

STATISTICS AND REGISTRATION SERVICES BILL

LORDS DELEGATED POWERS AND REGULATORY REFORM COMMITTEE: MEMORANDUM FROM HM TREASURY

Introduction

1. The *Statistics and Registration Services Bill* was introduced in the House of Commons on 21 November 2006. It contains 73 clauses and four schedules. This memorandum identifies the provisions for delegated legislation in the Bill. It explains the purpose of the delegated powers taken; describes why the matter is to be left to delegated legislation; and explains the procedure selected for each power and why it has been chosen.

Purposes of the Bill and main provisions

2. The Bill provides as follows:

Part 1

- Clauses 1 to 5 establish the new Board as a non-ministerial department. The Board itself will be composed of at least six non-executive members, including the Chairman, and three executive members.
- Clause 7 provides the Board with an overall objective of promoting and safeguarding the quality of official statistics, good practice in relation to official statistics and the comprehensiveness of official statistics.
- Clauses 8 to 27 confer a number of functions on the Board, relating to the production and quality assurance of statistics, including a power to prepare a Code of Practice and assess statistics against it for designation as National Statistics. In clause 23, the functions of the Registrar General for England and Wales in relation to the census are transferred to the Board.
- Clauses 28 to 34 deal with the organisation and administration of the Board, including establishing the National Statistician as the Board's chief professional statistical adviser and member of the Board, and the Head of Assessment as the Board's principal adviser on the assessment of National Statistics.
- Clauses 35 to 38 provide for the use and disclosure of information by the Board and clauses 39 to 43 set out gateways for the sharing of information by and with the Board. Clauses 44 to 51 provide for regulations to be made for data sharing between the Board and other public authorities.

Part 2

- Clauses 66 to 69 regularise the employment position of registrars in England and Wales, by making them local authority employees, providing them with employment rights and protections.

Parliamentary scrutiny

3. The Bill contains eleven provisions for delegated powers. These provisions, and the secondary legislation to be made under them, ensure that there is appropriate Parliamentary scrutiny for the exercise of such powers. Out of the eleven delegated powers, nine are proposed under the affirmative procedure. It is considered that no

Parliamentary procedure is required in respect of the power to delegate functions relating to the production of statistics in clause 22 or the power to bring the Act into force by a Commencement Order made by the Treasury under clause 71.

Territorial Coverage

4. Clause 72 sets out that the legislation extends to England, Scotland, Wales and Northern Ireland (including the criminal offence created by clause 36 of the Bill), with the exceptions of clause 59 (on evidence in legal matters, which will be governed by the law in England and Wales) and Part 2 (on the Registration Service, which extends only to England and Wales). Further, any amendment or repeal effected by this Act has the same extent as the enactment to which it relates.

Delegated powers in the Bill: overview

5. A full list of the delegated powers, listed by clause, is as follows:
 - Clause 6 – Official statistics
 - Clause 11 – Pre-release access
 - Clause 22 – Delegated functions
 - Clause 44 – Power to authorise disclosure to the Board
 - Clause 45 – Power to authorise disclosure to the Board: Scotland
 - Clause 46 – Power to authorise disclosure to the Board: Northern Ireland
 - Clause 47 – Power to authorise use of information by the Board
 - Clause 48 – Power to authorise disclosure by the Board
 - Clause 49 – Power to authorise disclosure by the Board: Scotland
 - Clause 50 – Power to authorise disclosure by the Board: Northern Ireland
 - Clause 71 – Commencement

These delegated powers are listed in a table in the annex.

Clause by clause analysis of delegated powers

Clause 6 – Official Statistics

6. Clause 6 states that official statistics includes all statistics produced by the Board, government departments, the Scottish Executive, the Welsh Ministers,¹ a Northern Ireland department or any other person acting on behalf of the Crown.
7. The clause also gives Ministers of the Crown, the Scottish Ministers, the Welsh Ministers and Northern Irish departments the power to make orders to notify statistics produced by further bodies, meaning that all of the statistics produced by those bodies would be official statistics, or to notify particular statistical series or sets of series as official statistics. These orders may also remove these further statistics from the category of official statistics.² Before orders are made specifying statistics produced

¹ As well as the First Minister for Wales and the Counsel General to the Welsh Assembly Government.

² Statistics produced by the Board, government departments, the Scottish Administration, the Welsh Ministers, a Northern Ireland department or any other person acting on behalf of the Crown, cannot be removed from the category of official statistics.

by further bodies as official statistics, the Board must be consulted, and it would be expected to give its view on whether it is appropriate for the statistics to be official statistics.

8. Clause 6 automatically covers the main bodies which are sources of official statistics. However, bodies such as the Health and Social Care Information Centre and the Higher Education Statistics Agency, which produce a range of statistics, including some statistics currently designated as National Statistics, would not automatically have all their statistics included in the category of official statistics (as defined in clause 6 (1)(a)). It is therefore expected that statistics produced by these bodies would be notified for inclusion in the category of official statistics through an order. In general, the kind of bodies whose statistics might be notified by order under this clause include local authorities and health authorities, and non-departmental public bodies that are not Crown bodies.
9. Once notification had been agreed by Parliament, statistics will be treated as official statistics for the purposes of the Act, and could be subject to monitoring by the Board (under clause 8) or be eligible for assessment as National Statistics (under clause 12).
10. Given their responsibility for the relevant statistics in their policy areas, Ministers will be responsible for making orders in their departmental area. For example, the Secretary of State for Health would notify statistics produced by health authorities. For devolved statistics, the Scottish Ministers, the Welsh Ministers and Northern Ireland departments would make the orders in relation to their respective devolved statistics.
11. Given the wide range of bodies beyond central government that might now and in the future produce official statistics, it is difficult to define in primary legislation exactly where the boundary of official statistics should lie. It is for this reason that the class of official statistics produced outside central government will be set out in orders. This allows an appropriate flexibility to include new statistics as they are developed and new bodies that take on the production of such statistics, as well as to remove statistics or bodies outside central government, if appropriate.
12. The orders are to be made via the affirmative resolution procedure; Parliament will therefore be able to scrutinise the statistics – beyond those produced in central government – notified to be part of, or removed from, the category of official statistics.

Clause 11 – Pre-release access

13. Clause 11 empowers the Treasury (on behalf of all Ministers of the Crown), and – in the case of wholly devolved statistics – the devolved administrations, by order, to set out rules and principles to govern the conditions under which Ministers and others may receive pre-release access to official statistics, in their final form.
14. To ensure a consistent policy approach, any order made by the Treasury or the relevant devolved administration, must be made following consultation with the other devolved administrations and the Treasury, as appropriate. In all cases, an order will be subject to the affirmative resolution procedure, giving Parliament (or the relevant

devolved legislatures) the opportunity to scrutinise the draft order, and requiring its explicit approval before the order is made. After an order is made, the rules and principles set out in the order will be regarded as being included in, and will be assessed against as part of, the Code of Practice for National Statistics.

15. Pre-release access to statistics in their final form for Ministers and others is intended to give Ministers the opportunity to account for implications in their policy areas for which they are responsible, and to allow them, in certain circumstances, to act at the time statistics are released, for example to prevent a market disturbance.
16. Given this, the Government intends to provide for the continuation of pre-release access to official statistics by setting out the arrangements for pre-release explicitly in secondary legislation, with any order under this clause subject to the affirmative resolution procedure. This will ensure Parliamentary scrutiny of the proposed arrangements, with Parliament's consent being required before any order becomes binding.
17. This power is a discrete and well-defined derogation from the Board's broader power to determine the Code of Practice for National Statistics, with any order made under clause 11 being limited to the specific topic of granting pre-release access to official statistics. As set out in clause 11, the order may include the circumstances in which pre-release access may be granted; descriptions of statistics for which pre-release may be granted; the persons to whom pre-release may be granted; the period during which pre-release may be granted and the conditions subject to which pre-release may be granted. The rules and principles in the order may make different provision for different cases, and allow for the exercise of discretion by persons responsible for official statistics.
18. The use of secondary legislation, rather than putting the arrangements on the face of the primary legislation, also provides sufficient flexibility to enable arrangements to be adapted to different circumstances and to evolve over time, while ensuring that Parliament (and the relevant devolved legislatures, in the case of devolved statistics), has the opportunity to engage with, and approve, any changes.

Clause 22 – Delegated functions

19. This clause allows a Minister of the Crown, and the respective devolved administrations in Wales and Northern Ireland, to delegate to the Board any of the functions relating to the production of statistics for which they have responsibility.
20. The Chancellor of the Exchequer currently delegates certain Ministerial functions under the *Statistics of Trade Act 1947* to the Director of the ONS. This provision will allow this kind of delegation to continue in the future, for example, allowing the Chancellor of the Exchequer to delegate these functions to the new Board.
21. The clause does not provide for any Parliamentary procedure. This clause only allows for the delegation of those functions relating to the production of statistics that Parliament has given to Ministers or that Ministers have under common law. Furthermore, the nature of the delegation will be limited to delegation to the Board. This clause does not, therefore, provide for any Parliamentary procedure, insofar as

the legislation in which the production functions is given to the relevant Minister will not change by virtue of the delegation itself, and accountability will remain with the Minister to whom Parliament has already given that function. Although the clause would also permit the amendment of any enactment, such amendments can only be of a consequential or incidental nature, and so this does not confer the power to make substantive changes to the legislation in question.

Clauses 44 to 50 – Powers to authorise disclosure / use of information

22. Clauses 44, clause 47 and clause 48 provide the Treasury with power to make regulations:
 - authorising the disclosure of information from a public authority to the Board (clause 44);
 - authorising use of information by the Board, where the Board currently may receive information but is subject to a restriction on use of that information (clause 47); and,
 - authorising the disclosure of information by the Board to a public authority (clause 48).

23. Clause 45 and clause 49 provide the Scottish Ministers with a power to make regulations:
 - authorising the disclosure of information from a Scottish public authority to the Board (clause 45); and,
 - authorising the disclosure of information by the Board to a Scottish public authority (clause 49).

24. Clause 46 and clause 50 provide a Northern Ireland Department with a power to make regulations:
 - authorising the disclosure of information from a Northern Ireland Department to the Board (clause 46); and,
 - authorising the disclosure of information from the Board to a Northern Ireland public authority (clause 50).

25. The power to make regulations in clauses 44 to 50 may be exercised where the disclosure or use (use in clause 47 only) of the information would otherwise be prohibited by a rule of law, where the bars to disclosure are in an Act passed before this Act, or where the public authority would not otherwise have the power to make the disclosure (clause 44, 45 and clause 46 only).

26. Regulations made under the delegated powers in clauses 44 to 50 will provide for further data sharing. The powers include the power to amend enactments and to make such incidental and consequential provision as may be necessary. The affirmative procedure is prescribed.

27. It is not possible to anticipate every case in which the Board might require access to administrative data in departments; some data sets have not yet been created, for example, and statistical – and policy – needs are likely to change such that existing

data sets might become useful for statistical analysis. Providing for delegated powers therefore ensures the flexibility for data sharing for statistical purposes to adapt to changing user needs, and developing data sets and statistical practice.

28. However, recognising the legitimate concerns around confidentiality, the legislation includes safeguards to ensure that the circumstances in which the powers may be used are tightly constrained. Improved confidentiality provisions – applying to both business and personal data – have also been stipulated on the face of the Bill (at the confidentiality obligation in clause 36³), with sharing in violation of the confidentiality obligation incurring criminal sanctions.
29. The circumstances in which the power can be used, and the purposes for which it may be used are limited and focused:
 - Regulations made under the powers in clauses 44 to 47 may only authorise disclosure for statistical purposes (in practice, all of the Board’s functions are statistical).
 - In the case of regulations made under clauses 48 to 50, the regulations may only authorise disclosure for the purposes of the statistical functions of the public authority to which the disclosure is made.
 - The information disclosed may only be used by the Board or by the public authority for the specific purpose(s) for which the disclosure is authorised.
 - In respect of clauses 44, 47 and 48, the Treasury may only make the regulations with the consent of another Minister of the Crown or, where appropriate, the Welsh Ministers. Before making the regulations the Treasury (and the Welsh Ministers or the Minister of the Crown whose consent is required) must be satisfied both that the disclosure is required by the Board (or the public authority) to enable it to carry out its statistical function or functions and that the disclosure is in the public interest.
 - The regulations may not amend the *Human Rights Act 1998* and the *Data Protection Act 1998*.
30. In exercising the delegated powers in clause 44 and 48, the Treasury may not make regulations authorising disclosure by or to a Northern Ireland public authority⁴ or a Scottish public authority⁵.
31. Clause 45 and 49 provide the Scottish Ministers with a power to make regulations (with the consent of the Treasury) authorising disclosure to or from the Board. It is necessary to leave this matter to delegated legislation for the same reasons set out above. The same limitations and restrictions on the use of the power apply and the

³ Note that, in the application of section 36 to personal information disclosed under the regulations, two exemptions to the general confidentiality obligation (given in 36(4)(c) and (h), which concern, respectively, disclosure for the purpose of enabling or assisting the Board to exercise any of its functions, and disclosure to an approved researcher) do not apply. In addition, the regulations may contain consequential and supplementary provisions to prohibit or restrict further disclosure or authorise further disclosure.

⁴ The definition of a “Northern Ireland public authority” is set out in clause 62 – a Northern Ireland public authority is a public authority whose functions are exercisable only or mainly in or as regards Northern Ireland and relate only or mainly to transferred matters.

⁵ In so far as it is exercising functions that relate to matters that are not reserved matters.

Government expects the power would be used in the same way. The regulations will be made by statutory instrument, laid in draft and not made until the Scottish Parliament has approved them.

32. Clause 46 and 50 provide a Northern Ireland department with a power to make regulations authorising disclosure to and from the Board. It is necessary to leave this matter to delegated legislation for the same reasons set out above. The same limitations and restrictions on the use of the power apply and we expect the power will be used in the same way. The regulations will be made by statutory rule and will be subject to affirmative resolution within the meaning of section 41(4) of the *Interpretation Act (Northern Ireland) 1953 c.33 (NI)*.
33. Regulations under clauses 44, 47 and 48 are made by the Treasury, acting in its role as having the residual legislative responsibility for the Board, with the consent of a Minister of the Crown. This would generally be the Minister of the Crown responsible for the public authority that would be involved in the data sharing permitted by the regulation. In the same way, where the body making the regulation is the Scottish Ministers or a Northern Ireland Department, under clauses 45,46, 49 and 50, the consent of the Treasury is required.

Clause 71 – Commencement

34. Clause 71 enables the Treasury to bring the provisions of the Act into force by order. This is a standard power to bring the provisions of the Act into force and as is usual with commencement orders the power does not specify a Parliamentary procedure. The order may include consequential, transitional or incidental provision.

Annex: Table of Regulation Making Powers

Measure	Clause number	What the regulation making power provides
Power to notify official statistics beyond those produced by central government	Clause 6	Allows Ministers of the Crown, the Scottish Ministers, the Welsh Ministers and Northern Irish departments to make orders to notify statistics as official statistics (beyond those produced by central government).
Power to set out rules and principles to govern pre-release access to statistics	Clause 11	Allows the Treasury and – in the case of wholly devolved statistics, the devolved administrations – by order to set out rules and principles to govern the conditions under which Ministers and others may receive pre-release access to official statistics.
Power to delegate functions	Clause 22	This function allows a Minister of the Crown, and the devolved administrations in Wales and Northern Ireland, to delegate to the Board any of their functions relating to the production of statistics.
Power to authorise disclosure to the Board	Clause 44	This power allows the Treasury to make regulations authorising the disclosure of information from a public authority to the Board.
Power to authorise disclosure to the Board: Scotland	Clause 45	This power allows Scottish Ministers to make regulations authorising the disclosure of information from a Scottish public authority to the Board.
Power to authorise disclosure to the Board: Northern Ireland	Clause 46	This power allows a Northern Ireland Department to make regulations authorising the disclosure of information from a Northern Ireland public authority to the Board.
Power to authorise use of information by the Board	Clause 47	This power allows the Treasury to make regulations authorising the Board to use information received by the Board where the Boards use of information is restricted.
Power to authorise disclosure by the Board	Clause 48	This power allows the Treasury to make regulations authorising the disclosure of information by the Board to a public authority.
Power to authorise disclosure by the Board: Scotland	Clause 49	This power allows Scottish Ministers to make regulations authorising the disclosure of information by the Board to a Scottish public authority.

Measure	Clause number	What the regulation making power provides
Power to authorise disclosure by the Board: Northern Ireland	Clause 50	This power allows a Northern Ireland department to make regulations authorising the disclosure of information from the Board to a Northern Ireland public authority.
Power to make commencement orders	Clause 71	This power enables the Treasury to bring the provisions of the Act into force by order.