

Pre-Release Access to Official Statistics

A review of the
statutory arrangements

March 2010

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Monitoring Report 6

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About the UK Statistics Authority

The UK Statistics Authority is an independent body operating at arm's length from government as a non-ministerial department, directly accountable to Parliament. It was established on 1 April 2008 by the *Statistics and Registration Service Act 2007*.

The Authority's overall objective is to promote and safeguard the production and publication of official statistics that serve the public good. The Authority is accordingly required to promote and safeguard the quality and comprehensiveness of official statistics, and good practice in relation to official statistics.

The Statistics Authority has two main functions:

1. oversight of the Office for National Statistics (ONS) – the executive office of the Authority;
2. independent scrutiny (monitoring and assessment) of all official statistics produced in the UK.

Contact us

Tel: 0845 604 1857

Email: authority.enquiries@statistics.gsi.gov.uk

Website: www.statisticsauthority.gov.uk

UK Statistics Authority
Statistics House
Myddelton Street
London EC1R 1UW

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Foreword

The passage of the *Statistics and Registration Service Act 2007* saw vigorous debate about the arrangements for independent oversight of the statistical services in government. One issue on which the two Houses of Parliament initially reached differing views was the question of how, and by whom, access to official statistics prior to publication should be controlled.

The House of Lords favoured leaving the rules to be determined by the newly created UK Statistics Authority, in line with other aspects of statistical good practice. But the Government and the House of Commons concluded that access to unpublished statistical information was so important to Ministers and their departments that it should instead be controlled under Orders prepared by Government and approved by Parliament: and that was the final outcome. An account of the debates from that time is included in this report. Under the Act, the Statistics Authority is precluded from determining the rules on pre-release access in the Code of Practice for Official Statistics.

This report is the Statistics Authority's first formal advice to Government and Parliament on the subject.

There is currently a widespread expectation that Ministers and Departments must be able to give instant comments when new statistics are published. It is our view that this expectation will need to be changed in order to respect a very important principle of good statistical practice – equality of access. All the parties to public debate should ideally have the same statistical information available to them at the same time and only the minimum number of people should see statistical results before they are published.

Our conclusions and recommendations are set out in Section 1.8 of the report. In short, we recommend further restricting pre-release access; and that Ministers undertake in future to follow the advice of the Authority on pre-release access arrangements.

One consequence of the new statutory arrangements, possibly unforeseen, was that the Orders introduced by the Scottish and Welsh administrations turned out to be substantially different from those passed in Westminster and Northern Ireland. Given that the principles at issue are the same in all four administrations, we regard this divergence in practice as unsatisfactory and unhelpful to the cause of building confidence in the UK statistical system.

Our recommendations in this report are designed to help restore public confidence in official statistics, which appears to be at a low level. I very much hope that the UK Government and the devolved administrations will accept these recommendations.



Sir Michael Scholar KCB
Chair, UK Statistics Authority

Summary

Pre-release access is the practice of making official statistics, and the written commentary that accompanies them, available in advance of their publication to specific individuals not involved in their production. In most cases this includes Government Ministers and their advisers.

The *Statistics and Registration Service Act 2007*, which came into force in April 2008, provides for the Government to propose to Parliament a set of detailed rules under which pre-release access to 'statistics in their final form' may be granted. The aim of the Act in introducing these arrangements was to provide public reassurance that advance access was only being granted where it was appropriate to do so and for an appropriate period, leaving the detailed departmental arrangements to the discretion of departmental Ministers. Under the Act, the Statistics Authority is precluded from addressing the issue of pre-release access to statistics in their final form in the Code of Practice for Official Statistics.

This report represents the Statistics Authority's first formal advice to Government and Parliament on the subject of pre-release access.

The report sets out the arguments both for restricting and for allowing pre-release access. The main arguments for restrictions are that pre-release access creates potential opportunities to influence statistical outputs inappropriately, or to exploit advance knowledge for political advantage; and increases the risk of leaks, deliberate or inadvertent. Pre-release access may also create an inhibiting environment around the work of statisticians, and may feed suspicion outside government. The main arguments for allowing pre-release access are that it allows Ministers to be fully briefed so that they can comment at the time the statistics are published; that Ministers are themselves formally responsible and accountable for many of the statistics released; and that it is not pre-release access per se that must be controlled but rather inappropriate influence or exploitation.

On the question of where responsibility for the rules should rest, the Statistics Authority proposes that Ministers should commit themselves to following the Authority's advice in respect of pre-release access, as set out in this report and subsequently. This would enable the Authority to reassure Parliament and the public that the issues were being addressed independently and consistently with international best practice. Approached in this way, the legislation which prevents the Authority from advising government bodies directly on the matter would not need to be amended.

Our formal recommendations are at section 1.8 of the report and would require a substantial change in current practice both to introduce stricter controls and to standardise practice across the United Kingdom.

Each of the four administrations in the UK is free to draft secondary legislation on pre-release access as it chooses. The current position is that the rules governing access to 'non-devolved' statistics apply in Whitehall and are mirrored in Northern Ireland, but differ in both detail and intent from the rules in Scotland and Wales. This is not conducive to building public confidence that pre-release access is granted only according to well established and consistent principles. The Statistics Authority therefore recommends that, in the public interest and to support the international reputation of the UK statistical system, the four administrations should work together to share a common understanding of the arguments and to develop a common formulation for the pre-release rules as they apply to all official statistics, wherever they are produced.

We also recommend a shorter maximum period of pre-release access than the 24 hours currently allowed under the UK Parliament's Order, and much shorter than the 5 days allowed in Scotland and Wales. We believe it would be in the public interest if all UK administrations amended their secondary legislation to adopt a maximum period of pre-release access of 3 hours, with a shorter period as the norm. A three hour limit was also recommended by the House of Commons Treasury Committee in 2006.

There is currently an expectation, inside and outside government, that Ministers and Departments must be able to give instant comments when new statistics are published. It is our view that this should change and more regard should be paid to a central principle of good statistical practice – equality of access. Current practice has developed as a consequence of pre-release access but it should not be used to defend it. We suggest that there should normally be a short interval after publication, of perhaps one hour, during which only the statisticians' explanation of the statistics would be in the public domain. That would help to encourage the news media to pay attention to what the statisticians have to say about the statistics and would also reduce the need for advance access.

The Statistics Authority further recommends that the provisions in the secondary legislation relating to the granting of pre-release access to journalists should be deleted, for reasons explained in full in the report. We see no good justification for journalists receiving statistical data ahead of Parliament. The one exception would be 'lock-in' arrangements under which journalists are allowed to read material in a secure place shortly before publication.

In preparing this report, the Authority asked senior statisticians in a number of government bodies to respond to a set of questions about current practice in relation to pre-release access. Details of the information gathered are presented in Annex 2.

Part 1: Arguments and Conclusions

1.1 Introduction

'Pre-release access' refers to the practice of making official statistics, and the text that accompanies them, available in advance of their publication to specified individuals not involved in their production; including in many cases Government Ministers and their advisers. The reasons this is done, and the arguments for and against further restricting such advance access, are discussed in this report. Our conclusions and recommendations to Government are at Section 1.8 below.

In the United Kingdom over 200 bodies produce at least some official statistics. The Office for National Statistics is much the largest of these producers in terms of the volume of statistical output; but a substantial majority of official statistics are nonetheless produced by other bodies.

The earliest formal guidance on pre-release access to UK statistics, published by the then Central Statistical Office (CSO) in 1984, asserted that 'only people who strictly need to know should see sensitive statistics before they are released, and then only for the minimum time necessary'.¹ This was, and remains, the central principle accepted by successive administrations. However, under the *Statistics and Registration Service Act 2007*, which came into force in April 2008, the Government is empowered to propose a set of more detailed rules under which pre-release access to 'statistics in their final form' may be granted (both within and outside the producer body) in an Order subject to parliamentary approval under the affirmative procedure.²

The aim of the 2007 Act in introducing these arrangements was to provide public reassurance that advance access was only being granted where it was appropriate to do so and for an appropriate period, whilst at the same time leaving the detailed departmental arrangements to the discretion of departmental Ministers rather than the newly created UK Statistics Authority. Pre-release access is thus treated in the Act as something that must be both *controlled* (by the Order) but also *protected* (in the sense that no-one other than Ministers would draft the rules in the Order).

The inclusion of these provisions in the Act was motivated in part by a view that the Statistics Authority should not be allowed to deal with pre-release access within its own Code of Practice; and the Act contains a clause specifically to prevent this. Implicit here was a recognition that pre-release access was likely to be seen as more controversial outside Whitehall than inside, and that the Statistics Authority might well take a different view to that of Whitehall. These aspects of the legislation were vigorously debated during the passage of the

¹ Letter from Sir John Boreham to Department of Health and Social Security, 16 November 1984 and appended guidance.

² The *Pre-Release Access to Official Statistics Order*, and corresponding Orders for Scotland, Wales and Northern Ireland.

Bill. The arguments within and between the two Houses of Parliament at that time are summarised in Part 2 of this report.

In contrast to the Act's treatment of pre-release access, the determination of almost all other aspects of statistical good practice is, under the legislation, a matter for the Authority to set down in a new Code of Practice for Official Statistics.³ This was published in January 2009.

Although the Government did not want the Statistics Authority to determine the rules for pre-release access it was nonetheless committed to introducing more restrictive controls itself. It recognised the need to minimise opportunity for interference in the production of statistical outputs or for inappropriate exploitation of statistics ahead of publication. In this context, 'exploitation' might mean for example obtaining political advantage by having more up-to-date figures than other parties in matters of public debate.

This complex motivation – both to protect pre-release access rights whilst being seen to control them more strongly – sowed the seeds of complexity in terms of implementation. Three problems illustrate this complexity:

- First, under the government approach, the person whose job it is to control pre-release access often works within the same government body as people who would wish to have that access. There is no clear-cut distinction between the staff who produce, or quality-assure, the statistics (and therefore have advance access) and those who may be granted access. This creates problems in defining, in any rigorous way, who is responsible for controlling advance access and how they are to achieve that; and that in turn weakens the practical authority of the person given the task.
- Second, the meaning of 'statistics in their final form' (the concept to which the Order applies) is not always clear. The original data from which the statistics are compiled are often derived from administrative systems controlled by people other than those who produce the statistics – in consequence, figures which may differ little if at all from the final statistics may be widely circulated as 'management information' outside the terms of the Order.

³ <http://www.statisticsauthority.gov.uk/assessment/code-of-practice/index.html>

- Third, the Order does not, and could not reasonably, restrict access for individuals involved in the production or quality assurance of the statistics; such people may be numerous and may in some cases work in external organisations as well as in the producer body. This creates a potential weakness in the controls, in that by saying that a policy official has a role in ensuring the quality of the statistical product, he or she can be given unrestricted access at any stage. The research carried out for this report suggests that this could sometimes be used as a way to extend advance access.

Thus there are important matters of interpretation and application that need to be resolved, to the extent they can be, by the individuals to whom control of access is given – normally the head of profession for statistics in the producer organisation. The tighter the control regime adopted, the greater the potential for these difficulties to weaken the arrangements.

The intrinsic complexity is compounded by the fact that the Orders introduced for Scotland and Wales differ, not just in detail but in intent, from those introduced in Westminster and Northern Ireland. The Scotland and Wales Orders do not start from the presumption that pre-release access should be kept to a minimum, which is at least implicit in the other two Orders. Instead, they take the position that certain rules should be observed, having the effect partly to accommodate pre-release access and partly to contain it. This difference in approach is discussed further in section 1.6 below.

Part 2 of this report summarises the history of the debate about pre-release access in government and in the UK Parliament, and sets out some of the arguments that were influential in the drafting and passage of the relevant parts of the *Statistics and Registration Service Act* and the four associated Pre-Release Access Orders, one each for UK statistics (not devolved), and those wholly devolved statistics produced by the administrations in Scotland, Wales and Northern Ireland.

The following section looks at the arguments for and against restricting pre-release access, starting with the case in favour of restriction. There are several arguments in either direction, each with some merit, and the balance of these is clearly a matter of judgement. The Statistics Authority's view on the balance of the arguments is given in section 1.8.

1.2 The Arguments for Restricting Pre-Release Access

Four distinct arguments are commonly cited for restricting pre-release access, and similar arguments were advanced during the passage of the *Statistics and Registration Service Bill* and Pre-Release Access Orders (see Part 2). These are that:

- 1) such access allows opportunity to *influence* the statistical outputs for inappropriate reasons;
- 2) it allows opportunity to exploit advance knowledge for political advantage and introduces the risk of leaks, deliberate or inadvertent;
- 3) regardless of either of those things happening, it creates an *inhibiting* environment around the work of statisticians; and
- 4) regardless of any of the above, it may feed a *perception* outside government that inappropriate actions might be taken prior to release.

These arguments are discussed in turn. In setting out the arguments, the Statistics Authority is not necessarily endorsing individual points, simply acknowledging that these arguments can be made and offering its own perspective on them.

Argument 1: Opportunity for influence

Allowing people, particularly those closely involved in the political and policy functions of government, to see the final draft of a statistical output before it is published provides an actual (if limited) opportunity to seek to influence the statistical output. It may also suggest to them that it is acceptable to influence the statistical output, in much the same way as it is commonly part of officials' work to influence the policy documents issued by the department. If a policy adviser sees his role as being to contribute to the draft documents that cross his desk, then he may seek to do that with all such documents, including statistical ones, should they come to him in draft form.

Whilst, in practice, there is little opportunity, at that late stage, to influence the actual figures that are about to be published, there are more subtle interventions that could be attempted. Depending on the nature of the publication, statisticians might be challenged on the range of tables included; the order in which the statistics are presented; the balance of the commentary (in terms of good and bad news); the use of particular words in the commentary; the validity of statistical judgements (for example, whether the trend was really upwards or just fluctuating); the base year used for the purposes of comparison; the selection of geographic comparisons; and, the inclusion of factual contextual information (such as a reference to government targets).

Statisticians can defend their draft work against such challenges by reference to the principles in the Code of Practice for Official Statistics and to the statutory framework for the governance of official statistics. However, attempts to influence statisticians to temper a statistical output at the margins might still be made and might have an effect over time.

Statisticians in government understand these pressures and know that they must be ready to stand their ground on major points of principle. However, a senior official seeking to effect a slight shift in tone or emphasis in the statistical output, might present his case to statisticians as a matter of helpful clarification, or the correction of minor misjudgement; and the statistician might regard acceptance of advice of this kind as a price worth paying for maintaining good relations with senior departmental colleagues. Once such ground was conceded, the precedent of influence would be established, and re-establishing independence would be more difficult.

There is little tangible evidence – nor is there ever likely to be – as to how often such pressures are brought to bear on statisticians but the argument here turns more on the *opportunity* created by pre-release access than on specific evidence. It is true that such challenges could still occur even after the statistics have been published (with a view to influencing the next set of statistics) but, in the nature of such things, once the material is in the public domain the need for statisticians to defend and negotiate is substantially reduced; and precedent is then on the side of the release as issued.

Argument 2: Opportunity for exploitation

Pre-release access may also give those to whom it is granted the opportunity to exploit their advance knowledge in order to achieve some political advantage – and, again, suggest to them that they are at liberty to do so. The nature of such advantage would not necessarily involve an overt public reference to the unpublished statistics. Merely indicating that a government spokesperson was basing his or her position on more up-to-date knowledge of the facts than other commentators, and that time would prove this to be the case, would be a usable political edge. It could unsettle those presenting counter-arguments and it could sway the uncommitted.

Some observers might take the view that the government of the day is entitled to have some small political advantage of this kind because the statistics have been produced, at least in part, for the government's own use, and the government will be responsible for the decisions that the statistics influence. The Statistics Authority rejects this view, which is

inconsistent with seeking to promote a 'level playing field', in terms of access to relevant information, in political or public debate. Such debate is more likely to reach a valid, balanced conclusion, and to command public respect, if all the parties have the same access to up-to-date statistical data.

As well as the potential for deliberate exploitation of pre-release access, there are cases where pre-release access leads to either deliberate or inadvertent premature release – the latter case being where the figures are included prematurely in a speech or document by mistake. The surest way to avoid either type of leak is not to circulate the statistics before they can be used.

During 2009, the National Statistician investigated two explicit breaches of the pre-release rules⁴, and a further 12 cases which involved early release of data before the pre-announced release time.⁵

Argument 3: Inhibiting statisticians

Statisticians working in government departments are alert to the way in which their work is regarded by their managers and Ministers. The respect of their departmental colleagues, their pay, promotion prospects and future career can be affected by the perception of their contribution to the work of the department. Circulation of that work, prior to publication, may serve to focus the statisticians' attention not on the public utility of their advice but rather on how it will be received within the department.

If, for example, a government department is defending a controversial policy position, this may give rise to an imperative within the department for all officials to 'pull together', both to achieve as much as possible and, in the meantime, present the best possible outward face. In such an environment, departmental statisticians who present evidence that is seen as unhelpful run the risk of being perceived by departmental colleagues as naive or disloyal.

⁴ Office for National Statistics and Department for Food and Rural Affairs (1 each)

⁵ Scottish Government, Office for National Statistics, and Department for Business Innovation and Skills and its predecessor (2 breaches each); Department for Children Schools and Families, Communities and Local Government, Defence Analytical Services and Advice/Ministry of Defence, HM Treasury, Ministry of Justice, and NHS Information Centre for Health and Social Care (1 breach each). Breach reports are published on the Authority website: <http://www.statisticsauthority.gov.uk/assessment/code-of-practice/breach-reports/index.html>

Such an environment will always be an uncomfortable one for statisticians but the knowledge that their work is subject to top-level scrutiny and discussion in advance of publication will increase the tension. The temptation will be to minimise discomfort during the period ahead of release by saying no more in the commentary about the messages contained in the statistics than is absolutely necessary; or perhaps trying to find something to say that will play well in the department. Acting in this way may sometimes be understandable; but it is not impartial.

Argument 4: Public and international perceptions

Pre-release access may feed public uncertainty about what happens behind the doors of government departments, and tends to undermine trust both in the statistical evidence and in the policies to which the statistics relate. Policy statements (relating to the subject of the statistics) are often issued by Ministers at the same time as the official statistics, usually by the same press office. These simultaneous policy statements are seen within government as a rapid and coordinated response to the release of the statistics. But that is not necessarily how they are seen by external observers. The observer may rather conclude that there has been some form of collusion ahead of the publication of the statistics, 'preparing' the policy message to sit alongside the statistics, and possibly 'preparing' the statistics to sit alongside the policy message.

The public perception is likely to be that there has been an opportunity to influence the presentation of the statistics, and that there has been a motive to do so insofar as the policy statement is evidence that Ministers have actively sought to present the government's position in light of the statistics. Given public scepticism about the processes of government, it is not surprising that the perception of opportunity and motive is sometimes seen as grounds for believing there to have been actual interference.

This argument is about perceptions rather than substance, but any incident in which it is evident that statistics have been leaked or exploited prior to their release will greatly reinforce such perceptions.

There is a related, but slightly different, argument about international perceptions. The international reputation of the UK statistical system could be negatively affected by being seen to have a 'political' component in relation to pre-release access (in the sense that the 2007 Act places authority over pre-release rules in the hands of Ministers rather than in the Statistics Authority). Pre-release access is a strongly symbolic issue among national and international statistical offices; it is often cited by them as their benchmark of independence – they know they have independence because they are not forced to provide pre-release access.

The position in a decentralised system, such as in the UK, is necessarily more complex than in a central statistical office, but international approval is not simply a desirable gloss on the integrity of national arrangements. If confidence in the statistical system is to be strengthened then it is important that international bodies and commentators have confidence. Their views are readily heard by people who have influence on UK public opinion.

1.3 The Arguments for Allowing Pre-Release Access

There are also arguments in favour of pre-release access and it is these arguments in combination with those already discussed that led to the current situation in which Government policy, as reflected in the UK Parliament's *Pre-release Access to Official Statistics Order*, is to restrict the length of pre-release access to a 24 hour maximum but still allow potentially large numbers of officials and Ministers to have such access.

The arguments considered here are that

- 1) Ministers must be properly briefed ahead of having to make a comment at the time the statistics are published;
- 2) Ministers are formally accountable for the statistics released; and,
- 3) Pre-release access is not, of itself, the problem.

Argument 1: Ministers must be properly briefed

It is argued by both Ministers and government statisticians themselves that it is preferable for Ministers to be carefully briefed on the statistics in advance of release so that they can make sensible and informed comments at the time the figures are published. As discussed in Part 2, this argument was advanced by Ministers during the parliamentary debates on the *Statistics and Registration Service Bill* and the *Pre-Release Access Orders*.

Many government statisticians argue that a ban on pre-release access would mean that the only voice that is silent in the internal departmental briefing process that leads up to the release of statistics would be their own. Statisticians would not be able either to explain any special characteristics of the latest figures or advise on the validity or appropriateness of statements that the Minister or department might wish to make. Evidence collected by the Statistics Authority indicates that some statisticians, notably those working in the Scottish Government, feel that more liberal pre-release access arrangements enhance the role of the statistician and improve engagement with Ministers and senior officials.

This view reflects the day-to-day role of many of the senior statisticians working in the major departments of government. Only a relatively small part of their time is devoted to the production and publication of statistics. They have a separate responsibility, which has evolved over many years, to offer confidential advice to Ministers and officials on the implications of the statistics for policy and decision-making, much as

policy advisers do. This role is undoubtedly valued by departments and earns statisticians respect and standing with colleagues. It may sometimes be the primary justification for a statistician's relatively senior position (in terms of civil service grades) and the foundation of his or her personal influence. One of the times that statisticians can be most influential with policy colleagues is in the lead-up to a policy statement planned to accompany the next release of statistics. But for statisticians to have a constructive influence on such a statement, they must be free to talk, in confidence, about what the statistics are going to show.

In this situation, the departmental statistician wears two hats (independent producer of official statistics, and departmental policy adviser), and there is a tension between the two roles. The 'producer' role would prefer to release the statistics to everyone at the same time, in line with the basic principles of statistical good practice. The 'statistical adviser' role needs to talk to Ministers and officials about the forthcoming statistics, and to do so in advance of their publication. This latter role tends to be the more influential and respected one within the departmental hierarchy.

Thus, tight control of pre-release access suits few officials (statisticians or otherwise) within a policy department of government. It may be recognised as desirable in an abstract sense, and it may help to prevent attempts at inappropriate influence, but it is seen as getting in the way of bringing beneficial statistical influence to bear on policies and decisions.

However, this apparently strong argument is open to challenge. It is predicated on the assumption that Ministers and officials need to decide their position in relation to new statistics before those statistics are published. There are many other events that occur without advance notice, from the release of independent think-tank reports, to financial crises, or acts of terrorism, which require the policy machinery of government to respond quickly. Government is well used to responding to events after they have occurred. It may prefer to get its house in order before the release of new information but there is abundant evidence that it can manage well enough without doing so. Governments in some other countries function effectively with no, or very little, pre-release access to official statistics.

The statistical adviser role only needs to be performed before the release of the statistics if a substantive policy statement is to be made at the time the statistics are released. It is, therefore, a self-perpetuating argument.

Pre-release access allows a statement to be prepared in advance. The making of such a statement necessitates the statistical adviser to be involved; and his or her involvement will necessitate pre-release access to the statistics. So practices permitted by pre-release access become, over time, the main justification for pre-release access. And if there was little or no pre-release access, the practices that would evolve would similarly support not having pre-release access.

There is also another weakness in the argument. The latest set of statistics to be published is rarely much of a surprise. A government department will often have a very good idea what the next set of statistics is going to show, regardless of pre-release access. Therefore, it is not necessarily the case that pre-release access is essential for good statistical advice to be given. The senior statistician would still be able to provide extensive advice without personally knowing exactly what the latest statistics show.

Argument 2: Ministers are accountable for the statistics

Ministers in charge of government departments are formally responsible, and accountable to Parliament, for all the work of the staff of that department, including statisticians employed by the department. When departmental statisticians publish a statistical release, the name of the department will usually be displayed in a prominent position on the front page. Parliament and the media will look to the relevant Minister as the *producer* of the statistics, if only because the department's name and its staff have been involved; and the media like to associate all government action, including the release of statistics, with a Minister or other recognised individual. Again, as discussed in Part 2, Ministers advanced this argument during the parliamentary debates on the *Statistics and Registration Service Bill* and the Pre-Release Access Orders.

The statistics are thus often seen publicly as being *by* the Minister (the more so if he or she issues a policy statement at the same time), *for* the Minister and *about* the Minister, or at least about his or her policies. Under such circumstances, it is sometimes argued that to deny Ministers access to the statistics at the earliest opportunity undermines their authority and compromises their capacity to manage the affairs of their department. The rules for social research, and reports by economists and other professional groups, in contrast to those for statistics, do not impose such tight controls on ministerial involvement. It can therefore also be argued that it is in the interests of good departmental management to ensure that all the analytical professions are working to essentially the same rules.

The counter to this argument is that the decision to treat statistics differently from the other work of departments was taken by Parliament, on the advice of Government, and enshrined in the *Statistics and Registration Service Act 2007*, because of the need to demonstrate the independence of statistics and to protect their objectivity and impartiality. The statutory framework is informed by, and consistent with, the United Nations Fundamental Principles of Official Statistics and the European Statistics Code of Practice. There is a strong international consensus that statistical work should be handled under special rules that minimise ministerial involvement, and these rules will, in the long term, serve the interests of Ministers and government better than treating statistical work on the same footing as other analytical work. More than 100 countries worldwide have statutory frameworks that, in some way or other, mark out statistical work as distinct from other activities of government.

Argument 3: It is not pre-release access that must be controlled

The primary aim of restricting pre-release access might be seen as being to prevent inappropriate influence over, or exploitation of, the statistics prior to release, and therefore the control of pre-release access is essentially a means to that end. It is usually true that the user of statistics is not much concerned about, or affected by, which individuals see statistics leading up to their release as long as the statistics are released when they should be and are well presented and explained. This argument concludes that what is really needed, therefore, is not controls on pre-release access per se but, instead, a formal commitment from Ministers, advisers and others that they will not seek to influence or prematurely exploit the statistics.

This argument has some merit in that it is important to recognise that control of pre-release access is not itself the ultimate goal. However it ignores the other arguments that relate to public perceptions and the inhibition of statisticians. It is also far from clear that a self-denying ordinance on the part of Ministers would reliably prevent subtle forms of influence or exploitation. Not showing the statistics to someone is a much surer way of avoiding unwanted actions.

1.4 The Principle of Equal Access

In considering the various arguments, it is helpful to start from some broad statements of principle that are already well established. The three most relevant sets of principles are those enshrined in the UN Fundamental Principles of Official Statistics, the European Statistics Code of Practice and the UK's own Code of Practice for Official Statistics. In each of these three cases, the relevant principle is stated in similar terms:

...to make information widely known and available on an impartial basis requires...release policies which provide equal opportunity of access.⁶

All users have equal access to statistical releases at the same time and any privileged pre-release access to any outside user is limited, controlled and publicised. In the event that leaks occur, pre-release arrangements should be revised so as to ensure impartiality.⁷

Make official statistics equally available to all, subject to statutory provisions for pre-release access.⁸

'Equality of access' is the concept running through these three statements. There is some room for interpretation about what this means in practice, but most authoritative sources interpret it as implying both that official statistics should be made widely and freely available at the time of publication, and that no more people than necessary should see statistics prior to their publication.

Whilst there are obvious practical challenges in requiring policy departments of government to control their officials' access to internally produced statistics, the case for doing so is just as strong as it is for national statistical offices. Government departments already have experience of analogous regimes. Control of access to confidential personal information under Data Protection legislation is one such case – some officials are required to protect certain information and not allow even their closest colleagues to see it. The key to this working successfully is wide acceptance that it is necessary.

⁶ United Nations Statistical Commission *Fundamental Principles of Official Statistics*, explanatory text to Principle 1
<http://unstats.un.org/unsd/methods/statorg/FP-English.htm>

⁷ Eurostat, *European Statistics Code of Practice*, Principle 6
http://epp.eurostat.ec.europa.eu/portal/page/portal/quality/documents/code_practice.pdf

⁸ UK Statistics Authority, *Code of Practice for Official Statistics*, Principle 2
<http://www.statisticsauthority.gov.uk/assessment/code-of-practice/index.html>

The large number of national statistical offices that do have strict controls on pre-release access, along with the broader international principle of equality of access, point to a strong international preference for tight controls where these are practicable. The UK legislation and Orders, despite their limitations, provide a framework within which such control can be achieved. Whilst we would ideally want to see amendments made to the *Statistics and Registration Service Act* itself, progress could be made without this. The statutory framework (the Act and the four Orders) could be used to achieve a stronger control regime by means of specific changes to the Orders.

1.5 International Perspectives

Most national statistical offices in other countries have strict rules to prevent access prior to release but, as far as we can establish, it is rarer for policy organisations that produce statistics in foreign administrations (the counterpart to UK government departments) to have such clear and public rules. In this respect the UK position is possibly more developed than in most countries. This may be because the UK has long had a highly decentralised statistical service with statistical offices in a number of government bodies and we have thus needed to address policy on pre-release more directly and openly than in countries where the most important statistics are all issued by a central agency.

Research undertaken by the Royal Statistical Society in 2006⁹ suggested similarly that few countries had clear rules for bodies other than the national statistics office although such rules, as they existed, tended to be strict. We have not drawn directly on the RSS evidence in this report as some of the countries covered have more recently told us that their pre-release rules are now different.

We have instead spoken afresh to a number of national statistical offices. The country which perhaps offers the closest parallel to the UK is the United States which has a number of major statistical agencies, and also statistical units in other government bodies. The guidance issued centrally, *Principles and Practices for a Federal Statistical Agency* (4th edition, 2009) says, for example, that statistical agencies are required to ‘take steps to ensure that no person outside the agency can gain access...before the official release time’. A more detailed Statistical Policy Directive of March 2008¹⁰ does, however, add that ‘the statistical agency may grant pre-release access via an embargo under the following conditions’ and sets out four strict conditions but no upper time limit. There are though time limits in practice. The USA told us that ‘there are 37 Principal Federal Economic Indicators produced by 8 agencies’, that the President and a small number of key officials had access in the ‘late afternoon before the morning of the release’ but that policy officials and the President are not allowed to comment publicly until at least one hour after the official release time.¹¹ The press only have advance access under ‘lock-up’ arrangements to the key economic indicators for 30 minutes prior to the release time.

⁹ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 103-06

¹⁰ United States Office of Management and Budget, *Statistical Policy Directive No. 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies*, Federal Register, 73:46, 7 March 2008, pp. 12622-12626 http://www.whitehouse.gov/omb/assets/omb/fedreg/2008/030708_directive-4.pdf

¹¹ US Office of Management and Budget to UK Statistics Authority, February 2010: ‘Policy officials in the Executive Branch, (and) the President, are not permitted to comment publicly on the data until at least one hour after the official release time. This is to make clear the separation between the technical release of the data and the interpretation of the data by policy officials of the Administration.’

Practice in countries other than the United States in respect of pre-release access varies substantially. Several countries that recently told us that they provide no pre-release access also have relatively high levels of public trust in official statistics as evidenced by the results of a 2007 European Commission *Eurobarometer* survey. These include Sweden, Finland, and Denmark.¹²

Perhaps the main themes from international practice are that whilst pre-release access is often allowed, at least for key economic statistics, it is seen as an undesirable practice because of the risk to the public reputation for independence of the statistical office and the commitment to providing equal access for all. In most advanced countries there are thus quite elaborate regimes to control and minimise such access. But the exact time limits vary, with 24 hours very much at the upper end of the range where specific limits exist. The existence in the United States of a one-hour interval during which some statistical releases are available but no comment from the administration is permitted is also worth noting. Clearly such an interval, in our view highly desirable, is practical and viable despite the demands of the news media.

¹² European Commission *Special Eurobarometer, Eurobarometer 67, Spring 2007*.
http://ec.europa.eu/public_opinion/archives/ebs/ebs_special_eco_ind_en.pdf

1.6 A Consistent Policy throughout the United Kingdom

The current position (in which the UK Government introduced an Order in December 2008 which was then the model for the Northern Ireland Order but not for the Scotland Order, which became the basis for the Wales Order) is not ideal in terms of building public confidence across the UK that pre-release access is granted only according to well established principles.

Each administration is free to draft its Order in the form it chooses, but the Statistics Authority would expect, and urge, all four administrations to accept that a common approach, reflecting a common understanding of the issues, is desirable and might still be achieved. The user of statistics is unlikely to accept that one set of rules is appropriate to cover UK (i.e. not devolved) and wholly devolved Northern Ireland statistics whilst another is appropriate in Scotland and Wales. The arguments relating to influence, exploitation, inhibition, and perceptions are equally valid in all four administrations and the response to those arguments should, in the public interest, be consistent.

The differences between the UK Parliament Order and the Scottish Order are set out in Part 2 and in Annex 8. However, the main differences include:

- the maximum period of access permitted in usual circumstances (24 hours in the UK Parliament Order, 5 days in Scotland and Wales)
- the required justification for pre-release access (the wording is substantively different)
- the requirements to publish records about those to whom pre-release access has been granted (required under the UK Parliament Order, not required under the Scotland and Wales Orders).

We have concluded that having more than one Order has contributed to a degree of confusion amongst both statisticians and external observers. The differences in the Orders present particular difficulties for bodies releasing statistics that include aggregate UK or GB figures and also figures for the devolved administrations. For example, where the content of an ONS statistical release relates to both UK and devolved matters, ONS gives each individual administration pre-release access to its own 'devolved data' in accordance with the rules set out in each administration's Order. At present there is no official guidance on how to handle UK collaborative releases under the four Orders.

1.7 Statistics in their Final Form

Whatever broad position the administrations of the UK take in terms of restricting pre-release access (both length of time and who is granted access), there remain subsidiary but important questions about how to manage the controls and to what they apply. The stated position of principle and the nature of the controls need to be considered together. The *Statistics and Registration Service Act 2007* defines pre-release access as being access to official statistics 'in their final form prior to publication'. This section looks at what this concept means in practice.

It is common for data from administrative sources (for example, school and hospital records, social security records, crime records, and various measurements such as traffic flows) to be aggregated by a central department or agency to produce statistical data. This process will often be largely automated with local computer systems feeding central systems which, in turn, generate statistical tables and related material in a more or less continuous process.

Little of this initial work requires statistical expertise and it is usually managed outside the control of the statistical staff of the government department or agency concerned. Therefore, the statisticians are not in a position to control access to the emerging statistical data prior to the stage where they develop the material into outputs (tables and text) suitable for publication. And it would often be inappropriate to do so. The administrative data may be needed to inform administrative decisions before they have been converted into aggregate statistics. For example, information on local crime patterns might prompt a high level decision on police deployment before the national statistics have been produced. So tight control of administrative data from which statistics are extracted is often neither practicable nor desirable.

The other main source of statistics is sample surveys, involving interviews with members of the public or the collection of data from businesses or other organisations. Such surveys may involve the regular collection of information from the same respondents, or they may (as in the case of the Labour Force Survey or British Crime Survey) involve approaching a random sample of households at regular intervals. In either case, the work requires a high level of statistical expertise at all stages and it is normally managed by statisticians or equivalent experts. In survey work there is thus much greater scope to control who has access to the statistical information as it is being produced.

There are also statistics that are derived by calculations from administrative or survey data, and sometimes from both in combination. National Accounts, the Consumer Prices Index, and all other indices, are included in this category. In such cases, as with sample survey statistics, the production of the figures is

usually controlled by a small group of experts and there are opportunities to control access to the statistics prior to their publication.

Whichever of these sources are involved, the 'statistics in final form' will normally comprise a relatively small set of highly aggregated statistics, usually accompanied by a commentary that should explain the statistics for a broad audience – as required by the Code of Practice for Official Statistics. However, the scope to control access effectively varies greatly depending on which type of source they came from.

Given these considerations, it is clear that there are some circumstances in which restricting pre-release access is easier than others. In the case of statistics from administrative sources, it is neither practicable nor necessarily desirable to seek to refuse access to the final statistics when managers already have access to the data from which the final statistics are derived. However, the commentary associated with those statistics is a different matter and it is more practicable, and arguably more important, to control access to that. The commentary is at the discretion of the statisticians and thus open to influence whereas the statistics themselves are much less so.

It should be noted that the underlying data from which statistics are produced may not be 'published' in a formal sense but are regarded as being available publicly as soon as the higher level aggregates (the statistics in final form) are themselves published, subject to considerations of confidentiality protection and certain practical constraints in some cases.

For a pre-release access regime to work well, the scope of the statistics to which access is controlled should be clear; and control should be practicable and achievable. In the case of administrative data that lie below 'statistics in their final form', the arrangements are often neither clear nor practicable.

Whilst it might prove impractical and over-complicated to have one set of pre-release rules for data from survey sources and another set of rules for data from administrative sources, there are real differences in terms of what is realistic. The Statistics Authority therefore believes it would be helpful, in the context of the interpretation of the Orders, to treat administrative data differently. In particular, the obligation on producers should be more one of preventing inappropriate use of the data ahead of publication and of controlling access to the statistical commentary, and less a matter of trying to control access to the figures. Alongside this, publication of the administrative data at the earliest possible date is clearly important to minimise the opportunity for misuse.

1.8 Conclusions and Recommendations

In developing this report, the Statistics Authority has sought to weigh up the arguments for and against tighter control of pre-release access, taking account of the broader international principles. With these considerations in mind, the Authority believes that the presumption should be one of **very limited** pre-release access, both in terms of the number of people granted access and the length of time. However, there should also be recognition that in the case of administrative data used as management information before being published as statistics, it is sometimes impractical and/or inappropriate to aim for tight control. Allowance needs to be made for this. There are some further exceptional cases where the public interest may be seen, by an independent eye, to be best served by allowing longer access than normal to a small number of individuals.

The question of *who* should be responsible for judgements about the public interest is important. The view of the Statistics Authority is that it is, itself, best placed to make those judgements. The Authority has statutory independence from any political influence and is focused on maximising the value of the statistical service to all users, including Ministers, Parliament and the public. Further, it is already responsible (and accountable to Parliament) for virtually all aspects of statistical good practice with the exception of those that relate to pre-release access.

The existing legislation specifically prevents the Statistics Authority from addressing pre-release access within the Code of Practice. Ideally, the legislation should be changed to allow the Authority to establish the principles of good practice, as it already does with other aspects of statistical practice. However, as this is unlikely to be practicable, at least in the shorter term, the Authority will propose to Ministers that they should instead commit themselves to following the Authority's advice as set out in this report and subsequently. This would enable the Authority to reassure Parliament and the public that the issues are being addressed independently and in line with internationally recognised principles.

Subject to consideration of these points and the recommendations of this report, the powers and responsibilities of Ministers in relation to pre-release access to statistics should be set out clearly in the Ministerial Code (see page 50, section 2.4 below).

Application of controls

The arguments about the nature of the controls (section 1.7) suggest that the emphasis of the pre-release regime should be, firstly, on the presentation of statistical releases, including the commentary (the written text) and any statistical analysis or derived statistics contained in it and, secondly, on any statistics within the statistical release that are *not* already available to managers via management information systems.

As noted earlier, it would be impractical to have one set of rules for data from administrative sources and separate rules for data from survey sources but the interpretation of the Orders should recognise and accommodate the differences in terms of what can be achieved in practice. This should make it easier for departmental statisticians to manage the pre-release regime. Under this approach, access to management information (from administrative sources) for management purposes would not be impeded by, or seen as a grey area under, the pre-release access rules. The focus would instead be on early publication and on preventing interference with, or exploitation of, the statistics before their publication.

Clarification of this point would also be helpful in focusing pre-release controls on those aspects of the release of statistics that are most vulnerable to influence or inhibition; namely the overall presentation of the statistics, the commentary which indicates what the statisticians are planning to say, and those figures within the release that are *not* already knowable from other sources.

Period of access

The evidence we have collected indicates that while there are rare examples of pre-release access for less than the maximum period allowed under the Pre-Release Orders (24 hours in Whitehall and Northern Ireland departments, 5 days in Scotland and Wales), in practice the maximum is treated as an expectation by those to whom access is given.

The UK Parliament Order does not say explicitly that the period should be kept to a minimum, although various provisions in the Order and elsewhere do suggest that the intention is to restrict access to the minimum consistent with certain specified tasks. And the rationale for controlling pre-release access via an Order at all is that it should be kept to a minimum, on the basis of perceived need and the balance of public interest.

It would be more consistent with this underlying rationale if the Orders were to be clearer that the granting of access for the **maximum** period should be

regarded as exceptional, and that the norm should be a shorter period. The Statistics Authority favours setting the maximum period at **3 hours** ahead of release, which was also recommended by the House of Commons Treasury Committee in 2006.¹³ Three hours is time enough for Ministers and officials to understand what is to be published but short enough to ensure little opportunity to influence or exploit the information being released. It may be necessary to introduce such a change in stages, perhaps starting with those statistics for which strict control of pre-release access is most important and practical. This would include key economic statistics and the results of major surveys.

Numbers of people to whom access is granted

In terms of the numbers of people to whom pre-release access is granted, the evidence that the Statistics Authority has collected suggests that it is still common for quite large numbers of people to be given 24 hours advance access. For the sampled statistics, the average number of recipients was 21. Lists varied considerably in length, ranging from 8 to 55 recipients. Generally speaking, the longer lists tended to be for the higher-profile statistics, such as crime, immigration and poverty. The Orders further allow those people to pass on the material to those who provide them with 'administrative support' (the meaning of which is not specified), increasing the numbers with privileged access, and creating a further potential weakness in the control arrangements as no record is required in this context. Whilst arbitrary limits on the numbers entitled to have access would be difficult to justify, there would be scope to put a tighter interpretation on the range of reasons for which pre-release access is allowed.

The evidence collected indicates that, since the Order came into force, departments have had mixed success in reducing the number of people with pre-release access to statistics. Some departments granted pre-release access, by default, to Ministers, Parliamentary Under-Secretaries, Permanent Secretaries and Special Advisers. This may be compliant with the letter of the Order but is less easy to reconcile with the intention behind the introduction of controls and is a practice which we think should be severely restricted.

The UK Order is specific in that the number of people receiving access should be kept to a minimum. It says 'the responsible person...is required to restrict pre-release access to the minimum number of persons consistent with the need for pre-release identified'. It is not possible to identify from the information presented to us whether the numbers of people being granted access are, in fact, the minimum consistent with the relevant paragraphs of the Order.

¹³ for further discussion of the House of Commons Treasury Committee's inquiry *Independence for statistics*, and its conclusions regarding pre-release access, see section 2.2 below

However, in the absence of any specific control and the large numbers of recipients seen in some cases, we suspect that there is room to reduce substantially the numbers of people to whom pre-release access rights are currently granted.

The Statistics Authority would like to see all bodies covered by the Orders review and reduce the numbers of people to whom pre-release access is granted and increase the number of statistical outputs to which no access is granted in advance. The Authority would be willing to work with the Cabinet Office to draw up criteria, in consultation with Government departments, to indicate which releases should be regarded as suitable for no advance access at all.

Opposition politicians and journalists

It has been suggested from time to time that if pre-release access is granted to Ministers and their advisers, it would also be appropriate to grant it to Opposition spokespersons, so as to provide both Government and Opposition the same opportunity to prepare comment in advance. We reject this on pragmatic grounds. The inclusion of Opposition politicians in the list of recipients of pre-release access would further complicate, and politicise, the release of statistics and invite still further controversy. Also, such an approach would blur the meaning of 'publication'. As far as possible pre-release access has to be kept to a minimum and restricted to people with some direct responsibility for the statistical product.

This point also has relevance to the granting of pre-release access (under embargo) to journalists, for which provision is made in the Orders, with the same 24 hour maximum period. We take the view that if Opposition politicians are not to have pre-release access then neither should journalists. It may be helpful to the individual journalist to have extra time to absorb the substance of a statistical release, and this may result in more balanced and considered reporting on occasion. However, it potentially also creates a perception of collusion between the press and Government press offices around the process of releasing the statistics and a situation, prior to release of the statistics, in which journalists have access to more information than people they might interview about forthcoming announcements. Also, Parliament might reasonably expect and demand to be given sight of new statistical information at the same time as the news media.

The only form of early release to the press that we do support is the arrangement known as 'lock-in', where journalists are given copies of a statistical release in a secure room and are not allowed to speak to people beyond that room until the material has been published.

We thus recommend that the provisions relating to pre-release access for journalists be deleted from the Orders. In doing so, we acknowledge that many journalists have made responsible use of the advance access they have been given in the past and that many feel strongly that this should continue.¹⁴

A specific case illustrates the difference in view. The Statistics Authority received representations from education correspondents of national news organisations and from the Press Association opposing the reduction in the time limit to 24 hours in respect of advance access to statistics of school examination results produced by the Department for Children, Schools and Families. Extended pre-release access to selected news organisations had previously been allowed to facilitate the preparation of tables published in national and regional newspapers. The Authority recognises that this practice worked to the advantage of both the department and the news media but takes the view that the principle of equal access should be respected, and that the public value of the school statistics will be no less a few days after the raw results become available; indeed it would be helpful if the statisticians' own analysis of the results were to become the focus of media attention initially. To the extent that the media need the statistics in a specific format which takes time to prepare, their wishes in that respect should be seen as a major customer requirement by the departmental statisticians. The department should, as far as possible, provide the media with the statistics in the format wanted, not give advance access to news organisations to do the work for themselves.

Policy statements at the same time as statistical releases

Achieving appropriate control of advance access would be simpler if the grounds for such access were more tightly drawn. Currently the Order defines the grounds for access as being where to 'deny such access would...significantly impede the provision of responses to questions or the *making of statements about an official statistic at or shortly after the time of publication...* or the taking of action before, at the time of or shortly after publication'.

In the view of the Statistics Authority, the making of policy statements at the same time as the statistical release (effectively eclipsing the statistical product in the eyes of the news media) is not a positive act in terms of trust in the statistical product or indeed in securing the attention of the media to the statistical product, which will often be less 'media friendly' than the ministerial statement.

¹⁴ Correspondence between Sir Michael Scholar, Chair of the UK Statistics Authority, and Alexandra Frean on behalf of education correspondents, 7 January 2009
<http://www.statisticsauthority.gov.uk/reports---correspondence/correspondence/index.html>

As a matter of principle, the Authority would prefer to see ministerial statements on statistics following after the release of the statistics, separated by at least a short interval during which the statistical product would have the undivided attention of interested journalists. As mentioned in section 1.6 above, there is an interval of one hour for some releases in the United States, during which no political comment is made. We regard that as a good model.

However, there seems little prospect of reaching early agreement to such a change in the UK and, that being the case, we think the first step should be the removal of the ground for pre-release access that relates to 'significantly impeding the making of statements...at...the time of publication'. This part of the Order seems to endorse, and actively support as grounds for pre-release access, a practice that is not in fact helpful to the cause of building confidence in, and encouraging the media to pay attention to, official statistics in the form they are released by government statisticians.

Statistical releases to which no pre-release access should be granted

The evidence collected by the Statistics Authority indicates that there are a small number of uncontroversial statistical reports to which no pre-release access is given, and that, by implication, this does not cause undue difficulty. The reasons given for not granting pre-release access were related to the statistics being of limited interest within government – though presumably of greater interest to external users. For some statistics there had been no requests for pre-release access, and others were deemed to be 'too low profile'. We would like to see a set of criteria developed and used to identify statistical reports that should not have any pre-release access.

Devolution and UK policy

As was noted earlier, the Statistics Authority thinks there is a very strong case for a common approach across all four UK administrations, reflecting a common understanding of the issues. The public interest arguments are the same regardless of which administration has lead responsibility for the statistics and a common approach would do much to support the public presentation of the United Kingdom's position internationally.

RECOMMENDATIONS

Taking account of the arguments and considerations above, the Statistics Authority makes the following four recommendations:

1. All the UK administrations should seek to amend their Orders to adopt a maximum period of pre-release access of 3 hours, with a shorter period as the norm. Exceeding the 3 hour period would require special justification and be the subject of prior consultation with the Statistics Authority, which would report publicly on such cases. This shorter interval may necessitate a change to the standard time of day for releases, currently 9.30 am, and the Statistics Authority would support and facilitate such a change. A set of transitional steps, introducing the shorter period first for those statistics that are either of particular importance or of a kind where access is easier to control, might also be helpful to departmental statisticians.
2. In the public interest and to support the international reputation of the UK statistical system, the four UK administrations should work together to share a common understanding of the arguments and develop a common formulation for the Orders, beyond the adoption of the 3 hour limit.
3. One of the current grounds for pre-release access should be removed: namely, 'the making of statements about an official statistic at...the time of publication'. This practice, though common, distracts media attention from the statistical release and can give the impression that there has been collusion to align the statistical release with the ministerial statement. Reducing the practice to exceptional cases would substantially reduce the perceived need for pre-release access. We would therefore also recommend that an interval of one hour should be respected, on a voluntary basis, between the release of statistics and the release of ministerial comment on those statistics.
4. The provisions in the Orders relating to the granting of pre-release access to journalists should be deleted. These are not necessary and create the anomaly of the news media having the statistical information ahead of Parliament.

Part 2: Legislative and Policy Background

2.1 Introduction

The first steps in the formal codification of release practices date back to the early 1980s when the Central Statistical Office (CSO) under its then director, Sir John Boreham, prepared general guidance in this area. While the guidance was advisory, Sir John observed:

These guidelines are important because they aim to develop a respect among Ministers, senior administrators and the public for (Government Statistical Service) integrity. They should expect, and value, prompt, relevant, accurate, and above all impartial statistics and advice. I am sure they will not do so if we allow doubts to develop about the impartiality of our advice and publication timetables, and I will therefore continue to stress the need to avoid this giving any ground for such doubts...Only people who strictly need to know should see sensitive statistics before they are released, and then only for the minimum time necessary.¹⁵

The guidance was published in CSO's *Statistical News* in 1985, and incorporated in the *CSO Agency Framework Document* in 1991. It was further updated as part of a new Official Statistics Code of Practice, published in 1995, as a stand-alone Annex to the Code, while the Office for National Statistics expanded on the principles in a policy statement¹⁶ and in its *Framework Document*, both published in 1996:

The [ONS] Director is responsible for making statistics about the economy and society readily available and for maximising the use of official statistics subject to the need to recover the costs of dissemination. The Director is responsible for deciding the form, coverage and timing of release of statistics issued by the Office, taking into account the views of customers. The Director will release statistics in a timely way and will preannounce publication dates.¹⁷

The Framework for National Statistics, which was introduced in June 2000, included provisions for Ministers and officials to receive early access to official statistics. The Framework set out three conditions:

- access to administrative and management data which may be circulating amongst officials and Ministers in advance of their release as National Statistics, because they form part of the department's daily business;
- access to statistics by officials, as part of the compilation and quality assurance process; and,

¹⁵ Letter from Sir John Boreham to Department of Health and Social Security, 16 November 1984 and appended guidance.

¹⁶ Office for National Statistics, *Policy for the Release of Statistical Data to the Press and Public*, 1996

¹⁷ http://www.statistics.gov.uk/about_ns/downloads/ONS_framework.pdf, p. 12

- access by Ministers and officials to the final data, in advance of publication, to enable Ministers to account for the policy implications of statistics at the time of publication, and in certain circumstances, be in a position to announce policy decisions immediately after the release of data.¹⁸

The Protocol on Release Practices (2002) attached to the former National Statistics Code of Practice set out two forms of pre-release access:

- For statistics that are **not market-sensitive**, privileged early access will be no longer than **five working days** before release.
- Where privileged early access is provided for **market-sensitive** statistics, it will begin **40.5 hours** (and not more than 40.5 hours) before release, that is at 5pm on day one in advance of release at 9.30am on day three.¹⁹

The Phillis Review of Government Communications (2004) concluded that there was 'no need for the 40 hours of advance notice of National Statistics'. While the review found that there was no evidence that pre-release access rights had been abused, it believed the arrangements were 'open to the perception of abuse' and was, for example, 'far longer than the period of notice that the Executive in the United States receives of...key economic data'.²⁰

The Statistics Commission identified some suspected breaches of the Code of Practice in respect of pre-release access. For example, in their 2005-06 Annual Report, the Commission reported that it had investigated nine suspected breaches of the Code in this area. The Commission remained 'concerned about the amount of pre-release access within departments', and identified a further two instances where non-National Statistics releases which were not covered by the Code had, nevertheless, breached the pre-release access compliance statement of the department concerned.²¹ Generally, the Commission suggested, the procedures for investigating suspected breaches of pre-release access were not sufficiently robust:

¹⁸ HM Treasury Independence for statistics: a consultation document, 22 March 2006, p. 25

¹⁹ Office for National Statistics, National Statistics Code of Practice: protocol on release practices, September 2002, p. 13 http://www.statistics.gov.uk/about_ns/cop/downloads/ReleaseRD.pdf, p. 13

²⁰ The Phillis Review, An Independent Review of Government Communications, January 2004, p. 25

²¹ Statistics Commission, Annual Report 2005-06, July 2006 (Cm 6857), Annex D

We have found at times past some difficulty in getting the responses from departments...if you do not get the information you required then it is somewhat difficult to be certain, especially in this highly ambiguous situation of suspecting whether something is a breach of an ambiguous code [of practice].²²

In the Commission's view, pre-release access was seen to undermine public confidence in official statistics:

For many, it is not the data that are at fault but rather the presentation that leads to a lack of trust. Many question the right of Ministers to access official statistics prior to their release and believe that this should be abolished or, at the very least, reduced.²³

²² House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 25

²³ Statistics Commission, *Trust in Official Statistics*, 2005, p. 39

2.2 Independence for Statistics and the Treasury Committee Inquiry

In its consultation paper *Independence for statistics*, setting out plans for the setting up of a new Statistics Board, the Government contended that pre-release access arrangements were common in statistical systems abroad, and that it would further 'consider how pre-release access might operate in future' with no commitment to end or limit the practice.²⁴ Following the consultation, the Government concluded that the principle of pre-release should be 'retained', setting out that the new legislation would provide for pre-release rules to be determined through secondary legislation, while the new Statistics Board would have a statutory duty to assess departments' and Ministers' adherence to the new arrangements.²⁵

However, in evidence to the House of Commons Treasury Sub-Committee in July 2006, the Royal Statistical Society identified that pre-release arrangements in other countries tended to be more restrictive than in the UK. In Austria, Denmark, Finland, Norway and Poland there was no pre-release access at all.²⁶ The then Chief Statistician of Canada, Ivan Fellegi, told the Sub-Committee that pre-release arrangements in Canada were also 'extremely' restricted:

[to] those statistical series where there is a very strong and powerful reason for pre-release to exist...essentially...key economic indicators which can move markets and which might require early intervention in the markets and therefore preparedness to counter some bad news or particularly strong news...social data are totally excluded...pre-release is given to [officials] at two o'clock the previous day, in the afternoon, and our releases come out the next morning to everyone at 8.30, so it is less than 24 hours...and ministers are only given those data at five o'clock in the afternoon after the markets have closed.²⁷

Dr. Fellegi further observed that, in his view, in a statistical system that 'purports to be independent', civil servants or political staff should not make comments on statistics before they are released.²⁸ Lord (Claus) Moser, Director of the Central Statistical Office between 1967 and 1978, favoured the abolition of pre-release access altogether:

²⁴ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 25

²⁵ HM Treasury *Independence for statistics: the Government response*, 15 November 2006, p. 21

²⁶ Royal Statistical Society, *Pre-release Access to National Statistics: International Perspective* cited in House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 50

²⁷ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 20

²⁸ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 32

Pre-release should basically be abolished...I think perhaps something over one hour, so that the minister can be prepared to answer questions about the figures; but that would be the maximum in my view...I would leave it to the new Statistics Board to decide whether there should be any exceptions. My own view is to start from no exceptions.²⁹

While the Statistics Commission agreed with Lord Moser that the principle should be for no pre-release access, they also proposed to the Treasury Sub-Committee that Opposition spokespeople should also be given a limited amount of access where a system of pre-release was retained. For the Commission, the most important considerations were 'how long [the statistics] are released in advance and how they are embargoed and what the penalties are'.³⁰

The Royal Statistical Society emphasised the role of departmental press officers who were routinely asked to undertake two different functions in respect of statistical releases: assisting in the production of a statistical release that explains the statistics in an objective way and being simultaneously required to promote the policy objectives of their Ministers and the department. The Society advanced what it believed was a better alternative – that National Statistics should be released from a separate (virtual) location to the department. This would allow departmental statisticians to remain accountable for statistical production, the methods and definitions used, and for explaining the significance of the statistics and what inferences could reasonably be drawn from them. At the same time it would remove their responsibility for being involved in interpreting the implications of the statistics on departmental policies.³¹

While the Government conceded to the Sub-Committee that pre-release access arrangements had contributed to a general 'perception of interference in statistics', it felt that the number of proven cases of abuse was 'very few and far between'. In his evidence to the Sub-Committee, the then Financial Secretary to the Treasury, John Healey, defended the principle of pre-release access:

In my view the principle of pre-release access is justified largely because... Ministers are required, expected, as part of our duty to be accountable for the decisions and what is going on in government, to understand and respond immediately to challenges that might come from the production

²⁹ House of Commons Treasury Committee Independence for statistics, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 39

³⁰ House of Commons Treasury Committee Independence for statistics, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 25

³¹ House of Commons Treasury Committee Independence for statistics, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 12

of statistics. In those circumstances, I think it is right and sensible that there is some degree of pre-release. Second, I think that the principle of pre-release is quite widely accepted internationally. The details may be different but the principle of pre-release is accepted.³²

In the Sub-Committee's report, published in July 2006, it concluded that it had 'heard nothing to convince us that it is necessary for Ministers to have access to statistics 40 hours prior to their release'. The Committee recommended that the statutory replacement of the existing Protocol on Release Practices should provide Ministers with no more than three hours pre-release access to non-market sensitive data while access to market sensitive data should be given to Ministers only after the markets have closed on the day prior to release, as the Sub-Committee had heard from Dr. Fellegi in respect of the Canadian example.

The Sub-Committee also agreed with the Statistics Commission's suggestion that Opposition spokespeople should be given one hour's pre-release access to non-market sensitive data.

Finally, to improve public confidence in official statistics, the Sub-Committee recommended that the Statistics Board should have responsibility for the release of all National Statistics with 'considered and non-partisan interpretation'. This would leave Ministers to outline separately the implications of the statistical release for departmental or wider Government policy. The National Statistician's role to 'monitor and police those who misuse and misrepresent statistics' should also be further enhanced.³³

The debate about pre-release access arrangements was re-ignited following the intervention of the National Statistician in September 2006 regarding an apparent breach of the National Statistics Code of Practice by the then Prime Minister. In a speech to the Trades Union Congress on 12 September, the Prime Minister said:

Tomorrow, I think, we will probably see for the first time in some months a fall again in unemployment.³⁴

³² House of Commons Treasury Committee Independence for statistics, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 49

³³ House of Commons Treasury Committee Independence for statistics, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 53

³⁴ BBC News, Unemployment is down says Blair, 12 September 2006 http://news.bbc.co.uk/1/hi/uk_politics/5339870.stm

The Prime Minister's remarks were seen to refer to the release of labour market statistics by the Office for National Statistics at 9.30am the following day. The data had been sent to the Prime Minister's office on 11 September 'in line with normal privileged access'. The then National Statistician, Karen Dunnell, concluded:

The reported comments clearly contravened the National Statistics Code of Practice. It is essential for the maintenance of the integrity of official statistics, and of public confidence in them, that the provisions of the Code...are complied with fully. I should be grateful, therefore, if you would bring this point to the attention of all at 10 Downing Street.³⁵

The Cabinet Secretary, Sir Gus O' Donnell, replied to the National Statistician immediately. Sir Gus observed:

I regret what has happened. I have already discussed the issue with colleagues in the Prime Minister's Office. They are fully seized of the importance of complying with the National Statistics Code of Practice and have already put in place steps to tighten the procedures for handling statistics subject to the pre-release arrangements. This should, I hope make sure that you do not have cause to have to write to me again on this subject.³⁶

The Government responded to the Sub-Committee's report in October 2006. It undertook to continue its consideration of how pre-release access arrangements might operate in future, suggesting that it would announce 'further details in due course'.³⁷ A fuller account was provided in the Government's response to its *Independence for statistics* consultation in November 2006, in which it restated the case for the continuation of some form of pre-release access:

Ministers need to account for the implications of policy areas for which they are democratically responsible at the time new statistics are released – something the British public has come to expect – and, in certain circumstances, Ministers need to be in a position to announce policy decisions immediately after the release of data, for example to

³⁵ Letter from the National Statistician to Sir Gus O'Donnell, Cabinet Secretary (13 September 2006)
<http://www.ons.gov.uk/about/newsroom/correspondences/etter-to-sir-gus-o-donnell-kcb---secretary-of-the-cabinet-and-head-of-the-home-civil-service.pdf>

³⁶ Letter from the Cabinet Secretary to the National Statistician (13 September 2006)
<http://www.ons.gov.uk/about/newsroom/correspondences/letter-from-sir-gus-o-donnell-kcb---secretary-of-the-cabinet-and-head-of-the-home-civil-service.pdf>

³⁷ House of Commons Treasury Committee *Independence for statistics: Government Response to the Committee's Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006, HC 1604, p. 14

prevent market disturbances in financial or currency markets. As such, the Government remains convinced that there is a case for the continuation of formal pre-release access.³⁸

In its response the Government also announced how pre-release access arrangements would be decided. Ministers would agree the new arrangements and put them before Parliament and the devolved legislatures as secondary legislation. The Government also confirmed that it would review the suggestion made by the Sub-Committee that National Statistics releases should be published by a central publication 'hub', which would formally separate statistical releases from policy and ministerial commentary.³⁹

To this point, the Government's position focused mainly on the principle of Ministers needing pre-release access so they could account for the policy implications arising out of the publication of statistics, and that it was accepted internationally. The Government spoke less about what the maximum time limit should be, or the number of people to whom pre-release access should be granted. Meanwhile many of those who were concerned about the impact of pre-release access on public trust in official statistics advocated that the time limit should be reduced substantially such that it would be effectively abolished, and that the number of recipients and number of statistical releases was also sharply lowered.

³⁸ HM Treasury, Independence for statistics: the Government response, 15 November 2006, p. 21

³⁹ HM Treasury, Independence for statistics: the Government response, 15 November 2006, p. 21

2.3 Pre-Release Access and the *Statistics and Registration Service Bill*

Annex 1 provides a detailed account of Parliament's consideration of pre-release access arrangements set out in the *Statistics and Registration Service Bill* between November 2006 and July 2007.⁴⁰

The arrangements for pre-release access set out in the Bill were vigorously debated in Parliament. These debates featured prominently in all of the parliamentary stages in both Houses, and a lack of consensus about who should determine the pre-release access regime ultimately delayed the expected conclusion of proceedings by several weeks. During the Committee Stage in the House of Lords a number of significant amendments to the Bill were made, including giving the new Statistics Board – rather than Government Ministers – the statutory responsibility for determining the pre-release access rules. The pre-release access amendments were opposed by the Government, meaning the Bill was subject to several rounds of 'ping-pong' between the House of Lords and the House of Commons during the Bill's closing parliamentary stages. Eventually the opposition in the Lords conceded, and the Bill was allowed to pass, meaning the provisions for pre-release access as originally drafted remained unchanged.

In both Houses, those opposed to the provisions for pre-release access as drafted in the Bill believed that they ran counter to the wider objective of the legislation to seek to build public trust in official statistics by removing politicians as much as possible from their production and release. Many felt that pre-release access arrangements were at the heart of the issue of public confidence in statistics. Much of the debate revolved around the question of *who should decide* the rules – Ministers or the new Statistics Board. The Government favoured the provisions in the Bill which provided for Ministers to determine the new arrangements through secondary legislation subject to scrutiny in Parliament and the devolved legislatures. Others wished to see Ministers removed from the process altogether, with statutory responsibility for deciding the pre-release rules handed over to the independent Statistics Board.

The parliamentary debates surrounding pre-release access often reflected on the question of *why* Ministers need sight of statistical releases in advance of their publication. The Government's position was that Ministers need to account for the impact and implications on Government policy arising out of the release of new statistics, and generally to develop contingency measures to 'guard against disproportionate or costly market or public reaction'. They took the view, therefore, that Ministers themselves were best placed to

⁴⁰ A detailed review of the *Statistics and Registration Service Bill* and proceedings in the Public Bill Committee can be found in House of Commons Library Research Papers 06/66 and 07/25 available at:
<http://www.parliament.uk/commons/lib/research/rp2006/rp06-066.pdf>
<http://www.parliament.uk/commons/lib/research/rp2007/rp07-025.pdf>

decide the rules. Opponents were more sceptical. They believed that the pre-release access regime allowed (or gave the perception of allowing) Ministers the opportunity to 'massage' statistical releases, to cover-up the truth with 'political topspin', and to give statistics some form of political 'treatment' which undermined public confidence in the independence of the statistical product. Giving Ministers a 40-hour 'head-start' meant they could 'cherry-pick' the most eye-catching way of presenting the data so as to help steer the media in one particular, typically favourable, direction.

Attention was also paid to comparing the pre-release access environment in the UK to other countries. A number of MPs and Peers reviewed the regulatory regime in European and other Western countries, particularly where they constrained the *time limit* for pre-release access to a couple of hours. They questioned the rationale underpinning the Government's proposal to limit pre-release access to both market and non-market sensitive statistics to 40.5 hours, suggesting that this upper limit was still far too long and should be reduced much further. The *number of people* to whom privileged access was granted in the UK was also seen to be too many and should be limited. Overall, many believed that the UK regime would continue to be too lax.

Clause 11 of the Bill provided for UK Government Ministers (and Scottish and Welsh Ministers, and the Department of Finance and Personnel in Northern Ireland, in the case of wholly devolved statistics) to determine, by secondary legislation subject to the affirmative procedure, the rules and principles for pre-release access to official statistics 'in their final form'. Once approved by Parliament and the devolved legislatures these rules would be regarded as part of the Board's new Code of Practice for Statistics, and therefore the Statistics Board would be able to assess ministerial and departmental adherence as part of its wider statutory Assessment function provided for in clauses 12 and 14 of the Bill.

Clause 11(4) set out some of the principles that might be included in the secondary legislation, in particular the circumstances and conditions under which pre-release may be granted, the persons to whom it may be granted, and the length of time for which pre-release access may be given. Clause 11(5) allowed for these principles to vary according to different types of statistics or statistical releases, so that different conditions and lengths of time were permissible for market and non-market sensitive data.

Clause 11(7) required the appropriate authorities responsible for drafting the various Orders to consult each other before putting the draft Orders before Parliament and the devolved legislatures. It was apparent from the drafting of clause 11(7) that the arrangements for pre-release access to wholly devolved

statistics might allow for different pre-release practices across the UK where agreement between the appropriate authorities could not be achieved.

Clauses 11(1) and (2) prohibited the rules and principles of pre-release access being formally included as part of the new Statistics Board's revised Code of Practice for Statistics because the new pre-release access arrangements were to be determined under secondary legislation drafted by Ministers and subject to parliamentary scrutiny. Clause 17(4) prohibited the Board from making changes to pre-release access rules as part of any revision of the existing National Statistics Code which may be operational under transitional arrangements. Pre-release access arrangements, therefore, were a matter for Ministers rather than the new Statistics Board to determine.

The relevant sections of the *Statistics and Registration Service Act 2007* are reproduced below. Readers wishing to see how those clauses of the Bill were amended during the House of Lords stages of parliamentary consideration should refer to Annex 1.

Statistics and Registration Service Act 2007

8 Monitoring and reporting of official statistics

- (1) The Board is to monitor the production and publication of official statistics.
- (2) The Board may report any concerns it has about—
 - (a) the quality of any official statistics,
 - (b) good practice in relation to any official statistics, or
 - (c) the comprehensiveness of any official statistics,to the person responsible for those statistics.
- (3) The Board may publish its findings or any report under this section.

10 Code of Practice for Statistics

- (1) The Board is to prepare, adopt and publish a Code of Practice for Statistics.
- (2) The Board may at any time revise the Code and, if it decides to do so, must publish the Code as revised.
- (3) In preparing or revising the Code the Board must consult—
 - (a) the Scottish Ministers,
 - (b) the Welsh Ministers,
 - (c) the Department of Finance and Personnel for Northern Ireland, and
 - (d) such other persons as it thinks fit.

11 Pre-release access

- (1) The Code of Practice for Statistics under section 10 may not deal with any matter relating to the granting of pre-release access to official statistics.
- (2) The appropriate authority may for the purposes of the Code by order provide for rules and principles relating to the granting of pre-release access to official statistics.
- (3) The Code shall apply in relation to any official statistics as if it included any rules and principles provided for in relation to those statistics under subsection (2).
- (4) The rules and principles which may be provided for under subsection (2) include rules and principles as to—
 - (a) the circumstances in which, or descriptions of statistics in relation to which, pre-release access may or may not be granted;
 - (b) the persons or descriptions of person to whom pre-release access may be granted;
 - (c) the period, or maximum period, during which pre-release access may be so granted;
 - (d) the conditions subject to which pre-release access may be so granted.
- (5) Those rules and principles may—
 - (a) make different provision for different cases, and
 - (b) allow for the exercise of discretion by persons responsible for official statistics.
- (6) In this section 'appropriate authority' means—
 - (a) the Minister for the Cabinet Office⁴¹, except in a case falling within paragraphs (b) to (d);
 - (b) the Scottish Ministers, in relation to official statistics that are wholly Scottish devolved statistics;
 - (c) the Welsh Ministers, in relation to official statistics that are wholly Welsh devolved statistics;
 - (d) the Department of Finance and Personnel for Northern Ireland, in relation to official statistics that are wholly Northern Ireland devolved statistics.
- (7) Before making an order under subsection (2) the appropriate authority must consult—
 - (a) the other persons referred to in subsection (6)(a) to (d), and
 - (b) the Board.
- (8) In this section 'pre-release access', in relation to official statistics, means access to the statistics in their final form prior to publication.

⁴¹ During the House of Lords Committee stage, the Bill was amended so as to give the Minister for the Cabinet Office, instead of Treasury Ministers, residual ministerial oversight over the Statistics Board as an 'appropriate authority'. The amendments were agreed by the House of Commons and clause 11 and all other relevant clauses were amended accordingly.

2.4 Limiting Pre-Release Access: The Government Consultation

On 3 July 2007, as parliamentary debates on the Statistics Bill neared their conclusion, the Government published a Green Paper on the *Governance of Britain* setting out a programme for constitutional reform within a narrative that emphasised the broad themes of Britishness, citizenship and civic participation.

Included in the Green Paper was a brief review of the rationale underpinning the Statistics Bill and the arrangements for pre-release access to statistics. The Government reiterated its view that pre-release access was necessary to allow Ministers to account to the media and the public for the implications on Government policy arising out of statistical releases. However, the Government further acknowledged the ‘perception’ – evident in the earlier parliamentary debates – that the existing pre-release access arrangements were ‘overly generous’ and contributed to an impression of ‘ministerial interference’ which, in turn, impacted on public trust in official statistics. In advance of the planned consultation on the new pre-release access arrangements, which was not due to start for another few months, the Government announced a change of heart on the upper time limit. It now proposed reducing the limit from the 40.5 hours which it advocated during the parliamentary debates on the Bill, to 24 hours. It did not provide any further rationale for either time limit or the decision to switch from one to the other.

The question of *who* should decide the new arrangements – the Government or the Statistics Board – was also not directly addressed in the Green Paper. The new time limit of 24 hours effectively pre-empted the planned consultation, and demonstrated that Ministers would continue to control the new pre-release access regime:

The Government has also announced further changes to help improve trust in statistics. The British public expect, and the British media demands, that Ministers are able to account immediately for the implications of statistics about policy areas for which they are democratically responsible. Some have suggested, however, that the existing arrangements for giving Ministers advance sight of National Statistics are overly generous and contribute to a perception of Ministerial interference in statistics, which in turn has an impact on trust in statistics. The Government therefore previously announced its intention to reduce such pre-release access from up to five days (as now) to 40.5 hours for all statistics. Recognising the continuing concern about pre-release arrangements, the Government will go even further, reducing pre-release access to National Statistics to a **maximum of 24 hours**.⁴²

⁴² Ministry of Justice, *The Governance of Britain*, July 2007 (Cm 7170), p. 37

The Government launched a consultation *Limiting pre-release access* in December 2007. The consultation was run jointly by HM Treasury, which still had responsibility for UK statistical policy and the Office for National Statistics, and the Cabinet Office, which would assume 'residual' responsibility for oversight of the new Statistics Authority from April 2008. In the consultation document, the Government set out how it sought to tighten pre-release access:

- limiting pre-release access to a strict maximum of 24 hours, reduced from up to 5 working days for certain National Statistics at present;
- requiring that pre-release access be limited to the minimum necessary number of people and the minimum number of statistics, with decisions on pre-release access taking into account the need to reduce pre-release access to promote public trust;
- requiring that, where pre-release access is granted, it shall be done in an open and transparent manner, with details documented and published. The need for pre-release access to a publication, and the people granted access, will be reviewed ahead of release of the relevant statistics;
- access will also 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; and,
- 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 until the point of publication. As now those granted pre-release access to statistical releases must not alter or attempt to alter the content or timing of those releases, or the way in which they are presented; and obviously pre-release access must not be used for personal gain, or for political advantage.⁴³

The consultation ran for the standard 12 weeks for public consultations of this kind, ending in early March 2008. There were 15 respondents to the consultation, including the UK Statistics Authority (then operating in a 'shadow' capacity), the Statistics Commission (which would cease to exist once the Act came into force), and the Royal Statistical Society (RSS).

While a few respondents supported the upper limit of 24 hours being proposed by the Government, a number of leading bodies wished to see the time period limited to just a few hours. The Statistics Commission felt that an upper limit of three hours was sufficient, the Statistics Authority also proposed

⁴³ HM Treasury and Cabinet Office, *Limiting pre-release access to statistics: a consultation document*, December 2007, p. 3

three hours, and the RSS wished to see, in principle, pre-release abolished altogether but, in practice, recommended an upper limit of two hours for a limited number of key national statistics. The Statistics Authority opposed the provisions in the *Statistics and Registration Service Act* which gave Ministers the right to determine the pre-release rules:

Observers at home and in other countries are likely to regard this as the retention of inappropriate political influence in a key part of the statistical production and dissemination process, whose rules ought to be determined independently.⁴⁴

Although the Statistics Authority accepted the principle of giving Ministers and their officials a limited amount of pre-release access, the Authority believed the Government's proposals were not strong enough:

The Authority considers pre-release access to be of major importance because of its central relevance to our task of improving public trust in official statistics...We accept that there is a principled case for allowing relevant Ministers and their officials to have some limited privileged pre-release access to statistics in their final form...However, we feel that the proposals made in the consultation document – themselves a great improvement on previous practice – are simply not strong enough to combat the public's misgivings about politicians' involvement in official statistics – the perception that there is political interference in the production and presentation of statistical outputs, and that the Government does not use official figures honestly.⁴⁵

However, the Health Statistics User Group was concerned that reducing pre-release time limits too far might affect the quality of the presentation of the statistics, and that an important principle was to ensure that Ministers and officials were 'properly briefed' so that they could 'talk intelligently' about the figures. The First Division Association (FDA) believed that officials should not be put under undue pressure to prepare briefings for Ministers and recommended that departmental officials should receive a longer period of pre-release access than their Ministers.⁴⁶

⁴⁴ Response of the UK Statistics Authority to the Government's consultation on *Limiting pre-release access to statistics*, 3 March 2008 http://www.cabinetoffice.gov.uk/media/cabinetoffice/corp/assets/publications/consultations/prerelease_statistics/UKStatsAuthorityresponse.pdf

⁴⁵ Response of the UK Statistics Authority to the Government's consultation on *Limiting pre-release access to statistics*, 3 March 2008

⁴⁶ Responses to the Government's consultation on *Limiting pre-release access to statistics* are available online at: http://www.cabinetoffice.gov.uk/consultations/prerelease_access/responses.aspx

The Government concluded that 'pre-release access should be kept to a minimum', and it found that it would be 'legally and practically difficult' to manage an environment in which Ministers were given less pre-release access than their officials, as suggested by the FDA. Given the need to 'develop, coordinate and agree briefing with all relevant officials', a period of less than 24 hours 'would risk that this briefing would not be of an acceptable quality for complex statistics'. The Government, therefore, proposed to retain the 24-hour maximum.⁴⁷

The Government also proposed that the number of people receiving pre-release access, and the number of statistical releases that they receive access to, should be 'minimised'. While it was important 'to achieve the appropriate balance between the legitimate need of government for pre-release access and the need to minimise pre-release access in the pursuit of public trust', the Government believed that 'pre-release access could only be granted where the public benefit outweighed the detriment to public trust likely to result from such access'.

The RSS proposed that pre-release access arrangements should apply to only a limited number of National Statistics outputs. Likewise, the Statistics Authority believed that pre-release access should only be granted to certain market-sensitive statistics, or to non-market sensitive statistics only with its explicit consent:

...we consider that...the range of outputs to which pre-release access might be granted should be reduced considerably, to a core of the most significant economic releases only – those releases currently categorised as 'market sensitive' National Statistics...If Ministers want pre-release access to other statistical products then they should be obliged to apply to the Authority, which would publish its reasoned decision.⁴⁸

The Government concluded that decisions on whether to grant pre-release access would take into account 'the importance, public profile and complexity' of the statistics concerned, although these would continue to be made by Ministers and departmental Heads of Profession. The role of the Statistics Authority would be to assess whether these decisions were being taken properly with the ultimate sanction of the withdrawal of National Statistics status where inappropriate pre-release access was given.

⁴⁷ Cabinet Office, *Limiting pre-release access to statistics: the Government's response to the consultation exercise*, May 2008

⁴⁸ Response of the UK Statistics Authority to the Government's consultation on *Limiting pre-release access to statistics*, 3 March 2008

The Statistics Authority proposed that only the relevant Minister and one or two briefing officials should receive pre-release access, and the RSS suggested that pre-release access should only be granted after the department concerned had consulted the National Statistician. The Local Government Association felt that particular attention should be paid to the granting of pre-release access to ministerial Special Advisers:

Pre-release access to special advisers may particularly undermine public trust. This should be a major consideration in reviewing existing (pre-release) distribution lists.⁴⁹

In its response to the consultation, the Government outlined what it understood the 'minimum number' of people who might receive pre-release access to mean:

This minimum may include more than just one or two briefing officials, given the potential need for advice from multiple policy areas on complex releases and the need to have specialist advice, for example from press offices. Different departments have different procedures for briefing Ministers, and it would not be helpful to set down centrally exactly which officials should take part in the briefing. The Statistics Authority can assess pre-release practice across government, challenge departments where it considers that pre-release access is not needed and, ultimately, take away National Statistics status from statistics where inappropriate pre-release access is being granted.⁵⁰

The Government also announced that it intended to retain the requirement, set out in the consultation document, that pre-release access lists should be reviewed to ensure that individuals did not continue to receive pre-release access under the new arrangements 'merely because they received it in the past'.

The consultation response also confirmed that decisions on pre-release access would be 'led by statistical professionals'. Ministers would remain ultimately responsible but, in practice, departmental Heads of Profession for Statistics would take the day-to-day decisions on how to apply the principles and rules on pre-release. Heads of profession could draw on support from their Ministers and Permanent Secretaries and they would be able to seek advice from the National Statistician and Statistics Authority, as required. The Government believed that this would 'distance Ministers from decision-making on pre-release'.

⁴⁹ Response of the Local Government Association to the Government's consultation on *Limiting pre-release access to statistics*

⁵⁰ Cabinet Office, *Limiting pre-release access to statistics: the Government's response to the consultation exercise*, May 2008, p. 12

The Statistics Authority and Statistics Commission both welcomed this role for heads of profession, although they proposed that this should be set out in the secondary legislation itself. In its response, the Government did not explicitly commit to this, although it observed that heads of profession would 'generally' have day-to-day authority for implementation of the rules in their departments.

The Government's consultation proposed that there should be a requirement that, once pre-release access to statistics in their final form had been granted, those statistics would be 'under embargo'. This meant that the contents of the statistical release should not be shared with others until publication. Being 'under embargo' meant that:

...the person with pre-release access must not reveal the figures...they must not reveal, hint at or speculate about the trend or direction of the figures... [they] must not alter – or attempt to alter – the content or timing of those releases, or the way they are presented, and...the pre-release access period must not be used for personal gain, or for political advantage.

Most respondents to the consultation seemed to implicitly support these proposals. The Statistics Authority suggested that the requirements on Ministers in respect of pre-release access should be replicated in the Ministerial Code. The Government said that it would consider amending the Ministerial Code as the Authority had proposed.⁵¹

The Government proposed that the operation of the pre-release access arrangements should be undertaken in an open and transparent manner with the details of those to whom pre-release access was granted being routinely published. The Statistics Commission suggested that a pre-release access scheme should be also published which would include information on *how* departments were complying with the rules and the names of those who were operationally responsible for the pre-release environment in the respective department. The Statistics Authority went further by proposing that, as well as publishing details of those who enjoyed privileged pre-release access, details of *when* access was given and the purpose of that access should also be published.

The Government accepted that justification for pre-release access for each individual should be made available on request, although it concluded that it would be 'overly burdensome on departments to routinely require them to publish this information, which may in many cases be deduced from the published job title and organisation of the recipient of pre-release access'.

⁵¹ Cabinet Office, *Limiting pre-release access to statistics: the Government's response to the consultation exercise*, May 2008, p. 14

However, the Statistics Authority's proposal that access times should be routinely published was not accepted by the Government, nor that a justification should be given for the exact length of pre-release access for each individual, again because such requirements would be 'overly burdensome' on departments. The requirement on departmental heads of profession to report breaches of the pre-release rules was retained, making a report to the Statistics Authority outlining the circumstances of the breach and what remedial action would be taken to prevent recurrence.

The consultation document proposed a number of 'special cases', where pre-release access would be given to individuals outside departments. These included access for the Bank of England to certain statistics to enable it to 'fulfil its remit efficiently' and to allow the Bank to respond to 'financial market disruption' caused by the release of market-sensitive statistics; to journalists to enable them to 'absorb and understand the significance of a given release, and to ensure that any articles they write are based on a proper appreciation of the facts'; to international organisations to meet the requirement of European Union or international law; and, to allow statistics to be included in important reports that are to be published at the same time as, or shortly after, the statistical release concerned.

The Statistics Authority believed that the scope for special cases or exceptional circumstances should be more stringent than the Government had proposed. The RSS suggested that pre-release access should no longer be granted to journalists except under 'restrictive lock-up arrangements', while the Statistics Commission proposed that access for journalists should be actively discouraged with the names of all journalists given pre-release access reported to the Statistics Authority.

The Government concluded that its proposals for special cases and exceptional circumstances were sufficient although, 'to ensure transparency', it proposed to publish the details of all journalists given pre-release access under the new arrangements.

The *Statistics and Registration Service Act* determined that the rules for pre-release access in the secondary legislation would be applicable to statistics, rather than the publications of which they form a part. The Statistics Authority and Statistics Commission observed that the text of the statistical release was as important as the statistics themselves. The Statistics Authority proposed that pre-release access should be given only to the actual text of a statistical release, and not just be given to one part of it.

The Government agreed that the new pre-release arrangements should cover the wider text of statistical releases, as well as the figures themselves, but it disagreed that access should always be given to the entirety of a statistical release on the grounds that this may be 'impractical, especially for larger releases'. The Government also concluded that heads of profession should have the sanction of removing individuals' pre-release access rights 'for a period' from anyone knowingly breaching the rules, and this sanction would complement the Statistics Authority's right to remove National Statistics designation from any statistic where it believed the rules on pre-release were not being followed.

A number of consultation respondents were concerned to ensure that the new pre-release regime did not restrict quality assurance of statistics before their publication. The Health Statistics Users Group observed that 'one good way of ensuring that the statistics are reliable is to share these with data producers, or some of the main data users, before they are finalised'. The Market Research Society concluded that 'to maintain the quality of official statistics it is vital that quality assurance processes are explicitly considered in drawing up the pre-release regulations and that no restrictions on quality control are imposed.'

In its consultation response, the Government acknowledged that the legislation provided for the Statistics Authority to determine the access rules for statistics not in their final form through the Code of Practice for Official Statistics. The Statistics Authority recognised that it was for the Authority to deal with these matters and that it would undertake this role by balancing 'the interests of good administration with those of statistical integrity to produce proposals that will improve public confidence'. The Government concluded that it would amend the draft Order to ensure that those receiving statistics ahead of release were able to report any errors they might find to the relevant producer department(s).

The Government's consultation exercise was limited to the rules for pre-release access to non-devolved statistics, and the devolved administrations would individually determine the rules in respect of their own wholly devolved statistics. In its response to the consultation, the Statistics Authority suggested that it would prefer the pre-release rules for all administrations to be identical. The Government accepted that this would be the 'most convenient position', but noted that each administration had been given the right under the *Statistics and Registration Service Act* to set its own rules and that 'policy differences' might mean there needed to be 'some differences' between them. The Government further concluded that consistency between the four administrations should be revisited as part of the review of the new pre-release arrangements once 12 months had elapsed.

2.5 Implementing the new Pre-Release Regime

Following the consultation, the UK Government introduced its draft Order into Parliament. The draft Order was considered by both Houses in November 2008⁵², and came into force on 1 December 2008. The *Pre-Release Access to Official Statistics Order 2008* (referred to here as the 'UK Order') is reproduced at Annex 4.

The UK Order sets out the rules and principles relating to the granting of pre-release access to official statistics that are not wholly devolved Scottish, Welsh or Northern Ireland statistics. Under the UK Order, only the 'person responsible' may grant pre-release access to an 'eligible person'. The person responsible is defined in section 67 of the *Statistics and Registration Service Act* as the Minister responsible for statistics being produced by the department concerned, the National Statistician in the case of statistics produced by the ONS, or the producer of the statistics in the case of any other body. An eligible person is defined in the Order as a Minister of the Crown, a head of a government department, a junior Scottish Minister, a member of the Welsh Assembly Government, or a Northern Ireland Minister or their junior. The UK Order also provides for pre-release access to be granted to those who:

- in the opinion of the person responsible is accountable to the public for the formulation or development of government policy or for the delivery of public services to which the statistic has 'direct relevance';
- need pre-release access in order to advise any of those other eligible persons listed in the Order; or,
- provide 'administrative support' to an eligible person.

In the UK Order, 'Government policy' includes the policies of the UK Government, as well as that of the three Devolved Administrations.

The Order prohibits the person responsible from granting pre-release access for a period in excess of 24 hours before the publication of the official statistic concerned. However, in exceptional circumstances, pre-release access may be granted to an eligible person for more than 24 hours, when:

- In the opinion of the person responsible the public *benefit* likely to result from such access (in excess of 24 hours) significantly outweighs the *detriment* to public trust in official statistics likely to result from such access; or

⁵² House of Commons Fourth Delegated Legislation Committee, 4 November 2008 and House of Lords in Grand Committee, 12 November 2008.

- An eligible person makes representations to the person responsible that pre-release access should be granted to a person who is not already an eligible person because they need pre-release access in order to take action before, at the time of, or shortly after the publication of the relevant official statistic.

If the person responsible grants pre-release access in such exceptional circumstances, they are required to publish their reasons for doing so and inform the UK Statistics Authority.

The UK Order prohibits those given pre-release access from disclosing the statistic, any part of a publication which includes that statistic, or any 'suggestion of the size or direction' of any trend indicated by that statistic, until the statistical release has been published. It also prohibits an eligible person from using pre-release access for personal gain, or to take any action for 'political advantage' other than the preparation of responses or statements to be made at, or shortly after, publication. Recipients of pre-release access should also not use their privileged access to 'change or compromise' the content or preparation of the statistic or the timing of its publication.

At this point, the UK Order makes a distinction between market sensitive and non-market sensitive statistics. The UK Order provides for pre-release access to market-sensitive statistics to be granted to an eligible person, but only after they have signed a specific declaration that they will comply with the provisions of the Order in respect of disclosure and use. The UK Order does not require a similar declaration to be made in the case of non-market sensitive official statistics.

The person responsible is required to publish, at least annually, a list of all official statistics to which they have granted pre-release access. In addition, they must also publish lists containing the job title and organisation of those given pre-release access at the same time as, or immediately prior to, the publication of each official statistic to which they have given privileged early access. The person responsible is also required to publish a general statement setting out how the department complies with the pre-release rules, including the role of the departmental Head of Profession.

The UK Order sets out a number of special provisions in respect of pre-release access to the Governor, Deputy Governors, members of the Monetary Policy Committee (MPC), and officials of the Bank of England to enable them to effectively discharge Bank functions. Where such access is granted, the person responsible may also provide similar access to the Chancellor of the Exchequer or the Treasury representative on the MPC, or any official advising them, where

access assists them in 'effective co-ordination of fiscal and monetary policy' or the preparation of a communication from the Treasury to the Bank under the *Bank of England Act 1998*. The Order requires the number of people given such access, and the time for which access is granted, to be kept to a minimum. However, the 24-hour maximum and the provisions in the Order in respect of exceptional circumstances do not apply to pre-release access granted to the Bank or Treasury in this area.

Because the Bank of England was not regarded – and continues not to be regarded – as a producer of official statistics as defined in the *Statistics and Registration Service Act*, the special provisions for the Bank set out in the UK Order are designed to facilitate pre-release access for the Bank to the (mainly economic) official statistics produced by other departments.

The UK Order also makes special provisions to allow the person responsible to grant pre-release access to journalists for up to a maximum of 24 hours where such privileged access helps journalists to 'understand' the statistic and the statistical publication in which it is included, and it is 'likely to facilitate well-informed debate'. As before, the person responsible is required to undertake a public interest test to decide whether pre-release access for journalists means that the public benefit from pre-release would outweigh the detriment to public trust, and to restrict pre-release access to the minimum time necessary. The Order sets out some specific conditions which may be imposed on pre-release access for journalists, including access must take place in a secure location (lock-in) and that no communication equipment may be used except that permitted by the person responsible; or that journalists receiving pre-release access are required to comply with any conditions imposed on them.

Finally, the UK Order makes special provisions to allow pre-release access for the purposes of 'third-party publications' so that these publications may include the relevant statistic and inclusion would 'significantly improve the accuracy or usefulness of information' contained within it. While the number of people to whom pre-release access is granted under these provisions, and the time limit imposed, should be kept to a minimum, and the person responsible must conduct a public interest test, the 24-hour maximum and the provisions on exceptional circumstances do not apply to pre-release access for third party publications.

The rules and principles for pre-release access as they apply to wholly devolved Scottish, Welsh, and Northern Ireland statistics are set out in the three Orders which the respective Devolved Administrations consulted upon during 2008 and 2009, and which the devolved legislatures brought into force during that period. The Scottish Order came into force on 1 December 2008, at the same

time as the UK Order; the Northern Ireland Order came into force on 1 April 2009; and the Welsh Order came into force on 21 October 2009.

The Northern Ireland Order closely mirrors the provisions of the UK Order, while the Scottish and Welsh Orders differ from the UK and Northern Ireland Orders in a number of important respects. The Scottish and Welsh Orders:

- Fix the maximum period of access for market-sensitive statistics at 24 hours, while for other official statistics it is fixed at five working days before publication. In the UK and Northern Ireland Orders, the maximum period is fixed at 24 hours, unless in exceptional circumstances.
- Exclude mention that the presumption of the Order is that the number of people to whom pre-release access is granted should be kept to a minimum.
- Set out a number of circumstances in which pre-release access may be granted.

In addition,

- The Scottish Order sets out detailed requirements for the person responsible to maintain records about the individuals and circumstances surrounding pre-release access, and to provide information on request, but not to routinely publish that information.
- Whereas in Wales the requirement is that the person responsible should annually publish a list of those official statistics where pre-release has been granted.
- The Scottish and Welsh Orders set out that the reasons for granting access are to ensure that Ministers and officials have a correct understanding of the statistics and their implications so that any comments made about the statistics at, or shortly after, publication may be properly informed.

The Scottish, Welsh and Northern Ireland Orders are reproduced at Annexes 5 to 7, and a summary table is provided at Annex 8.

The Statistics Authority observed that Scotland and Wales were 'at odds' with the UK and Northern Ireland position on pre-release access. In a letter to the Welsh Assembly Government, Sir Michael Scholar wrote:

We note that the Welsh Assembly Government has proposed that the arrangements for pre-release access to Welsh statistics should broadly mirror the arrangements in Scotland, providing up to five days' privileged access for Ministers and advisers. This puts the devolved administrations in Scotland and Wales at odds with the UK and Northern Ireland administrations which limit pre-release access to 24 hours. We take the view that it would be in the interests of public confidence in the statistical systems if all four administrations restricted pre-release access as much as possible.⁵³

In a letter to the Statistics Authority, the Scottish Government set out different views:

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...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... this may result in a reduction in the number of people given access but it might not.⁵⁴

The Authority has also questioned the provision set out in the Scottish and Welsh Orders for the maximum period of pre-release access to be varied to an unlimited extent. In a letter to the Welsh Assembly Government, Sir Michael observed that 'if the statistics are ready for publication it would be better if they were published at the earliest opportunity rather than held back'. As the Authority told the Northern Ireland Executive, it believed that:

Enabling the administration of the day to discuss, and prepare statements about, the statistics whilst not allowing the same access to Parliament or the public is not, in our view, either the best approach, in terms of principle, or at a practical level, likely to help build confidence in the independence and impartiality of the statistical service. The Statistics

⁵³ Letter from Sir Michael Scholar, Chair of the UK Statistics Authority, to the Minister for Finance and Public Service Delivery, Welsh Assembly Government, 7 August 2009 <http://www.statisticsauthority.gov.uk/reports---correspondence/correspondence/sir-michael-scholar-to-andrew-davies-070809.pdf>

⁵⁴ Letter from the Minister for Enterprise, Energy and Tourism, Scottish Government, to Sir Michael Scholar, Chair of the UK Statistics Authority, 30 September 2008 <http://www.statisticsauthority.gov.uk/reports---correspondence/correspondence/second-letter-from-jim-mather-to-sir-michael-scholar-regarding-pre-release-access.pdf>

Authority would like to see all four UK administrations using the new Orders not just to establish a new standard for pre-release access but to achieve progressive reduction both in the length of time for which privileged access is granted, and in the number of officials and Ministers seeing statistics prior to publication.⁵⁵

In a letter to the Scottish Government, the Authority said:

...the Statistics Authority view is both one of principle – that pre-release is inconsistent with the principles of equal access and earliest possible release – and also one of practical management, in that pre-release access increases the risk of leaks and undue influence over the statistical product ahead of publication.⁵⁶

The Welsh Assembly Government held different views. It believed that:

...pre-release access is needed for good governance and to ensure the integrity of the statistics...The draft (Welsh) Order follows our current pre-release access times, which we feel works well for Wales, is a workable time to allow the legitimate uses to be carried out efficiently and effectively. As such we propose a normal maximum of 5 working days but a maximum of 1 working day for market sensitive statistics to reduce the risk of leaks.⁵⁷

Sir Michael Scholar again set out the views of the Statistics Authority at an event in Westminster in November 2008:

We have also taken a strong stand on the issue of pre-release, which we think is an important obstacle to the rebuilding of public trust. Our view is that, as a matter of principle, statistics should be published so as to be available to everyone at the same time. Giving one favoured group pre-access to the statistics – particularly if that group consists of government Ministers and political advisers and their staff – naturally encourages the public to suspect chicanery and manipulation. Unfortunately, the Statistics Act gave the power of decision on pre-release to Ministers and

⁵⁵ Letter from Sir Michael Scholar, Chair of the UK Statistics Authority, to the Minister for Finance and Personnel, Northern Ireland Executive, 29 January 2009 <http://www.statisticsauthority.gov.uk/reports---correspondence/correspondence/sir-michael-scholar-to-nigel-dodds-290109.pdf>

⁵⁶ Letter from Sir Michael Scholar, Chair of the UK Statistics Authority, to the Minister for Enterprise, Energy and Tourism, Scottish Government, 15 October 2008 <http://www.statisticsauthority.gov.uk/reports---correspondence/correspondence/second-response-from-sir-michael-scholar-to-jim-mather.pdf>

⁵⁷ Letter from the Minister for Finance and Public Service Delivery, Welsh Assembly Government, to Sir Michael Scholar, Chair of the UK Statistics Authority, 3 July 2009 <http://www.statisticsauthority.gov.uk/reports---correspondence/correspondence/andrew-davies-to-sir-michael-scholar-030709.pdf>

not to the Authority, so we are not yet having our way on this matter. But we will keep plugging on. With your support we should in the end succeed.⁵⁸

As Sir Michael later told the 2009 conference of the Royal Statistical Society:

We have a very unsatisfactory set of arrangements in respect of pre-release access to statistics – the arrangements that give privileged access mainly to Ministers and their spin-doctors. I have gone on record before saying that my belief is that pre-release access should be abolished, or at least minimised to, say, three hours. Pre-release access, in the Authority's view undermines public trust and confidence in official statistics. We also now have a situation in which Scotland and Wales grant up to five days' pre-release access, whereas in Northern Ireland and the UK this is limited to just one day. The Authority will soon publish its views on this – and I would expect them to be trenchant.⁵⁹

⁵⁸ Welcoming remarks by Sir Michael Scholar at an event hosted by the UK Statistics Authority, London, 11 November 2009

⁵⁹ Speech by Sir Michael Scholar to the Annual Conference of the Royal Statistical Society, Edinburgh, 10 September 2009 <http://www.statisticsauthority.gov.uk/news/sir-michael-scholar-s-speech-to-the-royal-statistical-society-annual-conference-2009.pdf>

Annex 1

Parliamentary scrutiny of pre-release access arrangements in the *Statistics and Registration Service Bill*

The *Statistics and Registration Service Bill* was introduced into the House of Commons on 21 November 2006 and the Second Reading debate was held on 8 January 2007. The Bill was then considered in a Public Bill Committee between 16 and 25 January. The Committee agreed to two minor amendments to clause 25 and four Government amendments to Schedule 3, none of which impacted on the drafting of clauses relating to pre-release access. The Bill was debated at Report Stage and Third Reading on 13 March 2007, and sent to the House of Lords, as amended, for consideration.

The House of Lords considered the Bill at Second Reading on 26 March and it was considered in Grand Committee on 24 April, 2 and 23 May where the Bill was amended to give the Statistics Board the responsibility for determining the rules on pre-release access as part of the Code of Practice for Official Statistics, and could monitor the arrangements for pre-release access as part of its monitoring and reporting functions. The Bill was considered by the Lords at Report Stage on 18 June and given a Third Reading, as amended, on 25 June, and sent back to the Commons for consideration.

The Commons rejected the amendments in the area of pre-release, and the Lords insisted on their amendments, meaning the Bill was the subject of 'ping-pong' between the two Houses during July 2007. On 19 July, the Lords did not insist on their amendments to those clauses relating to pre-release access, and the Bill was allowed to pass, being granted Royal Assent on 26 July 2007. The Bill came into force on 1 April 2008.

During the Second Reading debate a number of Members expressed concern at the proposed arrangements for pre-release access, as drafted in the Bill. Theresa Villiers, then Shadow Chief Secretary to the Treasury, told the House that the Opposition's objective in scrutinising the Bill was to 'restore public trust in official statistics by taking politicians out of the process of the production and release of Government statistics' and by 'removing their power to manipulate and spin the figures for their own short-term political ends'.⁶⁰

⁶⁰ HC Deb, 8 January 2007, c. 40

Mrs. Villiers also suggested that, if the Government's reforms were to succeed in building public trust, then the pre-release rules should be 'determined by the [Statistics] Board, not by politicians'.⁶¹ David Gauke asked the then Financial Secretary to the Treasury, John Healey, what proportion of respondents to the Government's consultation on *Independence for statistics* agreed with the Government's approach to pre-release access. Mr. Healey acknowledged that:

...many respondents strongly considered that arrangements for pre-release needed to be tightened and that arrangements for pre-release as they currently stand contributed to a lack of public trust in our statistics.⁶²

Michael Fallon, Chair of the Treasury Sub-Committee, urged the Government to limit the extent of ministerial pre-release access to statistics. Mr. Fallon believed that pre-release access had:

...involved some of the more glaring abuses. Forewarned at such length of bad statistics, Ministers have been free – indeed, within their rights – to try to massage the release and cover the truth with political topspin or bury the figures with other related announcements. Forewarned of good statistics, Ministers have not hesitated to commit breaches – inadvertently, of course...The extent of pre-release is unacceptable...no other country allows it and I believe that it should be cut altogether.⁶³

David Gauke was concerned that pre-release access was 'the most obvious abuse in the system' because it preserved 'the power of Ministers to determine the rules'. Overall, he hoped that, in Committee there would be 'substantial amendments to a Bill that has the best of intentions, but fails to live up to them'.⁶⁴ Sir Robert Smith thought that Ministers having pre-release access of 40 hours:

...gives the Minister a huge advantage because they can then pick the most eye-catching part of, or way of presenting, that data, and the easiest way of steering the media in one direction – and the media have deadlines to meet. It can then take ages for everyone else to get into the detail of the data, with the Minister having had the unfair advantage of a 40-hour head start.⁶⁵

⁶¹ HC Deb, 8 January 2007, c. 47

⁶² HC Deb, 8 January 2007, c. 30

⁶³ HC Deb, 8 January 2007, cc. 67-8

⁶⁴ HC Deb, 8 January 2007, c. 91

⁶⁵ HC Deb, 8 January 2007, c. 79

The Bill was given a Second Reading without division, and committed to a Public Bill Committee for further consideration.

The Public Bill Committee debated the provisions of clause 11 of the Bill regarding pre-release access on 23 January 2007. Michael Fallon moved an amendment to clause 11, supported by the Liberal Democrats, giving a role for the Statistics Board in determining the arrangements for pre-release access. Mr. Fallon concluded that the arrangements, as drafted, were like 'giving the batsman the ability to decide whether the leg before wicket rule should apply to them' and that this was 'wrong in principle and wrong in practice'.⁶⁶ Mr. Fallon also spoke to two amendments that required the Board to maintain and publish a register of officials granted pre-release access. The practice of granting pre-release access, he concluded, 'involved too many people':

40 named officials have two days' advance notice of the likely unemployment figures. The list of those entitled to that information of course includes important figures, such as the Governor of the Bank of England and the Chancellor...However, the last two officials on the list of those 40 people are referred to as 'Treasury official clearing brief' and 'Treasury official preparing brief'. Do 40 people, including Treasury officials preparing a brief, really need two days' notice of the unemployment statistics? I think not...That is a mess. It is an abuse, and it is has spread far too widely.⁶⁷

Vincent Cable also spoke to a series of amendments which sought to specify a two-hour time limit on pre-release access, and to establish a 'non-political process' for determining pre-release access arrangements. Dr. Cable suggested that 'the longer the period of pre-release, the greater the opportunity for political mischief, through spinning and interpreting the data'. In addition, pre-release access for Ministers and press officers had heightened 'poor public perception of government statistics'. Finally, Dr. Cable suggested that the longer the period of pre-release access 'the greater the likelihood they will be leaked inadvertently, with damaging consequences'. In comparative perspective, the British practice was 'far out of line with that in the rest of the developed world'. In other countries, pre-release access arrangements were 'much less permissive'.⁶⁸

Theresa Villiers supported the proposition that amendments to clause 11 were necessary to give the Statistics Board the power to decide the pre-release rules. Mrs. Villiers was concerned that leaving Ministers with the responsibility

⁶⁶ *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, c. 170

⁶⁷ *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, c. 171

⁶⁸ *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, cc. 172-3

for deciding pre-release access arrangements ‘significantly undermines the credibility of the reforms [the Government] propose’.⁶⁹ She also observed that many responses to the Government’s consultation process had expressed dissatisfaction with the existing pre-release arrangements. For example, the Bank of England believed that ‘narrowing or even eliminating existing arrangements for ministerial pre-release access might have significant benefits on the public’s perception of the integrity of the statistical process’.⁷⁰ However, Mrs. Villiers noted:

...the Minister’s announcement [during the Second Reading debate] of a reduction in the access period for non-market sensitive data, from five days to 40.5 hours, is welcome, but it does not go far enough to allay the real concern of the statistical community and the general public about pre-release access.⁷¹

Brooks Newmark felt that preventing the Statistics Board from deciding the pre-release access arrangements was the ‘black hole at the centre of the Bill’. The Bill’s provisions for Ministers to decide the arrangements, he argued, put pre-release ‘firmly out of sight and out of mind’.⁷²

The double standards that have been set up between the Board’s code of practice and the ministerial code on pre-release threaten to undermine the perception of independence.⁷³

Rob Marris had ‘some sympathy’ with the suggestion that there should be a shorter time limit for pre-release access, ‘much shorter’ than the 40.5 hours which the Government had announced during the Second Reading debate that would apply for both market- and non-market sensitive data. Mr. Marris agreed with the proposal that pre-release access arrangements should be ‘framed in primary legislation’, and asked the Government to revisit the arrangements for pre-release access set out in the Bill.⁷⁴

⁶⁹ *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, c. 174

⁷⁰ *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, c. 177

⁷¹ *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, c. 175

⁷² *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, cc. 179-80

⁷³ *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, c. 181

⁷⁴ *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, c. 181

David Gauke suggested that pre-release access was used

...not for the purposes of developing policy and being able to produce policy in time for economic statistics so that the Government are able to adapt very quickly, but instead for presenting the figures in as favourable a light as possible for the Government.⁷⁵

The Minister, the Financial Secretary, John Healey, agreed that 'no political capital should be made out of statistics prior to release'. He believed that the new arrangements set out in the Bill would help restore public confidence in official statistics through

...shorter periods of access for non-market sensitive data, tighter arrangements codified in secondary legislation and complemented by the release of national statistics through a central hub and the separation of statistical figures and commentary from policy or political commentary.⁷⁶

Mr. Healey also outlined the general value of pre-release access:

Pre-release access allows the Government to account for the impact and implications of policy when important new statistics are released – as the public have a right to expect and as the British media have come to demand. That also provides a fundamental safeguard and enables the Government to consider and plan contingency measures that may be needed alongside a statistical release to guard against disproportionate or costly market or public reaction.⁷⁷

The Financial Secretary reaffirmed that 'Parliament, and not the [Statistics] Board, should ultimately approve the rules and procedures relating to pre-release access to statistics in the final form prior to publication'. As his earlier letter to the Committee had explained, secondary legislation on pre-release access arrangements would

...set out the rules and principles for deciding the number of officials in each Department who receive pre-release access with a view to tightening and making more consistent the arrangements across Government.⁷⁸

⁷⁵ *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, cc. 182-3

⁷⁶ *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, c. 185

⁷⁷ *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, c. 188

⁷⁸ *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, cc. 191-2

Mr. Healey also confirmed his earlier commitment that pre-release access for non-market sensitive statistics would be cut from five days to 40.5 hours, in line with market-sensitive data, and that the new pre-release system would be reviewed within twelve months of its introduction.⁷⁹

In concluding the debate on the amendments, Michael Fallon was reminded of an earlier intervention by Celia Barlow:

[Ms. Barlow] said that the purpose of pre-release – I wrote her words down – is to allow Ministers ‘to give statistics treatment’. It is precisely the purpose of [my] amendment to get away from Ministers giving statistics ‘treatment’.⁸⁰

The amendment was defeated on division by 10 votes to 8, and the other amendments to clause 11 were not voted on, meaning the wording of the clause remained unchanged.

The Report Stage debate was held on 13 March 2007. During the debate, the Conservatives re-introduced a similar amendment to the Bill, defeated in Committee, which would give the Statistics Board responsibility for determining the arrangements for pre-release access. Mark Hoban reminded the House of the views of Liam Halligan, economics editor of the *Sunday Telegraph*, who had said that:

I can tell you from personal experience that pre-release is constantly used by the government to divert the media away from numbers which make for uncomfortable reading. It allows pre-emptive spin, with government departments sometimes putting out data designed to contradict evidence about to be revealed by the industrious, independent boffins from the ONS.⁸¹

Vincent Cable supported the proposal to give the Statistics Board responsibility for drawing up the rules on pre-release access. He suggested that the issue was ‘not the fundamental principle of pre-release, but the time and circumstances surrounding it’.⁸² Rob Marris supported the amendments being debated. He found the ‘general sense of the Opposition’s proposals attractive’ because he believed that ‘a pre-release period of 40.5 hours for non-market and market-sensitive information (to be) far too long’.⁸³

⁷⁹ House of Commons Library Deposited Paper 07/532, Letter dated 19 February 2007 to Sir John Butterfill MP from John Healey MP regarding secondary legislation under clause 11

⁸⁰ *Statistics and Registration Service Bill* Public Bill Committee, 23 January 2007, c. 194

⁸¹ HC Deb, 13 March 2007, c. 212

⁸² HC Deb, 13 March 2007, c. 214

⁸³ HC Deb, 13 March 2007, c. 216

David Gauke told the House about the concerns of the Central Statistical Office in the Republic of Ireland, which the Treasury Committee had recently visited. The CSO had 'raised concerns' about the Bill, specifically in the area of pre-release access, because pre-release arrangements in Ireland were determined by the CSO and included in its own code of practice, as opposed to being determined by Irish Ministers.⁸⁴

In reply, John Healey confirmed that the Government would review the new pre-release arrangements after they had been in force for 12 months:

We are setting up, in the Bill in general and in these provisions, a new system (of arrangements for pre-release access) that can evolve in the light of experience and of the emerging and changing demands of the statistics system. I can reassure the House, as I did in Committee, that we will review the operation of pre-release arrangements 12 months after their introduction.⁸⁵

Mr. Healey repeated the Government's view that the Government itself should determine the pre-release rules because it was important for Ministers to remain accountable to Parliament and the public, to ensure they could 'account for the impact and implications of policy when new statistics are released'.⁸⁶

Instead of the Statistics Board determining the rules, Mr. Healey suggested, compliance and consistent interpretation of the rules would be 'much more effectively achieved by assessment, monitoring and reporting by the independent board' and 'reporting back to this House where necessary'.⁸⁷ Nor did Mr. Healey accept the proposal in the series of amendments being debated to limit pre-release access to two hours. A longer period of access was necessary because, 'particularly in times of economic instability, that enables the Government to consider and plan contingency measures or to release further clarifying information that may prevent...disproportionate and costly public or market reaction'.⁸⁸ The substantive amendment was defeated on division by 268 votes to 185, and the other amendments were not voted on.

The House then immediately debated the Bill at Third Reading.⁸⁹ A number of those who had previously expressed concern at the Bill's provision for pre-release access repeated their views. Theresa Villiers suggested that 'pre-

⁸⁴ HC Deb, 13 March 2007, c. 216

⁸⁵ HC Deb, 13 March 2007, c. 217

⁸⁶ HC Deb, 13 March 2007, cc. 217-8

⁸⁷ HC Deb, 13 March 2007, cc. 220

⁸⁸ HC Deb, 13 March 2007, c. 221

⁸⁹ Commencing at HC Deb, 13 March 2007, cc. 244

release is emblematic of so many of the defects in our current system'.⁹⁰ Vincent Cable felt that pre-release was the most important area of concern for his party, and that the 'Government will have to move a long way in their secondary legislation (on pre-release access) to provide the sort of reassurance that Members and people outside this House seek'.⁹¹ The Bill, amended in other areas, was given a Third Reading and sent to the House of Lords for consideration.

The House of Lords held its Second Reading debate on 26 March 2007. Lord Jenkin asked the Minister, Lord Davies, why the Bill 'expressly excluded' the Statistics Board from determining the arrangements for pre-release access. Lord Davies recognised that there had been 'controversy' during the Commons' stages of consideration, but repeated the earlier assurances given by Mr. Healey that the Government intended to tighten the current pre-release arrangements through secondary legislation subject to the affirmative procedure. This would mean, Lord Davies contended, that 'Parliament, not the Board through its code of practice, approves the new rules and procedures and ensures they are suitably comprehensive'. What the Board could do, however, was to 'monitor compliance with the new system and to make its findings publicly available', and to remove National Statistics status from those statistics that were 'found to have been prepared or handled in a manner contrary to the code of practice, including in relation to pre-release arrangements'.⁹²

Lord Jenkin disagreed. He felt that the 'biggest source' of public mistrust in official statistics was the way in which they were released, and that the UK was 'wildly out of line with the practices in other advanced countries':

We allow pre-release on a far wider range of statistics and we allow a far greater number of people to see them and far farther in advance... This aspect of the present system also gives rise to a wide perception of political interference. As I said in my intervention, the Bill astonishingly excludes the Statistics Board from having any involvement in this process. That cannot possibly be right. It simply perpetuates the impression that Ministers are determined to brook no interference with their right to spin the statistics as they will. I have to ask the question: is that supposed to restore public trust?⁹³

⁹⁰ HC Deb, 13 March 2007, c. 248

⁹¹ HC Deb, 13 March 2007, c. 252

⁹² HL Deb, 26 March 2007, c. 1448

⁹³ HL Deb, 26 March 2007, cc. 1450-1

Lord Moser suggested that release practice was ‘the most sensitive issue’ in the Bill because the public were suspicious when ‘political comment is mixed with neutral statistical comment’ and that Ministers, advisers and officials ‘get sight of figures well before publication’. Lord Moser felt that the UK situation was ‘now very lax’:

Even market-sensitive data are seen by 10 to 20 people, most of whom have no need for advance sight. Some statistics are pre-released even more widely, often 40 hours or even longer, in advance...if we mean what we say about improving public confidence, radical change has to be faced. Release has to be controlled by the statistical authorities, not by Ministers, and should be very strictly limited and disciplined. In my view, and indeed in the view of the Royal Statistical Society, it would be best to have no pre-release...In any case, the decision to release should be left to the new Board’.⁹⁴

Lord Hannay expressed similar concerns, and believed the questions about pre-release access were ‘sensitive and vexed’:

[Pre-release access] is at the heart of the issue of public confidence. It is the belief that statistics are spun and their presentation manipulated for political purposes that is undermining the credibility of our national and departmental statistics. The arrangements proposed are complex, Byzantine and almost certainly capable of being operated in such a way as to provide no substantial change from the present unsatisfactory arrangements.⁹⁵

Lord Haskell hoped that the Government would ‘eventually limit pre-release to minutes rather than hours’ and that ‘too much opportunity to bury, combine or distort data’ would only undermine any improved levels of confidence in official statistics brought about by the legislation.⁹⁶

However, Lord Turnbull, the former Cabinet Secretary, favoured the new Statistics Board – rather than Ministers – having the responsibility for deciding pre-release arrangements but with a duty placed upon it to provide Ministers with adequate time to remain accountable for their policies. Lord Turnbull thought that 24 hours pre-release access ‘would normally be plenty’, and thought that it was:

⁹⁴ HL Deb, 26 March 2007, c. 1456

⁹⁵ HL Deb, 26 March 2007, c. 1477-8

⁹⁶ HL Deb, 26 March 2007, c. 1479

...not good government to keep Ministers in the dark. If we want them to be accountable we must set up procedures and controls that make that possible...I doubt whether Parliament really wants to allow Ministers to put forward the excuse that they cannot comment because their officials are still analysing the figures. Nor is it good practice to allow misunderstandings to circulate for hours uncorrected...The noble Baroness, Lady Thatcher, when Prime Minister, frequently quoted Mark Twain to me – usually when incandescent after listening to the World Service at 5.30 in the morning – saying that a lie ‘can get halfway around the world before the truth even gets its boots on’.⁹⁷

Lord Chorley thought the pre-release issue was a ‘murky area’⁹⁸ while Lord Northbrook believed that the arrangements should provide for no pre-release, or at least be very tight with the new Statistics Board determining the rules.⁹⁹ Lord Dearing felt that a ‘small time, perhaps regulated by the Board’ should be given to Ministers to allow them to comment on the statistics being released¹⁰⁰ while Lord Newby complained that the promised 12-month review of the new arrangements ‘will not do’, because he saw ‘no reason why the regulatory framework cannot be got right from the start’.¹⁰¹

Baroness Noakes voiced her concern that the proposal to decide the new pre-release regime through secondary legislation gave ‘the appearance of parliamentary power’ although, in practice, it was ‘an elaborate rubber stamp for the Government’s views’:

A purist response would be to give Ministers no pre-release access and hence open up no possibility of abuse. However, we agree with several noble Lords...that it is a legitimate role of government to make effective policy responses...But at present the Bill positively prohibits the Statistics Board from getting involved in pre-release. We are very clear that the Statistics Board must be given the leading role in pre-release arrangements.¹⁰²

⁹⁷ HL Deb, 26 March 2007, c. 1484

⁹⁸ HL Deb, 26 March 2007, c. 1488

⁹⁹ HL Deb, 26 March 2007, c. 1494

¹⁰⁰ HL Deb, 26 March 2007, cc. 1497-8

¹⁰¹ HL Deb, 26 March 2007, c. 1500

¹⁰² HL Deb, 26 March 2007, c. 1503

In replying for the Government, Lord Davies recognised that pre-release access was a 'critical issue' and one of 'several areas of controversy' in the Bill. Nonetheless, he believed that pre-release access had been 'given a special status in the new system' because, unlike the rest of the Code of Practice which would be backed by, but not prescribed by, legislation, the rules on pre-release would be set out in secondary legislation 'proposed by Ministers but approved by Parliament'.¹⁰³

The Lords considered clause 11 of the Bill in Committee on 2 May 2007. Lord Moser moved an amendment to clause 8 and spoke to a series of other amendments to clauses 10 and 11 which would give the Statistics Board the responsibility of monitoring the arrangements for release of official statistics and determining the arrangements for pre-access to official statistics in their final form prior to publication. Lord Jenkin spoke to a separate amendment which required the Statistics Board to draw-up a specific code of practice for pre-release access. Lord Turnbull defended the principle of pre-release access which he felt was 'consistent with the way we operate ministerial accountability', but supported the 'central thrust' of the amendments which would give responsibility for deciding pre-release arrangements to the new Board.

However, Lord Turnbull disagreed with Lord Jenkin that ministerial statements on statistics should be delayed for a period until after the publication of the statistical release itself. Instead, he favoured a separation 'in space' where the statistics were release in a separate location to the ministerial or policy comment – and therefore, supported the notion of creating a new Publication Hub which the Government had previously announced would deliver this.¹⁰⁴

Lord Newby told the House that he was 'less worried' about the issue of pre-release access than some of his colleagues, although urged them to support the amendments. While he suggested the existing pre-release arrangements were 'unacceptable', and that the Government's proposal to limit pre-release to 40.5 hours was 'completely ridiculous', he nevertheless questioned the rationale for setting the time limit at 40.5 hours. '40.5 suggests there is something hugely significant about this period, which is clearly nonsense'.¹⁰⁵

Viscount Goschen said that he supported the principle of pre-release because there were 'many occasions where government should have informed access to statistics before they hit the markets'. However, he felt that the Government would be 'open to the charge of manipulating the information' were they

¹⁰³ HL Deb, 26 March 2007, c. 1506

¹⁰⁴ HL Deb, 2 May 2007, cc. 1077-8

¹⁰⁵ HL Deb, 2 May 2007, c. 1078

to have 'too great a head start'. Viscount Goschen favoured a compromise whereby the Board would 'put forward advice' to Ministers. Ultimately, he suggested, the provisions should be decided by Parliament through secondary legislation subject to the affirmative procedure, as the Government had proposed.¹⁰⁶

Baroness Noakes, for the Opposition, supported Lord Moser's amendment. If his amendment was agreed, she said, it would be important for the new Board to monitor how pre-release access worked in practice, and to include information about that in the Board's annual report. The suggestion that pre-release rules would be decided, ultimately, by Parliament, Baroness Noakes contended, was 'a mere fig leaf' because the Government customarily wins votes on secondary legislation. The Government's proposals in this area 'simply does not meet the public interest of ensuring that statistics are free from government spin'.¹⁰⁷

Lord Chorley told the House that he did not know much about pre-release but had been convinced by the arguments put forward by Lords Moser, Jenkin, and Turnbull. He felt that the Government's proposals for pre-release access were an 'important flaw in the Bill'.¹⁰⁸ Lord Desai suggested that a number of issues were 'being confused' in the debate. Lord Desai contended that governments did not gain 'much advantage from pre-release' and whatever advantage was gained was 'quickly dissipated partly by incompetence and partly by the fact that clever people can see through any spin that the statistics may be given'. He did not mind whether the Statistics Board or Ministers decided the rules, as long as they were placed before Parliament for comment and pre-release times were 'short'.¹⁰⁹

Replying for the Government, Lord Davies felt that the debate had 'conceded that the Bill is about tightening up the arrangements' for pre-release access. Lord Davies told the House that a limit of 40.5 hours had been decided because it would 'regulate the most sensitive of all statistics namely those relating to the economy and market-sensitive information'; it was a 'calculation of the time taken up by a clear day's grace between the closure of the markets on one day and their opening on the next day but one'. Lord Davies made 'no apologies' for the proposals as set out in the Bill:

¹⁰⁶ HL Deb, 2 May 2007, c. 1079

¹⁰⁷ HL Deb, 2 May 2007, cc. 1079-80

¹⁰⁸ HL Deb, 2 May 2007, c. 1080

¹⁰⁹ HL Deb, 2 May 2007, c. 1081

Pre-release access provides a fundamental safeguard, enabling the Government to consider and plan contingency or mitigation measures, release further clarifying information which might be needed on the basis of a statistical release, and to guard against disproportionate and potentially costly market reactions and currency movements. Governments are ultimately responsible for maintaining economic and financial stability. Pre-release access to data may be necessary to meet this fundamental responsibility.¹¹⁰

Lord Moser pushed his amendment to a vote and the amendment was agreed by 196 votes to 133. Clauses 8 and 10 were amended by giving the Statistics Board, rather than Ministers, the responsibility for deciding pre-release arrangements, and Clause 11 was later removed from the face of the Bill without division.

The relevant clauses of the Statistics and Registration Service Bill amended during the House of Lords Committee Stage are reproduced below. Readers wishing to see the final wording of the Act should refer to the text box in Part 2.

Statistics and Registration Service Bill: Lords amendments¹¹¹

8 Monitoring and reporting of official statistics

- (1) The Board is to monitor the production and publication of official statistics.
- (2) The Board is to monitor the arrangements for—
 - (a) the release of official statistics, and
 - (b) any access to official statistics in their final form prior to publication.
- (3) The Board may report any concerns it has about—
 - (a) the quality of any official statistics,
 - (b) good practice in relation to any official statistics, or
 - (c) the comprehensiveness of any official statistics,to the person responsible for those statistics.
- (4) The Board may publish its findings or any report under this section.

¹¹⁰ HL Deb, 2 May 2007, cc. 1081-2

¹¹¹ Lords amendments to the Bill as drafted are reproduced in blue.

10 Code of Practice for National Statistics

- (1) The Board is to prepare, adopt and publish a Code of Practice for Statistics.
- (2) The Code shall include rules and principles relating to the access to official statistics in their final form prior to publication (“pre-release access”), including—
 - (a) the circumstances in which, or descriptions of statistics in relation to which, pre-release access may or may not be granted,
 - (b) the persons, or descriptions of persons, to whom pre-release access may be granted,
 - (c) the period, or maximum period, during which pre-release access may be granted, and
 - (d) the conditions subject to which pre-release access may be granted.
- (3) The Code may make different provision for different cases.
- (4) The rules and principles for pre-release access required by subsection (2) shall keep such access to the minimum necessary to meet the needs of Ministers.
- (5) The Code shall include rules and principles relating to the release of official statistics, including—
 - (a) the location from which the release of official statistics may be made,
 - (b) the time at which the release of official statistics may be made, and
 - (c) the identification of the person or persons who are responsible for the release of official statistics.
- (6) The Board may at any time revise the Code and, if it decides to do so, must publish the Code as revised.
- (7) In preparing or revising the Code the Board must consult—
 - (a) the Scottish Ministers,
 - (b) the Welsh Ministers,
 - (c) the Department of Finance and Personnel for Northern Ireland, and
 - (d) such other persons as it thinks fit.

11 Pre-release access

Clause deleted

The Bill was debated in the Lords at Report Stage on 18 June 2007, given a Third Reading, as amended, on 25 June, and returned to the Commons for consideration.

The amendments to clauses 8 and 10 were debated in the Commons on 2 July 2007 where the Government moved a motion to disagree with the Lords in their amendments of the Bill in the area of pre-release access. Angela Eagle, the Exchequer Secretary, observed that the Lords’ amendments ‘all relate to the important issue of who under the new system should determine the rule relating to how and when statistics are released and early access to official statistics in their final form prior to publication’. Ms. Eagle felt that:

Ministers themselves are the best placed to judge how much pre-release access they require, and under what conditions they require it in order to be fully informed and in a position to act if required...¹¹²

Theresa Villiers suggested that the Government should publish its draft secondary legislation on pre-release access, and that this might help to resolve the differences between the two Houses on the issue. Ms. Eagle confirmed that a draft was not currently available, although Mr. Healey had outlined during the Commons' Committee Stage the approach that would be taken 'in general'.¹¹³

Mrs. Villiers asked Ms. Eagle why she had 'signed up' to the Treasury Committee's report on the Government's proposals for *Independence for statistics* when she had been a member of that Committee. Ms. Eagle told the House that she had rarely been able to attend meetings of the Committee due to other commitments, and had therefore not heard the evidence relating to pre-release access, and agreed to the report as she did not want to be 'disruptive' to the work of the Committee.¹¹⁴

Mrs. Villiers reiterated the policy of the Opposition in respect of pre-release access:

The Opposition believe that, if this reform is to succeed in rebuilding trust in official figures, the rules on pre-release access to statistics should be in the hands of the Statistics Board and the new independent framework established by the proposed legislation, and not left in the hands of Ministers...If we can trust the Board to take so many important decisions – including on key aspects of how the retail prices index will operate – why cannot we trust it on pre-release as well?¹¹⁵

Vincent Cable told the House that the Liberal Democrats and the Conservative Opposition had 'a common approach' to the 'crucially important' question of pre-release access. Dr. Cable thought this to be the most important part of the Bill and suggested that 'the Government's reluctance to give way on this central principle enormously detracts from what is otherwise very good and positive legislation'. He suggested that Lord Moser's observation that the pre-release arrangements in the UK were 'more lax than anywhere else or than they have ever been before' was a 'scathing indictment of how the system operates'.¹¹⁶

¹¹² HC Deb, 2 July 2007, c. 710

¹¹³ HC Deb, 2 July 2007, c. 711

¹¹⁴ HC Deb, 2 July 2007, cc. 712-3

¹¹⁵ HC Deb, 2 July 2007, c. 716

¹¹⁶ HC Deb, 2 July 2007, cc. 720-1

Michael Fallon also supported the Lords' amendments. Mr. Fallon could not understand why the Government found it 'impossible to move at all on the issue of pre-release', especially given that it had conceded on the important question of oversight of the Statistics Board being with the Cabinet Office instead of the Treasury:

What is the point of bringing legislation to the House and making the Statistics Board properly independent if the one issue that is vital to the public perception of independence is then taken out of the Board's control and left in the hands of Ministers..? It should be a matter for the Board, not simply to supervise, but to regulate via the code (of practice for official statistics).¹¹⁷

Brooks Newmark suggested that 'actual independence and perceived independence' were intimately connected and that the Government's rejection of the Lords' amendments on pre-release access struck 'a blow against both':

The double standards that have been set up between the Board's code of practice and the ministerial code on pre-release threaten to undermine the perception of independence. We are in danger of ending up with legislation to entrench independence that does not address a significant perceived failing of that independence...The truth is that allowing ministerial pre-release access to be controlled by ministerial fiat could not give a more effective shot in the arm to anyone with suspicions about Government interference in statistics.¹¹⁸

Stewart Hosie, for the Scottish Nationalists, agreed. Mr. Hosie contended that the Government's proposals for pre-release access were 'back to front':

If the Minister is serious about transparency and if she and the Department are serious about removing perceptions of spin and cover-up, I have yet to hear an argument today as to why the Government will not hand over the responsibility...to the National Statistician or the independent Board.¹¹⁹

The motion to disagree with the Lords in their amendment was approved by 297 votes to 172. Setting out its reasons for disagreement with the Lords was 'because the rules and principles relating to pre-release access are more appropriately provided for by Order made by Ministers or the devolved

¹¹⁷ HC Deb, 2 July 2007, c. 723

¹¹⁸ HC Deb, 2 July 2007, c. 725

¹¹⁹ HC Deb, 2 July 2007, c. 726

administrations, subject to scrutiny by affirmative resolution procedure, than by the Statistics Board'.¹²⁰

The Lords debated the Government's reasons on 9 July and again insisted on its amendment, by 181 votes to 151. The Commons reiterated its disagreement with the Lords in a debate on 18 July, and by 303 votes to 190. When the Bill returned to the Lords for further consideration, Baroness Noakes observed that it had been 'the consistent position of your Lordships' House that the independent Statistics Board, created by this Bill, should set the rules' on pre-release. However, while

All of that led me to believe that we should fight on for the principle of pre-release not being in the hands of Government. But we recognise that the other place has clearly expressed the opposite view. We have therefore reluctantly come to the view that your Lordships' House should accept the judgement of the elected House (of Commons) on the issue of pre-release.¹²¹

Clause 11 was reinstated and the earlier amendments to clauses 8 and 10 which gave the Statistics Board the responsibility for determining pre-release arrangements were removed. The Bill was given Royal Assent on 26 July 2007.

As the passage of the Bill through Parliament neared its conclusion, the Treasury Select Committee held a pre-appointment confirmation hearing with Sir Michael Scholar, who had been recommended to Parliament as the Chair-designate of the Statistics Board.

During the hearing, Sir Michael was asked about his views in respect of pre-release access. Michael Fallon suggested that the Government's proposal for a maximum time limit of 24 hours had been decided without waiting to consult the new Statistics Board. Sir Michael told the Committee that there was a chance that the 24-hour limit 'is not there forever', that it may be 'possible to review it at some stage', and that there may be 'a process in which there will be some further movement on this matter'. Sir Michael would have preferred 'a shorter pre-release period' than the 24 hours being proposed by the Government, and that 'it would have been very good' had the new Board been given the responsibility for determining the new pre-release regime.¹²²

¹²⁰ HL Deb. 9 July 2007, c. 1248

¹²¹ HL Deb. 19 July 2007, c. 376

¹²² House of Commons Treasury Committee *The appointment of the Chair of the Statistics Board*, Ninth Report of Session 2006-07, 18 July 2007, HC 934-ii, Ev 3-4, Qq 25-32

Annex 2

Evidence of Current Practice

Introduction

To gather evidence on how the Pre-Release Orders have been implemented across the UK statistical system, a short questionnaire was sent to the Statistical Heads of Profession of eight UK Government Departments and to the three Chief Statisticians in the Devolved Administrations. General responses were requested for all official statistics produced by them. More specific details were gathered on a sample of three statistical releases from each: a) the first statistical release published under the provisions of the relevant Order, b) the most recently published release, and c) an example of a statistical release that, in the view of the Head of Profession or Chief Statistician, attracted significant media attention or user interest.

Summary

The evidence indicates that the new arrangements for pre-release access (PRA) have been implemented successfully in those departments that we surveyed, following the coming into force of the PRA Orders, albeit implementation was achieved by departments in different ways with some departments reporting challenges with the transition. There is mixed evidence of success in the reduction of the number of recipients of PRA and no evidence of a reduction in the number of statistical releases to which PRA is given.

Length of PRA: Aside from Scotland and Wales, PRA was granted for a 24 hour period in almost all cases. One UK department granted PRA for less than the full 24 hours. There were no cases among the sampled statistics of PRA for longer than 24 hours in the UK departments surveyed.

Number of recipients: The average length of PRA lists was 21 individuals. Where PRA was granted, lists varied considerably in length, ranging from 8 to 55 recipients. Generally speaking, the longer lists tend to be for statistics with a high profile, such as crime, immigration and poverty.

Range of releases: PRA was granted for almost all of the sampled statistics.

Reasons for *not* granting PRA: For the very small number of statistics that had no PRA, the reasons given were that the statistics were not of interest. Some departments granted PRA by default for Ministers, Parliamentary Under-Secretaries and Special Advisers. Only one department told us that they granted PRA where there was a suitable justification for doing so.

Signed declarations: Three departments provided copies of signed declarations for PRA to market sensitive statistics, but the strength of commitment required by signatories varied.

Publishing lists: Where required by the relevant Order, lists of people with PRA appear to be accurately maintained, although there are cases where full information does not seem to be available.

Access to statistics not in their final form: Some people who are granted access before release for quality assurance purposes (i.e. to statistics not in their final form) are the same as those who are granted 24 hour PRA to prepare briefing for Ministers. This creates a potential weakness in the control arrangements.

Guidance: The nature of the guidance that departments provided to staff and PRA recipients varied considerably between departments.

UK and Northern Ireland Orders

The sampled UK departments generally thought that the new PRA regime was better than before. The Order had helped them to reduce the number of people with access 'where appropriate' and helped them better define their processes for the management of PRA.

Departments told us that they worked hard to prepare for and communicate the implications of the Order. While the new arrangements were initially challenging to operate, especially for high profile statistics, once the reasons for the restrictions had been clearly explained to colleagues within departments, there was wider understanding of obligations under the new PRA regime.

Some UK departments also questioned whether the new PRA regime had improved public trust in statistics.

The Northern Ireland Statistics and Research Agency said the new PRA arrangements in Northern Ireland, arising out of the Northern Ireland Order coming into force in April 2009, had been successfully introduced, but involved an inevitable culture change for some administrators.

Scottish and Welsh Orders

Statisticians in the Scottish Government and Welsh Assembly Government said that their Orders ensured that their Ministers and officials could comment in an informed way at the time of publication.

Statisticians in the Scottish Government argued that communicating clearly the reasons for having PRA was more important than setting specific time limits. In their view, giving statisticians such flexibility enhanced their role within the administration, as well as improving engagement with Scottish Ministers and senior officials.

The differences in the Orders were seen to present difficulties for departments releasing statistics that included aggregate United Kingdom (or Great Britain) figures alongside figures for the administration(s) concerned. For example, where the contents of a statistical release produced by the Office for National Statistics relates to both UK and devolved matters, ONS provides each individual administration pre-release access to its own 'devolved data' in accordance with the rules set out in each Order. While no official guidance exists on how to handle UK collaborative releases, informal arrangements have evolved.

Detailed findings on the implementation of the Order

1. Interpretation of 'person responsible'

The 'person responsible' as provided for in the PRA Orders is typically the Chief Statistician or Statistics Head of Profession, and/or their deputies. This responsibility was sometimes delegated to other senior managers, and occasionally delegated further to statistical staff such as Assistant Statisticians.

2. Number of recipients

The average number of recipients on PRA lists for those departments we surveyed was 21. Lists varied considerably in length, ranging from 8 to 55 recipients. The longer PRA lists tended to be for statistics with higher profiles, such as crime, immigration and poverty. However, the number of people with PRA was not always in proportion to the profile of the statistics, for example statistics used to measure performance against National Indicators in respect of mental health and social care had the same number of PRA recipients as maritime statistics.

Departments appear to have had mixed success in reducing the number of people with PRA since the Order(s) came into force. While some statistical releases have shorter PRA lists, other PRA lists have lengthened or stayed about the same. Some departments told us that they had pre-emptively reduced PRA lists prior to the new arrangements coming into force, and this may be one reason that they have not shortened further. For example the PRA list for the Home Office's crime statistics bulletin was reduced by around one-half during 2008. The Department for Children, Schools and Families told us that the apparent number of people receiving PRA may have been

inflated by the identification of individuals who had PRA but had not been recorded previously. The Home Office told us that as the content and coverage of statistics expands over time, there will be a consequent need to consider expanding PRA lists.

The Authority was told that Northern Ireland departments have also managed to reduce the number of PRA recipients, although in respect of one statistical release on public perceptions of the Northern Ireland police service PRA was granted to 'approximately' 100 national, regional and local journalists, on top of a further 11 other individuals.

When departments identify individuals who no longer require PRA, they usually advise them that they plan to remove their names from the relevant PRA list. The Home Office told us that this provides individuals with an opportunity to make a case to retain access. Some departments reported that the process of removing names from PRA lists inevitably causes tensions, although CLG told us that, in their experience, those individuals whose names are to be removed typically accept the situation once the reasons behind the decision are explained to them.

3. Reasons for not granting PRA

Of the 33 statistical releases sampled, PRA was granted to all but one release. The reason for no PRA for this release was that the data are provided to ONS and Eurostat for other releases, and therefore the statistics were not new.

For the other statistics produced by the sampled departments, there was a relatively small number to which PRA was not granted. The reasons given were related to the statistics being of limited interest. For example, CLG told us that for some statistics there had been no requests for PRA, while others were not First Release statistics. The Department of Health deemed one of their outputs to be 'too low profile' to warrant PRA. The NHS Information Centre was the only department to mention that PRA was granted only where there were 'suitably justified' requests.

Some departments granted PRA by default for Ministers, Parliamentary Under-Secretaries, Permanent Secretaries and Special Advisers. DCSF said that they understood that the assumption in the PRA Order was that these individuals 'should not have access unless they contribute to briefing for use in the response to the release'. DCSF suggested that there was a need for further guidance on the circumstances under which Ministers, Special Advisers, Permanent Secretaries and Senior Officials should be granted PRA automatically.

4. Declarations for market sensitive statistics

Three departments provided copies of signed declarations, but the strength of commitment to the conditions of the Order varied. Examples of two of these declarations are shown below. The first declaration is a strongly worded agreement to undertake the obligations of the Order. The second declaration includes a reminder that the information is designated as National Statistics and to treat the information using the security classification 'Restricted', but otherwise does not require a specific agreement to abide by the provisions of the PRA Order.

Example 1

As a pre-release recipient of [statistical release], I undertake to abide by the requirements of paragraphs 6 and 7 of The Pre-release Access to Official Statistics Order 2008 in relation to these statistics.

Namely that I will not:

- disclose any characteristics about them, whether a statistic itself, any part of the publication that includes a statistic or any suggestion of the size or direction of any trend indicated by that statistic.
- use them for personal or political gain.
- use them to seek changes to the release itself, whether the content or presentation of the official statistics or the timing of publication of them.

Example 2

Reason for Pre-Release Access to Regional Trade Statistics:

To enable data to be included in a third party publication to be published at the same time as or shortly after the statistics itself. You are reminded that these are National Statistics to which you have privileged access in advance of release.

Any accidental or wrongful release should be reported immediately and may lead to an inquiry. Wrongful release includes indications of the content, including descriptions such as 'favourable' or 'unfavourable'.

Please prevent inappropriate use by treating this information as restricted.

5. Publishing lists

Overall, departmental lists for PRA appear to be accurately maintained, although some departments suggested that they had difficulties in implementing this provision of the PRA Order. DH issued guidelines requiring its business areas to publish lists alongside each release, but there were some

cases where these guidelines were not followed. DCSF publishes PRA lists for National Statistics, and since 1 December 2009 has published similar lists for other official statistics.

Most departments that previously recorded only minimal details of PRA granted, such as named divisions or teams within departments, are now recording job titles as required by the PRA Order. However, some PRA lists continue not to specify job titles, for example access granted to 'child poverty unit' or 'Number 10'.

6. Access to statistics not in their final form

Access to statistics not in their final form is less well-documented. DCSF mentioned that some recipients of statistics not in their final form for quality assurance purposes are the same as those who received the 24 hour PRA in order to prepare briefing for Ministers. During the Authority's assessments of National Statistics, we have noted concern expressed by some departmental statisticians that other officials were using the distinction between statistics in their final form and not in their final form as a means to provide certain individuals with a longer period in which to digest the statistics. DWP's internal PRA guidance says that where individuals receive access for quality assurance purposes, and are also responsible for providing briefing on the statistics, they may begin work on the briefing as soon as they receive access but they must not share any of the policy briefing with people not on the quality assurance list.

DCSF suggested that it would be helpful for there to be further clarification of the term 'statistics not in their final form'. They also would wish to see a clearer statement on how departments can continue to comply with the requirements of the PRA Order when Ministers and officials receive access to statistics not in their final form, either as management information or for quality assurance purposes, when these may disclose the direction of trend of the final statistics.

7. Guidance

The departments we sampled emphasised the importance of producing and disseminating effective guidance on PRA management for their staff and for PRA recipients, to minimise the risk of non-compliance with the PRA Order. However, the quality of existing guidance on PRA appears to vary considerably between departments. One department did not provide specific advice to staff, although provided a contact point for statisticians if they had questions about PRA. Another department told us that they had held a seminar for statistical staff, and circulated a brief note to senior officials. Others have communicated the implications of the Order using a combination of workshops, detailed desk notes and internal memoranda.

8. Breaches

The Statistics Authority issued a statement on 11 May 2009 on the breach of the embargo on pre-release access by journalists to the DCSF's achievement and attainment tables for National Curriculum Assessments at Key Stage 2 in England 2007/08.¹²³ This statement noted that DCSF has issued a public statement explaining the breach at the time and the corrective action to seek a way to ensure that journalists who have PRA are made fully aware of the conditions of the embargo.

DCSF took the view that it would be in the public interest for journalists to be granted PRA to school performance tables for longer than the 24 hour maximum. It was felt that a longer period of PRA would enable journalists to prepare and interpret these data for more effective local use than could be achieved from the centre.

¹²³ <http://www.statisticsauthority.gov.uk/news/breach-of-code-of-practice--pre-release-access--achievement-and-attainment-tables-for-national-curriculum-assessments-at-key-stage-2-in-england-2007-08.pdf>

Annex 3

Statistics Authority questionnaires to producers of official statistics

UK GOVERNMENT DEPARTMENTS AND AGENCIES QUESTIONNAIRE

1. In the period from 1 December 2008 to 30 September 2009, please list the people within your organisation who have exercised the authority of the 'person responsible' (see paragraph 2 of the Schedule to the *Pre-release Access to Official Statistics Order 2008*).
2. Please provide a list of all 'statistics in their final form' (statistical outputs) for which pre-release access was granted during this period.
3. In relation to each output listed in response to (2) above, please state to the best of your knowledge, and comparing 2009 to 2008, whether the number of people granted pre-release access was fewer, more or about the same as last year (Please put 'Fewer', 'More', 'Same' or 'Don't Know' against each output listed).
4. Please list any statistical outputs published during the period in (1) above for which no pre-release access was granted, and indicate the reasons for this.
5. Please identify from those listed in response to (2) above:
 - a. the first statistical release published under the provisions of the Order;
 - b. the most recently published statistical release, and;
 - c. an example of a statistical release published during this period which attracted a significant amount of media attention and/or had a high amount of user/external interest, other than those listed in response to (a) and (b) above.
6. In relation to *each* of the three statistical outputs listed in response to (5) above, please indicate the number of recipients granted pre-release access under the terms of the Order. [By recipients we mean those people to whom you send the statistical output in advance of the release time]. In relation to these:
 - a. The total number of recipients of pre-release access
 - b. The number recipients who were (i) Ministers and (ii) special advisers [Please list separately, if possible]

- c. The number of recipients in press office or equivalent roles
 - d. The number of recipients outside the organisation (in the case of Government Departments, please include NDPBs, agencies etc as 'outside')
 - e. The number of 'generic addresses' to which pre-release access has been granted (other than a named individual or individual post description)
 - f. Was pre-release access granted to any journalists, and if so to how many?
 - g. Was pre-release access granted for a period of less than 24 hours?
 - h. Was pre-release access granted for a period in excess of 24 hours as provided for in paragraph 5 of the Schedule to the Order? If so, on what grounds?
7. Have the requirements of paragraph 9 of the Schedule to the *Pre-release Access to Official Statistics Order 2008* (publication of lists) been complied with in relation to all the statistical outputs listed in response to (2) above? If so, please indicate the most recent date these were published and provide a link to where this information is published.
 8. Has any written advice to the staff of your organisation been issued in relation to the Order? If so, please provide a copy indicating whether the document is in the public domain or not.
 9. Have individuals granted pre-release access been required to make any specific declaration (in accordance with paragraph 8 of Schedule to the Order or otherwise)? If so, please provide details of the wording of the declaration.
 10. Were Ministerial press notices (or equivalent) issued at the same time as any of the statistics covered by the Order? Please provide copies of these documents in respect of all statistical outputs listed in response to (5) above plus up to five other examples.
 11. Has early access to statistical outputs listed in response to (5) above but not in their final form been given to individuals working beyond the statistical team (i.e. policy colleagues in the department, or other organisations outside the department), for example for the purposes of peer review or quality assurance? If so, how many individuals and organisations have been given such early access?
 12. Please provide us with any general comments that you may wish to make about the operation of the pre-release access arrangements.

NORTHERN IRELAND EXECUTIVE QUESTIONNAIRE

1. In the period from 1 April 2009 to 30 September 2009, please list the people within your organisation who have exercised the authority of the 'person responsible' (see Explanatory Note to the *Pre-release Access to Official Statistics Order (Northern Ireland) 2009*).
2. Please provide a list of all 'statistics in their final form' (statistical outputs) for which pre-release access was granted during this period.
3. In relation to each output listed in response to (2) above, please state to the best of your knowledge, and comparing the period after 1 April 2009 to before, whether the number of people granted pre-release access was fewer, more or about the same. (Please put 'Fewer', 'More', 'Same' or 'Don't Know' against each output listed).
4. Please list any statistical outputs published during the period in (1) above for which no pre-release access was granted, and indicate the reasons for this.
5. Please identify from those listed in response to (2) above:
 - a. the first statistical release published under the provisions of the Order;
 - b. the most recently published statistical release, and;
 - c. an example of a statistical release published during this period which attracted a significant amount of media attention and/or had a high amount of user/external interest, other than those listed in response to (a) and (b) above.
6. In relation to *each* of the three statistical outputs listed in response to (5) above, please indicate the number of recipients granted pre-release access under the terms of the Order. [By recipients we mean those people to whom you send the statistical output in advance of the release time]. In relation to these:
 - a. The total number of recipients of pre-release access
 - b. The number recipients who were (i) Ministers and (ii) special advisers [Please list separately, if possible]
 - c. The number of recipients in press office or equivalent roles
 - d. The number of recipients outside the relevant department (please include NDPBs, agencies etc as 'outside')

- e. The number of 'generic addresses' to which pre-release access has been granted (other than a named individual or individual post description)
 - f. Was pre-release access granted to any journalists, and if so to how many?
 - g. Was pre-release access granted for a period of less than 24 hours?
 - h. Was pre-release access granted for a period in excess of 24 hours as provided for in paragraph 5 of the Schedule to the Order? If so, on what grounds?
7. Have the requirements of paragraph 9 of the Schedule to the *Pre-release Access to Official Statistics Order (Northern Ireland) 2009* (publication of lists) been complied with in relation to all the statistical outputs listed in response to (2) above? If so, please indicate the most recent date these were published and provide a link to where this information is published.
 8. Has any written advice to the staff of your organisation been issued in relation to the Order? If so, please provide a copy indicating whether the document is in the public domain or not.
 9. Have individuals granted pre-release access been required to make any specific declaration (in accordance with paragraph 8 of Schedule to the Order or otherwise)? If so, please provide details of the wording of the declaration.
 10. Were Ministerial press notices (or equivalent) issued at the same time as any of the statistics covered by the Order? Please provide copies of these documents in respect of all statistical outputs listed in response to (5) above plus up to five other examples.
 11. Has early access to statistical outputs listed in response to (5) above but not in their final form been given to individuals working beyond the statistical team (i.e. policy colleagues in the department, or other organisations outside the department), for example for the purposes of peer review or quality assurance? If so, how many individuals and organisations have been given such early access?
 12. Please provide us with any general comments that you may wish to make about the operation of the pre-release access arrangements.

SCOTTISH GOVERNMENT QUESTIONNAIRE

1. In the period from 1 December 2008 to 30 September 2009, please list the people within your organisation who have exercised the authority of the 'person responsible' (see paragraph 2 of the *Pre-release Access to Official Statistics Order (Scotland) 2008*).
2. Please provide a list of all 'statistics in their final form' (statistical outputs) for which pre-release access was granted during this period.
3. In relation to each output listed in response to (2) above, please state to the best of your knowledge, and comparing 2009 to 2008, whether the number of people granted pre-release access was fewer, more or about the same as last year? (Please put 'Fewer', 'More', 'Same' or 'Don't Know' against each output listed).
4. Please list any statistical outputs published during the period in (1) above for which no pre-release access was granted, and indicate the reasons for this.
5. Please identify from those listed in response to (2) above:
 - a. the first statistical release published under the provisions of the Order;
 - b. the most recently published statistical release, and;
 - c. an example of a statistical release published during this period which attracted a significant amount of media attention and/or had a high amount of user/external interest, other than those listed in response to (a) and (b) above.
6. In relation to *each* of the three statistical outputs listed in response to (5) above, please indicate the number of recipients granted pre-release access under the terms of the Order. [By recipients we mean those people to whom you send the statistical output in advance of the release time]. In relation to these:
 - a. The total number of recipients of pre-release access
 - b. The number recipients who were (i) Ministers and (ii) special advisers [Please list separately, if possible]
 - c. The number of recipients in press office or equivalent roles
 - d. The number of recipients outside the Scottish Government (please include NDPBs, agencies etc as 'outside')

- e. The number of 'generic addresses' to which pre-release access has been granted (other than a named individual or individual post description)
 - f. Was pre-release access granted to any journalists, and if so to how many?
 - g. Was pre-release access granted for a period in excess the maximum period as provided for in paragraph 4 of the Schedule to the Order? If so, on what grounds?
7. Have the requirements of paragraph 8 of the Schedule to the *Pre-release Access to Official Statistics Order (Scotland) 2008* (record-keeping) been complied with in relation to the statistical outputs listed in response to (2) above?
8. Has any written advice to the staff of your organisation been issued in relation to the Order? If so, please provide a copy indicating whether the document is in the public domain or not.
9. Have individuals granted pre-release access been required to make any specific declaration? If so, please provide details of the wording of the declaration.
10. Were Ministerial press notices (or equivalent) issued at the same time as any of the statistics covered by the Order? Please provide copies of these documents in respect of all statistical outputs listed in response to (5) above plus up to five others.
11. Has early access to statistical outputs listed in response to (5) above but not in their final form been given to individuals working beyond the statistical team (i.e. policy colleagues in the department, or other organisations outside the department), for example for the purposes of peer review or quality assurance? If so, how many individuals and organisations have been given such early access?
12. Please provide us with any general comments that you may wish to make about the operation of the pre-release access arrangements.

WELSH ASSEMBLY GOVERNMENT QUESTIONNAIRE

1. In the period from 1 December 2008 to 30 September 2009, please list the people within your organisation who have exercised the authority of the 'person responsible' as defined in paragraph 1 of the Schedule to the *Draft Pre-release Access to Official Statistics (Wales) Order 2009* had it been in force during that period.
2. Please provide a list of all 'statistics in their final form' (statistical outputs) for which pre-release access was granted during this period.
3. Please list any statistical outputs published during the period in (1) above for which no pre-release access was granted, and indicate the reasons for this.
4. Please identify from those listed in response to (2) above three statistical outputs which attracted a significant amount of media attention and/or had a high amount of user/external interest.
5. In relation to *each* of the three statistical outputs listed in response to (4) above, please indicate the number of recipients granted pre-release access. [By recipients we mean those people to whom you send the statistical output in advance of the release time]. In relation to these:
 - a. The total number of recipients of pre-release access
 - b. The number recipients who were (i) Ministers and (ii) special advisers [Please list separately, if possible]
 - c. The number of recipients in press office or equivalent roles
 - d. The number of recipients outside the Welsh Assembly Government (please include NDPBs, agencies etc as 'outside')
 - e. The number of 'generic addresses' to which pre-release access has been granted (other than a named individual or individual post description)
 - f. Was pre-release access granted to any journalists, and if so to how many?
 - g. Was pre-release access granted for a period in excess of the usual maximum period?
6. Have individuals granted pre-release access been required to make any specific declaration? If so, please provide details of the wording of the declaration.

7. Were Ministerial press notices (or equivalent) issued at the same time as any of the statistical outputs listed in response to (2) above? Please provide copies of these documents in respect of all statistical outputs listed in response to (4) above plus up to five others.
8. Has early access to statistical outputs listed in response to (4) above but not in their final form been given to individuals working beyond the statistical team (i.e. policy colleagues in the department, or other organisations outside the department), for example for the purposes of peer review or quality assurance? If so, how many individuals and organisations have been given such early access?
9. Please provide us with any general comments that you may wish to make about the operation of the pre-release access arrangements.

Annex 4

Pre-Release Access to Official Statistics Order 2008

Made 18th November 2008

Coming into force 1st December 2008

The Minister for the Cabinet Office makes this Order in exercise of the powers conferred by section 11(2), (4), (5) and (6) of the Statistics and Registration Service Act 2007¹²⁴.

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

In accordance with section 65(5)(a) of that Act a draft of this Order has been approved by resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Pre-release Access to Official Statistics Order 2008 and comes into force on 1st December 2008.

Pre-release access

2. The Schedule sets out the rules and principles relating to the granting of pre-release access to official statistics that are not wholly Scottish devolved statistics, Welsh devolved statistics, or Northern Ireland devolved statistics.

Liam Byrne
Minister for the Cabinet Office

18th November 2008

Article 2

SCHEDULE

PART 1 Generally applicable rules and principles

1. Pre-release access may only be granted in accordance with the rules and principles set out in this Schedule.

2. Only the person responsible may grant pre-release access.

3.—(1) The person responsible—

(a) may only grant pre-release access where to deny such access would, in the opinion of the person responsible, significantly impede—

¹²⁴ 2007 c.18

- (i) the provision of responses to questions or the making of statements about an official statistic at or shortly after the time of publication of that statistic; or
 - (ii) the taking of action before, at the time of or shortly after publication of that statistic;
 - (b) may only grant pre-release access to an eligible person;
 - (c) may only grant pre-release access if in the opinion of the person responsible the public benefit likely to result from such access outweighs the detriment to public trust in official statistics likely to result from such access;
 - (d) is required to restrict pre-release access to the minimum number of persons consistent with the need for pre-release identified within paragraph (a);
 - (e) may, when deciding whether to grant pre-release access to an eligible person, take into account any failure by that person, in relation to a previous grant of pre-release access, to comply with paragraph 6, paragraph 7 or any conditions imposed by the person responsible;
 - (f) may grant pre-release access subject to conditions.
- (2) For the purposes of this paragraph ‘eligible person’ means—
- (a) a Minister of the Crown;
 - (b) the head of a government department;
 - (c) a member of the Scottish Executive;
 - (d) a junior Scottish Minister;
 - (e) a member of the Welsh Assembly Government;
 - (f) a Northern Ireland Minister, including the First Minister and Deputy First Minister in Northern Ireland;
 - (g) a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998¹²⁵;
 - (h) a person who, in the opinion of the person responsible, is otherwise accountable to the public for the formulation or development of government policy or for the delivery of public services to which the statistic has direct relevance; or
 - (i) a person who needs pre-release access in order to advise a person referred to in any of paragraphs (a) to (h).
- (3) For the purposes of this paragraph, ‘government policy’ includes the policy of the Scottish Administration, the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the Welsh Assembly Government.
- 4.** Subject to paragraph 5, the person responsible may not grant pre-release access for a period in excess of 24 hours prior to the time set for the publication of an official statistic.

¹²⁵ 1998 c.47

5.—(1) In exceptional circumstances only, the person responsible may grant pre-release access to—

(a) an eligible person for a period in excess of 24 hours prior to the time set for the publication of an official statistic if in the opinion of the person responsible the public benefit likely to result from such access significantly outweighs the detriment to public trust in official statistics likely to result from such access;

(b) a person who is not an eligible person (either within the period of 24 hours prior to the time set for the publication of an official statistic or before this period) if an eligible person who has been granted pre-release access to an official statistic makes representations to the person responsible that pre-release access is needed for the purposes of paragraph 3(1)(a)(ii) in relation to that statistic.

(2) Where pre-release access is granted under sub-paragraph (1)(b), the person responsible must be satisfied that—

(a) the public benefit likely to result from such access (including the timing of such access) significantly outweighs the detriment to public trust in official statistics likely to result from such access; and

(b) the person to whom pre-release access is granted is the appropriate person to take the action referred to in paragraph 3(1)(a)(ii).

(3) A person who receives pre-release access under sub-paragraph (1)(b) is an eligible person only for the purposes of paragraphs 6, 7 and 8.

(4) Where pre-release access is granted under this paragraph the person responsible must—

(a) publish the reasons for granting such access; and

(b) inform the Statistics Board.

(5) For the purposes of this paragraph—

(a) paragraph 3(1)(b) does not apply to sub-paragraph (1)(b),

(b) paragraph 3(1)(c) does not apply.

6.—(1) An eligible person who receives pre-release access must not disclose—

(a) the statistic,

(b) any part of a publication where that part includes that statistic, or

(c) any suggestion of the size or direction of any trend indicated by that statistic, until after the official statistic has been published.

(2) An eligible person who receives pre-release access must not use that access—

(a) for personal gain;

(b) to take any action (other than the preparation of responses or statements as referred to in paragraph 3(1)(a)(i)) for political advantage.

7.—(1) An eligible person who receives pre-release access must not use such access to change or compromise—

(a) the content or presentation of the official statistic;

(b) the timing of publication of the official statistic.

(2) This paragraph does not prevent an eligible person from communicating to the person responsible any numerical or typographical error in the composition or presentation of the official statistic.

8. The person responsible may only grant pre-release access to market sensitive official statistics to an eligible person ("P") who has signed a declaration that P undertakes, in relation to any such statistics to which P is granted pre-release access, to comply with paragraphs 6 and 7 together with any specific conditions subject to which such access is granted.

9. The person responsible must publish—

- (a) a list of all official statistics at least annually to which that person has granted pre-release access;
- (b) at the same time as or prior to the publication of an official statistic a list of the job title and organisation of persons to whom the person responsible has granted pre-release access to that statistic; and
- (c) arrangements made by the person responsible to ensure compliance with this Schedule including, where appropriate, the role of the departmental Head of Profession for Statistics.

10.—(1) Nothing in this Schedule prevents access to official statistics in their final form prior to publication by a person directly involved in the production of the publication, whether electronic or in hard copy, by which such statistics are to be published providing such access is used only for those purposes.

(2) A person mentioned in sub-paragraph (1) is an eligible person only for the purposes of paragraphs 6 and 7.

11.—(1) Nothing in paragraphs 6, 7 and 8 prevents an eligible person who receives pre-release access sharing such access to the official statistic with a person providing administrative support (of a type not within paragraph 3(2)(i) or 15(3)(k)) to that eligible person.

(2) A person providing administrative support under sub-paragraph (1) is an eligible person only for the purposes of paragraphs 6 and 7.

PART 2 Special provisions

Bank of England

12.—(1) The person responsible may grant pre-release access to a Bank eligible person if, in the opinion of the person responsible, such access is needed for the effective discharge by the Bank of England ("the Bank") of its functions.

(2) For the purposes of this paragraph 'Bank eligible person' means—

- (a) the Governor of the Bank;
- (b) a Deputy Governor of the Bank;
- (c) a member of the Monetary Policy Committee; or
- (d) an officer, servant or agent of the Bank.

- (3) The person responsible may, for any of the purposes set out in sub-paragraph (5), grant pre-release access to a Treasury eligible person to any statistics to which access has been granted to a Bank eligible person under sub-paragraph (1).
- (4) For the purposes of this paragraph 'Treasury eligible person' means—
- (a) a person designated by the Treasury to attend, as a representative of the Treasury, a meeting of the Monetary Policy Committee pursuant to paragraph 13 of Schedule 3 to the Bank of England Act 1998 ¹²⁶;
 - (b) the Chancellor of the Exchequer; or
 - (c) a person who needs pre-release access in order to advise a person referred to in paragraph (a) or (b).
- (5) The purposes referred to in sub-paragraph (3) are—
- (a) the effective co-ordination of fiscal and monetary policy;
 - (b) the preparation of any communication from the Treasury to the Bank in relation to a notice given by the Treasury to the Bank under section 12 of the Bank of England Act 1998.
- (6) The number of persons to whom pre-release access is granted under this paragraph must be kept to the minimum necessary for achieving the purpose for which such access is granted.
- (7) Such access must be kept to the minimum time prior to publication necessary to achieve the purpose for which such access is granted.
- (8) Such pre-release access may be granted subject to such conditions as the person responsible sees fit.
- (9) The person responsible must not grant pre-release access under this paragraph unless, in the opinion of the person responsible, the public benefit likely to result from such access outweighs the detriment to public trust in official statistics likely to result from such access.
- (10) For the purposes of this paragraph, paragraphs 6, 7 and 8 apply to a Bank eligible person and a Treasury eligible person as they apply to an eligible person.
- (11) The person responsible may, when deciding whether to grant pre-release access to a Bank eligible person or a Treasury eligible person, take into account any failure by that person, in relation to a previous grant of pre-release access, to comply with paragraph 6, paragraph 7 or any conditions imposed by the person responsible.
- (12) Nothing in paragraphs 6, 7 and 8 prevent a Bank eligible person or a Treasury eligible person who receives pre-release access sharing such access to the official statistic with a person providing administrative support (of a type not within paragraph 12(4)(c)) to that Bank eligible person or Treasury eligible person.
- (13) A person providing administrative support under sub-paragraph (12) is an eligible person only for the purposes of paragraphs 6 and 7.
- (14) Paragraphs 3, 4, 5 and 11 do not apply to the granting of pre-release access under this paragraph.

¹²⁶ 1998 c.11

International obligations

13.—(1) The person responsible may grant pre-release access to permit the UK to comply with its international obligations to provide data to international statistical organisations.

(2) Part 1, except for paragraph 2, does not apply to the granting of pre-release access under this paragraph.

Journalists

14.—(1) If the person responsible is satisfied that a person is a bona fide representative of a news gathering or news reporting organisation, the person responsible may grant pre-release access to that person for up to a maximum period of 24 hours prior to publication of an official statistic.

(2) The person responsible may grant such pre-release access if, in the opinion of the person responsible, such access—

(a) is necessary for bona fide representatives of news gathering or news reporting organisations to understand the statistic and, where relevant, a statistical publication which includes that statistic, and

(b) is likely to facilitate well-informed debate.

(3) The person responsible may only grant pre-release access if in the opinion of the person responsible the public benefit likely to result from such access outweighs the detriment to public trust in official statistics likely to result from such access.

(4) Such access must be kept to the minimum time prior to publication necessary to achieve the purposes of sub-paragraph (2).

(5) The person responsible may, when deciding whether to grant pre-release access to a person under this paragraph, take into account any failure by that person, in relation to a previous grant of pre-release access, to comply with paragraph 6, paragraph 7 or any conditions imposed by the person responsible.

(6) The person responsible may impose such conditions on the granting of pre-release access as the person responsible considers appropriate including—

(a) that pre-release access must take place in such secure location as may be specified by the person responsible and that no communication equipment may be used at that location except as may be permitted by the person responsible; or

(b) without prejudice to paragraph 8, that a person to whom pre-release access under this paragraph is intended to be granted and before such access is granted must agree to comply with any conditions imposed by the person responsible.

(7) Part 1, except for paragraphs 2, 6, 7, 8 and 9, does not apply to the granting of pre-release access under this paragraph.

(8) For the purposes of this paragraph, paragraphs 6, 7 and 8 apply to a person to whom pre-release access is granted under this paragraph as they apply to an eligible person.

Third party publications

15.—(1) The person responsible may grant pre-release access for the purpose of a publication where, in the opinion of the person responsible, the official statistic is relevant to the subject-matter of the publication and the inclusion of the official statistic in the publication will significantly improve the accuracy or usefulness of information contained in the publication.

(2) Such pre-release access may only be granted if the publication is intended to be published at the same time as or shortly after the official statistic to which pre-release access is being granted under this paragraph is to be published.

(3) The person responsible may only grant such access to—

- (a) a Minister of the Crown;
- (b) the head of a government department;
- (c) a member of the Scottish Executive;
- (d) a junior Scottish Minister;
- (e) a member of the Welsh Assembly Government;
- (f) a Northern Ireland Minister, including the First Minister and Deputy First Minister in Northern Ireland;
- (g) a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998;
- (h) the National Statistician;
- (i) an officer, servant or agent of a person or body which produces official statistics;
- (j) a person who, in the opinion of the person responsible, is otherwise accountable to the public for the formulation or development of government policy or for the delivery of public services to which the statistic has direct relevance;
- (k) a person who needs pre-release access in order to advise a person referred to in any of paragraphs (a) to (j).

(4) The number of persons to whom pre-release access is granted under this paragraph must be kept to the minimum necessary for achieving the purpose referred to at sub-paragraph (1).

(5) Such access must be kept to the minimum time prior to publication necessary for the inclusion of the statistic in the publication.

(6) The person responsible must not grant pre-release access under this paragraph unless in the opinion of the person responsible the public benefit likely to result from granting such access outweighs the detriment to public trust in official statistics likely to result from granting such access.

(7) The person responsible may, when deciding whether to grant pre-release access to a person listed in sub-paragraph (3), take into account any failure by that person, in relation to a previous grant of pre-release access, to comply with paragraphs 6 and 7.

(8) Paragraphs 3 to 5 of Part 1 do not apply to the granting of pre-release access under this paragraph.

(9) For the purposes of this paragraph, paragraphs 6, 7, 8 and 11 apply to a person listed at sub-paragraph (3) as they apply to an eligible person.

(10) For the purposes of this paragraph, 'government policy' includes the policy of the Scottish Administration, the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the Welsh Assembly Government.

PART 3 Interpretation

16. In this Schedule, 'market sensitive official 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.

Annex 5

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 2007¹²⁷ 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 ¹²⁸.

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 ¹²⁹;

“official statistics” has the meaning given by section 6(1) of the Act;

¹²⁷ 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

¹²⁸ The Statistics Board (Am Bòrd an Staitistig) is also known as the UK Statistics Authority

¹²⁹ 1998 c47

“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.

JIM MATHER

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
27th November 2008

Article 3

SCHEDULE

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.

(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 2000¹³⁰ 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
 - (e) an explanation of why it was necessary to increase the maximum period.

¹³⁰ 2000 c.7. See s. 15(1), amended by the Communications Act 2003 (c. 21), Schedule 17, paragraph 158.

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;
 - (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 2002¹³¹ in relation to any records kept under paragraph 8.

¹³¹ 2002 asp 13

Annex 6

Pre-Release Access to Official Statistics Order (Northern Ireland) 2009

Made 2nd March 2009

Affirmed by resolution of the Assembly 31st March 2009

Coming into operation in accordance with Article 1

The Department of Finance and Personnel for Northern Ireland makes this Order in exercise of the powers conferred by section 11(2), (4), (5) and (6) of the Statistics and Registration Service Act 2007¹³².

In accordance with section 11(7) of that Act the Department of Finance and Personnel for Northern Ireland has consulted the Statistics Board¹³³, the Minister for the Cabinet Office, the Scottish Ministers and the Welsh Ministers.

Citation and commencement

1.—(1) This Order may be cited as the Pre-release Access to Official Statistics Order (Northern Ireland) 2009 and shall come into operation on the day after it is affirmed by resolution of the Assembly.

Interpretation

2. The Interpretation Act (Northern Ireland) 1954¹³⁴ shall apply to this Order as it applies to an Act of the Northern Ireland Assembly.

Pre-release access — wholly Northern Ireland devolved official statistics

3. The Schedule sets out the rules and principles relating to the granting of pre-release access to official statistics that are wholly Northern Ireland devolved statistics.

Sealed with the Official Seal of the Department of Finance and Personnel on 2nd March 2009.

T. N. Caven
A Senior Officer of the
Department of Finance and Personnel
Article 3

¹³² 2007 c.18

¹³³ The Statistics Board is also known as the UK Statistics Authority

¹³⁴ 1954 c.33 (NI)

SCHEDULE

PART 1 Generally applicable rules and principles

1. Pre-release access to official statistics may only be granted in accordance with the rules and principles set out in this Schedule.
2. Only the person responsible may grant pre-release access.
- 3.—(1) The person responsible—
 - (a) may only grant pre-release access where to deny such access would, in the opinion of the person responsible, significantly impede—
 - (i) the provision of responses to questions or the making of statements about an official statistic at or shortly after the time of publication of that statistic; or
 - (ii) the taking of action before, at the time of or shortly after publication of that statistic;
 - (b) may only grant pre-release access to an eligible person;
 - (c) may only grant pre-release access if in the opinion of the person responsible the public benefit likely to result from such access outweighs the detriment to public trust in official statistics likely to result from such access;
 - (d) is required to restrict pre-release access to the minimum number of persons consistent with the need for pre-release identified within paragraph (a);
 - (e) may, when deciding whether to grant pre-release access to an eligible person, take into account any failure by that person, in relation to a previous grant of pre-release access, to comply with paragraph 6, paragraph 7 or any conditions imposed by the person responsible;
 - (f) may grant pre-release access subject to conditions.
- (2) For the purposes of this paragraph ‘eligible person’ means—
 - (a) a Northern Ireland Minister, including the First Minister and Deputy First Minister in Northern Ireland;
 - (b) a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998¹³⁵;
 - (c) a Minister of the Crown;
 - (d) the head of a government department;
 - (e) a member of the Scottish Executive;
 - (f) a junior Scottish Minister;
 - (g) a member of the Welsh Assembly Government;
 - (h) a person who, in the opinion of the person responsible, is otherwise accountable to the public for the formulation or development of government policy or for the delivery of public services to which the statistic has direct relevance; or
 - (i) a person who needs pre-release access in order to advise a person referred to in any of paragraphs (a) to (h).

¹³⁵ 1998 c.47

(3) For the purposes of this paragraph, 'government policy' includes the policy of the Executive Committee of the Northern Ireland Assembly, the policy of the Scottish Administration, the policy of the Welsh Assembly Government and the policy of the Government of the United Kingdom.

4. Subject to paragraph 5, the person responsible may not grant pre-release access for a period in excess of 24 hours prior to the time set for the publication of an official statistic.

5.—(1) In exceptional circumstances only, the person responsible may grant pre-release access to—

(a) an eligible person for a period in excess of 24 hours prior to the time set for the publication of an official statistic if in the opinion of the person responsible the public benefit likely to result from such access significantly outweighs the detriment to public trust in official statistics likely to result from such access;

(b) a person who is not an eligible person (either within the period of 24 hours prior to the time set for the publication of an official statistic or before this period) if an eligible person who has been granted pre-release access to an official statistic makes representations to the person responsible that pre-release access is needed for the purposes of paragraph 3(1)(a)(ii) in relation to that statistic.

(2) Where pre-release access is granted under sub-paragraph (1)(b), the person responsible must be satisfied that—

(a) the public benefit likely to result from such access (including the timing of such access) significantly outweighs the detriment to public trust in official statistics likely to result from such access; and

(b) the person to whom pre-release access is granted is the appropriate person to take the action referred to in paragraph 3(1)(a)(ii).

(3) A person who receives pre-release access under sub-paragraph (1)(b) is an eligible person only for the purposes of paragraphs 6, 7 and 8.

(4) Where pre-release access is granted under this paragraph the person responsible must—

(a) publish the reasons for granting such access; and

(b) inform the Statistics Board.

(5) For the purposes of this paragraph—

(a) paragraph 3(1)(b) does not apply to sub-paragraph (1)(b),

(b) paragraph 3(1)(c) does not apply.

6.—(1) An eligible person who receives pre-release access must not disclose—

(a) the statistic,

(b) any part of a publication where that part includes that statistic, or

(c) any suggestion of the size or direction of any trend indicated by that statistic,

until after the official statistic has been published.

(2) An eligible person who receives pre-release access must not use that access—
(a) for personal gain;
(b) to take any action (other than the preparation of responses or statements as referred to in paragraph 3(1)(a)(i)) for political advantage.

7.—(1) An eligible person who receives pre-release access must not use such access to change or compromise—

- (a) the content or presentation of the official statistic;
- (b) the timing of publication of the official statistic.

(2) This paragraph does not prevent an eligible person from communicating to the person responsible any numerical or typographical error in the composition or presentation of the official statistic.

8. The person responsible may only grant pre-release access to market sensitive official statistics to an eligible person ("P") who has signed a declaration that P undertakes, in relation to any such statistics to which P is granted pre-release access, to comply with paragraphs 6 and 7 together with any specific conditions subject to which such access is granted.

9. The person responsible must publish—

- (a) a list of all official statistics at least annually to which that person has granted pre-release access;
- (b) at the same time as or prior to the publication of an official statistic a list of the job title and organisation of persons to whom the person responsible has granted pre-release access to that statistic; and
- (c) arrangements made by the person responsible to ensure compliance with this Schedule including, where appropriate, the role of the departmental senior statisticians.

10.—(1) Nothing in this Schedule prevents access to official statistics in their final form prior to publication by a person directly involved in the production of the publication, whether electronic or in hard copy, by which such statistics are to be published providing such access is used only for those purposes.

(2) A person mentioned in sub-paragraph (1) is an eligible person only for the purposes of paragraphs 6 and 7.

11.—(1) Nothing in paragraphs 6, 7 and 8 prevents an eligible person who receives pre-release access sharing such access to the official statistic with a person providing administrative support (of a type not within paragraph 3(2)(i) or 13(3)(l)) to that eligible person.

(2) A person providing administrative support under sub-paragraph (1) is an eligible person only for the purposes of paragraphs 6 and 7.

PART 2 Special provisions

International obligations

12.—(1) The person responsible may grant pre-release access to permit Northern Ireland to comply with its international obligations to provide data to international statistical organisations.

(2) Part 1, except for paragraph 2, does not apply to the granting of pre-release access under this paragraph.

Third party publications

13.—(1) The person responsible may grant pre-release access for the purpose of a publication where, in the opinion of the person responsible, the official statistic is relevant to the subject-matter of the publication and the inclusion of the official statistic in the publication will significantly improve the accuracy or usefulness of information contained in the publication.

(2) Such pre-release access may only be granted if the publication is intended to be published at the same time as or shortly after the official statistic to which pre-release access being granted under this paragraph is to be published.

(3) The person responsible may only grant such access to—

(a) a Northern Ireland Minister, including the First Minister and Deputy First Minister in Northern Ireland;

(b) a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998;

(c) a Minister of the Crown;

(d) the head of a government department;

(e) a member of the Scottish Executive;

(f) a junior Scottish Minister;

(g) a member of the Welsh Assembly Government;

(h) Chief Statisticians in the Devolved Administrations;

(i) the National Statistician;

(j) an officer, servant or agent of a person or body which produces official statistics;

(k) a person who, in the opinion of the person responsible, is otherwise accountable to the public for the formulation or development of government policy or for the delivery of public services to which the statistic has direct relevance;

(l) a person who needs pre-release access in order to advise a person referred to in any of paragraphs (a) to (k).

(4) The number of persons to whom pre-release access is granted under this paragraph must be kept to the minimum necessary for achieving the purpose referred to at sub-paragraph (1).

(5) Such access must be kept to the minimum time prior to publication necessary for the inclusion of the statistic in the publication.

(6) The person responsible must not grant pre-release access under this paragraph unless in the opinion of the person responsible the public benefit likely to result from granting such access outweighs the detriment to public trust in official statistics likely to result from granting such access.

(7) The person responsible may, when deciding whether to grant pre-release access to a person listed in sub-paragraph (3), take into account any failure by that person, in relation to a previous grant of pre-release access, to comply with paragraphs 6 and 7.

(8) Paragraphs 3 to 5 of Part 1 do not apply to the granting of pre-release access under this paragraph.

(9) For the purposes of this paragraph, paragraphs 6, 7, 8 and 11 of Part 1 apply to a person listed at sub-paragraph (3) as they apply to an eligible person.

(10) For the purposes of this paragraph, 'government policy' includes the policy of the Executive Committee of the Northern Ireland Assembly, the policy of the Scottish Administration, the policy of the Welsh Assembly Government and the policy of the Government of the United Kingdom.

PART 3 Interpretation

14. In this Schedule, 'market sensitive official 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.

Annex 7

Pre-Release Access to Official Statistics (Wales) Order 2009

Made 20 October 2009

Coming into force in accordance with article 1

The Welsh Ministers make this Order in exercise of the powers conferred by sections 11(2), (4), (5) and (6) of the Statistics and Registration Service Act 2007¹³⁶

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

In accordance with section 65(7) of that Act, a draft of this Order has been laid before and approved by resolution of the National Assembly for Wales.

Title and commencement

1. The title of this Order is the Pre-release Access to Official Statistics (Wales) Order 2009 and it comes into force on the day after the day on which it is made.

Interpretation

2. In this Order—

“the Act’ (“y Ddeddf”) means the Statistics and Registration Service Act 2007;

“the Code’ (“y Cod’) means the Code of Practice for Statistics under section 10 of the Act; and

“market-sensitive statistics’ (“ystadegau sy’n sensitif i’r farchnad’) means statistics which when disclosed would, in the opinion of the person responsible, be reasonably likely to have a significant effect on the value of any investment or on the amounts traded of any investment.

Statistics to which pre-release access rules and principles apply

3.—(1) Subject to paragraph (4), the Schedule applies to the statistics referred to in paragraph (3).

(2) For the purposes of the Code, the Schedule provides for rules and principles relating to the granting of pre-release access¹³⁷ to those statistics.

¹³⁶ 2007 c.18

¹³⁷ ‘pre-release access’ is defined in section 11(8) of the *Statistics and Registration Service Act 2007* c.18 (‘the Act’)

- (3) The statistics are official statistics¹³⁸ that are wholly Welsh devolved statistics¹³⁹ and—
- (a) have been designated as ‘National Statistics’ under section 12(2) of the Act, and that designation has not been cancelled;
 - (b) are regarded by virtue of section 12(8) of the Act as having been designated as ‘National Statistics’, and that designation has not been cancelled; or
 - (c) a request under section 12(1) of the Act has been made in respect of them, and no determination has been made under section 12(2) of the Act.
- (4) The Schedule does not apply where the statistics are released only for the purpose of producing an electronic or hard copy publication in which the statistics are to be published.

Andrew Davies

Minister for Finance and Public Service Delivery, one of the Welsh Ministers

20 October 2009

Article 3

SCHEDULE

Rules and principles relating to pre-release access

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

- 1.—(1) Subject to the provisions of this Order, the person responsible¹⁴⁰ may grant pre-release access in respect of statistics only to the extent that they consider it is necessary to grant access to a particular identifiable individual in order to—
- (a) enable an individual mentioned in sub-paragraph (3) to comment publicly on the statistics based on a correct understanding of them;
 - (b) enable an individual mentioned in sub-paragraph (3) to consider the implications of the statistics for the policies and programmes of the Welsh Ministers so as to ensure that any public comments made by an individual mentioned in sub-paragraph (3) about those policies and programmes at or after the time of publication of the statistics reflect a correct understanding of them;
 - (c) ensure that other statistics available to an individual mentioned in sub-paragraph (3), about the same subject-matter as the statistics to which pre-release access may be granted are not relied on by such an individual to the detriment of—
 - (i) the exercise of any functions of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, or

¹³⁸ ‘official statistics’ is defined in section 6(1) of the Act.

¹³⁹ ‘Welsh devolved statistics’ is defined in section 66(3) of the Act.

¹⁴⁰ ‘the person responsible’ is defined in section 67 of the Act.

- (ii) any public comment an individual mentioned in sub-paragraph (3) makes relating to those other statistics, without their being informed of the statistics to which pre-release access may be granted;
 - (d) ensure, where a publication or other material is being prepared by or on behalf of any public body, public office or holder of such an office 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;
 - (e) enable one of the following to make public comments in connection with the publication of the statistics based on a correct understanding of them—
 - (i) a Minister of the Crown;
 - (ii) the head of a United Kingdom government department;
 - (iii) a member of the Scottish Executive;
 - (iv) a junior Scottish Minister;
 - (v) a Northern Ireland Minister, including the First Minister and Deputy First Minister in Northern Ireland;
 - (vi) a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998¹⁴¹ ;
 - (vii) an individual who advises any of those mentioned in sub-paragraphs (i) to (vi).
 - (f) enable a public body, public office or holder of such an office, to whose functions the statistics are relevant, to comment publicly on the statistics based on a correct understanding of them;
 - (g) enable a body which represents a public body, public office or holder of such an office to whose functions the statistics are relevant, to comment publicly on the statistics based on a correct understanding of them;
 - (h) achieve any other purpose if the person responsible considers that the public interest is significantly better served by granting pre-release access (rather than not granting it) for that purpose having regard to any harm which the pre-release access would be likely to cause to—
 - (i) public trust in the integrity of official statistics generally; or
 - (ii) public trust in the integrity of particular official statistics.
- (2) The person responsible may grant pre-release access only where they are satisfied that there are arrangements in place to inform an individual to whom they grant pre-release access of the following information—
- (a) the ground in sub-paragraph (1) under which access is granted; and
 - (b) the requirements of paragraph 5.

¹⁴¹ 1998 c.47

- (3) The individuals mentioned in this sub-paragraph are—
- (a) a Welsh Minister appointed under section 48 of the Government of Wales Act 2006¹⁴²;
 - (b) the First Minister for Wales;
 - (c) the Counsel General to the Welsh Assembly Government;
 - (d) a Deputy Welsh Minister appointed under section 50 of the Government of Wales Act 2006;
 - (e) an individual who advises any of those mentioned in sub-paragraphs (a) to (d).

Pre-release access to be granted to particular identifiable individuals

2. Where the person responsible grants pre-release access they must make that grant to a particular identifiable individual.

Information to accompany statistics to which pre-release access has been granted

3. The person responsible must ensure that the following information accompanies the release of statistics in respect of which they have granted pre-release access—

- (a) in the case of market-sensitive statistics, that they are ‘Confidential Statistics’;
- (b) in the case of statistics that are not market-sensitive statistics, that they are ‘Restricted Statistics’;
- (c) in all cases—
 - (i) that pre-release access in respect of the statistics has been granted under this Order;
 - (ii) that paragraph 5 of this Schedule contains certain requirements; and
 - (iii) details of how to inform the person responsible in the event that the statistics are or might be disclosed otherwise than is permitted by this Order.

Timing of access

- 4.—(1) Subject to sub-paragraphs (2) to (6)—
- (a) in the case of market sensitive statistics, where granting pre-release access the person responsible must not give access to those statistics earlier than 24 hours before the intended time of their publication;
 - (b) in the case of other statistics, where granting pre-release access the person responsible must not give access to those statistics earlier than the fifth day before the intended date of their publication;

¹⁴² 2006 c.32

- (c) in all cases, the person responsible must not give access earlier than they consider is necessary to fulfil the purpose for which they are granting access.
- (2) Where the person responsible grants pre-release access under the ground in paragraph 1(1)(d), sub-paragraphs (1)(a) and (b) do not apply.
- (3) Where granting pre-release access the person responsible may give access earlier than is provided for in sub-paragraphs (1)(a) and (b) provided that the following conditions are met–
- (a) they consider that such earlier access is necessary to fulfil the purpose for which they are granting pre-release access; and
 - (b) they consider that the public interest is significantly better served by giving such earlier access (rather than not giving it) having regard to any harm which such earlier access would be likely to cause to–
 - (i) public trust in the integrity of official statistics generally; or
 - (ii) public trust in the integrity of particular official statistics.
- (4) Where the person responsible gives pre-release access earlier than is provided for in sub-paragraphs (1)(a) and (b) they must, as soon as is reasonably practicable, inform the Statistics Board¹⁴³ of–
- (a) the fact that they have done so;
 - (b) the name of the statistics in respect of which such earlier access has been given;
 - (c) the name and position of the individual to whom such earlier access has been given;
 - (d) the date and time from which access was given;
 - (e) the ground in paragraph 1(1) under which access was granted; and
 - (f) an explanation of the reason for granting such earlier access.
- (5) The requirements set out in sub-paragraph (4) apply in cases where the person responsible has granted pre-release access under the ground in paragraph 1(1)(d) as if the restrictions in sub-paragraph (1) did apply to grants under that ground.
- (6) The periods of time mentioned in sub-paragraph (1) ('24 hours' and 'day') exclude any period of time which falls within a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a Bank Holiday under the Banking and Financial Dealings Act 1971¹⁴⁴ in any part of the United Kingdom.

Requirements where pre-release access has been granted

- 5.—(1) This paragraph applies where an individual has been granted pre-release access under paragraph 1 in respect of statistics, or where statistics have been disclosed to an individual under paragraph 6.
- (2) Without prejudice to paragraph 6, the individual must not disclose the statistics, or any indication of their content or of what they may show.
- (3) In the case of an individual who has been granted pre-release access under paragraph 1, that individual must use the statistics only for the purpose for which such access was granted.

¹⁴³ The Statistics Board ('Y Bwrdd Ystadegau') was established by section 1(1) of the Act.

¹⁴⁴ 1971 c.80

- (4) In the case of an individual to whom the statistics have been disclosed under paragraph 6 by a person who has been granted pre-release access to them under paragraphs 1(1)(a) to (g), that individual must use the statistics only for the purpose of providing that person with administrative or technical support.
- (5) The individual must take reasonable steps towards ensuring—
- (a) that the statistics are not disclosed otherwise than is permitted by this Order; and
 - (b) that no indication of their content or of what they may show is disclosed.
- (6) The individual must not use the statistics for personal gain.
- (7) If the individual has reasonable grounds for believing that—
- (a) the statistics have been disclosed otherwise than is permitted by this Order; or
 - (b) an indication of the content of the statistics, or of what they may show, has been disclosed; or
 - (c) there is a risk that a disclosure mentioned in sub-paragraph (a) or (b) will be made,
- the individual must comply with sub-paragraph (8).
- (8) As soon as is reasonably practicable the individual must take all reasonably practicable steps to inform the person responsible of the disclosure or possible disclosure.
- (9) The individual must not seek to change the format, content or timing of the publication of the statistics, except in accordance with sub-paragraph (10).
- (10) If the individual identifies errors in, or wishes to comment on the format, content or timing of the publication of the statistics, the individual may communicate that to the person responsible.

Disclosure of statistics for purposes of receiving administrative or technical support

6. An individual who has been granted pre-release access under a ground in paragraphs 1(1)(a) to (g) may disclose to another particular identifiable individual the statistics in respect of which they have been granted access, provided that the disclosure is necessary for, and solely for the purpose of, enabling that other individual to provide them with administrative or technical support.

Notification to Statistics Board where pre-release access is granted under the ground in paragraph 1(1)(h)

7. Where pre-release access is granted under the ground in paragraph 1(1)(h) the person responsible must as soon as is reasonably practicable notify the Statistics Board of—
- (a) the name of the statistics in respect of which access was granted;
 - (b) the name and position of the individual to whom access was granted;
 - (c) the date and time from which that individual was given access; and
 - (d) an explanation of the reason for granting access.

Breach of the requirements of paragraph 5

8. Where deciding whether or not to grant pre-release access to an individual under this Order, the person responsible must take into account any evidence of which they are aware which, in their opinion, indicates any of the following—
- (a) that the individual has, or may have, previously failed to comply with the requirements of paragraph 5;
 - (b) that another individual to whom that individual has previously disclosed statistics under paragraph 6 has, or may have, failed to comply with the requirements of paragraph 5;
 - (c) that a previous grant to that individual under this Order of pre-release access in respect of statistics has, or may have, given rise to a disclosure of those statistics which was not permitted by this Order;
 - (d) that a previous grant to that individual under this Order of pre-release access in respect of statistics has, or may have, given rise to a disclosure of an indication of the content of those statistics or of what they may have shown.

Record-keeping

- 9.—(1) In relation to any statistics in respect of which the person responsible has granted pre-release access under this Order, the person responsible must make, as soon as is reasonably practicable, records of—
- (a) the name of the statistics;
 - (b) the name, position and contact details of any individual to whom they have granted access;
 - (c) the date and time from which that individual was given access;
 - (d) the ground in paragraphs 1(1)(a) to (h) under which access was granted;
 - (e) where access has been granted under the ground in paragraph 1(1)(h), the purpose to be achieved by the access;
 - (f) any discussions or correspondence with the individual about the format, content or timing of the publication of the statistics;
 - (g) any information which they have notified to the Statistics Board under paragraphs 4(4) or 7;
 - (h) any information given to them under paragraph 5(8), along with the details of when and by whom that information was given to them;
 - (i) any information received by them about a possible failure by any individual to comply with the requirements of paragraph 5, along with the details of when and by whom that information was given to them;
 - (j) any information received by them about any disclosure of the statistics which was not one which was permitted by this Order, along with the details of when and by whom that information was given to them; and

(k) any information received by them about any disclosure of an indication of the content of the statistics or of what they may have shown, along with the details of when and by whom that information was given to them.

(2) The records must be retained by the person responsible for a period of no less than 7 years from the date of the publication of the statistics to which they relate.

Publication

10.—(1) The person responsible must ensure that each year, on 1 January or as soon as is reasonably practicable after that date, there is published a list of the names of the statistics to which they have granted pre-release access in the twelve months immediately prior to that date.

(2) The person responsible must ensure that there are arrangements in place towards ensuring that statistics in respect of which they are the person responsible, and to which this Schedule applies, are dealt with in accordance with this Order.

(3) The person responsible must ensure that, as soon as is reasonably practicable, there is published an explanation of the arrangements mentioned in sub-paragraph (2).

(4) If the arrangements mentioned in sub-paragraph (2) are revised, the person responsible must ensure that, as soon as is reasonably practicable after those revisions are made, there is published an explanation of the revised arrangements.

Provision of information

11.—(1) Subject to sub-paragraph (3), the person responsible must, if a request is received by them for information which meets the criteria in sub-paragraph (2), provide the requester with that information no later than the twentieth working day after the day on which they receive the request.

(2) The criteria are that the information is contained in records which the person responsible has made for the purposes of any of paragraphs 9(1)(a) to (g) and are not contact details recorded for the purpose of paragraph 9(1)(b).

(3) For the purposes of this paragraph a request means a request which—

(a) is in writing;

(b) is received in legible form;

(c) states the name of the requester and an address for correspondence;
and

(d) adequately describes the information requested.

Annex 8

Summary table comparing the provisions of the four Pre-Release Orders

	UK Order	Northern Ireland Order	Scotland Order	Wales Order
Applies to	All official statistics that are not wholly devolved	Wholly devolved Northern Ireland official statistics	Wholly devolved Scottish National Statistics	Wholly devolved Welsh National Statistics
Maximum length of pre-release access	24 hours	24 hours	Market sensitive 1 working day Other stats 5 working days	Market sensitive 1 working day (24 hrs) Other stats 5 working days
Reasons for granting access	Respond to questions or make statements at time of or after publication; taking action before, at time of or after publication	As UK Order	to ensure Ministers and government officials have a correct understanding of the statistics and their implications, so that any comment made at the same time or after the publication of the statistics is properly informed.	To allow public comments based on a correct understanding; no detriment to the exercise of any functions of the Welsh Ministers etc; it is in the public interest
Exceptional circumstances	Access >24 hours if the public benefit significantly outweighs the detriment to public trust. Non-eligible person may be granted access (within or in excess of 24 hours) if an eligible person argues it is necessary for 'taking action'.	As UK Order	The person responsible may extend the pre-release period but must take into account the risk of detriment to public trust. Statistics can be passed on to other Ministers where necessary, with approval of the person responsible and with a record of access being kept. Named individuals other than Ministers or government officials may be given access unless it would be to the detriment of public trust in the integrity of official statistics. Must be agreed in writing and a record kept.	Pre-release access may be extended if it is considered necessary to fulfil the purpose for which they are granting pre-release access and; the public interest is significantly better served by doing so Must take into account public trust in the integrity of official statistics
Eligible person defined	Yes	Yes	Yes	Yes

Summary table comparing the provisions of the four Pre-Release Orders

	UK Order	Northern Ireland Order	Scotland Order	Wales Order
Conditions	<p>An eligible person must not: Disclose the statistic, any part of a publication that includes the statistic, suggest size or direction of trend until after publication; Use access for personal gain or to take any action for political advantage; Change or compromise the content, presentation or timing of the publication</p> <p>For pre-release access to market sensitive statistics the eligible person must sign a declaration to comply with the points above.</p>	<p>As UK Order.</p>	<p>Market sensitive statistics must be marked "Confidential Statistics". Other official statistics must be marked "Restricted Statistics".</p> <p>The individual must: not disclose any of the statistics, give broad indication of content or what they may show to anyone without access; only use the statistics for the purpose for which access has been granted; not use the statistics for personal or political gain; report immediately any accidental or wrongful disclosure to the person responsible; not seek to change format, content or timing, unless referring to errors (eg typographical).</p> <p>Where named individuals who are not Ministers or government officials are given access, the person responsible must notify the UK Statistics Authority of the statistics, individual, period of access and reasons.</p> <p>Records must be kept for 7 years.</p>	<p>Market sensitive statistics must be marked "Confidential Statistics". Other statistics must be marked "Restricted Statistics".</p> <p>The individual must: not disclose the statistics or any indication of their content or what they may show; only use the statistics for the purpose for which access was granted; not use the statistics for personal gain; not seek to change format, content of timing; communicate any errors identified to the person responsible; report immediately any accidental or wrongful disclosure to the person responsible.</p> <p>Where access is granted 'in the public interest' the person must notify the Statistics Board of the statistics, individual, period of access and reasons.</p> <p>Records must be kept for 7 years.</p>

Summary table comparing the provisions of the four Pre-Release Orders

	UK Order	Northern Ireland Order	Scotland Order	Wales Order
What should be published	<p>The reasons for granting access in exceptional circumstances must be published and the Statistics Board must be informed.</p> <p>A list of statistics (at least annually) where pre-release access has been granted; a list of persons (job title and organisation) with pre-release access; arrangements to ensure compliance with pre-release schedule.</p>	As UK Order.	If access period is extended publish as soon as is practicable, the fact of the increase, the statistics to which it relates, its duration, the grounds for granting the extension and reasons why it was necessary.	<p>A list of statistics (annually) to which pre-release access has been granted in the previous 12 months.</p> <p>Arrangements to ensure compliance with the pre-release schedule.</p> <p>Provide information within 20 days on receipt of a written request.</p>
Special provisions	<p>The Bank of England may be granted pre-release access in order to function effectively.</p> <p>Pre-release access may be granted to permit the UK to provide data to international statistical organisations.</p> <p>A bona fide journalist may be granted (max 24hrs) pre-release access, if the person responsible thinks it necessary to understand the statistic and it is likely to facilitate well-informed debate.</p> <p>A third party publication may be granted pre-release access where the statistic is relevant to the subject matter and will significantly improve the accuracy or usefulness of the information in the publication.</p>	<p>Pre-release access may be granted to permit Northern Ireland to provide data to international statistical organisations.</p> <p>A third party publication may be granted pre-release access where the statistic is relevant to the subject matter and will significantly improve the accuracy or usefulness of the information in the publication.</p>	<p>A third party publication may be granted pre-release access where the statistic is relevant to the subject matter and will significantly improve the accuracy or usefulness of the information in the publication.</p> <p>There is no maximum period of pre-release access if access is granted for the statistics to be included in another publication (to be published at the same time or after the publication of the original statistics).</p>	

