

This document relates to the Pre-release Access to Official Statistics (Scotland) Bill (SP Bill 81) as introduced in the Scottish Parliament on 8 September 2020

Pre-release Access to Official Statistics (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Pre-release Access to Official Statistics (Scotland) Bill, introduced in the Scottish Parliament on 8 September 2020. They have been prepared by Scottish Government officials on behalf of the Economy, Energy and Fair Work Committee, whose convener (Gordon Lindhurst MSP) introduced the Bill.

2. The following other accompanying documents are published separately:

- statements on legislative competence by the Presiding Officer and the member who introduced the Bill (SP Bill 81–LC);
- a Financial Memorandum (SP Bill 81–FM).¹

3. The Explanatory Notes are intended to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a

¹ A Policy Memorandum is not required for a Committee Bill and one has not been prepared on this occasion. The policy is set out in the Economy, Energy and Fair Work Committee's 7th Report, 2019 (Session 5), Pre-release access – Committee Bill proposal report (SP Paper 553), available at: <https://sp-bpr-en-prod-cdnep.azureedge.net/published/EEFW/2019/6/6/Pre-release-Access---Committee-Bill-proposal-report/EJFWS052019R07.pdf>

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section, does not seem to require any explanation or comment, none is given.

The Bill

4. The purpose of the Bill is to further restrict what is known as “pre-release access” to official statistics. Pre-release access is where certain persons, in particular Ministers, are given access to official statistics in their final form in advance of publication. The Bill’s restrictions on pre-release access are limited to official statistics on Scotland’s gross domestic product (GDP) and retail sales, and to other economic statistics; it does not affect other, non-economic, official statistics.

5. The Bill achieves this purpose by adding a new section 11A into the Statistics and Registration Service Act 2007 to restrict the provision about pre-release access that the Scottish Ministers may make (using their powers under section 11 of that Act). It also amends the existing order (made in 2008, in exercise of those section 11 powers).² In relation to certain economic statistics, the effect is to restrict, permanently, the maximum period of pre-release access that may normally be granted to one working day. In relation to statistics on GDP and retail sales, the effect is first to restrict the maximum period to one working day, then to reduce it to four hours and finally to remove it altogether, but with this reduction and removal subject to an independent review.

6. The Bill consists of five sections. Section 1 amends the 2007 Act; section 2 amends the order made (in 2008) under that Act; section 3 provides for the review; and sections 4 and 5 deal with commencement and the Bill’s short title.

Section 1

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

8. 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

² The Pre-release Access to Official Statistics (Scotland) Order 2008 (S.S.I. 2008/399).

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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).

9. Section 10 of the 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.

10. 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 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.

11. Rules and principles made under section 11 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.

12. Subsection (2) of section 1 of the Bill makes relevant provisions of section 11 subject to the new section 11A, inserted by subsection (3).

13. 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 of the Bill – see paragraphs 18-21 below) which authorise pre-release access to GDP and retail sales statistics, since that order was made prior to section 11A coming into force.

This document relates to the Pre-release Access to Official Statistics (Scotland) Bill (SP Bill 81) as introduced in the Scottish Parliament on 8 September 2020

14. 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 below).

15. 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 Bill 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).

16. 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).

17. 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.

Section 2

18. Section 2 of the Bill amends the 2008 order. That order, made under section 11 of the 2007 Act, currently governs pre-release access to wholly Scottish devolved statistics (see paragraph 10 above). The rules and principles for that access are set out in the Schedule to the order. Under paragraph 4 of the Schedule, the maximum period of pre-release access

This document relates to the Pre-release Access to Official Statistics (Scotland) Bill (SP Bill 81) as introduced in the Scottish Parliament on 8 September 2020

that may normally be granted is one working day for “market-sensitive statistics” and five working days for other official statistics. “Market-sensitive statistics” are defined in article 2 of the order to mean “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”. This is currently understood to include statistics on Scotland’s gross domestic product (GDP), the Retail Sales Index for Scotland, Scotland’s quarterly national accounts and Government Expenditure and Revenues Scotland (GERS).

19. Subsection (3)(a) amends paragraph 4 (of the Schedule to the 2008 order) so that the statistics that are subject to a one-working-day maximum period for pre-release access includes “economic statistics” as well as “market-sensitive statistics”. Subsection (2) adds into article 2 of the 2008 order the same definition of “economic statistics” that section 1(3) of the Bill includes in new section 11A of the 2007 Act (see paragraph 15 above).

20. Subsection (3)(b) also amends the Schedule to the 2008 order, by adding a new paragraph 4A. That paragraph restricts the maximum period of pre-release access that may be allowed to official statistics on Scotland’s gross domestic product and Scottish retail sales (whether by volume or value). The new limit is one working day during the first year after the Bill receives Royal Assent (in practice, the same as the current limit), reduced to four hours during the next-following year, after which pre-release access to such statistics is prohibited altogether (subject to the outcome of the independent review required under section 3 – see below)

This document relates to the Pre-release Access to Official Statistics (Scotland) Bill (SP Bill 81) as introduced in the Scottish Parliament on 8 September 2020

21. Accordingly, if the Bill was passed, the maximum periods of pre-release access that could generally be authorised would be as follows:

Category of official statistics Period	Statistics on GDP or retail sales	Economic statistics	Market-sensitive statistics	Other official statistics
Up to and including the day of Royal Assent	5 working days (except where market-sensitive)		1 working day	5 working days
Year 1 (beginning on day after Royal Assent)	1 working day			5 working days
Year 2	4 hours	1 working day		5 working days
Year 3	None	1 working day		5 working days
After Year 3	None (unless recommended by the independent reviewer)	1 working day		5 working days

Section 3

22. Section 3 of the Bill requires the Scottish Ministers to commission an independent review of the impact of the reduction and removal of pre-release access to GDP and retail sales statistics. The review is to be commissioned as soon as practicable after a 3-year period (starting when the Bill becomes an Act), so that, by the time the review begins, there will have been one year's experience of each of the following: pre-release access capped at one working day, pre-release access capped at four

This document relates to the Pre-release Access to Official Statistics (Scotland) Bill (SP Bill 81) as introduced in the Scottish Parliament on 8 September 2020

hours, and a ban on pre-release access. The person or organisation appointed to conduct the review must report to Ministers, who in turn must publish the report and lay a copy before the Parliament.

23. As noted above (paragraph 14), if the report recommends that Ministers should be entitled to authorise pre-release access to GDP or retail sales statistics, Ministers could then make an order (under section 11 of the 2007 Act) to give effect to that recommendation, and this would not be prohibited by the operation of new section 11A(1). By virtue of section 65(6) of the 2007 Act, any such order would require to be laid in draft before, and approved by resolution of, the Parliament.

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