11(7) of that Act, they have consulted the Minister for the Cabinet Office, the Welsh Ministers, the Department of Finance and Personnel for Northern Ireland and the Statistics Board⁽²⁾.

In accordance with section 65(6)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Pre-release Access to Statistics (Scotland) Order 2008, and comes into force on the day after the day on which it is made.

(2) It extends to Scotland only.

Interpretation

2. In this Order—

“the Act” means the Statistics and Registration Service Act 2007;

“the Code of Practice” means the Code of Practice for Statistics published under section 10 of the Act;

“market-sensitive statistics” means 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;

“Northern Ireland Minister” includes a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998;

“official statistics” has the meaning given by section 67 of the Act;

“person responsible” has the meaning given by section 67 of the Act;

“Scottish devolved statistics” has the meaning given by section 66 of the Act;

“the UK Statistics Authority” means the Statistics Board (Am Bòrd an Staitistig) established under section 1 of the Act; and

⁽¹⁾ 2007 c.18 (“the 2007 Act”). Sections 66 and 67 of the 2007 Act contain definitions of “official statistics”, “person responsible” in relation to official statistics and “Scottish devolved statistics” relevant to the powers under which this Order is made.

⁽²⁾ The Statistics Board (Am Bòrd an Staitistig) is also known as the UK Statistics Authority.

“working day” means any day other than a Saturday, a Sunday, a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 (c. 80), a day appointed for public thanksgiving or mourning, or any other day when the offices of the person responsible are closed.

Pre-release access - wholly Scottish devolved official statistics

3. The Schedule sets out rules and principles relating to the granting of pre-release access to official statistics which are wholly Scottish devolved statistics for the purposes of the Code of Practice.

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh

2008

Rules and principles for pre-release access - wholly Scottish devolved official statistics

Scope

- 1.—(1) The rules and principles in this Schedule apply to official statistics in their final form prior to publication—
- in respect of which a request is made to the UK Statistics Authority under section 12(1) of the Act (assessment for designation as National Statistics);
 - insofar as the person responsible is under a duty under section 13 of the Act (to continue to comply with the Code of Practice) in respect of designated National Statistics; or
 - which are re-assessed under section 14(1) of the Act.
- (2) Nothing in this Order prevents statistics in their final form from being released to any individual directly responsible for their printing and production if they are only used for those purposes.

Persons to whom, and circumstances in which, pre-release access may be granted

- 2.—(1) The person responsible may grant pre-release access only insofar as that person considers it necessary to—
- ensure that the Scottish Ministers and office-holders or officials advising them understand the statistics and are able to comment on them without misinterpreting them;
 - allow the Scottish Ministers and office-holders or officials advising them to consider the implications of the statistics for their policies and programmes so as to ensure that any public statements or comments they make about those policies and programmes at or after the time of publication reflect a proper understanding of the statistics;
 - allow office-holders or officials advising the Scottish Ministers to assure the quality of any statistical public statement to be issued by those office-holders or officials;
 - ensure that other statistics available to the Scottish Ministers, and office-holders or officials advising them, about the same subject-matter as the statistics to which pre-release access may be granted are not relied on by them to the detriment of—
 - the exercise of their functions, or
 - any public statement or comment relating to those other statistics,
 without their being informed of the statistics to which pre-release access may be granted;
 - ensure that where a publication or other material is being prepared by or on behalf of any public body or office-holder for publication at the same time or shortly after the statistics that any statistics contained in that publication or material are correct or that the publication or material is otherwise properly informed by the official statistics to which pre-release access may be granted;
 - enable a Minister of the Crown, the head of a government department, a member of the Welsh Assembly Government or a Northern Ireland Minister to make a public statement or comments in connection with the publication of the statistics based on a correct understanding of them;
 - enable a public body whose functions are described by the statistics to comment publicly on the statistics with a correct understanding of them;
 - give any other person access, unless in the opinion of the person responsible allowing that access would be to the detriment of public trust in the integrity of official statistics.
- (2) But the person responsible may only grant pre-release access where that person is satisfied that there are arrangements in place—
- to inform the recipient of the purpose under sub-paragraph (1) for which access is being granted; and
 - to enforce the requirements and conditions specified in paragraphs 3 and 5.

Pre-release access restricted to individuals

- 3.—(1) Access granted under paragraph 2(1)(a) to (g) must be restricted to individual ministers, office-holders or officials.

(2) Those individuals may be given access (and pass on the statistics to other ministers, office-holders or officials) only where-

- (a) necessary for the purpose under paragraph 2(1)(a) to (g) for which access is being granted; and
 - (b) a record is kept under paragraph 8(1)(b).
- (3) Access granted under paragraph 2(1)(h) must be restricted to named individuals.

Maximum period of access

4.—(1) In the case of market-sensitive statistics the maximum period which may be allowed for pre-release access is 1 working day before publication.

(2) For other official statistics, the maximum period is 5 working days before publication.

(3) The person responsible may increase either of those maximum periods where that is necessary to fulfil one or more of the purposes set out in paragraph 2(1).

(4) In deciding whether or not to increase the maximum period the person responsible must take into account the risk of detriment to public trust in the integrity of official statistics.

(5) Where the person responsible increases the maximum period that person must publish that fact.

Conditions on pre-release access

5.—(1) The conditions in sub-paragraphs (2) to (8) apply to any person given access to official statistics under paragraph 2 or any individual given access under paragraph 3.

(2) The person or individual must (if they are not already so marked) apply any official security marking or mark the statistics—

- (a) “Confidential” in the case of market-sensitive statistics; or
- (b) “Restricted” in the case of other statistics.

(3) The person or individual must not disclose any of the statistics, or give any broad indication of their content or what they may show, to any individual who has not similarly been given access.

(4) The person or individual must only use the official statistics for the purpose for which access has been granted under paragraph 2(1).

(5) The person or individual must not use the official statistics for personal or political gain.

(6) Any accidental or wrongful disclosure of the statistics, or any broad indication of the contents of the statistics or what the statistics may show, by the person or individual, or by any other individual to whom such a disclosure is made of which the person or individual with access becomes aware, must be reported immediately by the person or individual to the person responsible.

(7) The person or individual must not seek to change format, content or timing of the publication of the official statistics, except in accordance with sub-paragraph (8).

(8) If the person or individual identifies errors or wishes to comment on format, timing or content the person or individual may communicate that to the person responsible.

Access to other persons – notification of UK Statistics Authority

6. Where access is granted under paragraph 2(1)(h) the person responsible must as soon as practicable notify the UK Statistics Authority of-

- (a) the statistics to which access was granted;
- (b) any individual given access for that purpose;
- (c) for how long those individuals were given access; and
- (d) the reason for granting access.

Breach of the rules and principles

7. The person responsible must take into account any record kept of a person or individual given access not adhering to the rules and principles in this Schedule where subsequently considering granting access to that person or individual under this Order in relation to any official statistics.

Record-keeping

- 8.—(1) The person responsible must keep a record of—
- (a) the statistics to which access is granted;
 - (b) the name or job title of any individual given access;
 - (c) for how long those individuals were given access;
 - (d) the reason for granting access, including the purpose under paragraph 2(1)(a) to (h) for which access was granted;
 - (e) any discussions or correspondence about the format, content or timing of the publication of any official statistics to which access is granted; and
 - (f) any report under paragraph 5(6) or information about any other failure to adhere to the rules and principles in this Schedule which comes to the person's notice.
- (2) The record must be kept for a period of 7 years from the date of publication of the statistics.

Provision of information

9.—(1) The person responsible must, on request, provide information about any person given access under paragraph 2 or any individual given access under paragraph 3, and on the timing of that access.

(2) The person responsible must not seek to rely on the exemption in section 29 (formulation of Scottish Administration policy etc.) or 30 (prejudice to the effective conduct of public affairs) of the Freedom of Information (Scotland) Act 2002⁽³⁾ in relation to any records kept under paragraph 8.

⁽³⁾ 2002 asp 13.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for rules and principles relating to the granting of pre-release access to official statistics which are wholly Scottish devolved statistics.

The rules and principles are relevant for the purposes of the assessment of official statistics as to whether they can be given National Statistics status by the Statistics Board established by the Statistics and Registration Service Act 2007.