

Statistics Commission

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LIMITING PRE-RELEASE ACCESS TO STATISTICS: A CONSULTATION DOCUMENT

1. I am writing on behalf of the Statistics Commission, in response to the consultation document issued in December 2007.
2. This letter does not comment on the context within which the Government proposals for secondary legislation are being made. We accept that the provisions of the Statistics and Registration Service Act 2007 have been agreed by Parliament. However, the Statistics Commission continues to have reservations about the treatment of pre-release access within the Act.
3. The consultation document comprises a draft Order and explanatory material. Clearly the key part of this is the Order itself and we make specific suggestions for amendments below. However, we also have some broader comments on the consultation document as follows.
4. Paragraph 3.16 notes that whilst the formal position is that the Minister in charge of a department is the person responsible (in law) for decisions on pre-release access, "the Government proposes to undertake to give a formal role in applying the pre-release principles and rules to departmental Heads of Profession for Statistics". 3.17 further recognises the role of the Statistics Board in providing advice and guidance on these matters. A footnote elaborates that "It is fully intended... that Heads of Profession will play the central role in determining pre-release access in practice". Although these points are welcome, we do not think it is satisfactory for the explanatory material to make such important commitments whilst the Order itself makes no reference to them. We believe the Order could be crafted to make reference to the need to establish such arrangements. Also, the statement (in 3.16) that 'the Government proposes to undertake to give a formal role'... to Heads of Profession is not explained. Could the Government not give that undertaking now (rather than simply proposing to do so in the future) so that respondents to the consultation can see what form it takes and what force it has?
5. Similarly, the comment in paragraph 3.5 that 'where it is not possible to set out the Government's proposals in the secondary legislation,...., they will form part of wider guidelines for pre-release access to statistics in their final form' leaves the impression that something of substance is being left unsaid at this stage. It would be helpful if this could be clarified.

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6. Failure to capture adequately the Government's intentions (those mentioned at 3.15 to 3.17 etc) in the Order itself risks doing lasting damage to public confidence. Without this, the Order appears to transfer responsibility for release arrangements from professional statisticians (whose role was set out in the June 2000 Framework for National Statistics) to Ministers. This risks harming the international reputation of the UK Statistical System as well as fostering domestic suspicion of Ministers' intentions and actions. On the basis of discussion with international experts, we are concerned that it may well be seen internationally as making formal provision for political influence on matters such as which statistics are circulated ahead of publication and to whom. We believe that the damage that would thus be done to the UK's reputation abroad will exceed any practical benefit.
7. Neither the draft Order nor the explanatory material recognises that the phrase 'pre-release access to an official statistic' (eg in section 6 of the Schedule to the Order), has to be read as meaning much more than simply access to sets of numbers. In practice it refers to the entire text of a statistical release including the explanation of the statistics and any professional advice on their interpretation. Whilst access to the statistics themselves will, from time to time, be a sensitive matter, it is likely that political attention ahead of release will focus not so much on the figures as on what the statisticians are planning to say about them. For example, Ministers and their advisers will be looking to see which figures the statisticians intend to draw attention to and how they intend to describe changes in levels and trends. They want to know this so that they can position themselves with the news media and Parliament at the moment of release. That is understandable but it is not necessarily in the public interest.
8. The document says (1.22) that 'there is no reason to believe there is a problem of substance'. We do not agree. The concerns that the Statistics Commission has identified over the years are matters of substance. They may not involve statistics themselves being influenced but they do involve influence over their public presentation.
9. Paragraph 3.9 says that the Government proposes that pre-release should only be granted to ensure that Ministers 'are able to respond – whether in words or in action – at the time of release'. 3.3 adds that 'the public and media often expect that Ministers are able to account immediately for the implications of statistics about policy areas for which they are democratically responsible'. In our view, however, it is not so much the public or the media who *expect* instant answers to complex questions of the policy implications of statistics; it is Ministers who want to be able to give instant answers. Ministers in some countries – those that do not allow pre-release access – sometimes have to say that they will comment when they have had a chance to take advice on the figures. That seems a perfectly proper and defensible position to us.
10. The Order as drafted contains weaknesses that would allow a political statement, containing or referring to the unpublished statistics, to be circulated to selected journalists before the statistics are published. Because of this, we believe the provisions for the embargoed release of 'statistics' – which could, as currently drafted, mean a political statement referring to the statistics as well as the statistical publication itself – need to be tightened. This would require changes to Section 13 of the Order as discussed below.

11. The comments above apply regardless of the length of the maximum period of pre-release access. However, we would prefer the upper limit specified in the Order to be 3 hours more in line with international comparators and as recommended by the Treasury Select Committee. 24 hours is long enough to take political advantage of advance sight; 3 hours is much less likely to be. Provisions for exceptions to a 3 hour limit could be made in exceptional circumstances as discussed in specific amendments below.
12. Underlying the arguments about the length of time of pre-release access is concern that political advantage may be being obtained one way or another. Most advanced countries, whilst allowing some measure of pre-release access in specific circumstances, accept that such access is not generally in the interests of either the administration or the democratic system in the longer term. The draft Order does go some way to reflect this view (Section 3(1)c in particular) but, overall, leaves the impression that the Government regards 24 hours advance access as an acceptable level and one that should be extended (under the provisions of Section 5) where needed. Paragraphs 2.12 – 2.15 of the consultation document refer to international practice but do not explain that there is almost universal acceptance that pre-release access is undesirable. In quoting the European Statistics Code of Practice, paragraph 2.14 omits the key phrase “All users have equal access to statistical releases at the same time” which appears under Principle 6 of that Code. This is recognised by most countries as the fundamental principle; pre-release access is the undesirable exception to it.
13. Section 11(8) of the Statistics and Registration Service Act defines ‘pre-release access’ as meaning access to statistics in their final form prior to publication. This creates a logical hole as to the rules for pre-release access to statistics in their near-final form or in the form of ‘work in progress’. As these are not covered by the Order, they must, necessarily, be covered by the revised Code of Practice which will be the responsibility of the Statistics Board. The Statistics Commission has already published its recommendations on a revised Code of Practice but, in view of the potential for the Order to create more pressure for access to statistical products in their not-final form, the Government and the Statistics Board may need to agree very firm rules over access to not-final statistics. This will be complicated by the ongoing need to circulate some statistics in unfinished form within and between government departments for quality assurance purposes – essentially seeking the views of experts on the credibility of statistics before they are issued. Whilst we would not want to prevent such circulation, the Statistics Board will need to ensure that it is not exploited as a backdoor form of pre-release. The Government may also need to make a firm commitment on that score.

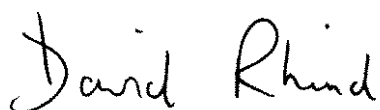
Amendments to the draft Order

14. Following from the points above, the draft Order could be amended in the following ways:
 - Section 3: The person responsible (in a government department) should be required to publish a Pre-release Access Scheme after consultation with the Statistics Board; Section 3 should also describe the content of these Schemes. They would set out the details of the officials in the department (normally the Head of Profession for Statistics) who would have day to day authority for implementation of

the Order, other arrangements made to ensure compliance with the Order, and all the standing arrangements relating to regular statistical publications made under the Order. They would also explain under what circumstances it might be considered appropriate for an exception to be made to the 3 hour limit (see below). In practice a document of this kind will be needed for internal guidance, so requiring it to be agreed with the Board and published would be little additional work. The documentation currently required by Section 10 of the Order would form a substantial part of the Scheme so there would not be much additional bureaucracy. And the greater formality associated with a published Scheme would give Heads of Profession a clearer role. There are precedents for such Schemes; for example, the Publication Schemes required under the Freedom of Information Act.

- Section 4: This should be expanded to make clear that the person responsible (or the person delegated that responsibility under the departmental Scheme) must base the decision about the length of time of pre-release access on a written assessment of the criteria in Section 3 and that this assessment should be available on request. In practice this will in any case be necessary to demonstrate compliance with the criteria in Section 3. And as discussed above, this section should make clear that the limit is 3 hours, rather than 24, and that exceptions are to be considered under the principles set out in the departmental Scheme.
- Section 10 could be deleted following the expansion of Section 3 suggested above.
- Section 13 needs to be amended to make clear that the only document to which journalists can be given embargoed access is the full text of the statistical publication. No other document or selective extract should be allowed to be released under this section. In particular, no political statement containing, or relating to, the statistics can be released (under embargo or otherwise) before the statistics themselves. And the selection of journalists to be given early access should be closely monitored by the Statistics Board to ensure that this is not being informed by the political sympathies of the press organisations. The departmental Scheme should further set out the form of pre-release access (eg use of lock-up arrangements) that will be offered. In general, we think the circulation to journalists of statistical releases in paper or electronic form before formal publication should be actively discouraged and subject to close scrutiny where departments use that method.

Yours sincerely



[Chairman, Statistics Commission]