

Explanatory Memorandum to the draft Pre-Release Access to Official Statistics (Wales) Order 2009

This Explanatory Memorandum has been prepared by the Statistical Directorate and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

- (i) **Description** - The Order sets out the rules and principles to be followed in allowing certain people to have advance sight of certain types of statistics before they are officially published. This type of access is referred to as pre-release access.
- (ii) **Matters of special interest to the Subordinate Legislation Committee** –
None
- (iii) **Legislative Background** – The power of the Welsh Ministers to make this Order is contained in Section 11(2) of the Statistics and Registration Service Act 2007 (“the Act”). The section provides that “the appropriate authority” may by Order provide, for the purposes of the Code of Practice for Statistics (further explained below), for rules and principles relating to the granting of pre-release access to official statistics. Section 11(6) provides that “the appropriate authority” in relation to official statistics that are wholly Welsh devolved statistics is the Welsh Ministers. “Official statistics” is defined in section 6(1) of the Act, while “Welsh devolved statistics” is defined in section 66(3). The Order is subject to the affirmative resolution procedure.
- (iv) **Purpose and intended effect of the legislation** –
 - a. The Official Statistics Code of Practice, published in January 2009 by the Statistics Board (also known as the UK Statistics Authority) sets out the principles and rules governing the handling of official statistics by government. The publication of the Code of Practice is required by section 10 of the Act. The content of the Code of Practice is determined by the Statistics Board but, under the terms of the Act, the power to determine the rules and principles around pre-release access was given to the UK Government and the devolved administrations.
 - b. Pre-release access is defined in section 11(8) of the Act. It means access to statistics in their final form in advance of publication. The rules and principles in this Order apply to official statistics that are wholly Welsh devolved statistics, and either have been accredited by the Statistics Board as “National Statistics”, or are awaiting a decision by the Board as to whether they are to be accredited as “National Statistics”.
 - c. The Order (see paragraph 1 of the Schedule to the Order) provides that the person responsible in respect of particular

statistics may grant pre-release access to them only where they consider it necessary to do so in order to achieve one of the purposes set out in paragraphs 1(1)(a) to (h) of the Schedule to the Order. For example, one of the purposes is to enable one of the Welsh Ministers to comment publicly on them based on a correct understanding of them.

- d. The Order (see paragraph 4 of the Schedule) places limitations on how far in advance of publication of the statistics pre-release access can be given. This is 24 hours in the case of market-sensitive statistics, and five days (excluding weekends and Bank Holidays) in the case of other statistics. However, the person responsible is additionally subject to an obligation not to give access earlier than is necessary to fulfil the purpose for which they are granting access. The Order does permit the person responsible to exceed the limitations of 24 hours and 5 days mentioned above, but they can do so only if a public interest test is passed. In addition, the 24 hour and 5 day limitations do not apply where the purpose of granting access to the statistics is to enable published material to be prepared in way which accurately reproduces or takes account of the statistics (see paragraph 4(2) of the Schedule).
- e. The Order (see paragraph 3 of the Schedule) requires that certain information must accompany statistics when pre-release access is given to them. This is to warn recipients that certain requirements apply to their handling.
- f. The Order (see paragraph 5 of the Schedule) imposes requirements on the handling of statistics to which pre-release access has been granted. One of these is that, subject to an exception allowing disclosure for the purposes of receiving administrative or technical support, the statistics must not be disclosed to any person, nor must any person be given an indication of their content. Another requirement is that if it is believed that the statistics have been disclosed contrary to the Order, the person responsible must be informed as soon as is reasonably practicable.
- g. The Order (see paragraph 9 of the Schedule) requires the person responsible to keep certain records about pre-release access they have granted and to publish certain information (paragraph 10).
- h. The Order (see paragraph 11 of the Schedule) creates a right of access to certain information contained in the records which are kept by the person responsible for the purposes of paragraph 9.
- i. The rules and principles set out in the Order are aimed at allowing necessary pre-release access to be given to statistics, while putting safeguards in place to maintain public trust in Assembly Government statistics.

(v) **Implementation** – The Order will come into force the day after it is made. If the Order is not made there will be no statutory rules or principles governing pre-release access to wholly Welsh devolved official statistics. Current non-statutory principles and practices would continue to be followed by the Assembly Government. The equivalent Orders made by the UK and Scottish Governments came into force on 1 December 2008, while that made by the Department of Finance and Personnel for Northern Ireland came into force on 1 April 2009. It was considered appropriate to consider the provision made by these Orders and how they were received before finalising the provisions for wholly Welsh devolved official statistics. The UK Government have decided on a pre-release period of 24 hours for all statistics that they are responsible for. Northern Ireland have followed this. Scotland have kept to a pre-release access period of 5 days.

(vi) **Consultation** – Under section 11(7) of the Act, the Welsh Ministers have a duty to consult the Minister for the Cabinet Office, the Scottish Ministers, the Department of Finance and Personnel for Northern Ireland and the UK Statistics Board before making any Order relating to pre-release access under section 11(2). These have all been consulted.

Regulatory Impact Assessment – A Regulatory Impact Assessment has not been prepared in respect of this Order. The effect of the Order would be to place on a statutory basis the rules and principles to be followed by the Assembly Government in granting pre-release access to official statistics which are wholly Welsh devolved statistics and which have either been accredited as “National Statistics” or are awaiting a determination as to whether they are to be accredited as “National Statistics”. The additional cost to the Assembly Government of following the rules contained in the Order is minimal, as the Assembly Government already follows non-statutory principles and practices when dealing with pre-release access. The purpose and effect of the Order is to place principles and practices on a statutory footing. The order places obligations on persons outside the Assembly Government only in that, if they are a person to whom pre-release access is granted, they must protect the statistics from unauthorised disclosure. In order for wholly Welsh devolved statistics produced by a person or organisation other than the Assembly Government to become subject to the rules and principles in the Order, the Welsh Ministers would have to make a further Order under section 6(1)(b) of the Act (power to specify other statistics as “official statistics”). This would be subject to affirmative resolution procedure in the Assembly.