EXPLANATORY MEMORANDUM TO

THE OFFICIAL STATISTICS ORDER 2013

2013 No. [XXXX]

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This Order designates the statistics produced, or to be produced, by certain bodies as "official statistics" under the Statistics and Registration Service Act 2007 ("the Act"), making them subject to the monitoring of the Statistics Board.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Act established the Statistics Board, whose function it is to promote and safeguard the production and publication of official statistics. Under section 6(1)(a) of the Act, all statistics produced by the Statistics Board, government departments, the Scottish Administration, a Welsh ministerial authority, a Northern Ireland department and other Crown bodies are designated as "official statistics". This Order is made under section 6(1)(b) and (2) of the Act, which allows orders to be made to specify other persons as producers of official statistics.

4.2 The effects of designation as "official statistics" are:

- the production and publication of official statistics is subject to monitoring and reporting by the Statistics Board (section 8 of the Act);
- at the request of the "appropriate authority" (defined in section 12(7) of the Act) the Statistics Board must assess and determine whether the Code of Practice for Official Statistics (issued by the Board) has been complied with in relation to any official statistics and, if so, designate those statistics as "National Statistics" (section 12 of the Act);
- if the official statistics have been designated as National Statistics, the producers of those statistics must fully comply with the Code of Practice for Official Statistics in order to maintain that designation. For other official statistics, compliance with the Code is not a formal requirement but is best practice; and
- the producers of official statistics must comply with the relevant rules and principles relating to the granting of pre-release access to official statistics to the extent applicable to them[1] and, in relation to National Statistics, must do so as if these rules and principles are part of the Code of Practice.

[1] See the Pre-release Access to Official Statistics Order 2008 (S.I. 2008/2998) and the Pre-release Access to Official Statistics (Wales) Order 2009 (S.I. 2009/2818).

4.3 This Order is made under section 6(1)(b) and (2) of the Act and is the fourth use of this order-making power by a Minister of the Crown. The last such use of the power was in December 2010 when the Official Statistics Order 2010 ("the 2010 Order") was made[2]. The 2010 Order is revoked by this Order. This Order updates the list of (non-Crown body) producers of important, national-level statistics which the Government considers should be designated as official statistics.

5. Territorial Extent and Application

5.1 This instrument extends to all of the United Kingdom.

5.2 The Order does not apply to wholly Scottish devolved statistics or wholly Northern Ireland devolved statistics. The terms "Scottish devolved statistics" and "Northern Ireland devolved statistics" are defined in section 66 of the Act. The Official Statistics (Scotland) Order 2008 (S.S.I. 2008/131)[3] specifies the persons whose wholly Scottish devolved statistics are designated as official statistics. The Official Statistics (Northern Ireland) Order 2012 (S.R. 2012 No. 2) specifies the persons whose wholly Northern Ireland devolved statistics are designated as official statistics.

6. European Convention on Human Rights

The Minister for the Cabinet Office has made the following statement regarding Human Rights:

In my view the provisions of the draft Official Statistics Order 2013 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 Coming into force in December 2007, the Act established the Statistics Board (a non-ministerial department which has chosen to operate under the name "UK Statistics Authority"), to promote and safeguard the production and publication of official statistics that serve the public good. This was intended to address low levels of public trust in official statistics. The definition of official statistics in the Act allows flexibility to add or remove non-Crown bodies from the Statistics Board's remit by order. This Order provides an updated list of bodies whose statistical activities will be monitored, scrutinised and reported on by the Board.

7.2 The Statistics Board:

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[2] The 2010 Order was subsequently amended by article 17 of the Education Act 2011 (Consequential Amendments to Subordinate Legislation) Order 2012 (S.I. 2012/765). This omitted the entries relating to the Qualifications and Curriculum Development Agency and the Training and Development Agencies for Schools which bodies were abolished by the Education Act 2011.

[3] That Order has been amended by S.S.I. 2010/448 and S.S.I. 2012/196.

- promotes good practice for the production and publication of official statistics, including through the development and dissemination of a Code of Practice for Official Statistics;

- monitors and reports on the production and publication of official statistics; and

- assesses the treatment by producers of official statistics against the Code of Practice for Official Statistics and publishes the results of these assessments. If statistics comply with the Code, the Board will approve them as "National Statistics".

7.3 This Order designates the statistics produced, or to be produced, by the persons listed in the Schedule as official statistics. It revokes the 2010 Order and revises the list of persons set out in the Schedule to that Order. Bodies included in the list are those which produce, or will produce, national level statistics which (a) inform the public about the social or economic position of the country, (b) are likely to be used to judge government performance or targets or (c) the government considers it is otherwise important that the public has particular trust in.

7.4 The Schedule adds 5 new bodies to the list contained in the 2010 Order. These are the British Film Institute, the Human Fertilisation and Embryology Authority, the NHS Commissioning Board, the NHS Litigation Authority and the Sentencing Council for England and Wales.

7.5 The Schedule omits 21 bodies from the list contained in the 2010 Order. 11 of those bodies have now been abolished and their statistical functions have either also been abolished, or have been transferred to other bodies listed in the Order or to a Crown body whose statistics are already official statistics by virtue of section 6(1)(a) of the Act. The bodies that have been abolished are: the British Educational Communications and Technology Agency, the Commission for Rural Communities, the Health Protection Agency, the Museums, Libraries and Archives Council, the National College for Leadership of Schools and Children's Services Limited, the National Patient Safety Agency, the National Policing Improvement Agency, the National Treatment Agency, the Regulator of Social Housing, the Sustainable Development Commission and the UK Film Council.

7.6 4 bodies listed in the 2010 Order are now included in the Official Statistics Order (Northern Ireland) 2012 (S.R. 2012 No. 2) and so do not appear in this Order. These are the Chief Constable of the Police Service of Northern Ireland, the Northern Ireland Policing Board, the Police Ombudsman for Northern Ireland and the Probation Board for Northern Ireland.

7.7 The remaining bodies omitted from the list in the 2010 Order have been removed for miscellaneous reasons: the Audit Commission for Local Authorities and the National Health Service in England and the Nuclear Decommissioning Authority have been removed because they no longer produce statistical data. The School Food Trust and the Design Council have changed their status and the National Consumer Council and the Commission for Architecture and the Built Environment have merged with other bodies and no longer exist as separate organisations.

7.8 Without this Order, there would be 5 public bodies producing what the Government considers to be important, national-level official statistics but over which the Statistics Board would have no control, or power to make assessments against its Code and which statistics would not achieve the recognition of the status of official statistics. Further, there would be 21 public bodies designated as producing official statistics where it is no longer appropriate for this to be the case for the reasons described above. This Order is needed to update the list of specified persons in order to assist the Board in fulfilling its duty to build and maintain trust in official statistics.

- ***Consolidation***

7.9 This Order revokes the 2010 Order and replaces it with an updated list of non-Crown bodies falling within the Statistics Board's remit.

7.10 An order under section 6(1)(b) and (2) of the Act may be made by any Minister of the Crown, but the Government thinks the most efficient use is made of Parliamentary time, and that the legislation is clearer and more accessible if, in general, a Cabinet Office Minister makes such an order on a regular basis, producing a consolidated list of bodies including those sponsored by other government departments.

8. Consultation outcome

8.1 As required by the Act, Statistics Board has been consulted on this Order. The formal consultation took place in February 2013. The Board has said, after the formal consultation, that it is content for the Government to proceed with its proposals.

8.2 Bodies that have been newly included in the Order have been consulted. That consultation has been carried out by the statistical Head of Profession (or the statistical team) in each relevant Government department contacting those bodies which are sponsored by that department. The bodies listed in the Order which were also listed in the 2010 Order were consulted at the time they were first added to the list and so have not necessarily been consulted again for the purposes of this Order.

9. Guidance

9.1 The Statistics Board published its Code of Practice for Official Statistics in January 2009[4]. Producers of official statistics – including those bodies specified in this Order – are expected to follow the Code as a matter of good practice. Producers of National Statistics (that is those official statistics which the Statistics Board designates as "National Statistics" under the Act) are required to follow the Code in full in relation to those statistics. It is the responsibility of the Board to maintain, update and enforce this Code.

[4] http://www.statisticsauthority.gov.uk/assessment/code-of-practice/index.html

9.2 The National Statistician, who is the Chief Executive of the Statistics Board, has published guidance for producers of official statistics on various aspects of the Code (for example on the use of administrative data in producing official statistics).

9.3 The Cabinet Office has produced guidance on the Pre-release Access to Official Statistics Order 2008 which has been distributed to statistical Heads of Profession for their use and for onward distribution to other producers of official statistics.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be negligible because, although the persons listed in the Order include a number of registered charities (including the British Film Institute which has been added to the list by this Order) designation as official statistics (as opposed to designation as "National Statistics" under the Act) places no compliance burden on those persons.

10.2 The impact on the public sector is expected to be negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

This instrument is intended to allow the Statistics Board to fulfil its duties, in particular with regard to improving public trust in official statistics. The Government expects to update the list of (non-Crown body) producers of official statistics by order annually or as required. In doing so the Government will take advice from the Board and will also consider comments on the scope of the Board's remit made by other bodies (for example comments made by Parliament as part of its scrutiny of the Board's activities).

13. Contact

Sarah Harriss at the Cabinet Office Tel: 020 7276 0439 or email: sarah.harriss@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.