

PRE-RELEASE ACCESS TO OFFICIAL STATISTICS ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1

6. Section 1 amends the Statistics and Registration Service Act 2007 (the 2007 Act).

The 2007 Act

7. The 2007 Act established the Statistics Board (also known as the UK Statistics Authority) as a body corporate with general functions that include monitoring the production and publication of official statistics throughout the UK. Official statistics are defined (in section 6 of the Act) to include statistics produced by the Scottish Government and its agencies (as well as those produced by the Board itself, the UK Government and the other devolved administrations).
8. Section 10 of the 2007 Act requires the Board to prepare, adopt and publish a Code of Practice for Statistics. Section 11 prohibits the Code from dealing with any matter relating to pre-release access, but enables “the appropriate authority” to make provision, by order, for rules and principles relating to pre-release access. Such rules and principles are then to be treated as if they formed part of the Code.
9. The Scottish Ministers count as “the appropriate authority” in relation to official statistics that are “wholly Scottish devolved statistics” (section 11(6)(b)). Under the definition in section 66(1) of the 2007 Act, “Scottish devolved statistics” includes statistics that relate to devolved matters so long as they are not produced in the exercise of a function that relates to a reserved matter, together with statistics that relate to reserved matters but are produced in the exercise of a function that relates to a devolved matter; it also includes statistics produced by the Scottish Ministers in the exercise of functions devolved to them under section 63(1)(a) of the Scotland Act 1998.
10. Rules and principles made under section 11 of the 2007 Act may govern (among other things) the circumstances in which pre-release access may be granted, the persons to whom it may be granted, and the maximum duration for which it may be granted.

Amendments to the 2007 Act

11. Subsection (2) of section 1 makes relevant provisions of section 11 (of the 2007 Act) subject to the new section 11A, inserted by subsection (3).
12. New section 11A(1) prevents the Scottish Ministers using their section 11 power to make an order authorising pre-release access to two specific categories of official statistics – those on Scotland’s gross domestic product (GDP) and those on Scottish retail sales (whether by volume of sales, or the value of those sales). This does not affect the continued application (after section 11A comes into force) of the provisions in the 2008 order (as amended by section 2 – see paragraphs 17-20 below) which authorise

These notes relate to the Pre-release Access to Official Statistics Act 2021 (asp 11) which received Royal Assent on 21 April 2021

pre-release access to GDP and retail sales statistics, since that order was made prior to section 11A coming into force.

13. New section 11A(2) provides an exception to the prohibition on pre-release access to GDP and retail sales statistics if such access has been recommended in a report required by section 3 (see paragraph 21 below).
14. New section 11A(3) limits to one working day the pre-release access that may be allowed to what section 11A(4) defines as “economic statistics”. A non-exhaustive list of matters included within this definition is set out at paragraph (a). Paragraph (b) of the definition excludes statistics made by the Scottish Ministers in the exercise of a function that has been transferred to them by order under section 63(1)(a) of the Scotland Act 1998, a component of the definition of “Scottish devolved statistics” (section 66(1)(c) of the 2007 Act). Accordingly, the Act does not change the position for statistics produced in the exercise of functions executively devolved to the Scottish Ministers further to section 63(1)(a) (functions that would otherwise relate to reserved matters).
15. Subsection (5) of new section 11A ensures that subsections (1) and (3) of that section – which prohibit pre-release access to official statistics on GDP or retail sales, and restrict to a maximum of one working day pre-release access to economic statistics – do not prevent pre-release access being given where the condition set out in new section 11A(6) is met. As a result, pre-release access may still be granted if this is considered necessary to ensure that the statistics have been accurately reflected in a document which is to be published alongside the statistics or shortly afterwards. Section 11A(6) reflects the terms of paragraph 2(1)(e) of the Schedule to the Pre-release Access to Official Statistics (Scotland) Order 2008 (the 2008 order).
16. Subsection (7) of new section 11A ensures that the restrictions set out in the rest of that section do not prevent Ministers authorising pre-release access to anyone whose role includes printing or producing those statistics. This reflects the terms of paragraph 1(2) of the Schedule to the 2008 order.