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Sir Michael Scholar KCB  
Chair of the UK Statistics Authority  
Statistics House  
Myddelton Street  
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30<sup>th</sup> September 2008

*Dear Sir Michael,*

## CONSULTATION ON PRE-RELEASE ACCESS ORDER

Thank you for your letter of 29 August responding to the Scottish Government consultation on the draft Pre-release Access to Official Statistics (Scotland) Order 2008.

I would like to address the issues that you raised in your letter, and notify you of the resultant (and other) changes that we have made to the Order. A copy of the amended Order, which we will shortly be laying before the Scottish Parliament, is attached at Annex A.

You raised concerns with paragraph 3(2) of the draft Order, which allowed those first granted access to pass on the statistics to other officials without agreement of the professional statistical staff. Thank you for flagging up this point - we agree that this needs to be tightened up. We have revised the provision to make it clear that administrative and technical support to the person first granted access can have automatic access – as practically this has to be allowed for e.g. when a Minister is given access it is the private office who will consider the correspondence in the first instance. However, if the person given access needs to share the statistics with someone outside of their support team then the responsible statistician will have to give written permission for such sharing.

Your letter flags up the principles of equal access and earliest possible release – we agree with these principles and agree that these are key features of the EU and UN Codes. However, the EU Code of Practice also specifically recognises that pre-release access occurs and it requires that it should be limited, controlled and publicised – that is what our Order will do. You also mention that you do not think that it is good statistical practice for administrations to prepare statements about the statistics. Our consultation “Improving Statistical Services” found that stakeholders understand that Parliament, the public and media expect Ministers to make informed and authoritative comments on the implications of the statistics for the policy areas for which they are democratically responsible at or shortly after the time of release. Prevarication is often not possible or acceptable, and Ministers being drawn unnecessarily into commenting without having had the opportunity to be properly informed of the correct interpretation of the statistics or of the policy implications cannot serve good government. We can appreciate that the situation might be different where the statistics are produced by Central Statistics Offices or National Statistics Institutes (NSI), where Ministers have a reduced role. We would challenge the distinction you make

between international policies and practice. We reiterate what we have said in previous correspondence, that there is no clarity on what is the desirable or appropriate policy/practice for non-NSI statistics. Our proposed 12 month review of the new pre-release rules will seek to clarify this.

Your letter points out that pre-release access can be increased to an unlimited extent without public explanation; and that only the fact of the increase has to be made public (paragraph 4(5) of the Schedule to the Order). This provision would only be used in exceptional cases – it is to allow for events that we are not able to predict at this stage. However, given that is the case, and your concerns around public explanation, we have amended the Order to ensure that where the pre-release access time is extended by statisticians that this fact is published and explained.

Your letter suggests that a pre-release access time of five or more days would result in publication being held back. However, usually that is not the case as the pre-release access period overlaps with final preparations for publication.

Your letter questions some of the circumstances for pre-release access proposed in paragraph 2 of the Schedule to the Order:

- You state that it should not be in the normal run of business that Ministers make public statements relating to the statistics. Scottish Ministers do not always release such public statements but they need to be able to consider the statistics in advance in order to decide whether an accompanying public statement is required. You raise concerns that such ministerial statements could detract from the statistics themselves. However, the media are particularly interested in ministerial comment – and too much separation between this and the statistics could lead to the media focusing on the ministerial comment and ignoring the statistical news release. Furthermore our approach to pre-release access ensures that what Ministers say is consistent with the statistical release.
- You flag up that statisticians could alert Ministers to errors in the data without giving access to the statistics in their final form. We are very wary of getting into debates about what is final form and what is not - it is not helpful for statistical staff or improving trust in official statistics. It might be possible for statisticians to avoid giving Ministers the actual figures to be used in the final statistical publication, but they would certainly need to give a direction of change. Only giving direction of change could in some circumstances have damaging consequences as Ministers could be drawn into commenting without knowing the full facts. This kind of confusion would damage trust in official statistics which is why we are opting for a more open and inclusive approach by setting this circumstance out in the Order as a legitimate use of pre-release access.
- Your letter also questions the argument that pre-release access is needed to ensure that publications released at the same time or shortly after the statistics are properly informed. Though there may be instances where key policy documents require the most up-to-date data, this provision is really included to ensure that other statistical publications can include the most up-to-date data. This could be to ensure that simultaneous statistical publications on the same topic by other government departments are consistent or to ensure that simultaneous publication of performance monitoring of government targets is consistent.

It is important to flag up that all the circumstances for pre-release access in the Order are enabling, which means that it is at the statistician's discretion as to where these provisions should be exercised.

On the conditions of access, you state that the Authority would wish to see a commitment both to a progressive reduction in the length of time for which access is granted, as well as in the number of officials and Ministers given access. We believe that the timing of 1 working day maximum for market sensitive statistics and 5 working days maximum for other statistics, with the responsible statistician making the decisions within this timing, is appropriate for our circumstances. However, we will consider the timing again after 12 months of operation of the new rules. On the number of officials and Ministers given access, the responsible statistician will need to be able to justify any individual's inclusion in the pre-release access list in line with the Order – this may result in a reduction in the number of people given access but it might not.

I welcome the Authority's intention to carry out an independent assessment of the impact of the Order. Given the Authority's assessment function it will be well placed to consider how the rules are being implemented. However, given that our intention in Scotland is not necessarily to reduce pre-release access it would seem unreasonable for you to assess our Order against that criterion. We would want to see consideration as to whether Ministers' statements about statistics have been properly informed and indeed a key part of an objective assessment of the changes would be for you to also look into the effect that reducing pre-release access in other parts of the UK has on the quality and accuracy of Ministerial statements.

The Statistics and Registration Service Act specifically provides for the Scottish Parliament to decide on the rules for Scottish devolved statistics. An expectation by the Authority that the rules for pre-release access should be the same across administrations is difficult to reconcile with the flexibility deliberately provided for in the Act.

As well as the changes outlined above, we have made the following amendments to the Order:


- The title of the Order has been changed to refer to Official Statistics.
- The implementation date for the Order is now set at 1 December 2008.
- Amendment to section 2(1)(g) to ensure that statisticians can give pre-release access to public bodies that represent other public bodies.
- The maximum timing of 1 day and 5 days will not apply where pre-release access is required to inform a report to be published at the same time or shortly after the official statistics. This is to enable statisticians to provide more time, where necessary, to those preparing such publications – which will be, in the most part, access by other analysts preparing statistical reports. To give you a practical example of why more time is needed we could consider Scotland Performs, which is the Scottish Government's flagship database for measuring the government's performance in relation to its National Performance Framework. Some of the indicators and targets are underpinned by official statistics – Scotland Performs requires to be updated as the official statistics are published. The updating of Scotland Performs is not straightforward – statisticians' assessments of the change in performance as a result of the new official statistics need to be quality assured by the Scotland Performs Technical Assessment Group. This all requires to be done before statisticians brief Ministers and officials on the official statistics, as part of this briefing will be the change on Scotland Performs.

- The security markers at paragraph 5(2) now refer to “Confidential Statistics” and “Restricted Statistics”.

I am copying this letter to Karen Dunnell as UK National Statistician, Norman Caven as Chief Statistician for Northern Ireland and Kate Chamberlain as Chief Statistician for Wales so that they are aware of the changes to our Order.

I also intend to place a copy of your letter of 29 August, and this letter, on the Scottish Government website as I feel that the Parliament and other stakeholders would be interested in this useful dialogue – I trust that you would agree with this transparent approach.

*Yours sincerely*

  
JIM MATHER

# Annex A – Pre-release Access to Official Statistics (Scotland) Order 2008

*Draft Order laid before the Scottish Parliament under section 65(6)(a) of the Statistics and Registration Service (Scotland) Act 2007 for approval by the Scottish Parliament.*

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## DRAFT SCOTTISH STATUTORY INSTRUMENTS

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2008 No.

### OFFICIAL STATISTICS

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

Made - - - - 2008

Coming into force - - 1st December 2008

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 Official Statistics (Scotland) Order 2008, and comes into force on 1st December 2008.

(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 6(1) of the Act;

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

“pre-release access” has the meaning given by section 11(8) of the Act;

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

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(1) 2007 c.18 (“the 2007 Act”). Section 11(6) and (8) of the 2007 Act contain definitions of “appropriate authority” and “pre-release access” and 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.

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

“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 to statistics only insofar as that person considers it necessary to—
- ensure that the Scottish Ministers and office-holders or officials advising them are able to comment publicly on the statistics based on a correct understanding of 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 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 comment they make 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 public 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 or relevant to the statistics (or a public body representative of that body) to comment publicly on them based on 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 individual ministers, office-holders or officials may share such access with a person providing administrative or technical support.

(3) Those individual ministers, office-holders or officials may (without prejudice to sub-paragraph (2)) pass on the statistics to other individual ministers, office-holders or officials of the public body in which they hold office or another public body only-

- (a) where necessary for the purpose under paragraph 2(1)(a) to (g) for which access is being granted;
- (b) with the prior agreement in writing of the person responsible; and
- (c) where a record of that other individual being given access is kept under paragraph 8 by the person responsible.

(4) Access granted under paragraph 2(1)(h) must be restricted to named individuals.

(5) In sub-paragraph (3)(b), “in writing” includes an electronic communication within the meaning of the Electronic Communications Act 2000(3) which is recorded and consequently capable of being reproduced.

#### **Maximum period of access**

4.—(1) Subject to sub-paragraphs (2) to (5)-

- (a) in the case of market-sensitive statistics the maximum period which may be allowed for pre-release access is 1 working day before publication; and
- (b) for other official statistics, the maximum period is 5 working days before publication.

(2) For statistics released under paragraph 2(1)(e) there is no maximum period.

(3) The person responsible may increase the maximum periods in sub-paragraph (1)(a) and (b) 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, as soon as is reasonably practicable, publish-

- (a) the fact of that increase;
- (b) the statistics to which it relates;
- (c) its duration;
- (d) the purpose it served under paragraph 2(1); and
- (e) an explanation of why it was necessary to increase the maximum period to fulfil that purpose.

#### **Conditions on pre-release access**

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

(2) The individual must (if they are not already so marked) mark the statistics-

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

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

(5) The 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 individual, or by any other individual to whom such a disclosure is made of which the individual with access becomes aware, must be reported immediately by the individual to the person responsible.

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

(3) 2000 c.7. See section 15(1), amended by the Communications Act 2003 (c.21), Schedule 17, paragraph 158.



(8) If the individual identifies errors or wishes to comment on format, timing or content the 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 individual given access not adhering to the rules and principles in this Schedule where subsequently considering granting access to that 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;
- (f) any agreement given under paragraph 3(3)(b);
- (g) any information published under paragraph 4(5); and
- (h) 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 individual given access under paragraphs 2 and 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(4) in relation to any records kept under paragraph 8.

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(4) 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 set out in the Schedule are relevant for the assessment or re-assessment of the official statistics as to whether they can be given National Statistics status by the UK Statistics Authority (also known as the Statistics Board or Am Bòrd an Staitistig) established by the Statistics and Registration Service Act 2007.

The rules and principles describe the persons who may receive pre-release access to official statistics, the circumstances in which access may be given, and the duties of the persons giving and receiving such access.

Pre-release access is defined in section 11(8) of the Act. A decision whether to grant pre-release access is taken by the person responsible. The person responsible is defined in section 67 of the Act.

A Regulatory Impact Assessment has not been produced for this instrument as it has no impact on the costs of business.