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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 399**

**OFFICIAL STATISTICS**

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

*Made* - - - - *27th November 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<sup>(1)</sup> 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<sup>(2)</sup>.

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;

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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.

“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(3);

“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;

“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.

St Andrew’s House,  
Edinburgh  
27th November 2008

*JIM MATHER*  
Authorised to sign by the Scottish Ministers

## SCHEDULE

Article 3

### 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—

- (a) 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);
- (b) 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
- (c) 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—

- (a) 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;
- (b) 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;
- (c) 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;
- (d) 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—
  - (i) the exercise of their functions; or
  - (ii) 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;
- (e) ensure, 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 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;
- (f) 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;
- (g) 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;
- (h) 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.

*Status: This is the original version (as it was originally made).*

(2) But the person responsible may only grant pre-release access where that person is satisfied that there are arrangements in place—

- (a) to inform the recipient of the ground in sub-paragraph (1) under which access is being granted; and
- (b) 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 them with 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 of 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(4) 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—

- (a) to fulfil one or more of the purposes set out in paragraph 2(1)(a) to (g); or
- (b) under paragraph 2(1)(h).

(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 reasonably practicable, publish—

- (a) the fact of that increase;
- (b) the statistics to which it relates;
- (c) its duration;
- (d) the ground in paragraph 2(1) under which the increase was granted; and

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(4) 2000 c. 7. See s.15(1), amended by the Communications Act 2003 (c. 21), Schedule 17, paragraph 158.

- (e) an explanation of why it was necessary to increase the maximum period.

### **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).

(8) If the individual identifies errors or wishes to comment on the 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;
- (c) the period of time 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 an 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 ground in paragraph 2(1)(a) to (h) under which access was granted;

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- (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<sup>(5)</sup> in relation to any records kept under paragraph 8.

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## **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.

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(5) 2002 asp 13.