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The Statistics and Registration Service Bill

Bill 8 of 2006-07

The *Statistics and Registration Service Bill* (Bill 8 of 2006-07) was introduced into the House of Commons on 21 November 2006 and the Second Reading debate is due to be held on 8 January 2007.

The Bill provides for the creation of a Statistics Board which will be the legal successor to the Office for National Statistics (ONS). The Board will have a statutory responsibility to ensure the comprehensiveness and quality of official statistics. ONS's current responsibilities, with the exception of various functions with respect to civil registration, will transfer to the new Statistics Board. The non-statutory Statistics Commission will also cease to exist. The new Board will operate at arms' length from Ministers as a Non-Ministerial Department.

The Bill will also regularise the employment position of registrars in England and Wales, by making them local authority employees, and thereby providing them with employment rights and protections.

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Summary of main points

Official statistics in the UK have a long history, dating back to the Domesday Book as the first attempt at producing a definitive record of land-holding and the population living on it. During the Middle Ages, more extensive records of church baptisms, marriages, and deaths, and judicial and administrative proceedings, were developed. Modern official statistics date back to the collection of data on imports and exports in the 17th Century, and the first Census of Population took place in 1801. The centralised collection of statistics relating to births and deaths began in 1837. The Central Statistical Office was created in 1941 and the Office for Population, Censuses and Surveys was established in 1970. The CSO and OPCS were merged in 1996 to form the Office for National Statistics, currently an Executive Agency reporting to HM Treasury.

The UK's statistical system has remained decentralised. The ONS is the UK's central statistical office, although a large proportion of official statistics continue to be produced by statisticians in the Government Statistical Service based in Government Departments and agencies, and in the Devolved Administrations.

A report published by the ONS in 2005 identified that less than one in five (17%) of those surveyed thought that official statistics were produced without any political interference, 59% perceived that the government used statistics dishonestly, and only 34% felt that government figures were accurate.

The Government published its proposals on *Independence for statistics* in March 2006, emphasising its determination "to ensure high standards of public trust in the integrity of official statistics". The consultation period lasted three months. The House of Commons Treasury Sub-Committee conducted an inquiry into the Government's proposals, and its report was published in July 2006.

The *Statistics and Registration Service Bill* (Bill 8 of 2006-07) was introduced into the House of Commons on 21 November 2006 and the Second Reading debate is due to be held on 8 January 2007. The Bill provides for the creation of a Statistics Board which will be the legal successor to the Office for National Statistics (ONS). The Statistics Board will have a statutory responsibility to ensure the quality and comprehensiveness of official statistics. The ONS's current responsibilities, with the exception of various functions with respect to civil registration, will transfer to the new Statistics Board. The non-statutory Statistics Commission will also cease to exist. The new Board will operate as a Non-Ministerial Department.

The governing body of the Statistics Board will be composed of a majority of non-executive members appointed by Ministers following consultation with the Chair of the new Board. The governing body of the Board will also include three executive members, of which one will be the National Statistician as the chief executive of the Statistics Board. The National Statistician and the Chair of the Statistics Board will be Crown appointments.

The Board will monitor and report on quality and comprehensiveness across all official statistics. As part of this, the Board will be responsible for preparing and publishing professional standards in a Code of Practice. The Board will assess, for approval as *National Statistics*, existing National Statistics against the Code. The Board will also, at the request of

the Minister responsible, assess additional official statistics for approval as National Statistics. The Board's responsibilities will cover the whole UK statistical system. The Board will also have powers to produce statistics and will undertake the statistical functions of the Registrar General, including the preparation and publication of the Census. The Bill leaves unchanged other aspects of the current system, including the Government Statistical Service.

The Bill will also regularise the employment position of registrars in England and Wales by making them local authority employees, and therefore providing them with employment rights and protections. Part 2 of the Bill covers the employment status of those holding offices established under the *Registration Service Act 1953*. The Bill provides that registration officers will be employees of the relevant local authority under their existing terms and conditions, and make various minor and consequential amendments to the *Registration Service Act 1953*. These provisions extend only to England and Wales.

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I Introduction

A. Background to the Bill

The *Statistics and Registration Service Bill* (Bill 8 of 2006-07) provides for the creation of a Statistics Board which will be the legal successor to the Office for National Statistics (ONS). The Board will have a statutory responsibility to ensure the quality and comprehensiveness of official statistics. The ONS's current responsibilities, with the exception of various functions with respect to civil registration, will transfer to the new Statistics Board. The non-statutory Statistics Commission will also cease to exist. The new Board will operate as a Non-Ministerial Department.

The Bill provides that the Statistics Board will be responsible for assessing official statistics against professional standards set out in a Code of Practice for National Statistics which the Board will be responsible for adopting and revising. Currently, National Statistics are those official statistics produced by the ONS, Government Departments and public agencies, and the Devolved Administrations that meet strict criteria set out in the *Framework for National Statistics* and the current *National Statistics Code of Practice*.¹ National Statistics should, for example, be fit for purpose, methodologically sound, politically independent, and transparently produced. They are reviewed every five years for quality.

The UK's statistical system has historically been decentralised. The Office for National Statistics is the UK's central statistical office, although a large proportion of official statistics are also produced by Government Departments and agencies other than the ONS, and by the Devolved Administrations. Statistical work in the ONS, Government Departments and agencies (including the Devolved Administrations) is undertaken by members of the Government Statistical Service, a professional grouping of 7,000 civil servants who are responsible for collecting, analysing, and disseminating official statistics. The Bill leaves the current decentralised system for the production of statistics unchanged.

The Office for National Statistics incorporates the General Register Office for England and Wales (GRO). The GRO is responsible for ensuring the registration of births, marriages and civil partnerships, and deaths in England and Wales, and for maintaining a central archive dating back to 1837. The Bill provides for local registration officers to become local government employees, thereby providing them with employment rights. The functions of the GRO will be transferred to elsewhere in Government. The ONS is also currently responsible for the creation and maintenance of the National Health Service Central Register (NHSCR) in England and Wales. ONS's responsibilities for the NHSCR will cease when the Statistics Board comes into existence.

¹ Office for National Statistics *Framework for National Statistics* (2000)
http://www.statistics.gov.uk/about/national_statistics/downloads/FrameDoc1.pdf
 Office for National Statistics *National Statistics Code of Practice* (2002)
http://www.statistics.gov.uk/about/national_statistics/cop/downloads/StatementRD.pdf
 Further information about the Code of Practice is available online
http://www.statistics.gov.uk/about/national_statistics/cop/default.asp

Internationally, the ONS is the UK's national statistical institute (NSI) and the Director of ONS and senior officials represent the UK in European Union and international statistical forums, and bilaterally with other NSIs around the world as required.

The National Statistician, who is also the Director of ONS and head of the Government Statistical Service, has overall responsibility for the professional integrity and statistical quality of all outputs designated as National Statistics, and for ensuring that they are produced in accordance with the standards set out in the National Statistics Code of Practice and its supporting protocols. Ministers are responsible for deciding the scope of National Statistics within their departments. Although all National Statistics are regarded as "official statistics" and produced by members of the decentralised Government Statistical Service (with the exception of National Statistics produced in Northern Ireland), not all official statistics are National Statistics. All statistics produced by the ONS are, however, designated as National Statistics.

Government Statistical Service products, 2006

Department / Administration / Agency	National Statistics	Non-National Statistics	Total	% NS
Cabinet Office	2	0	2	100%
Communities and Local Government	31	21	52	60%
Constitutional Affairs	5	4	9	56%
Culture, Media and Sport	3	2	5	60%
Defence Analytical Services Agency	22	4	26	85%
Education and Skills	63	1	64	98%
Environment, Food and Rural Affairs	66	0	66	100%
Forestry Commission	6	6	12	50%
Health	6	7	13	46%
Health and Safety Executive	8	14	22	36%
Higher Education Statistics Agency	3	0	3	100%
Home Office	27	7	34	79%
Information Centre for Health & Social Care	39	14	53	74%
International Development	1	2	3	33%
Learning and Skills Council	3	0	3	100%
Office for National Statistics	250	0	250	100%
Revenue and Customs	64	2	66	97%
Scottish Executive and GRO(S) ¹	186	38	224	83%
Student Loans Council	3	0	3	100%
Trade and Industry	11	21	32	34%
Transport	36	0	36	100%
Treasury	3	0	3	100%
Welsh Assembly	148	49	197	75%
Work and Pensions	42	1	43	98%
Total - Government Statistical Service	1,028	208	1,236	83%
NISRA ²	99	41	140	71%
Total	1,127	249	1,376	82%

Note: There are no reliable figures on the number of statistical 'products' that are produced by central government officials who are not members of the Government Statistical Service

"Products" are end-products (i.e. statistical outputs such as Statistical Press Releases, Publications, Databases, etc). This description does not include individual statistical tables (paper or electronic), or statistical inputs such as statistical surveys, administrative sources and the like

¹ General Register Office for Scotland

² Northern Ireland Statistics and Research Agency

Source: Data supplied by Private Office of the National Statistician, Office for National Statistics (November 2006)

There are currently 1,127 National Statistics “products” of the Government Statistical Service, representing 82% of all GSS statistical products.² ONS directly produces 250 of these statistical products, around one-fifth (22%) of all National Statistics, although the National Statistician has ultimate professional responsibility for ensuring that all GSS National Statistics are produced in accordance with the Code of Practice. There are around 250 statistical products of the GSS (and Northern Ireland Statistics and Research Agency) that are not currently accredited as National Statistics. The total number of official statistics, including administrative datasets, produced and maintained by Government Departments and public agencies, and the Devolved Administrations, is not possible to quantify. The Home Office recently estimated that approximately 12% of its 165 statistical outputs were accredited as National Statistics, and subject to the Code of Practice.³ Estimates for other departments are not currently available.

Since 1996, the Office for National Statistics has been an Executive Agency and Department reporting to HM Treasury. Ministerial responsibility for the ONS lies with the Financial Secretary to the Treasury, currently John Healey MP. Karen Dunnell, the Director of ONS, is Permanent Secretary and Accounting Officer of ONS. The Director of ONS is National Statistician, the Government’s chief statistical adviser, and professional head of National Statistics and the Government Statistical Service. Ms. Dunnell is also Registrar General for England and Wales and heads the General Register Office for England and Wales.⁴ The Director of ONS is accountable to the Chancellor of the Exchequer for the performance of the Office and routinely appears before the House of Commons Treasury Sub-Committee to account to Parliament for the work of her Department, and appears before other parliamentary committees as required.

ONS employs 4,300 staff in London, and at sites in Southport, Newport in South Wales, and Titchfield in Hampshire.⁵ ONS is currently relocating a number of its London-based staff to its other sites, in line with the Treasury’s commissioned report on *Public Sector Relocation* led by Sir Michael Lyons.⁶ There will be a reduction of 700 full time equivalent staff and the relocation of 600 posts away from London and the South East by March 2008, as part of a strategy to achieve a total of 850 relocations by March 2010. Beyond that, as part of the 2004 Spending Review and the *Independent Review of Public Sector Efficiency* led by Sir Peter Gershon, the ONS agreed a target to deliver efficiency gains rising to £25m per year by 2007-08.⁷ The ONS’s trade unions recently observed that:

ONS Management’s attempts to implement Lyons and Gershon recommendations have so far resulted in cuts in services and increasing pressures on statistical output quality. While we welcome your review’s objective of establishing a statistical system that secures “statistics of high quality”, we

² including statistical products produced by the Northern Ireland Statistics and Research Agency which is not formally part of the Government Statistical Service

³ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p 14

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmtreasy/1111/1111.pdf>

⁴ The post of Registrar General for England and Wales is a Crown appointment

⁵ Office for National Statistics *Spring 2006 Departmental Report* (May 2006) (Cm 6838)

http://www.statistics.gov.uk/downloads/theme_other/SpringDeptReport2006_v1.pdf

⁶ http://www.hm-treasury.gov.uk/consultations_and_legislation/lyons/consult_lyons_index.cfm#final

⁷ http://www.hm-treasury.gov.uk/media/B2C/11/efficiency_review120704.pdf

must emphasise that the effect of recent 'efficiency' initiatives at ONS is likely to undermine that laudable objective.⁸

1. Development of the proposals

On 28 November 2005, the Chancellor of the Exchequer announced that he intended to publish plans to make the Office for National Statistics independent of Government. The announcement was made to Parliament in an answer to a written parliamentary question from Paul Clark MP:

Paul Clark: To ask the Chancellor of the Exchequer if he will make a statement on the review of the Framework for National Statistics. [33324]

Mr. Gordon Brown: Having reviewed the Framework for National Statistics, we will publish plans by early in the New Year to legislate to make the Office for National Statistics independent of government, making the governance and publication of official statistics the responsibility of a wholly separate body at arms length from government and fully independent of it. We propose to legislate for:

- the creation of an independent Governing Board for the Office for National Statistics, with delegated responsibility for meeting an overall objective for the statistical system's integrity;
- the appointment of external members to the Board, drawn from leading experts in statistics and including men and women from academia and business; and
- a new accountability to Parliament through regular reporting by the Board to explain and to be questioned by the Treasury Select Committee on their performance.⁹

The Chancellor's announcement followed recommendations from the Statistics Commission, the Royal Statistical Society, and the Treasury Committee, all of which called for legislation to set out more clearly the specific responsibilities of Ministers and government statisticians in the production, analysis and dissemination of official statistics.¹⁰

The Government's proposals were published on Budget Day (22 March 2006) and the consultation period lasted 12 weeks, closing on 14 June.¹¹

The Government published its response to the consultation process on 15 November.¹²

⁸ ONS trade unions' response to HM Treasury *Independence for statistics: a consultation document* <http://www.hm-treasury.gov.uk/media/24F/4D/ONSDepartmentalTradeUnionsSide.pdf>

⁹ HC Deb 28 November 2005, c78w

¹⁰ Statistics Commission, *Legislation to build trust in statistics*, May 2004;

<http://www.statscom.org.uk/uploads/files/reports/LegislationToBuildTrust.pdf>

Royal Statistical Society, *A Vision for National Statistics*, September 2002 (revised 2005);

<http://www.rss.org.uk/pdf/A%20Vision%20for%20National%20Statistics.pdf>

House of Commons Treasury Committee, *National Statistics*, Second Report of Session 2000–01, 18 January 2001, HC 137

<http://www.publications.parliament.uk/pa/cm200001/cmselect/cmtreasy/137/13702.htm>

¹¹ HM Treasury, *Independence for statistics: the Government's proposals*, 22 March 2006 http://www.hm-treasury.gov.uk/media/1E1/25/bud06_ons_357.pdf

In developing its proposals to reinforce the independence, integrity and quality of official statistics, the Government considered four options:¹³

Option 1: No change – retention of the existing non-legislative Framework for National Statistics;

Option 2: Parliamentary model – centralisation of statistical production within a single body, located within Parliament;

Option 3: Strengthened Statistics Commission – placing the existing Statistics Commission on a statutory footing; and

Option 4: Statutory Board – legislating to create an independent Board with responsibility for meeting an overall objective of statistical quality and integrity.

Option 1 was rejected. The Government acknowledged that a recent survey into public confidence in official statistics found that “the statistical quality of official outputs [in the UK] was considered to be generally good and to rival the best in the world”, suggesting that the existing Framework for National Statistics could be retained with no additional costs being incurred. However, the Treasury recognised that there was an identifiable public perception of political interference in the production and dissemination of statistics. A number of leading commentators had called for the UK statistical system to be reformed by underpinning it in legislation, notably the Royal Statistical Society¹⁴, House of Commons Treasury Committee¹⁵, the Phillis Review of Government Communications¹⁶, and the Statistics Commission.¹⁷ Furthermore, the Government observed that:

...international comparison suggests that some elements of statistical architecture are fairly common. According to Mather (2004)¹⁸, more than 90 per cent of the 112 respondent countries to a United Nations report in March 2004 declared a general statistics law that provides the authority and rules under which the national statistical office operates. Maclean and Spencer (2002)¹⁹ argue that statistics “need the protection of a law which enshrines the independence of the service and defines key roles and responsibilities”.²⁰

In rejecting Option 1, the Government concluded that “the costs of retaining the existing Framework for National Statistics are that the potential benefits from building on the

¹² HM Treasury, *Independence for statistics: the Government response*, 15 November 2006
http://www.hm-treasury.gov.uk/media/EB1/CD/ons_government_response.pdf

¹³ HM Treasury, *Independence for statistics: A Regulatory Impact Assessment*, 22 November 2006, p. 5
http://www.hm-treasury.gov.uk/media/0B9/55/stats_ria_221106.pdf

¹⁴ Royal Statistical Society “Official Statistics: Counting with Confidence” *Journal of the Royal Statistical Society Series A (Statistics in Society)* 154(1) pp. 23-44 (1991), and *A Vision for National Statistics* (2005)

¹⁵ House of Commons Treasury Committee, *National Statistics*, 18 January 2001, HC 137

¹⁶ Phillis, R., *An Independent Review of Government Communications: Final Report*, 2004
http://www.cabinetoffice.gov.uk/publications/reports/communications_review/final_report.pdf

¹⁷ Statistics Commission *Legislation to build trust in statistics*, May 2004

¹⁸ Mather, G., “International Developments in Statistical Organisation” in Statistics Commission, *Legislation to build trust in statistics* (Annex 3), November 2004

¹⁹ Maclean, I. and Spencer, U. on behalf of Statistics Commission, *Statistics Legislation*, December 2002
http://www.statscom.org.uk/C_437.aspx

²⁰ HM Treasury, *Independence for statistics: A Regulatory Impact Assessment*, 22 November 2006, p. 6

current arrangements, including by underpinning the statistical system through legislation, would not be realised”.

Option 2 was rejected. This option provided for statistical production to be centralised within a single body, located within and directly funded by Parliament. Similar to the National Audit Office, staff of the statistics office would be directly employed as officers of Parliament rather than as civil servants. The Government acknowledged that this option “would provide clear accountability of the new body to Parliament” and would have no net regulatory impact on businesses or individuals. However, this option would require transition costs in order to transfer the statistics office to Parliament. There were a number of other reasons why this option was rejected:

- the proper role of Parliament is to hold the Government to account for what it does. As part of that role, it is right that the National Audit Office, which has a special role in ensuring government departments have achieved value for money in using the resources Parliament has voted for them, is located in Parliament. However, the production of statistics is an executive function; statistics are a public good, serving a wide range of users, and it is inappropriate to make statistical production a part of Parliament.
- the UK has a long history of decentralised statistical production and there are important strengths and benefits in these arrangements, including: keeping statisticians close to data suppliers and customers, giving them a better understanding of their data; ensuring good working links to policymakers, allowing them key insights into developments and needs; and maintaining professional statistical expertise across government. These benefits would be lost if all statistical activity was centralised in one office;
- staff would become officers of Parliament, rather than civil servants, as now. Loss of civil service status would put at risk the benefits from continued movement of professional staff within and across the statistical system, which maximises the sharing of knowledge and best practice across government statisticians, and the benefits of the decentralised nature of the UK system.²¹

Option 3 was also rejected. This option would strengthen the existing Statistics Commission by placing it on a statutory footing, giving the Commission responsibility for the enforcement of a new, statutory Code of Practice for statistics. The Commission would be separated from the production of statistics which would remain the responsibility of the ONS. The Government recognised that this option would “entrench independence in legislation” while retaining “the benefits of the UK’s decentralised system of statistical production”. It would also have “no net regulatory impact” on businesses or individuals. However, this option meant that it was necessary for statistics office to remain under the direct control of Ministers, and this would risk “an ongoing perception of ministerial interference in the production and dissemination of statistics”.²² This option might also create two competing centres of statistical authority and expertise – the Commission and the statistics office.

²¹ HM Treasury, *Independence for statistics: A Regulatory Impact Assessment*, 22 November 2006, p. 7

²² HM Treasury, *Independence for statistics: A Regulatory Impact Assessment*, 22 November 2006, p. 8

The Government concluded that a statutory independent Statistics Board, **Option 4**, would deliver the most benefits. The roles and responsibilities of the different “players” in the statistical system would be clearly defined and transparent, providing a mechanism for accountability. The creation of an independent Statistics Board as a Non-Ministerial Department meant that “ministers would no longer be directly responsible for the day-to-day operation of the statistical system”, therefore “removing the perception of political interference”. An independent Board structured around a majority of non-executive members appointed through open and fair competition was consistent, the Government contended, with “good corporate governance principles” and would encourage a “collective perspective on user needs and the public interest”. As a Non-Ministerial Department, ONS staff would remain civil servants, thereby enabling the “continued movement of professional staff within and across the statistical system”.²³

By providing “special funding arrangements outside the normal Spending Review process”, the Treasury concluded that this would reinforce the perception of independence from Ministers “while at the same time ensuring adequate safeguards to encourage efficiency, secure value for money and control public spending”. Giving the new Board the responsibility to assess and approve all National Statistics against a statutory Code of Practice would deliver “independent assessment of the quality and integrity of all National Statistics, wherever produced in government”. The assessment function would ensure that “the key indicators that Government, business and the wider public rely on to provide an accurate, up-to-date, comprehensive and meaningful description of the UK” are fit for purpose.

Finally, the Government supported this option because it provided for the retention of the current decentralised system of statistical production which would benefit statisticians by keeping them close to data suppliers and customers, “giving them a better understanding of their data”, and generally “maintaining professional statistical expertise across government”.

The Treasury concluded that the effect of this option in expenditure terms “will be small”. Although there were likely to be certain transition costs involved in establishing the new arrangements, and some ongoing costs to run the independent Board and assessment functions, “these are not expected to be large” and would be partly “offset by the winding-up of the Statistics Commission”. The Government recognised that the assessment process could place additional compliance burden on the public sector, particularly current or future producers of National Statistics. Although the Treasury was unable to quantify the cost of the Board’s assessment function, the Government expected to minimise or offset these costs by:

- Placing a statutory requirement on the Board to exercise its functions efficiently and cost-effectively, minimising the burdens it places on others, and having due regard to the burdens it places on statistical producers by the assessment process;

²³ HM Treasury, *Independence for statistics: A Regulatory Impact Assessment*, 22 November 2006, pp. 8-10

- A requirement that the Board must publish a risk-based statement of principles and procedures underlying the assessment process to ensure assessment concentrates on those statistical outputs that Government, business and the public rely on to provide an accurate and meaningful description of the UK economy and society; and
- Taking forward existing quality assurance processes that already exist in most Government Departments and agencies producing National Statistics.

2. House of Commons Treasury Committee inquiry

The Treasury Committee has responsibility for scrutinising the Office for National Statistics on behalf of the House of Commons. In July 2005, the Treasury Committee established a Sub-Committee to examine the work of the smaller departments accountable to the Treasury, including the ONS, and other matters referred to it by the main Committee. In April 2006, the Sub-Committee announced that it intended to undertake an inquiry into the Government's proposals for independence for statistics. The terms of reference for the inquiry were:

The Sub-Committee expects to examine the Government's proposals for:

- the Office for National Statistics;
- an independent governing board, the method of making appointments to it and provisions for its reporting and accountability to Parliament;
- ensuring the quality and integrity of National Statistics;
- winding up the Statistics Commission.

The Sub-Committee also expects to consider other issues, including:

- the definition of National Statistics, and the status of other official statistics;
- the apparently low levels of public trust in official statistics;
- the role of statisticians working outside the Office for National Statistics, in central government and the devolved administrations;
- any lessons to be learnt from other countries' legislative frameworks for independence for statistics.²⁴

The Sub-Committee received written memoranda from a number of interested parties, and took oral evidence from a range of expert witnesses including Simon Briscoe, Statistics Editor of the *Financial Times*; Ruth Lea (Centre for Policy Studies); Alison Macfarlane (City University); Professor Tim Holt, the President of the Royal Statistical Society; the Statistics User Forum; Dr. Ivan Fellegi, the Chief Statistician of Canada; the Chair and Chief Executive of the Statistics Commission; the Chief Statistician of the Scottish Executive; the Chief Executive of the NHS Information Centre for Health and Social Care; Karen Dunnell, the National Statistician, and senior ONS officials; Lord Moser, Director of the Central Statistical Office between 1967 and 1978; and John Healey MP, Financial Secretary to the Treasury.

²⁴ House of Commons Treasury Committee *Press Notice 36* (27 April 2006)
http://www.parliament.uk/parliamentary_committees/treasury_committee/tc270406_36.cfm

The Sub-Committee published its report *Independence for statistics: Tenth Report of Session 2005-06* on 26 July 2006.²⁵ On publication of the report, the Sub-Committee called on the Government “to extend the scope of the proposed legislation on independence for statistics, or risk missing a ‘once-in-a-generation opportunity’ to improve public confidence in official statistics”. The Chairman of the Sub-Committee, Michael Fallon MP, observed that, while the Government’s proposals were “a welcome step in the right direction, more radical reform was needed in order to make government statistics demonstrably independent”. The Sub-Committee further warned that by “allowing Ministers to retain control over such a significant number of datasets could damage the perceived independence of the statistics system”. The separation between the National Statistician’s role in the executive delivery of statistics and the governing board’s oversight of the statistical system as a whole needed to be “clearer”. The Sub-Committee also called for a significant reduction in pre-release access to statistics. Mr Fallon concluded:

The Government mustn’t miss this opportunity to ensure that official statistics are not only independent, but seen to be independent. Public confidence is the yardstick by which the success of the proposed legislation will ultimately be measured.²⁶

The Government published its response to the Sub-Committee’s report on 16 October 2006.²⁷

Proposals for independence

The Government’s key proposals on independence for statistics include:

- providing for independence of official statistics through legislation;
- introducing direct reporting and accountability of a new Statistics Board to Parliament, rather than through Ministers;
- placing a statutory responsibility on the Board to assess and approve all National Statistics against a statutory Code of Practice;
- making key appointments to the Board through open and fair competition;
- removing the Statistics Board and, within it, the executive office (as the successor to the Office for National Statistics), from Ministerial control by establishing it as a Non-Ministerial Department with special funding arrangements outside the normal Spending Review process; and
- retaining the current decentralised system of statistical production across Government Departments and agencies, and the Devolved Administrations.

²⁵ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmtreasy/1111/1111.pdf>

²⁶ House of Commons Treasury Committee *Press Notice 55* (26 July 2006)

http://www.parliament.uk/parliamentary_committees/treasury_committee/tcpn260706.cfm

²⁷ House of Commons Treasury Committee *Independence for statistics: Government Response to the Committee’s Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006, HC 1604, <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmtreasy/1604/1604.pdf>

The *Statistics and Registration Service Bill* (Bill 8 of 2006-07) was introduced into the House of Commons on 21 November 2006 and the **Second Reading** debate is scheduled for **8 January 2007**.

The Bill provides for the creation of a new body, the Statistics Board, with statutory responsibility for ensuring the “quality” and “comprehensiveness” of official statistics, and “good practice”.²⁸ The Board will be a Non-Ministerial Department, acting at arms’ length from Government Ministers. The Board will be composed of a majority of non-executive members appointed by Ministers following consultation with the Chair of the new Board.

The Board will monitor and report on quality and comprehensiveness across all official statistics. As part of this, the Board will be responsible for preparing and publishing professional standards in a Code of Practice. The Board will assess, for approval as National Statistics, existing National Statistics against the Code. The Board will also, at the request of the Minister responsible, assess additional official statistics for approval as National Statistics. The Board’s responsibilities will cover the whole UK statistical system.

The Board will also have powers to produce statistics and will undertake the statistical functions of the Registrar General, including the preparation and publication of the Census.

The Bill leaves unchanged other aspects of the current system, including the Government Statistical Service (GSS) and Heads of Profession for statistics (HoPs). Further information on the work of the GSS and HoPs is provided in section B below.

3. Summary of the Bill and Territorial Coverage

The Bill has 73 clauses and four schedules. The Bill extends to each constituent part of the United Kingdom, with the exception of clause 59 (evidence) and Part 2 which extends to England and Wales only. The Bill will require a Legislative Consent Motion (formerly a “Sewel Motion”) in the Scottish Parliament as it covers topics that have been devolved. A Legislative Consent Memorandum was lodged on 5 December 2006 and the explanatory memorandum is available online.²⁹

The Bill contains three Parts. **Part 1** (clauses 1 to 64) deals with the establishment and powers of the Statistics Board, its members and employees. **Part 2** (clauses 65 to 69) deals with the Registration Service, the establishment of the Registrar General as a corporation sole, and the employment status of registrars and other registration officials. **Part 3** (clauses 70 to 73) deals with general provisions including enactments to be repealed by virtue of this legislation, commencement, and territorial extent.

²⁸ *Statistics and Registration Service Bill* (Bill 8 of 2006-07), Explanatory Notes
<http://www.publications.parliament.uk/pa/cm200607/cmbills/008/en/07008x--.htm>

²⁹ <http://www.scottish.parliament.uk/business/legConMem/pdf/StatisticsLCM.pdf>

The Bill contains four Schedules which outline repeals of, and consequential amendments to, enactments necessary to bring into force the provisions of Parts 1 and 2 of the Bill.

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 Chair, and *no more* than three executive members, including the National Statistician.

Clause 6 defines “official statistics” as statistics produced by the Statistics Board, Government Departments and Executive Agencies, the Devolved Administrations in Scotland, Wales, and Northern Ireland, or other persons acting on behalf of the Crown. This clause also makes provision for Ministers to add to the coverage of official statistics by introducing the necessary secondary legislation subject to the appropriate parliamentary scrutiny. Once added to coverage, statistics will be treated as official statistics for the purposes of the Act and would be subject to monitoring by the Statistics Board, or would be eligible for assessment as National Statistics. The Statistics Board will be required to publish a list of those statistics added to the coverage of official statistics at least once every financial year, although clause 6 does not specify that the Board would be required to publish a comprehensive list of *all* official statistics, whether National Statistics or not.

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 decennial 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.

Clauses 52 to 61 outline consequential and miscellaneous provisions.

Clause 62 sets out the parliamentary procedure to be followed when secondary legislation is made under different provisions of the Bill.

Clause 63 sets out the definitions of Scottish, Welsh and Northern Ireland devolved statistics in light of the provisions of the *Scotland Act 1998*, *Government of Wales Act*

2006 and Northern Ireland Act 1998. **Clause 64** defines certain terms used in the Bill, for example “Minister of the Crown”, “person responsible”, and “public authority”.

Part 2

Clause 65 establishes the Registrar General for England and Wales as a corporation sole. **Clauses 66 to 69** regularise the employment position of registrars in England and Wales, by making them local authority employees, and thereby providing them with employment rights and protections.

Part 3

Clauses 70 to 73 contain general provisions relating to repeals of enactments, commencement, and territorial extent.

4. Delegated Powers

The Bill contains 11 provisions for delegated powers, of which nine will be subject to the affirmative procedure.³⁰

The affirmative procedure is less common than the negative procedure, currently representing about 10% of delegated legislation subject to parliamentary scrutiny, but “provides more stringent parliamentary control since the instrument must receive Parliament's approval before it can come into force or to remain in force”.³¹ It is rare for draft Orders subject to the affirmative procedure not to be approved. The last occasion on which a draft Order subject to the affirmative procedure was not approved by the House of Commons was in November 1969 when the House disagreed to motions approving draft Orders specifying revisions to parliamentary constituency boundaries in England, Wales, Scotland and Northern Ireland.³² The House of Lords disagreed to an affirmative procedure Order more recently, in February 2000, when the House of Lords voted against approving the *Draft Greater London Authority (Election Expenses) Order 2000*.³³

The nine clauses of the Bill providing for delegated powers subject to the affirmative procedure are:

Clause 6 - Power to notify official statistics beyond those produced by central government. This delegated power allows Ministers to make orders to notify statistics as official statistics beyond those produced by central government.

³⁰ House of Lords Delegated Powers and Regulatory Reform Committee *Memorandum from HM Treasury*, November 2006

http://www.hm-treasury.gov.uk/media/0FC/26/stats_delegatedpowersmemo221106.pdf

³¹ For further information regarding delegated legislation and the affirmative and negative procedures, see House of Commons Information Office Factsheet *Statutory Instruments*

<http://www.parliament.uk/documents/upload/L07.pdf>

³² *Draft Parliamentary Constituencies (England) Order 1969*, *Draft Parliamentary Constituencies (Wales) Order 1969*, *the Draft Parliamentary Constituencies (Scotland) Order 1969*, and *Draft Parliamentary Constituencies (Northern Ireland) Order 1969*

³³ House of Lords, *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 2005, paras 8.02-8.06, <http://www.parliament.the-stationery-office.co.uk/pa/ld/ldcomp/compos.pdf>

Clause 11 - Power to set out rules and principles to govern pre-release access to statistics. This delegated power allows the Treasury and, in the case of wholly devolved statistics, the Devolved Administrations, to set out rules and principles to govern the conditions under which Ministers and others may receive pre-release access to official statistics.

Clause 44 - Power to authorise disclosure to the Board. This delegated power allows the Treasury to make regulations authorising the disclosure of information from a public authority to the Board.

Clauses 45 and 46 - Power to authorise disclosure to the Board: Scotland and Northern Ireland. These delegated powers allow Scottish Ministers and Northern Ireland departments to make regulations authorising the disclosure of information from Scottish and Northern Ireland public authorities to the Board.

Clause 47 - Power to authorise use of information by the Board. This delegated power allows the Treasury to make regulations authorising the Board to use information received by the Board where the Board's use of information is restricted.

Clauses 48 - Power to authorise disclosure by the Board. This delegated power allows the Treasury to make regulations authorising the disclosure of information by the Board to a public authority.

Clauses 49 and 50 - Power to authorise disclosure by the Board: Scotland and Northern Ireland. These delegated powers allow Scottish Ministers and Northern Ireland departments to make regulations authorising the disclosure of information by the Board to a Scottish or Northern Ireland public authority.

The Government have concluded that no parliamentary scrutiny is required in respect of the power to delegate functions relating to the production of statistics (clause 22) or the power to bring the Act into force by a Commencement Order made by the Treasury (clause 71).

B. The UK statistical system

1. History of UK official statistics

UK official statistics has a long history. The Domesday Book from 1066 was the first attempt at producing a definitive record of both the extent of land-holding and the population living on it. Throughout the Middle Ages there were various further attempts at constructing a "Prince's mirror", intended to show the King "the reflection of his grandeur in the form of his kingdom".³⁴ In the 16th Century, greater attention was paid to the statistical process, with more extensive written records of church baptisms, marriages, and burials, as well as judicial and administrative proceedings. Such record-keeping became compulsory in England in 1538. During the 17th Century more advanced methods for processing and calculating data were devised. William Petty, who published his studies of life expectancy in 1661, was later described by Michael Cullen as,

³⁴ Briscoe, S., *Britain in Numbers*, Politico's, 2005, p. 59

...the reformer who saw the collection of facts as indispensable preliminary to practical and effective reform. The facts he chose to collect, as with later statisticians, were designed to demonstrate the necessity and desirability solely of those reforms which he desired.³⁵

However, there continued to be opposition to the collection of official statistics. In 1753, a proposal to undertake a census of population was publicly denounced by the Whig party as ruining the last freedoms of the English people. Even after the more routinised collection of official statistics, governments did not necessarily wish them to be made public. For example, data collected as part of a confidential parliamentary inquiry into the employment of children in mines in 1840 were only made public after the report was leaked. Equally, in 1929, the publication of the first set of national accounts was withheld after the then Chancellor of the Exchequer concluded that they would damage the government since the data showed a declining share of national income going to the working classes.³⁶

Certainly the direct lineage of modern official statistics dates back to the collection of data on imports and exports in the 17th Century. The first census of population took place in 1801 and the routine central registration of births and deaths began in 1837, taking over from the church registers. Until the Second World War, the statistical system remained largely decentralised, with each government department maintaining its own statistical unit.

In 1941, the Central Statistical Office was created as part of the Cabinet Office, primarily to ensure greater coherence in the collection and production of official statistics. The Business Statistics Office and the Office for Population Censuses and Surveys were established in 1969 and 1970 respectively, and these three organisations collectively gave rise to the Government Statistical Service whose modern-day role is to improve the management of government statistics and to develop “a cadre of professional statisticians across government”.³⁷ The Business Statistics Office transferred to the CSO in 1989, and in 1991 the CSO became an Executive Agency of the Treasury. Residual responsibility for the production of employment statistics was transferred from the Department of Employment to the CSO in 1995. The Office for National Statistics was created in 1996 through the merger of the CSO and OPCS.

During the 1980s, the recommendations of the review undertaken by Derek Rayner were implemented, resulting in a reduction of statistical administration costs and staff. “The Rayner Doctrine”, as it became known, stated that the objective of the Government’s statistical service should be that:

³⁵ Cook, L., *Some thoughts on official statistics in public life in Britain*, Vice-Chancellor’s Annual Lecture, City University, 2005

http://www.city.ac.uk/whatson/dps/Transcript%2003112004_1%20-%20Len%20Cook.pdf

³⁶ Briscoe, S., *Britain in Numbers*, Politicos, 1995, p. 60

³⁷ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 7

Information should not be collected primarily for publication. It should be collected primarily because the Government needs it for its own business.³⁸

A subsequent Treasury investigation led by Stephen Pickford resulted in the expansion of the Central Statistical Office, and a sharper focus on the need for statistical quality to meet customer needs.³⁹ In 1995, the CSO published its *Official Statistics Code of Practice* which set out the key principles and practices for statistical work, in particular the need for impartiality, consultation, and transparency.

In 1995, the then Shadow Home Secretary, Jack Straw MP, made a speech to the Royal Statistical Society in which he outlined the Labour Party's vision for a future independent national statistical service. Mr Straw concluded:

...the [unemployment] claimant count...is now simply not trusted as a proxy for a proper measure of unemployment, and for good reason...The lack of data on key aspects of the NHS is wholly unacceptable. No figures, for example, are available of the number of hospitals closed....If ever there were a case made for a National Statistical Service independent of Ministers, it is the NHS as much as the current reputation of the claimant count...Democracy is about conceding power to those with whom you disagree, not those with whom you agree; and about ensuring that every citizen has a similar access to the information on which decisions are made, and governments are judged. In a modern democracy, the system of official statistics should be a dignified part of the constitution. I believe that your Society's proposals, and ours, will help secure that end.⁴⁰

The Labour Party's 1997 election manifesto pledged to establish an "independent national statistical service".⁴¹ In 1998, the new Labour Government launched a consultation exercise over the future of the UK's statistical system.⁴² The Government's proposals were set out in a White Paper *Building Trust in Statistics*, published in 1999, which recommended the preparation of a framework document.⁴³ The non-statutory *Framework for National Statistics* was introduced in 2000, resulting in:

- the creation of the post of **National Statistician** as the Government's chief statistical adviser (and head of the Government Statistical Service). Under the Framework, the post holder is granted operational independence from Ministers, and is both the professional Head of National Statistics and the Director of the ONS. The National Statistician has responsibility for the

³⁸ *Rayner Report on the Office for Population Censuses and Surveys* (1981) (Cmnd 8236)

³⁹ *Government Economic Statistics: A Scrutiny Report* (The Pickford Review) (1989)

⁴⁰ Speech by Jack Straw MP, Shadow Home Secretary, to the Royal Statistical Society (25 April 1995)
<http://www.rss.org.uk/pdf/Address%20to%20RSS%20by%20Jack%20Straw%201995.pdf>

⁴¹ Labour Party *New Labour: Because Britain deserves better* (1997)

<http://www.labour-party.org.uk/manifestos/1997/1997-labour-manifesto.shtml>

⁴² HM Treasury *Statistics: A Matter of Trust*, 1998 (Cm 3882), and Office for National Statistics *Statistics: A Matter of Trust: Report on the Consultation Exercise*, 1998

<http://www.archive.official-documents.co.uk/document/ons/govstat/report.htm>

http://www.statistics.gov.uk/about/national_statistics/downloads/GreenPaperSummaryofResponses.pdf

⁴³ HM Treasury *Building Trust in Statistics*, 1999 (Cm 4412)

http://www.statistics.gov.uk/about/national_statistics/documentation.asp

professional statistical quality of all outputs comprising National Statistics⁴⁴ and for ensuring that all outputs are produced in accordance with the standards set out in the National Statistics Code of Practice. The National Statistician is appointed by, and is accountable to, the Chancellor of the Exchequer (as Minister for National Statistics⁴⁵) for the performance of National Statistics and, with departmental Heads of Profession for Statistics, for the discharge of annual work programmes approved by Ministers;

- the creation of an independent **Statistics Commission**, to advise on quality assurance and integrity – including in areas of widespread concern – and priority setting for National Statistics.⁴⁶ Independent of both Ministers and producers of National Statistics, the Commission has its own budget and is able to determine its own activities. The Commission normally comprises eight Commissioners, supported by a Chief Executive and a secretariat of around ten staff. On the Framework’s introduction, the Commission was explicitly tasked to “review the need for statistical legislation after two years and ... keep the legislative framework under review thereafter”; and
- the introduction of the concept of ‘**National Statistics**’, aimed at providing an accurate, up-to-date, comprehensive and meaningful description of the UK economy and society, underpinned by professional standards as set out in a new Code of Practice. The Code – which draws on the United Nations’ Fundamental Principles for Official Statistics⁴⁷ – is a guide for all public sector statistical work, and applies not only to outputs from the ONS, but also to all those National Statistics produced elsewhere. Ministers are responsible for deciding the scope of National Statistics within their departments, and for ensuring that departmental Heads of Profession for statistics have the authority to maintain and demonstrate the integrity of such statistics in accordance with the Code. The National Statistician is responsible for the maintenance of the Code and its interpretation. The Code is supported by 12 protocols, which set out the specific responsibilities of data producers in a range of areas, for example in relation to Release Practices and Data Access and Confidentiality.^{48, 49}

⁴⁴ The governance arrangements for the Retail Prices Index (RPI) are an exception – the Chancellor of the Exchequer, as Minister for National Statistics, is formally responsible for scope and definition, with the National Statistician advising only on methodology.

⁴⁵ Under devolution arrangements, Ministerial responsibility for the coordination of National Statistics is shared with the Minister for Finance in the Scottish Executive, the Finance Secretary in the National Assembly for Wales, and the Minister for the Department of Finance and Personnel in Northern Ireland.

⁴⁶ The *Framework for National Statistics* (2000) requires the Statistics Commission to “comment on the application of the National Statistics Code of Practice”, “advise Ministers of areas of widespread concern about the quality of official statistics”, and empowers the Commission to “comment on the quality assurance processes of National Statistics, as well as being able to carry out spot checks on departmental or other audits of National Statistics, to advise the National Statistician of any areas of concern that merit review and if necessary to carry out or commission its own audits”.

⁴⁷ The UN *Fundamental Principles for Official Statistics* were adopted in 1994 to inform the organisation, collection and promulgation of official statistics across all UN members. See United Nations Economic and Social Council *UN Fundamental Principles of Official Statistics: Report of the Special Session of the Statistical Commission* (New York, 11-15 April 1994) E/1994/29
<http://unstats.un.org/unsd/methods/statorg/FP-English.htm>

⁴⁸ The 12 protocols cover: Release Practices; Consultation Arrangements between the National Statistician and UK Government Ministers; Professional Competence; Customer Service and User Consultation; Data Presentation, Dissemination and Pricing; Statistical Integration; Data Management, Documentation and Presentation; Managing Respondent Load; Quality Management; Revisions; Data Access and Confidentiality; and Data Matching
http://www.statistics.gov.uk/about/national_statistics/cop/protocols_published.asp.

⁴⁹ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, pp. 8-9

Three key features of the UK statistical system remained unchanged with the introduction of the Framework for National Statistics. The existence of the Office for National Statistics as an Executive Agency of the Treasury continued, in addition to Heads of Profession for statistics in Government Departments and agencies, and the professional grouping of statisticians in the Government Statistical Service.

In 2001, following the setting up of the Devolved Administrations and legislatures, a *Concordat on Statistics* was agreed, forming part of the formal *Memorandum of Understanding* between the UK Government and the Devolved Administrations. The Concordat set out the mechanisms for co-operation on all matters in relation to statistics.⁵⁰

2. Office for National Statistics

The present-day Office for National Statistics includes four statistical directorates that are responsible for the production, analysis and dissemination of key ONS statistics. The **Macro-Economics and Labour Market Directorate** is responsible for statistical outputs in the following areas:

- National Accounts and the balance of payments;
- monthly activity indicators;
- public sector finances;
- labour market statistics;
- implementation of the Allsopp programme for the improvement of regional statistics and structural infrastructure;
- regional gross value added (GVA), investment and household income.⁵¹

The Government's performance against its two fiscal rules, the Golden Rule and Sustainable Investment Rule, are measured using statistics produced by this directorate. The inflation target, which the Treasury requires the Bank of England's Monetary Policy Committee to achieve, is also based on ONS statistics. The Treasury and Bank use the full range of ONS economic statistics in order to discharge their fiscal and monetary policy responsibilities.

The directorate's Labour Market Division is responsible for delivering a wide range of labour market statistical outputs, analytical assessments and expert advice. The division produces a number of key outputs, the highest profile of which are the *Labour Market Statistics* monthly first releases for the UK, constituent countries and regions, alongside associated web-based outputs and briefing material.⁵² The division published *Labour Market Trends* until December 2006, now replaced by a new monthly journal, the *Economic and Labour Market Review* which will continue to publish labour market data and relevant articles. Other regular outputs include biennial analyses of work and worklessness among households, public sector employment annual analyses, and

⁵⁰ http://www.statistics.gov.uk/about/national_statistics/downloads/concordat_on_statistics.pdf

⁵¹ Gross value added (GVA) is the difference between output and intermediate consumption for any given sector/industry, which is the difference between the value of goods and services produced, and the cost of raw materials and other inputs which are used in production.

⁵² <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=1944>

quarterly local area labour market statistical indicators. The division is also responsible for the web-based *Nomis* electronic dissemination service which provides local area labour market profiles.⁵³ Other high priority outputs include local area-modelled unemployment estimates, the implementation of the recommendations of the recent *Employment and Jobs Quality Review*, the development of modernised systems for the production of labour market statistical outputs, and the *Labour Market Review* and complimentary on-line user guide to labour market statistics.⁵⁴

The **Social and Public Services Analysis and Reporting Directorate** is responsible for a range of socio-economic statistical outputs and analyses. The directorate comprises three divisions:

- The **UK Centre for the Measurement of Government Activity** (UKCeMGA) was established by the National Statistician to develop the recommendations of the *Atkinson Review of Measurement of Government Output and Productivity for the National Accounts*, published in January 2005, and to make relevant information available about the output and productivity of UK public services.⁵⁵ UKCeMGA provides information and research on spending on public services by analysing the relationship between inputs and outputs at an aggregate level. This work also leads to improvements in the estimates of government output which contribute to overall estimates of GDP growth. The key objectives of the work programme of the UKCeMGA are:
 - a) To ensure that the measures of key government services in the UK National Accounts are fit for purpose;
 - b) To develop with Government Departments, Devolved Administrations and other stakeholders better measures of output and productivity;
 - c) To conduct rolling reviews of methods of measurement of different government services, to ensure methodology keeps pace with changing circumstances and modes of delivery; and
 - d) To publish a regular series of authoritative analyses of government productivity, describing the output and productivity performance of the main government services.
- The **Social and Health Reporting and Analysis Division** produces a number of flagship statistical publications, for example *Health Statistics Quarterly*⁵⁶, and carries out cross-cutting research and analysis in areas such as income, ethnicity and identity, health expectancy, mortality and morbidity, child health, and socio-economic inequalities. It is responsible for major strands of the Government's longitudinal data strategy, including the management of the ONS Longitudinal Study, Millennium Cohort Study, and English Longitudinal Study of Ageing.

⁵³ <http://www.nomisweb.co.uk/>

⁵⁴ <http://www.statistics.gov.uk/labourmarketreview/>
<http://www.statistics.gov.uk/about/data/guides/LabourMarket/default.asp>

⁵⁵ <http://www.statistics.gov.uk/about/data/methodology/specific/PublicSector/Atkinson/default.asp>

⁵⁶ <http://www.statistics.gov.uk/statbase/Product.asp?vlnk=6725>

- The work of the **Social and Economic Micro-Analysis and Reporting Division** centres on productivity, earnings analysis (particularly low pay), and health analysis and inequalities. The division includes a Pensions Analysis Unit to improve the quality of pensions statistics, improve wider knowledge and expertise of pensions, and to develop pensions-related analysis. The division is also responsible for the ONS flagship publication, *Social Trends*.⁵⁷ It is multi-disciplinary, with economists, statisticians, social researchers and health analysts.

The **Census, Demography and Regional Statistics Directorate** produces statistical analysis based on a vast array of population, regional and local statistics. The key outputs of the directorate include population and migration statistics, *Regional Trends*⁵⁸, fertility, and the online Neighbourhood Statistics Service.⁵⁹ The directorate includes the National Statistics Centre for Demography. The Centre was formed in January 2006 when responsibility for national population projections transferred from the Government Actuary's Department to the Office for National Statistics. This transfer was recommended by the *Review of the Actuarial Profession* conducted by Sir Derek Morris, published in March 2005.⁶⁰ Population statistics are a devolved responsibility in Scotland and Northern Ireland, and the Centre works in partnership with the Devolved Administrations to deliver UK-wide population statistics and a demographic analysis work programme. The Centre provides statistical and analytical expertise on all aspects of demography.

The directorate is also responsible for planning for the 2011 Census. A census of population has been carried out in Great Britain every 10 years from 1801 to 2001, with the exception of 1941. Since 1926, a separate census has been conducted in Northern Ireland and, since 1951 Northern Ireland censuses have been carried out decennially in the same years as the censuses in the rest of the United Kingdom.

The **Surveys and Administrative Sources Directorate** brings together the remaining parts of the ONS involved in survey-taking and reporting. The directorate has responsibility for administrative sources such as ONS-owned systems providing data on the registration of births, marriages and deaths.

The directorate produces statistical outputs from surveys and administrative statistics to agreed timetables, quality standards, and cost. It is also responsible for a programme of development work on existing surveys arising from quality reviews, new EU regulations, or enhancements agreed with ONS customers. Requirements for efficiency, standardisation and systematisation mean that many parts of the directorate closely monitor ways of reforming existing statistical processes. The directorate also has responsibility for developing and maintaining the statistical infrastructure for the ONS, and aspects of the policy and quality standards to which ONS seeks to adhere as an internationally-recognised statistical office.

⁵⁷ <http://www.statistics.gov.uk/statbase/Product.asp?vlnk=5748>

⁵⁸ <http://www.statistics.gov.uk/statbase/Product.asp?vlnk=836>

⁵⁹ <http://neighbourhood.statistics.gov.uk/>

⁶⁰ http://www.hm-treasury.gov.uk/independent_reviews/morris_review/review_morris_index.cfm

The statistical directorates of the Office for National Statistics are supported by a National Statistics and Policy Directorate, Methodology Directorate, Finance and Planning Directorate, and a Corporate Services Directorate (which also includes Registration Services and the General Register Office for England and Wales).

The General Register Office for England and Wales works in partnership with local authorities to oversee a local registration service to the public. The GRO also offers support and guidance to local registration officers. The remit of the GRO extends over a range of services relating to civil marriage preparation, celebration and registration of marriage, and the registration of births, deaths, stillbirths, adoptions, and civil partnerships.

As well as being a legal requirement, the registration of key life events enables individuals to obtain certified copies of registration entries in support of applications for vital documentation such as passports and driving licences, and for claiming benefits and pensions. Local registrars are charged with keeping the GRO updated with details of all life events registered at a district level so the GRO can maintain central national records. These records, in turn, provide an important source for statistical analysis about the population of England and Wales.⁶¹

3. Government Statistical Service and Heads of Profession for statistics

There is a Head of Profession for statistics (HoPs) in each Government Department that produces National Statistics or otherwise use official statistics widely. Under the Framework for National Statistics, HoPs are responsible for the professional integrity of the National Statistics produced by their department. They are appointed by the Permanent Secretary of the relevant department, in consultation with the National Statistician. HoPs are accountable to their departmental Ministers for the relevant parts of statistical work programmes, and to the National Statistician for the statistical quality of the National Statistics they produce.

The GSS is a professional grouping of approximately 7,000 civil servants who collect, analyse, and disseminate official statistics.⁶² They work in the ONS, in other Government Departments and agencies, and in the Devolved Administrations in Scotland and Wales.⁶³ The National Statistician is head of the GSS and is responsible for maintaining central personnel and staff development functions in order to ensure the availability of skilled professional statisticians across government, as well as promoting the application and adherence to the National Statistics Code of Practice for all statistical work within government.

⁶¹ Information on the work of statistical directorates of the Office for National Statistics supplied via correspondence with the Private Office to the National Statistician (November 2006)

⁶² Of which around 1,000 members comprise the 'Statistician Group' within Government of statisticians with relevant qualifications.

⁶³ Although the equivalent staff in Northern Ireland are not formally part of the GSS, they work very closely with the GSS and share a common professional culture.

4. Statistics Commission

The Statistics Commission is an independent public body. It was set up in June 2000 with the aim of ensuring that official statistics are trustworthy and responsive to public needs, to give independent, reliable and relevant advice, and to provide an additional safeguard on the quality and integrity of official statistics. The Commission operates openly and independently, with all its papers normally available publicly on its website.⁶⁴ Some of the major reports recently published by the Commission have included:

- *Legislation to build trust in statistics* (2004)⁶⁵ which recommended that “ministers take steps to introduce new legislation...to safeguard and reinforce trust in statistical work in government” by placing the Statistics Commission on a statutory footing and giving it an explicit remit to promote compliance with a new Code of Practice drawn up by the National Statistician”;
- *Official Statistics: Perceptions and Trust* (2005)⁶⁶ which reviewed opinion evidence on levels of public trust in official statistics and concluded that there “needed to be greater distance between the producers of statistics and government, possibly with an independent regulatory body which would monitor the use of official statistics”;
- *Census and population estimates* (2005)⁶⁷ which included recommendations on enumeration in hard-to-count areas following the difficulties experienced in Westminster and elsewhere during the 2001 Census.
- *Crime Statistics: User Perspectives* (2006) which recommended a structural separation between Home Office policy functions, and the compilation and publication of crime statistics.⁶⁸

As well as carrying out research and publishing reports, the Commission investigates and responds to specific public concerns about official statistics, and works with Government Departments to improve understanding of the needs of users of statistics, and the governance of statistical services. These are routinely detailed in the Annual Reports of the Commission.⁶⁹

In their latest Annual Report, the Statistics Commission detailed its latest investigations of abuses and misrepresentations of the National Statistics Code of Practice carried out during the previous year. The Commission expressed its concern at “the amount of pre-release access given within policy departments” following additional pre-release access given to the *Housing Benefit Review* by officials at the Department for Work and Pensions. The Commission also found that the Department for Trade and Industry had breached the National Statistics Code of Practice by placing its publication *Energy Statistics* inadvertently on the DTI website in advance of the pre-announced release time. The Student Loans Company also breached the Code by putting its statistical first

⁶⁴ <http://www.statscom.org.uk/>

⁶⁵ <http://www.statscom.org.uk/uploads/files/reports/LegislationToBuildTrust.pdf>

⁶⁶ <http://www.statscom.org.uk/uploads/files/reports/024%20-%20Perceptions%20Trust.pdf>

⁶⁷ <http://www.statscom.org.uk/uploads/files/reports/Census%20Report%20Final%2022.pdf>

⁶⁸ http://www.statscom.org.uk/uploads/files/reports/Crime_Statistics_Review-final.pdf

⁶⁹ http://www.statscom.org.uk/S_31.aspx

release, *Student Loans for Higher Education in the UK*, on its website a day earlier than the stated release date. Finally, the Commission

...was approached by journalists seeking comments on a Home Office first release of crime statistics the day before official publication...It became evident that an embargoed press notice containing the figures alongside ministerial comment had been circulated by the Home Office to the media the day before publication. As well as expressing concern about the Home Office's interpretation of the Code, the Commission questioned the efficacy of the embargo process and its impact on public trust.⁷⁰

5. Royal Statistical Society

The Royal Statistical Society was established in 1834 and is the UK's professional and learned society devoted to the interests of statistics and statisticians. The Society has an international membership, and it is active in a wide range of areas, both directly and indirectly relating to the study and application of statistics.⁷¹ The Society's activities include:

- Nurturing and stimulating the discipline and profession of statistics through publications and meetings;
- Promoting the discipline and profession of statistics through its links with education, government, industry and the media; and
- Serving the interests of all statisticians through the setting of professional standards.

The RSS's Statistics User Forum was set up in 2004 to bring together representatives of statistics users. The Forum was set up with support from the Economic and Social Research Council. The SUF works to make sure that the needs and views of the statistical user community are taken into account by producers of statistics and policy makers. The membership of the Forum includes groups representing users of statistics in areas such as criminology, business, demography, finance, gender, health, information and research services, international trade, labour market, local authorities, national accounts, and transport.⁷²

II Improving public confidence in official statistics

A report published by the Office for National Statistics in February 2005, based on data collected from the National Statistics Omnibus Survey, identified that less than one in five (17%) of those surveyed thought that official statistics were produced without any interference by government, 59% perceived that the government used statistics

⁷⁰ Statistics Commission *Annual Report 2005-06*, July 2006 (Cm 6857)
http://www.statscom.org.uk/uploads/Annual_Report_2005-06.pdf

⁷¹ <http://www.rss.org.uk/>

⁷² <http://www.rss.org.uk/main.asp?page=1391>

dishonestly, and only one-third (34%) felt that government figures were accurate.⁷³ Although the Government's consultation paper on *Independence for statistics* did not explicitly refer to these findings, the Government confirmed that it remained "determined to ensure high standards of public trust in the integrity of official statistics" and "strengthening the existing arrangements by entrenching independence in legislation" would help to do so.⁷⁴ As the Statistics Commission noted in their report into an earlier survey on public trust in official statistics (cited examples of respondents' comments are italicised):

It is felt that such a move (independence) would not only free the statistical service from the charge that it is susceptible to Governmental pressure, but would also afford it greater autonomy in terms of the kind of work it conducts. As mentioned previously, one of the criticisms of the statistical service is that some perceive that it does not collect the most relevant data. It is thought that by severing its ties to the Treasury, the statistical service would have greater freedom to collect information on a wider, or different, range of issues - the scope of which could be determined by close consultation with key constituents. Such changes would encourage the image of a responsive statistical service, one which is free from actual or perceived Ministerial interference.

"We have to free it, and if you do that, although the numbers won't be different, the timing of their publication and the manner of their publication and the interpretation would be different".⁷⁵

A. Pre-release access to statistics

The accepted practice where Government Ministers have pre-release access to official statistics is also seen to undermine public confidence:

For many, it is not the data that are at fault but rather the presentation that leads to a lack of trust. Many question the right of Ministers to access official statistics prior to their release and believe that this should be abolished or, at the very least, reduced. Some draw on examples from overseas. They note the time difference in prior access and feel that Britain compares unfavourably in this regard.

"In most countries, the prior access is about half an hour - that's a huge difference and it does mean all sorts of mischief gets done"

There is a recognition by some that for key data series there will be a need for Ministers to have at least some advance warning to ensure that the response is

⁷³ Office for National Statistics *Public Confidence in Official Statistics: An analysis based on data collected in the National Statistics Omnibus Survey* (February 2005)

http://www.statistics.gov.uk/about/data/public_confidence/downloads/QuantitativeAnalysis.pdf

Further information on the ONS/Statistics Commission project on measuring public confidence in official statistics is available on the ONS website:

<http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=13967&Pos=&ColRank=1&Rank=272>

Financial Times *Figuring out a way to regain public trust* (29 November 2005)

⁷⁴ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 10

⁷⁵ Statistics Commission *Trust in Official Statistics*, 2005, p. 37

<http://www.statscom.org.uk/uploads/files/reports/024%20-%20Perceptions%20Trust.pdf>

appropriate. However, many feel there is a need to make this the exception rather than the rule.⁷⁶

Under the Framework for National Statistics, Ministers and certain officials have early access to official statistics. There are three conditions for early access:

- access to administrative and management data, which may be circulating amongst officials and Ministers in advance of their release as National Statistics, because they form part of the department's daily business;
- access to statistics by officials, as part of the compilation and quality assurance process; and
- access by Ministers and officials to the final data in advance of publication, to enable Ministers to account for the policy implications of statistics at the time of publication and, in certain circumstance, be in a position to announce policy decisions immediately after the release of data.⁷⁷

The National Statistics Code of Practice is supplemented by a *Protocol on Release Practices* which specifies two forms of pre-release access:

- For statistics that are not market-sensitive, privileged early access will be no longer than five working days before release.
- Where privileged early access is provided for market-sensitive statistics, it will begin 40.5 hours (and not more than 40.5 hours) before release, that is at 5 pm on day one in advance of release at 9.30 am on day three.⁷⁸

During the Treasury Sub-Committee's recent inquiry into the Government's proposals, several witnesses suggested that the third category of pre-release access – Ministerial and official access to the final data in advance of publication – encouraged public perception of political interference in the presentation of official statistics. The Statistics Commission's Annual Report routinely details suspected incidents of misuse of pre-release access by Ministers and officials. In their 2005-06 report, the Commission identified nine such instances of which one was a full breach of the Code of Practice, one was a minor breach, one was an accidental breach, and one which did not constitute a breach. The Commission observed that it remained "concerned about the amount of pre-release access [to statistics] within policy departments". In addition, the Commission reported on two non-National Statistics releases by the Department of Health which were not covered by the Code of Practice but which had, nevertheless, breached the Department's own compliance statement.⁷⁹

The Statistics Commission told the Sub-Committee that the procedures for investigating suspected breaches of the Code of Practice were not sufficiently robust:

⁷⁶ Statistics Commission *Trust in Official Statistics*, 2005, p. 39

⁷⁷ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 25

⁷⁸ Office for National Statistics, *National Statistics Code of Practice: Protocol on release practices*, September 2002, p 13

⁷⁹ Statistics Commission, *Annual Report 2005–06*, July 2006 (Cm 6857), Annex D

We have found at times past some difficulty in getting the responses from departments, and I think if you do not get the information you require then it is somewhat difficult to be certain, especially in this highly ambiguous situation of whether something is a breach of an ambiguous code.⁸⁰

In 2004, the independent Phillis review of government communications concluded that there was “no need for the 40 hours of advance notice of National Statistics that Ministers receive”.⁸¹ The review found that while there was no evidence that this right had been abused, it was “open to the perception of abuse”, and was “far longer than the period of notice that the Executive in the United States receives of such key economic data”.⁸² The Statistics Commission agreed:

There are clearly some data sets where considerable care must be taken, and the market sensitive ones to which Ivan Fellegi [Chief Statistician of Canada] referred I think come in a slightly different category from some others...our preference would be for no pre-release, but we recognise that that may have some difficulties for the operations of government.⁸³

Despite evidence that pre-release access can undermine public confidence in official statistics, the Government suggested in its consultation paper that pre-release access is common in statistical systems abroad, but that it would further “consider how pre-release access might operate in the future” with no commitment to end or limit the practice.⁸⁴ The Royal Statistical Society told the Sub-Committee, however, that pre-release access in many countries was much more limited than in the UK. In Austria, Denmark, Finland, Norway, and Poland there is no pre-release access at all. The Sub-Committee’s report summarised the practice in various countries with some form of pre-release access:

Australia: Ministers and supporting officials are allowed pre-embargo access to statistics where it is expected that they would need to make public comment soon after release. This practice is limited to a relatively small number of publications. Pre-release access is limited to 3 hours prior to embargo time.

France: Some ministers are given pre-release access to the most important key economic statistics (for example, inflation, trade, unemployment) up to (but not exceeding) one hour in advance.

Ireland: Ministers are given pre-release access of one hour to the most important statistical series, and 48 hours for the Annual National Accounts.

⁸⁰ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 25

⁸¹ The Phillis Review, *An Independent Review of Government Communications*, January 2004, p. 25

⁸² The Phillis Review, *An Independent Review of Government Communications*, January 2004, p. 25

⁸³ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 25

⁸⁴ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 25

United States: The President, through the chair of the Council of Economic Advisors, has pre-release access of 30 minutes. Civil servants may not comment publicly on data until at least one hour after release.⁸⁵

The Chief Statistician of Canada told the Sub-Committee that pre-release practices in Canada were “extremely restricted”:

...[to] those statistical series where there is a very strong and powerful reason for pre-release to exist...essentially...key economic indicators which can move markets and which might require early intervention in the markets and therefore preparedness to counter some bad news or particularly strong news...social data are totally excluded...pre-release is given to bureaucrats at two o'clock the previous day, in the afternoon, and our releases come out the next morning to everyone at 8.30, so it is less than 24 hours, and ministers are only given those data at five o'clock in the afternoon after the markets are closed.⁸⁶

Dr. Fellegi further observed that, in a statistical system “that purports to be independent”, civil servants or political staff should not make comments on statistics before they are released. The Canadian Chief Statistician noted:

It is my understanding that one of the sources of current suspicions about the lack of independence of the UK statistical system is the fact that occasionally non-statisticians (public servants or political staff) make comments on statistics that have not yet been released. This must not happen in a system that purports to be independent. In order to ensure that it will not happen in the future, consideration should be given to two measures:

- (a) In the case of data derived from statistical surveys, pre-publication access to personnel outside the official statistical system should be restricted to a maximum of 24 hours.
- (b) In the case of official statistics derived from administrative sources, access is, by definition, available outside the statistical system. In such cases pre-publication comments should be strongly discouraged—if possible via a legislated code of behaviour applicable to all government personnel.⁸⁷

Mike Hughes, National Statistics and Policy Director at the Office for National Statistics, suggested to the Sub-Committee that pre-release access arrangements could be reformed in three ways:

[First] there is a whole raft of series where you could argue there is no justification for having pre-release access. The second area is cutting back enormously the number of people who actually get it. Thirdly, reducing the time. And I think

⁸⁵ Royal Statistical Society, *Pre-Release Access to National Statistics: International Perspective* cited in House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 50

⁸⁶ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 20

⁸⁷ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 32

associated with those measures is a much more coherent and consistent approach to this across government.⁸⁸

Lord Moser favoured similar restrictions:

Pre-release should basically be abolished...I think perhaps something over one hour, so that the minister can be prepared to answer questions about the figures; but that would be the maximum in my view...I would leave it to the new board to decide whether there should be any exceptions. My own view is to start from no exceptions.⁸⁹

As an alternative to the complete abolition of pre-release access, the Statistics Commission proposed that Opposition spokespeople should also be given a limited amount of access:

Our preference would be to have no pre-release, but we could envisage various different models, where, for example, statistics might be embargoed for a number of hours beforehand but made available not only to ministers but perhaps also to opposition spokesmen...what is critical, I think, is how long they are released in advance and how they are embargoed and what the penalties are.⁹⁰

The Royal Statistical Society highlighted the role of press officers working in Government Departments. Currently, press officers are routinely asked to carry out two different functions with respect to statistical releases. They are required to produce a statistical release and explain the data in an objective way, while being asked simultaneously to promote the policy objectives of their Ministers and the department. The Society suggested that a better alternative would be for National Statistics to be released from a separate location to the department. Statisticians in departments could then be made

...accountable for the statistical production...accountable for the methods and definitions which are used, and...accountable for explaining the significance of the statistics and what could be drawn from them [but that they] would not have responsibility for interpreting the implications of that policy.⁹¹

The Society also felt it important that the National Statistician should be given the necessary authority to “comment on the interpretation of statistics and comment on gross misinterpretation of statistics” by others, offering her own interpretation where that was necessary.⁹²

⁸⁸ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 32

⁸⁹ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 39

⁹⁰ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 25

⁹¹ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 12

⁹² House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 12

The Financial Secretary to the Treasury conceded that pre-release access arrangements contributed to a general “perception of interference in statistics” although the number of proven cases of abuse was “very few and far between”. Mr Healey defended the principle of pre-release:

In my view, the principle of pre-release is justified largely because – particularly in today's world, with the sorts of imperatives and pressures – ministers are required, expected, as part of our duty to be accountable for the decisions and what is going on in government, to understand and respond immediately to challenges that might come from the production of statistics. In those circumstances, I think it is right and sensible that there is some degree of pre-release. Second, I think that the principle of pre-release is quite widely accepted internationally. The details may be different but the principle of pre-release is accepted. It is accepted in Australia, New Zealand, the USA, Ireland and France. So I think that the principle of pre-release is sensible and defensible. The practice of it is important; the details of it we will be prepared to look at; and we are looking forward to the views we get through the consultation on that.⁹³

In its report, the Sub-Committee concluded that it had “heard nothing to convince us that it is necessary for Ministers to have access to statistics 40 hours prior to their release”. The Committee recommended that the statutory successor to the Protocol on Release Practices should provide Ministers with a maximum of three hours pre-release access to non-market sensitive data while access to market sensitive data should be given to Ministers after the markets have closed on the day prior to release. The Sub-Committee also took forward the Statistics Commission's suggestion that Opposition spokespeople be given one hour's pre-release access to non-market sensitive data. Finally, to improve public confidence in official statistics, the Sub-Committee recommended that the Statistics Board assume responsibility for the release of all National Statistics with its own “considered and non-partisan interpretation”, leaving Ministers to separately outline the implications of the statistical release for government or departmental policy. The National Statistician's authority to “monitor and police those who misuse and misrepresent statistics” should be further enhanced.⁹⁴

In its response to the Sub-Committee's report, published in October 2006, the Government pledged that it would continue to consider how pre-release access arrangements might operate in future, announcing “further details in due course”.⁹⁵ A fuller response was provided in the Government's response to the consultation process, published in November 2006. The Treasury re-stated the case for the continuation of some pre-release access:

Ministers need to account for the implications of policy areas for which they are democratically responsible at the time new statistics are released – something the British public has come to expect – and, in certain circumstances, Ministers

⁹³ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 49

⁹⁴ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 53

⁹⁵ House of Commons Treasury Committee *Independence for statistics: Government Response to the Committee's Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006, HC 1604, p. 14

need to be in a position to announce policy decisions immediately after the release of data, for example to prevent market disturbances in financial or currency markets. As such, the Government remains convinced that there is a case for the continuation of formal pre-release access.⁹⁶

The Government also announced the mechanism by which pre-release access arrangements would be decided. Ministers would agree the new arrangements and put them before Parliament and the devolved legislatures in the form of secondary legislation. The Government confirmed that it would also consider the suggestion made by the Treasury Sub-Committee that National Statistics releases would be published by a central publication unit, formally separating statistical releases from policy commentary.⁹⁷

Shortly before the publication of the Bill, the National Statistician wrote to the Cabinet Secretary to express her concern at an apparent breach of the principles of the National Statistics Code of Practice by the Prime Minister. In a speech to the Trades Union Congress on 12 September 2006, the Prime Minister was quoted as saying:

Tomorrow, I think, we will probably see for the first time in some months a fall again in unemployment.⁹⁸

This remark apparently referred to the release of labour market statistics at 9.30am the following day. The data had been sent to the Prime Minister's office on 11 September "in line with normal privileged access". The National Statistician concluded:

The reported comments clearly contravened the National Statistics Code of Practice. It is essential for the maintenance of the integrity of official statistics, and of public confidence in them, that the provisions of the Code of Practice are complied with fully. I should be grateful, therefore, if you would bring this point to the attention of all at 10 Downing Street.⁹⁹

The Cabinet Secretary, Sir Gus O'Donnell, replied to the National Statistician immediately. Sir Gus observed:

I regret what has happened. I have already discussed the issue with colleagues in the Prime Minister's Office. They are fully seized of the importance of complying with the National Statistics Code of Practice and have already put in place steps to tighten the procedures for handling statistics subject to the pre-release arrangements. This should, I hope make sure you do not have cause to have to write to me again on this subject.¹⁰⁰

⁹⁶ HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 21

⁹⁷ HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 21

⁹⁸ http://news.bbc.co.uk/1/hi/uk_politics/5339870.stm

⁹⁹ Letter from the National Statistician to Sir Gus O'Donnell, Cabinet Secretary (13 September 2006) http://www.statistics.gov.uk/about/other_letters/downloads/ODonnell_13.09.06.pdf

¹⁰⁰ Letter from the Cabinet Secretary to the National Statistician (13 September 2006) http://www.statistics.gov.uk/about/other_letters/downloads/letter_from_sir_gus_odonnell_kcb_13sept06.pdf

The Bill

Clause 11 provides for the Treasury (and Scottish and Welsh Ministers, and the Department of Finance and Personnel in Northern Ireland¹⁰¹ in the case of wholly devolved statistics) to determine, by secondary legislation subject to the affirmative procedure, the rules and principles for access to official statistics “in their final form”. Once approved by Parliament and the devolved legislatures, these rules would be regarded as part of the Code of Practice for National Statistics, and therefore the Statistics Board will be able to assess ministerial and departmental adherence as part of its wider assessment function. It is not yet explicitly clear whether the secondary legislation will provide for pre-release access arrangements to apply *only* to National Statistics, or to *all* official statistics defined in clause 6 of the Bill.

Clause 11(4) specifies some of the principles that may be included in the secondary legislation, notably the circumstances and conditions under which pre-release may be granted, the persons to whom it may be granted, and the length of time for which pre-release access may be given. Clause 11(5) permits these principles to vary according to different types of statistics or statistical releases, therefore different conditions and lengths of time may be permissible for market and non-market sensitive data under this clause.

To attempt consistency, clause 11(7) requires the appropriate authorities responsible for drafting the secondary legislation to consult each other before putting the draft Orders before Parliament and the devolved legislatures, as appropriate. However, the anticipated role for the Devolved Administrations in determining pre-release access arrangements for devolved statistics might allow for different pre-release practices across the UK where agreements following consultation cannot be finalised.

Clauses 11(1) and (2) prohibit the rules and principles of pre-release access being formally included as part of the Board’s preparation or revision of a new Code of Practice since pre-release access arrangements are to be set out in secondary legislation drafted by Ministers and subject to parliamentary scrutiny. Under **clause 17(4)** the Board may not make changes to pre-release access rules as part of a revision of the *existing* Code of Practice operational under transitional arrangements.

B. Independent assessment of statistics and a statutory Code

The concept of National Statistics was introduced as part of the non-statutory *Framework for National Statistics* in 2000. National Statistics accreditation acts as a quality kite mark for official statistics. The existing *National Statistics Code of Practice* sets out the key principles and standards which official statisticians are expected to uphold. The Code is supported by twelve Protocols which describe how these principles are to be implemented in practice. Only those statistics produced in accordance with the National

¹⁰¹ Throughout the Bill, references are made to the Department of Finance and Personnel in Northern Ireland rather than Northern Ireland Ministers. For a discussion of the *Government of Ireland Act 1920* see HL Deb 22 November 2006, c389; also Library Research Paper 06/56 The Northern Ireland (St Andrews Agreement) Bill 2006-7 <http://www.parliament.uk/commons/lib/research/rp2006/rp06-056.pdf>

Statistics Code of Practice are accredited as National Statistics. The Code applies to all datasets for which the Office for National Statistics is responsible, and to National Statistics produced within Government Departments. The National Statistician has overall professional responsibility for the integrity and quality of statistics designated as National Statistics, although Ministers are responsible for deciding which of the statistics produced within their departments should become National Statistics.¹⁰²

The Government proposes to continue with the current National Statistics standard by giving the Code of Practice statutory backing by “legislating to make the development and maintenance of the Code the specific responsibility of the [Statistics] Board”.¹⁰³ Ministers will remain “wholly responsible” for statistics produced by their departments which are not currently National Statistics, and they will decide whether they wish to put forward departmental statistics for assessment by the Statistics Board against the National Statistics Code of Practice:

The Government...proposes that the board have responsibility for assessing against the code those statistics already produced in line with the Code of Practice and designated as National Statistics. Only statistics that the board assessed as meeting the standards and requirements set out in the code would be approved by the board as National Statistics. Ministers will remain wholly responsible for statistics produced by their departments which are not National Statistics, and Ministers will decide whether these statistics should become National Statistics, subject to the board assessing and approving them against the code.

During the course of its inquiry, the Treasury Sub-Committee heard from a number of critics of the existing National Statistics Framework and Code of Practice. The Statistics Commission felt that the Code was “ambiguous” because each individual “can make their own interpretation” of it.¹⁰⁴ The Royal Statistical Society told the Sub-Committee that it believed the public were unable to distinguish between National Statistics and other official statistics. National Statistics accreditation, the Society felt, created a system that was “patchwork” and “two-tier”:

...we have the situation where monthly waiting lists are not National Statistics but quarterly waiting lists are. It is very difficult for anyone outside the system to understand the logic of that.¹⁰⁵

Lord Moser also expressed concern about the existing National Statistics system, telling the Sub-Committee that, given the chance, he would “abolish the concept of National Statistics” altogether replacing it with “what every other country has – official statistics”. Ministerial control of National Statistics also undermined public trust in government statistics:

¹⁰² http://www.statistics.gov.uk/about/national_statistics/introduction.asp

¹⁰³ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 21

¹⁰⁴ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 25

¹⁰⁵ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 25

The great mistake is to have a category of statistics which are left totally to the ministers' hands. It is a formula for lack of trust, because anybody who looks into it can see that the minister has decided that those particular things do not go anywhere near [the Office for National Statistics]; they are totally for him or her to decide on. That, to me, is a very basic flaw.¹⁰⁶

Other witnesses agreed. Professor Alison Macfarlane felt that the National Statistics Code of Practice should "apply as widely as possible" given that the current arrangements made it difficult for the public to trust statistics quoted by politicians that had not been produced in accordance with a Code of Practice. Professor Macfarlane highlighted a case in point:

The DCMS commissioned a survey from MORI on the state of live music last year. There was a ministerial press release in the summer saying, "Live music is in a wonderful state, 1.7 million gigs," without relating it to the population or time. The report only came out six weeks later and it was not a National Statistic. It also turned out to fall rather short of optimal standards, but there were six weeks when the Minister's claim could not be checked because the Minister had released this non-National Statistic in advance of the statistical publication on which his claim was based.¹⁰⁷

The Financial Secretary to the Treasury did not share the concerns of other witnesses. Mr Healey contended that it was better to have a proportion of official statistics produced to the higher standard demanded by the National Statistics Code of Practice than to have all data produced to an identical, albeit lower, standard:

It is probably quite hard to have a code of practice that covers absolutely any statistics, any statistical outputs, or any data that may be generated within government. I have tried to explain that. I think it is right that we have an independently produced code of practice and that a designated set of the most important statistics—in our proposals the national statistics—are properly assessed and adjudged to meet the standards of quality and integrity that we want from them; done independently and under the auspices of the board, and all entirely without the involvement of Ministers.¹⁰⁸

In its response to the consultation process, the Treasury outlined its vision for a National Statistics assessment function in more detail. The assessment function would not be responsible for "the assessment of every piece of data produced in departments" but would instead "begin with a focus on the current set of National Statistics". The Government also envisaged that the system would "evolve over time":

The current set of National Statistics is a starting point. Ministers (including those in the devolved administrations) will be able to submit additional and new statistics to the Board for assessment. The credibility gained through receiving

¹⁰⁶ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 25

¹⁰⁷ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 5

¹⁰⁸ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 43

Board approval as National Statistics, will encourage Ministers to nominate more of their departmental outputs for inclusion in the system, to benefit from the public quality assurance endorsement that will come from being successfully assessed and approved by the independent Board.¹⁰⁹

The Government emphasised the importance of the assessment function not imposing “an undue burden on those producing and disseminating the statistics being assessed”. The Statistics Board would be required by statute to minimise such burdens, for assessments of National Statistics to be undertaken in accordance with a published code of practice, and to publish a set of principles which the Board would follow when undertaking assessments. These principles should be:

- **risk-based**, with the most attention paid to the statistics that are most important;
- **proportionate**, having due regard to the burdens (including financial) imposed on statistical producers by the assessment process, and with the overall timetable and deadlines mutually agreed;
- **consistent**, with the code applied in the same way, regardless of where the statistics are produced; and
- **transparent**, conducted against the published code, and with transparency in the results of assessment.¹¹⁰

The Statistics Commission recently published an interim report inviting views on its proposals for a new Code of Practice.¹¹¹ Comments are invited by the end of February 2007. The Commission made a number of proposals, including:

- the new Code should be “shorter, simpler and more imperative in style”;
- provide an “unambiguous and structured basis for independent assessment and audit”;
- would benefit from “being closer in style and structure to the European Statistics Code of Practice”;
- should be reconciled “explicitly” with the revised Civil Service Code;
- drafted to apply to the “whole of departments and other public bodies” producing statistics;
- provide for “sufficient managerial separation” between those staff engaged in the production and publication of statistics and those who use statistics for policy and management purposes;
- should not set out exceptions and exemptions to the Code, instead setting out mechanisms for agreeing exceptions and special cases, hence shortening the Code and removing the need for separate Protocols; and
- drafted so that the Code’s principles are “applicable to all official statistics” irrespective of whether they are National Statistics or not.

¹⁰⁹ HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 17

¹¹⁰ HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 19

¹¹¹ Statistics Commission *A Code of Practice for National Statistics: an interim report for consultation* (December 2006)

<http://www.statscom.org.uk/uploads/files/reports/Report%2031%20Code%20Consultation%20Dec%2006.pdf>

The Bill

Clause 10 of the Bill requires the Statistics Board to prepare, adopt, and publish a Code of Practice for National Statistics, in consultation with others as appropriate. The Code will set out the standards against which National Statistics will be assessed, and it is expected that the Board will draw and build upon the current Code of Practice in undertaking this role. Clause 10(2) allows the Board to revise and publish the Code at any time. Clause 10(3) requires the Board to consult Scottish and Welsh Ministers, and the Department of Finance and Personnel in Northern Ireland when preparing or revising the Code, and any other persons as the Board may think appropriate. The Explanatory Notes to the Bill indicate that the Board might reasonably be expected to consult key users of official statistics, such as academics, researchers, and businesses.¹¹²

Clause 5 sets out that the Board is to employ an officer known as the “Head of Assessment” who will be appointed by the non-executive members of the Board and will be a civil servant. **Clause 30** specifies that the Head of Assessment will be the Board’s principal adviser in relation to assessments and re-assessments of National Statistics and their compliance with the Code.

Clause 31 provides for the separation of the Board’s functions in relation to the production of statistics and the assessment of statistics against the Code of Practice. Clause 31(1) prohibits the National Statistician from taking part in deliberations about the assessment of statistics that the Board itself produces and, conversely, clause 31(4) prohibits the Head of Assessment from taking part in the production of statistics by the Board. Clause 31(2) prohibits executive members of the Board who are neither the National Statistician nor the Head of Assessment from taking part in deliberations about the assessment of any National Statistics, irrespective of whether they are produced by the Board or in other departments and agencies. The Board is expected to draw up procedures under clause 31(3) to ensure that employees of the Board engaged in the production of statistics are not engaged in advising the Board on the assessment or re-assessment of those statistics.

Clause 29(10) further separates the functions of the Head of Assessment where they are appointed as an executive member of the Board. If the Head of Assessment is an executive member, they may not also be a member of the Board’s executive office as specified in clause 29(6)(b). The Head of Assessment is also prohibited from exercising the functions of National Statistician in the event of a vacancy in that office.

Clause 12 provides the mechanisms necessary for the National Statistics assessment function. The assessment function will assess National Statistics against the published set of standards contained in the Code of Practice, prepared and published under clause 10. Assessment will also be undertaken of those statistics referred for consideration by Ministers or another appropriate authority to the Board. The results of all assessments will be made public. If the Board judges that the statistics meet the standards in the Code, then the Board is required to designate them as “National Statistics”. If the

¹¹² *Statistics and Registration Service Bill* (Bill 8 of 2006-07), Explanatory Notes, p. 10

statistics do not meet those standards, then National Statistics accreditation will be denied. Those persons responsible for the statistics being assessed are required to provide the Board with the relevant information the Board will need in order to undertake its assessment.

Clause 12(7) sets out the appropriate authorities who can refer statistics to the Board for assessment. Ministers will continue to be responsible for statistics produced in their departments, the National Statistician will be responsible for statistics produced by the Statistics Board, and Ministers in the Devolved Administrations will be responsible for their respective devolved statistics.

Clause 12(8) specifies that the existing body of National Statistics datasets and products will, at the time of commencement of the Act, be designated as National Statistics under the terms of this clause and will be subject to re-assessment outlined in clause 13.

Clause 13 makes provision for a process of re-assessment of those statistics designated as National Statistics, both National Statistics at the point of commencement and statistics subsequently designated as compliant with the Code of Practice under the provisions of clause 12(2). Those responsible for the production of statistics being re-assessed are required to provide the Board with the information necessary for the Board to undertake its re-assessment. National Statistics accreditation may only be removed where the Board has assessed the statistics and determined that they no longer comply with the Code of Practice.

Under **clause 14**, the Board is required to prepare and publish a programme for both the assessment and re-assessment of statistics.

Clause 15 requires the Board to publish a statement of principles and procedures to govern the arrangements for the assessment and re-assessment of statistics under clauses 12 and 13. The Board must consult the Devolved Administrations and other appropriate persons when preparing the statement, although the clause does not explicitly provide for a resolution process with the Devolved Administrations in the event of a disagreement. The Government expects that the Board's statement of principles would include:

- The criteria that might be applied in drawing up and amending the work programme;
- The way that assessments would be conducted;
- The way recommendations would be formulated;
- The timing and manner of publication of recommendations; and
- The professional standards expected of those conducting assessments.¹¹³

Under **clause 16**, the Board is expected to publish an annual list of statistics that are designated as National Statistics.

¹¹³ *Statistics and Registration Service Bill* (Bill 8 of 2006-07), Explanatory Notes, p. 13

Clause 17 sets out transitional arrangements with respect to the Code of Practice. Until a new Code is adopted by the Board, the existing Code of Practice will be maintained and revised as necessary. The existing Code of Practice may not be revised to include changes to pre-release access arrangements as defined under clause 11. During the interim period, the Board may use the existing Code of Practice to undertake assessments and re-assessments of statistics under clauses 12 and 13.

III Governance arrangements

The Government intends that the new Statistics Board will adhere to principles of good corporate governance in four key areas. The Statistics Board will be:

- separated from ministerial control by establishing it as a Non-Ministerial Department;
- accountable and report directly to Parliament;
- comprise a majority of non-executive members, led by a Crown-appointed non-executive Chair; and
- comprise a minority of executive members, including the National Statistician. The National Statistician will have a Crown appointment and will be responsible for the delivery of statistics produced by the Board.

The Statistics Board will be responsible for achieving certain high-level statutory objectives, including the production of “relevant, accurate and timely statistics about the UK economy and society”, ensuring “the quality and integrity of the National Statistics system”, advising Ministers of areas of concern about the quality of official statistics, and maintaining “an overview of the broad coverage of the statistical system, which should meet key user needs”.¹¹⁴

The National Statistician will be Chief Executive of the Statistics Board, responsible for the day-to-day delivery of statistics. The National Statistician will remain the chief statistical adviser to the Government on all professional and technical statistical matters, and will continue to lead the Government Statistical Service of professional statisticians within Government Departments and public agencies.

A. Delivering statistical independence through a Non-Ministerial Department

The Government proposes that the Office for National Statistics cease to be an Executive Agency of HM Treasury, and the new Statistics Board should become a Non-Ministerial Department (NMD) reporting directly to Parliament. NMDs are departments or agencies of government that are not headed by, or required formally to report to, a Government Minister. Instead, NMDs answer directly to Parliament (or in a small number of cases in Scotland, to the Scottish Parliament). As the consultation paper explained:

¹¹⁴ HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 11

NMDs are departments in their own right, established to deliver a specific function; part of government, but independent of Ministers. The precise nature of relationships between NMDs and Ministers vary according to the individual policy and statutory frameworks, but the general rationale is to remove day-to-day administration from ministerial control.¹¹⁵

There are currently 20 Non-Ministerial Departments.¹¹⁶ In the consultation paper, the Government made reference to the Food Standards Agency, the Charity Commission, the Office for Fair Trading (OFT), the Office for Standards in Education (Ofsted), and the Office of Gas and Electricity Markets (Ofgem) as examples of Non-Ministerial Departments that might usefully inform the model for an independent Statistics Board. Each NMD retains a residual relationship with a particular department and minister. During a House of Lords debate, the Government repeated that the Ofsted model might be considered for the Statistics Board.¹¹⁷ The Treasury Sub-Committee's report usefully outlined the governance arrangements at Ofsted:

Ofsted was established under the *Education Act 2005*. The Chief Inspector of Schools, the head of Ofsted, is appointed by the Queen in Council following recommendation by the Secretary of State for Education and Skills on behalf of the Government, in accordance with the guidelines of the Office for the Commissioner of Public Appointments.

Ofsted has a Strategic Board which is comprised of two non-executive members sitting with members of Ofsted's Management Board. Ofsted also has an Audit Committee with an independent chair and two other independent members.

Ofsted is funded as part of the Spending Review process and it is committed to achieving efficiency gains which will contribute to those outlined in the Department for Education and Skills' Efficiency Technical Note.

The Chief Inspector must make an annual report to the Secretary of State for Education and Skills, which is subsequently laid before Parliament. The Chief Inspector regularly gives evidence on Ofsted's performance to the Education and Skills Select Committee.¹¹⁸

In oral evidence to the Sub-Committee, the ONS acknowledged that Government Ministers would still need to retain some residual responsibilities for the Non-Ministerial Department:

¹¹⁵ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 21

¹¹⁶ Assets Recovery Agency; Charity Commission for England and Wales; Commissioners for the Reduction of the National Debt; Crown Estate; Crown Prosecution Service; Export Credits Guarantee Department; Food Standards Agency; Forestry Commission; HM Revenue and Customs; Office for Standards in Education; Office of Fair Trading; Office of Gas and Electricity Markets/Gas and Electricity Markets Authority; Office of Rail Regulation; Office of the International Rail Regulator; Office of Water Services; Postal Services Commission; Public Works Loan Board; Revenue and Customs Prosecutions Office; Serious Fraud Office; and UK Trade and Investment (Source: Cabinet Office *List of Ministerial Responsibilities* (2006) http://www.cabinetoffice.gov.uk/ministerial_responsibilities/downloads/lmr.pdf)

¹¹⁷ HL Deb 15 June 2006, c424

¹¹⁸ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 33

It is assumed that we will need a minister responsible for statistical legislation to oversee the working relationship [between the department and Government]...At the top level there is always a need for a minister to deal with Parliament about the legislation under which any organisation works.

During the course of the Sub-Committee's inquiry, consideration was given to whether the Treasury was a suitable department to continue to exercise residual ministerial responsibilities over the Statistics Board. Lord Moser suggested that the Cabinet Office would be a better department because it did not take a "particular subject interest".¹¹⁹ Given the Treasury's interest in the economic statistics produced by the statistics office, Lord Moser was concerned that a "conflict of interest" might arise if the Treasury were to retain residual ministerial responsibilities, while the most important social statistics in areas such as education and health were not "in the direct interest of the Treasury".¹²⁰ The Statistics Commission concurred:

One of our concerns is to ensure that there is effective planning of statistical work...to meet future statistical requirements right across government. Many of those issues involve not just a single department but cross-departmental concerns, and the Cabinet Office in many ways seems a more natural coordinator of statistical planning than the Treasury does.¹²¹

The Financial Secretary to the Treasury disagreed, asserting that it was "probably appropriate" for any residual ministerial responsibilities to remain with the Treasury since, out of the 250 statistical series currently published by the ONS alone, around 150 were economic in focus and carried "more impact and command[ed] more attention" than other statistics. Mr. Healey further reminded the Sub-Committee that the Treasury's interest in statistics was more extensive than other departments because of the co-ordinating role it played in delivering public service agreement and efficiency targets across government:

We have a direct interest in performance against public service agreements; we have a direct interest in departments delivering value for money and, within the Treasury, we also have the experience of dealing with statistical issues. Without being hard and fast about it, therefore, it seems to me sensible to leave with the Treasury whatever residual responsibilities need to be with ministers.¹²²

The Sub-Committee concluded that "on balance" it was appropriate for any residual responsibilities of government to continue to be exercised by the Treasury rather than by the Cabinet Office or another department. The Sub-Committee was not persuaded that the transfer of responsibilities away from the Treasury would significantly impact on the Treasury's ability to co-ordinate and measure progress against public service agreements and efficiency targets. It observed that the residual responsibilities of

¹¹⁹ HL Deb 15 June 2006, c407

¹²⁰ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 39

¹²¹ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 23

¹²² House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 41

Ministers were likely to be limited, and therefore it did not believe that “the precise location of the new department was particularly important”. Above all,

...the Government should consider carefully how it will demonstrate that its proposals will result in a genuinely independent statistics office. What is important is that the new department should be perceived to be more independent than the present arrangement.¹²³

In its response to the report, the Government welcomed the Sub-Committee’s recommendations in this area, particularly that any residual ministerial responsibilities should be retained by the Treasury. The Government further acknowledged that “perception plays an important role in reinforcing the independence of statistics produced in government” and accepted that the way in which it “communicates the independence of statistics to the public” would play an important part in ensuring that its proposals would “reinforce the quality and integrity” of official statistics.¹²⁴

The Bill

Clause 1 establishes a body corporate known as “the Statistics Board” (also “Y Bwrdd Ystadegau” in Welsh and “Am Bòrd an Staitistig” in Gaelic). **Clause 2** sets out that the Board will exercise its functions on behalf of the Crown and that the property, rights, and liabilities of the Board are those of the Crown. **Clause 52** establishes that, on commencement of the Act, the Office for National Statistics and the Statistics Commission will no longer exist. The Board will, therefore, “take on many of the responsibilities of the Statistics Commission”.¹²⁵

Clause 6 defines “official statistics” as any statistic produced by the Statistics Board, as well as those produced in Government Departments and agencies, the Devolved Administrations, or any other person acting on behalf of the Crown. This clause also provides for a mechanism whereby Ministers, including Scottish and Welsh Ministers, or a Northern Ireland department, can add to the scope of official statistics by secondary legislation subject to parliamentary scrutiny under the affirmative procedure. Ministers are required to consult the Statistics Board before adding to the scope of official statistics. While this clause sets out precisely what may or may not be regarded as “official statistics” for the purposes of the Act, a similar level of definition is not explicitly given in those clauses of the Bill providing for National Statistics.

Clause 7 sets out the overall objectives of the Statistics Board, and requires the Board to safeguard and promote good practice, and the quality and comprehensiveness of official statistics as they are defined in clause 6. Clause 7(2) defines “quality” to include impartiality, accuracy, relevance, and coherence with other official statistics. The Board is also expected to make official statistics easily and widely accessible in a fair and open way.

¹²³ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 35

¹²⁴ House of Commons Treasury Committee *Independence for statistics: Government Response to the Committee’s Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006, HC 1604, p. 10

¹²⁵ *Statistics and Registration Service Bill* (Bill 8 of 2006-07), Explanatory Notes, p. 33

Clause 20 allows the Board to supply statistical services to any person and details the different services which may be provided, including information, advice and technical assistance in relation to statistics; quality assessment; conducting statistical surveys and analysis; and the collection, adaptation, and development of data. **Clause 21** allows the Board to promote statistical research, particular by making available data held by the Board to researchers where the Board may lawfully do so.

B. Direct reporting to Parliament

The Government's proposals mean that the Statistics Board will report directly to Parliament rather than to the Treasury. Some early comparisons were made with the National Audit Office. However, the consultation paper did not see the model used for the NAO as appropriate in this particular case. The NAO acts an extension of Parliament by promoting its scrutiny and audit function, and consequently its Director (the Comptroller and Auditor-General) is an Officer of Parliament, and NAO staff are not civil servants. The Government regards the production of statistics as an executive function that should continue to be undertaken by civil servants in a Non-Ministerial Department acting as an agency outside of government and reporting directly to Parliament. The Director of ONS would not, therefore, become an Officer of Parliament.¹²⁶

It is the proper responsibility of Parliament to hold the Government to account. That is why, for example, the National Audit Office has a special role in ensuring government departments have achieved value for money in using the resources Parliament has voted to them. However, the production of statistics is an executive function; statistics are a public good, serving a wide range of users. The Government therefore proposes to reinforce with legislation the existing independence of the National Statistics system, rather than make statistical production a part of Parliament. However, the Government places a high priority on the central role of Parliament in holding the statistical system directly to account, and plans to introduce more direct reporting and accountability to Parliament.¹²⁷

Statistics Board officials will remain civil servants:

Under the NMD (Non-Ministerial Department) model, staff within the statistics office will continue to be civil servants. This has the advantage of facilitating the continued movement of professional staff within and across the statistical system, maximising the sharing of knowledge and best practice across government statisticians, and maximising the benefits of the decentralised nature of the UK system.¹²⁸

At present, the Office for National Statistics is accountable to Parliament through the Chancellor of the Exchequer as Minister for National Statistics. The Director of ONS

¹²⁶ For a discussion of the history and role of Officers of Parliament see House of Commons Library Research Paper 03/77, available online at <http://www.parliament.uk/commons/lib/research/rp2003/rp03-077.pdf>

¹²⁷ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 20

¹²⁸ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 21

regularly appears before the House of Commons Treasury Committee who question and scrutinise her on the work of her Department. The Director of ONS also appears before other parliamentary committees as required.

The Government's proposals would not significantly alter the current system of reporting, although it is anticipated that the Chair and other members of the Statistics Board would also be called to give evidence "in the same way as for the Financial Services Authority and the Bank of England's Monetary Policy Committee".¹²⁹

During the course of the Treasury Sub-Committee's inquiry, attention was paid to the method by which the reports of Statistics Board would be laid before Parliament, how parliamentary questions would be answered, and which form of scrutiny would be most appropriate. Under the current system, the annual reports of the ONS are laid formally before Parliament by a Treasury Minister, acting on behalf of the Chancellor of the Exchequer as Minister for National Statistics, and these reports are subsequently scrutinised by the appropriate Select Committee (the Treasury Sub-Committee) on behalf of the House. The Government's consultation paper proposed that the new Statistics Board would be responsible for preparing annual reports that "would be laid before Parliament directly by the board, rather than via a minister".¹³⁰

The Sub-Committee sought the advice of the Clerk of the House of Commons. The then Clerk of the House, Sir Roger Sands, told the Sub-Committee that all papers laid before the House should be laid by a Member of Parliament (in practice this typically means a Government Minister), and only in a few agreed cases would they be laid by the Clerk of the House "where there is no directly relevant ministerial responsibility".¹³¹ Sir Roger concluded that "there is therefore no current procedure by which the new body's annual reports could be laid before Parliament directly by the board". The Clerk of the House wished to wait for the Sub-Committee's assessment of the genuine independence of the proposed system before he could consider whether it would be appropriate for him to lay reports on behalf of the Board:

Recently I have agreed also to lay reports from certain health bodies where the Act required that they be laid before being provided to the Secretary of State¹³², and from the Information Commissioner in the light of the independent status of his office. In principle, I would be willing to lay reports from the new Office of National Statistics, provided that it was established with an equivalent independence from Government...It would appear that a large proportion of statistics will continue to be produced in government departments and agencies rather than in ONS itself...But the question of the independence of the statistics office under the system proposed in the consultation document is no doubt central to the Sub-Committee's inquiry. I would obviously want to take account of the Sub-Committee's conclusions on that issue before making a firm commitment.¹³³

¹²⁹ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 27

¹³⁰ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 27

¹³¹ Erskine May *Parliamentary Practice* (23rd edition), p. 262

¹³² *Health and Social Care (Community Health and Standards) Act 2003*, Schedule 2, paragraph 11.

¹³³ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 55

The Sub-Committee observed that it was not clear from the Government's proposals with respect to the laying of reports what precisely it had intended, and assumed that the Government was proposing that the Clerk of the House would lay the reports before Parliament on behalf of the Statistics Board. However, on balance, the Sub-Committee concluded that it would be more in line with current practice if reports published by the Statistics Board were laid by Ministers from the department which assumed the residual responsibilities of government in relation to the Statistics Board:

This appears to be current practice in respect of other non-ministerial departments and does not appear to compromise their independence. Consequently, we consider that the new board's annual report should be laid by a Treasury minister.¹³⁴

In their response to the Sub-Committee's report, the Government accepted the Sub-Committee's recommendation.¹³⁵

The Government's proposals also recommended changing the way parliamentary questions are answered by the Statistics Board. Under the current system, parliamentary questions requiring a reply from the National Statistician are tabled to the Chancellor of the Exchequer (as Minister for National Statistics) and the National Statistician or one of her officials replies by letter. Parliamentary answers are formally presented to Parliament by a Treasury Minister and printed in *Hansard*. The Government's proposals suggested changing this system so that:

...statistical answers to each House could be done (sic) via the Chairs of the committees responsible for statistical matters. Treasury Ministers would, of course, retain responsibility for answering questions specifically related to the Government's statistics policy.¹³⁶

The Clerk of the House advised the Sub-Committee that the Government's proposals in this area raised "some practical problems":

First, a judgement must be made as to whether the answer to a question falls partly or entirely within the responsibility of the National Statistician... (If) questions were to be tabled to Chairmen of Committees, any part of the answer which was thought to be outside the responsibility of the National Statistician could not be given ... but would have to be sought by a further question to the responsible Minister. Second, the role suggested in the consultation paper would place (Committee) Chairmen in an equivocal position ... it would be very odd to have representatives of the Select Committee system, whose purpose includes the scrutiny of such bodies, taking responsibility in the House for information supplied by the ONS. Some, perhaps most, Chairmen might be reluctant to be put in that position. Third, it is easy to imagine a situation where the reference of a question to the National Statistician for reply might be politically contentious ...

¹³⁴ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 119

¹³⁵ House of Commons Treasury Committee *Independence for statistics: Government Response to the Committee's Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006, HC 1604, p.13

¹³⁶ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 27

This could put the Chairman of the relevant Committee in an invidious and embarrassing position.¹³⁷

Overall, the Clerk of the House concluded that the system proposed by the Government would “at the least be cumbersome, but might also have considerable practical disadvantages” and serious consideration should be given to the retention of the “present arrangements”. A parliamentary question answered by a Minister in order to get information into the public domain, the Clerk of the House observed, “would not in itself call into question the independence of the (statistical) office and a reply formula might be devised which made that clear”.¹³⁸

The Sub-Committee agreed with the concerns expressed by the Clerk of the House, noting that there was “no precedent for Committee chairmen to be conduits for answers (to parliamentary questions) from outside bodies” and the Government’s proposals might conflict with the interest of Committee chairmen in scrutinising bodies such as the Statistics Board. The Sub-Committee recommended that the current arrangements remain in place, whereby parliamentary questions are directed to the National Statistician via the appropriate Minister who would assess the extent to which they are responsible before referring the remainder to the National Statistician.¹³⁹ In its response to the Sub-Committee’s report, the Government agreed with this recommendation.¹⁴⁰

Finally, the Sub-Committee considered the form of Select Committee scrutiny which would be most appropriate given the independent status of the Statistics Board. Since the Sub-Committee recommended that Treasury Ministers should continue to exercise residual ministerial responsibilities over the Non-Ministerial Department, it concluded that the Treasury Sub-Committee itself ought to continue to take the lead role on behalf of the House in calling the National Statistician and members of the Statistics Board to account for the performance, functioning, and funding of the Statistics Board.¹⁴¹

The Government noted the Sub-Committee’s recommendation and invited Parliament to consider further “how to reinforce its role in scrutinising the performance of the reformed statistical system”.¹⁴²

¹³⁷ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 56

¹³⁸ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 56

¹³⁹ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 46

¹⁴⁰ House of Commons Treasury Committee *Independence for statistics: Government Response to the Committee's Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006, HC 1604, p. 13

¹⁴¹ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 42

¹⁴² House of Commons Treasury Committee *Independence for statistics: Government Response to the Committee's Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006, HC 1604, p. 12

C. An independent governing board

In its consultation paper, the Government proposed that the independence of official statistics would be provided for in legislation and that an independent Board would be charged with meeting certain statutory objectives:

- to ensure the statistics office produces and disseminates relevant, accurate and timely statistics about the UK economy and society;
- to ensure the quality and integrity of the National Statistics system, by developing and maintaining the code of practice, and assessing National Statistics against this code;
- to advise Ministers of areas of widespread concern about the quality of official statistics;
- to maintain an overview of the broad coverage of the statistical system, which should meet key user needs;
- to operate efficiently, providing value for money whilst minimising the regulatory burden on business and other respondents; and
- to protect the confidentiality of data provided.¹⁴³

The Statistics Board would also have “executive responsibility for the statistics office (currently, the ONS), ensuring that statistics produced by the office are accurate, that they are timely, and that the office’s work programme delivers statistics that are relevant”.¹⁴⁴ The Government proposed that the governing board will have both oversight of the overall operation of Statistics Board *and* executive responsibility for the delivery of statistics produced within it although, in practice, day-to-day statistical operations will be a matter for the National Statistician and her executive team to determine. The National Statistician will be a member of the governing board as well as being individually accountable to it, as an employee of the Statistics Board, for the running of statistical operations.

The Government anticipated that the governing board would have a “strong non-executive presence” including “leading experts in statistics, and men and women from academia, business and public service”. The board would be led by a non-executive Chair who need not be a professional statistician.¹⁴⁵

Currently the ONS is managed by a Policy Board which is composed of the Director of ONS as its chair and three non-executive directors appointed with the agreement of the Chancellor of the Exchequer. The non-executive directors are independent of management. One non-executive director chairs the ONS Audit Committee. There are seven executive directors and two corporate directors who attend ONS Policy Board meetings.¹⁴⁶ The ONS Policy Board normally meets four or five times each year, and in between Policy Board meetings day-to-day executive responsibility rests with the ONS Executive Management Group composed of all executive directors, and the corporate

¹⁴³ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 22

¹⁴⁴ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 22

¹⁴⁵ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 25

¹⁴⁶ Office for National Statistics *Annual Report and Accounts 2005-06*
http://www.statistics.gov.uk/about_ns/ONS/downloads/ONS_Annual_Report_2005-06.pdf

director of National Statistics and Policy as Board Secretary. The EMG is chaired by the National Statistician as the Director of ONS.

The Treasury Sub-Committee heard from a number of expert witnesses who expressed concern at the apparent blurring of executive and non-executive functions in the hands of the governing board. The Royal Statistical Society told the Sub-Committee that the Government's proposals needed "significant modification" in this area:

We believe that there should be a clear separation between operational delivery of National Statistics (the responsibility of the National Statistician) and the oversight role of the Board. The National Statistician should have executive responsibility for ONS and a function to co-ordinate the statistical system as whole...The Board should be non-executive in terms of the production of statistics and should ensure that the statistical system serves the wider public interest...The governing board as proposed by the Government is an executive body and therefore if that model is pursued there will still be a need for [an oversight] body like the Statistics Commission to oversee the governing board.¹⁴⁷

The Statistics Commission had earlier criticised a model for a Statistics Board which merged executive and oversight functions, asserting that it would be unable to:

...deliver sufficient benefits in terms of confidence in the statistics produced by government departments other than the ONS itself...Also, ONS would be required to act as its own watchdog...The difficulties of marrying the regulatory role with organisational management are well-evidenced elsewhere.¹⁴⁸

The Government noted (rather than accepted) the Sub-Committee's recommendation that there be a "clear statutory separation between the role of the National Statistician in the executive (or operational) delivery of statistics" and the responsibilities of the Statistics Board "for the oversight and scrutiny of the statistical system as a whole".¹⁴⁹ In its response to the Sub-Committee's report, the Government noted:

The Government intends that the independent Board will be non-executive in nature, composed of a majority of non-executives and headed by a non-executive chair. The National Statistician will be Chief Executive of the central statistics office, and have responsibility for the day-to-day delivery of the business of the office, and head of the executive team. The Board will be responsible for holding the National Statistician to account for the running of the central statistics office, replacing the role of Ministers now.¹⁵⁰

In apparently dismissing the Sub-Committee's recommendation that a separate scrutiny body (such as the current Statistics Commission) should be established if the proposed

¹⁴⁷ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 73-74

¹⁴⁸ Statistics Commission, *Legislation to build trust in statistics*, May 2004, paras 1.14 & 4.10

¹⁴⁹ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, para 63

¹⁵⁰ House of Commons Treasury Committee *Independence for statistics: Government Response to the Committee's Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006, HC 1604, p. 7

Board were given executive functions, the Government stressed its view that the proposals, as published, provided “the best way forward” in the governance arrangements for the Statistics Board.¹⁵¹

The Government’s proposals indicated that the National Statistician and all non-executive members of the Statistics Board, including the Chair, would be appointed “through open and fair competition and in line with the Office of the Commission for Public Appointments guidance”.¹⁵² However, while the Chair of the Board and the National Statistician will be formally appointed by the Crown, their appointments will be made on the advice of Ministers. The Government also anticipates that “ministers will appoint the other non-executive members of the board” following consultation with the Chair. It remains unclear what the precise role and level of involvement Ministers will take in these appointments. It may be that they appoint their preferred candidate(s) from a shortlist of names drawn up by a selection panel, or their role may be confined to one of ‘rubber stamping’ the name of the candidate(s) recommended for appointment by the panel.

The National Statistician told the Sub-Committee during oral evidence that she expected the Chancellor of the Exchequer to be directly involved in non-executive appointments to the Board:

I know from discussions that this is the Chancellor’s opportunity ... to make a big step towards independence, and I am sure that he will find the people [and] choose the people in the right way, but it is up to all of us, either on the board or in the statistical system, to emphasise all the time the independence of what we do.¹⁵³

The Sub-Committee concluded that the Government’s proposals to make appointments to the Board, in line with OCPA guidelines, was on balance “sufficient to ensure independence” and concurred with the National Statistician that “public perceptions about the independence of the board will depend more upon the actions of board members than upon the way in which they are appointed”.¹⁵⁴

The Sub-Committee also considered the arrangements for the provision of secretariat services for the Statistics Board given that the Government’s proposals had not explicitly considered them. The Office for National Statistics told the Sub-Committee that there were two possible models for a board secretariat:

One [model] is for the board to share the same sort of secretariat as the chief executive, and that is practised in some organisations. In other organisations,

¹⁵¹ House of Commons Treasury Committee *Independence for statistics: Government Response to the Committee’s Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006, HC 1604, p. 7

¹⁵² HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 26

¹⁵³ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 35

¹⁵⁴ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, pp. 28-9

such as the BBC, they have taken exactly the opposite approach and decided that the governing board should be very distinct from the chief executive.¹⁵⁵

Although the ONS would “work through” through these models to determine the most appropriate way forward, the Sub-Committee recommended that the secretariat of the Statistics Board should be separate from that of its Chief Executive, the National Statistician.¹⁵⁶

In its response to the Sub-Committee’s report, the Government re-iterated that governing board would be non-executive in nature while the National Statistician would continue to have responsibility for the day-to-day delivery of the business of the Statistics Board. The Government concluded, therefore, that “it should be a matter for the (Statistics Board) to decide how to organise its support team”, suggesting that any decisions on the form and location of different secretariat services would be made after the appointment of members the new Board.¹⁵⁷

The Bill

Clause 3 stipulates that the Statistics Board will consist of executive and non-executive members. The Chair of the Board will be a non-executive member of the Board and will be formally appointed by the Queen on the advice of Ministers. It is not clear from the Government’s published proposals whether it will be the Prime Minister, Chancellor of the Exchequer, or another Minister who will be required to make such recommendations. *At least* five other non-executive members will be appointed by the Treasury after consulting the Chair. Three non-executive members will be appointed by the Treasury after consulting each of the three Devolved Administrations. The Treasury may also designate any one of the non-executive members to be the deputy chair of the Board.

Clause 3(6) provides for *no more* than three executive members of the Board, of which one will be the National Statistician (*ex officio*). The remaining two executive members of the Board will be appointed by the non-executive members.

Clause 4 sets out the rules for the appointment, re-appointment, resignation, and dismissal of non-executive members of the Board. Non-executive members are to be appointed for at least one year and no more than five years, and may resign at any time in writing to the Treasury. The Treasury may dismiss any non-executive member if they have, without permission, been absent from meetings of the Board for more than three months, been declared bankrupt, failed to comply with the terms of their appointment, misbehaved, or are otherwise unable or unwilling to undertake their duties. Non-executive members are eligible for re-appointment on any number of occasions. This contrasts with the current OCPA *Code of Practice* which suggests that, for an “upper tier body” which the Statistics Board is likely to be, non-executive board members should not

¹⁵⁵ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 33

¹⁵⁶ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 29

¹⁵⁷ House of Commons Treasury Committee *Independence for statistics: Government Response to the Committee's Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006, HC 1604, p. 8

serve for a period exceeding 10 years in total and should be re-appointed no more than twice, preferably only once.¹⁵⁸

The Bill does not explicitly provide for a role for Parliament or parliamentary committees to scrutinise the appointment of non-executive members of the Statistics Board through “confirmation hearings”, similar to the role played by the Treasury Committee in scrutinising appointments to the Bank of England’s Monetary Policy Committee. Similarly, no provision is made in the Bill for consultation with a Devolved Administration where the dismissal of a non-executive member of the Board, initially appointed in consultation with that Devolved Administration under clause 3, is being considered by the Treasury.

Clause 5 requires the Board to employ a National Statistician who will be appointed by the Queen on the advice of Ministers. It is not clear from the Government’s published proposals whether it will be the Prime Minister, Chancellor of the Exchequer, or another Minister who will be required to make a recommendation on the appointment of the National Statistician. The National Statistician will be employed on the terms of their appointment, which may include provision for dismissal. The National Statistician will be an officer of the Board and, under clause 4, will also be an *ex officio* executive member of the Board. Clause 5 also establishes the post of Head of Assessment, also an officer and employee of the Board but not necessarily an executive member of the Board. Both the National Statistician and the Head of Assessment will be civil servants. The Board will also employ other staff as required, subject to the approval of the Minister for the Civil Service as to the number of staff and their terms and conditions.

All employees of the Board will be civil servants. These employees will include employees in the executive office of the National Statistician who are involved in the production of statistics, as well as the secretariat to the Board, and those working on the assessment of National Statistics and reporting to the Head of Assessment.

Clause 27 allows the Chancellor of the Exchequer to give the Board any directions that the Chancellor may consider appropriate in the event of a failure by the Board to comply with its objective, perform any of its functions, or to comply with European Union obligations. This clause also allows Scottish and Welsh Ministers, and the Department of Finance and Personnel for Northern Ireland, with the consent of the Chancellor, to give the Board any necessary directions to remedy serious failures by the Board or to perform any of its functions in relation to Scotland, Wales or Northern Ireland. Clause 27(8) permits the authority giving the direction (i.e. the Chancellor or the Devolved Administrations) to carry out a direction where the Board fails to act, although the Devolved Administrations will require the consent of the Chancellor of the Exchequer before doing so.

¹⁵⁸ Office of the Commissioner for Public Appointments *Code of Practice for Ministerial Appointments to Public Bodies* (2005), p. 21
http://www.ocpa.gov.uk/upload/assets/www.ocpa.gov.uk/codeofpractice_aug05.pdf

D. The National Statistician

The Director of ONS is also currently the National Statistician, the Government's chief statistical adviser, and head of the Government Statistical Service. Under the *Framework for National Statistics* (2000), the National Statistician is granted operational independence from Ministers, and is both the professional head of National Statistics and Director of ONS. The National Statistician has responsibility for the professional statistical quality of all outputs designated "National Statistics", and for ensuring that all outputs comply with the *National Statistics Code of Practice* (2002). The National Statistician is appointed by, and accountable to, the Chancellor of the Exchequer as Minister for National Statistics for the performance of ONS and, alongside Heads of Profession for statistics in Government Departments, for the discharge of annual statistical work programmes approved by Ministers.

The Government initially proposed to change the title of National Statistician to "Chief Statistician", a title usually given to the more junior of statisticians in Senior Civil Service (SCS) grades. The proposals meant that the Chief Statistician would continue to be chief executive of ONS and the chief statistical adviser to government, although no mention was made as to whether the Chief Statistician would continue to be the UK's senior representative in EU and international statistical forums.

The Treasury Sub-Committee observed that the Government's consultation paper neither fully detailed the responsibilities envisaged for the National Statistician under the new arrangements nor specified whether the National Statistician's authority over the executive delivery of statistics would be reinforced in legislation. In their response to the Government's consultation paper, the Bank of England found the proposals in this area "somewhat unclear" and noted that the role of the National Statistician under the new arrangements did not "sound akin to the role of the National Statistician under the current framework."¹⁵⁹ The Chief Statistician of Canada, Dr Ivan Fellegi, told the Sub-Committee that the Government envisaged a "weak role" for the National Statistician¹⁶⁰, while the Royal Statistical Society suggested that the National Statistician should have the necessary powers in keeping with the United Nations Fundamental Principles of Official Statistics so she would have the authority to comment on "erroneous interpretation and misuse of statistics both inside and outside government".¹⁶¹

The Sub-Committee agreed with the Chief Statistician of Canada that the Government's proposals with respect to the stated powers of the National Statistician needed "major strengthening" and the professional authority of the National Statistician over the executive delivery and co-ordination of statistics should be "clearly and unequivocally provided for in legislation".¹⁶² Overall, the powers suggested by Dr. Fellegi seemed to the Sub-Committee to be "sensible":

¹⁵⁹ Bank of England response to HM Treasury *Independence for statistics: a consultation document*, p. 2

¹⁶⁰ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 19

¹⁶¹ Royal Statistical Society response to HM Treasury *Independence for statistics: a consultation document*, para 6

¹⁶² House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 31

- Absolute control over the statistical methods used throughout the statistical system. This would be exercised through her authority over the ONS; and through the conduct of quality audits of statistics produced in other government departments.
- Absolute control over the timing and content of statistical releases—whether originating from the ONS or from other government departments.
- Overall management of the statistical system which in turn includes:
 - day-to-day management responsibility over the centralised portion of the system (the current ONS);
 - effective authority to appoint and manage the careers of all members of the Government Statistical Service and the duty to be directly involved in the career management of the top two levels of the main decentralised components of the statistical system. This would include authority to appoint and reassign these managers to ONS and to other statistical organisations of the government.
- [Power to] recommend to the Board priority statistical areas for development or improvement, as well as areas the scope of which should be reduced or eliminated outright.
- [Power to] recommend to the Board statistical programmes to be subject to quality audits.
- [Authority to] act as the public spokesperson of the statistical system.
- [Responsibility for enforcing] the statistical code of practice throughout the system. This should include a provision that statistics will be disseminated from all statistical collections at the earliest date, i.e. that there are no confidential statistical programs and no holding back of results.¹⁶³

In its response to the Sub-Committee, the Government largely repeated the responsibilities of the National Statistician set out in the consultation paper. The National Statistician would, as now, be:

- the Chief Executive of the central statistics office (and therefore responsible for the day-to-day delivery of the business of the office and head of the executive team);
- the Chief Statistical Adviser to the Government and the Board on all professional and technical statistical matters; and
- Head of the Government Statistical Service (GSS), providing leadership to all professional statisticians within government, and being consulted on the appointments of all departmental Heads of Profession for Statistics (who will continue to have a responsibility to the National Statistician for the professional quality of their work).

In addition, the Government intends that, in the new system, the National Statistician will be:

¹⁶³ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 81

- a full member of the new Board (sharing responsibility with other Board members for ultimate decision-making rather than, as now, advising Ministers as the decision makers); and
- a higher-status Crown appointment (rather than, as now, appointed by Ministers).¹⁶⁴

As to the title of National or Chief Statistician, the current National Statistician told the Sub-Committee that she would “rather stick” with her existing title. Given the title “chief statistician” was already in use across Government Departments and in the Devolved Administrations, Ms Dunnell contended that an identical title for the chief executive of the Statistics Board might be “quite puzzling to people”.¹⁶⁵ The Royal Statistical Society agreed, observing that “there are things which need to change [so] let us not fiddle with things that do not”.¹⁶⁶

The Sub-Committee recommended that the title of National Statistician be retained.¹⁶⁷ In the Government’s response to the Sub-Committee’s report, no explicit acceptance was made of this recommendation although, throughout the response, all references to the chief executive of the Statistics Board used the current nomenclature of “National Statistician”. The Government confirmed that the title of National Statistician would be retained in its response to the consultation process.¹⁶⁸

The Bill

Under **clause 3** the National Statistician will be an executive member of the Statistics Board. **Clause 5** requires that the National Statistician will be an officer and employee of the Board, appointed by the Queen and employed on the terms and conditions of their appointment, which may include provision for their dismissal.

The National Statistician will have both executive and advisory functions. **Clause 28** sets out the National Statistician’s *advisory* functions. The National Statistician will be the Board’s principal professional adviser on statistical good practice, and the quality and comprehensiveness of official statistics. The Board is required to take account of the National Statistician’s advice. Where the Board disagrees with the National Statistician on professional statistical matters, it is required to publish a statement and lay it before Parliament. Advice on professional statistical matters is defined as the development and maintenance of definitions, methodologies, classifications and standards for official statistics, or the applications of these to statistics produced by the Board itself.

¹⁶⁴ House of Commons Treasury Committee *Independence for statistics: Government Response to the Committee’s Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006, HC 1604, p. 9

¹⁶⁵ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 34

¹⁶⁶ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 8

¹⁶⁷ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 31

¹⁶⁸ HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 13

Clause 29 sets out the National Statistician's *executive* functions. The National Statistician will be chief executive of the Statistics Board with direct authority to conduct the business of the Board. The National Statistician will not be permitted to adopt or revise the Code of Practice, or to determine whether official statistics comply with the Code. The Board is allowed to direct the National Statistician on whether they may exercise a particular function and, if so, how.

The National Statistician is required to set up and head an executive office which will include the other two executive members of the Board. Where the Head of Assessment is also an executive member of the Board, the Head of Assessment would not be part of the National Statistician's executive office. The National Statistician may appoint any other employee of the Board to the executive office where required, and may delegate to employees of the executive office any of their functions. In practice, these functions will include the range of activities related to the production of statistics.

In the event of a vacancy in the office of National Statistician, the Board may appoint one of the remaining two executive members of the Board to carry out the National Statistician's functions as chief executive. Where the Head of Assessment is also an executive member of the Board, they may not be appointed to carry out these functions in the event of a vacancy in the office of National Statistician.

Clause 31 prohibits the National Statistician from taking part in the Board's deliberations or decisions about the assessment of statistics that the Statistics Board itself produces, although the National Statistician may make representations to the Board about these statistics.

IV Funding and efficiency

The Government intends that funding for the Statistics Board would continue to come from general taxation, as at present, since statistics are seen as a "public good".¹⁶⁹ However, the extent of funding will no longer be determined as part of the Government's Spending Review process and would, instead, be determined by an agreed formula subject to periodic review. Separate arrangements would exist for the funding of the decennial census of population. The Government regards the "significant expenditure associated with the census" to be "difficult to forecast in advance of detailed planning", and hence census funding should remain part of the normal Spending Review process.¹⁷⁰

While the Government acknowledges that it would need to provide for flexibility in funding, particularly to allow for adequate resourcing of "significant new statistical demands it placed on the board during a funding period", the consultation document envisaged that "new statistical products proposed by the board itself would need to be met from within its allocated funding". The Sub-Committee received evidence from commentators and practitioners that this approach could undermine the perceived independence of the system. Some felt that it could limit the Statistics Board's role in ensuring that the statistical system meets the broader interests of statistical users and

¹⁶⁹ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 27

¹⁷⁰ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 28

the general public which may, or may not, be shared by the government of the day. The planning of the decennial census is also long-term, often over seven or eight years in advance of census day. For planning and delivery to be effective, it may be that the funding arrangements should be set well in advance of the two or three year “windows” of each Spending Review cycle.

The Sub-Committee heard from several witnesses who expressed concern at the Government’s proposals in respect of funding arrangements, particularly the mechanism where additional demands placed on the statistical system by government would be funded centrally whereas new outputs proposed by the Statistics Board would need to be funded from within existing budgets. The Chief Statistician of Canada told the Sub-Committee that there was

...a sharp distinction between the government having the freedom to fund (or not to fund) the development of statistical information on certain priority issues and the possibility open to the Government of withdrawing funding if, for example, it does not like the results.¹⁷¹

The Statistics Commission questioned whether this method of determining funding for the Statistics Board would make it possible for statistical plans and priorities to be adequately separated from ministerial decisions.¹⁷² The Financial Secretary to the Treasury told the Sub-Committee during oral evidence that the Treasury had not yet fully considered what impact the proposed model for funding would have on the ability of the Statistics Board to shape its own work programme. Mr Healey advised that this was a “matter down the track”.¹⁷³ The Sub-Committee concluded that the Government should set out a more detailed account of how the funding arrangements for the new Board would work in practice and, to ensure a degree of financial certainty for the Board, the minimum period between reviews of funding should be five years.¹⁷⁴

Regarding the funding of the decennial census, the Sub-Committee heard from several witnesses who were concerned that the funding of the census would be adversely affected by it being determined as part of the Spending Review cycle. The Statistics Commission stressed that planning for this “huge, lumpy part of statistical activity in the UK” was a long-term project that could not be undertaken as part of the Spending Review process.¹⁷⁵

Accommodating that one-off blip within standard funding arrangements is clearly not easy, not least because, whilst a census occurs every ten years, the preparations for it extend quite a long time beforehand and quite a long time thereafter. It seems ... to be rather a difficult one to accommodate within, say, a

¹⁷¹ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 84

¹⁷² House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 88

¹⁷³ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 47

¹⁷⁴ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 38

¹⁷⁵ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 24

three-year spending horizon, and it really has to be thought of as an enterprise from beginning to end rather than the first three years, middle three years or couple of years at the end.¹⁷⁶

The National Statistician agreed that funding for the census should be determined on the basis of long-term, rather than short-term, planning:

What we are very much working towards in the Spending Review process is acceptance by government...of the longer term costs [of the census], because we are estimating costs right up to 2013 now and what we need to get is an assurance that that a proper census will be funded. Whatever way it happens, I do not think it really matters. What we need to know is that we are going to get that money.¹⁷⁷

These views were not shared by the Financial Secretary. Mr Healey advised the Sub-Committee that retaining the census within the Spending Review process would not “inhibit [its] preparation and delivery”.¹⁷⁸

Acknowledging that the retention of the funding arrangements for the census within the Spending Review process may limit the Statistics Board’s ability to plan for future censuses adequately in the longer-term, the Sub-Committee recommended that the Government re-examine the implications of its proposal in this area.¹⁷⁹ In its response to the Sub-Committee’s report, the Government noted the recommendation and pledged to provide “further detail in due course”.¹⁸⁰

Under the 2004 Spending Review, ONS is committed to achieving annual efficiency savings. ONS achieved efficiency savings of £12.5 million in 2005–06, and is required to achieve savings of £25 million per year by 2007–08. ONS is also required to relocate 850 jobs from London and the South East by March 2010. As at 31 March 2006, 125 full time equivalent posts had been relocated.¹⁸¹

The Financial Secretary to the Treasury explained to the Sub-Committee that, since the Government intended to introduce the necessary legislation “as soon as possible”, he did not envisage that the 2007 Comprehensive Spending Review would form the basis on which the next round of funding for the ONS (or the Statistics Board as its successor) would be determined. Nevertheless, Mr Healey said that an independent Statistics Board would continue to have a responsibility to deliver the efficiencies and the relocation

¹⁷⁶ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 24

¹⁷⁷ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 33

¹⁷⁸ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 47

¹⁷⁹ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 39

¹⁸⁰ House of Commons Treasury Committee *Independence for statistics: Government Response to the Committee’s Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006, HC 1604, p. 11

¹⁸¹ Office for National Statistics, *Spring Departmental Report 2006* (Cm 6838), para 32 & para 41
http://www.statistics.gov.uk/downloads/theme_other/SpringDeptReport2006_v1.pdf

targets that the ONS had signed up for, because that was a “part of the overall settlement” in the 2004 Spending Review.¹⁸² While the new Statistics Board would have no new efficiency or relocation targets imposed upon it, the Government would “make sure there is a discipline on the sorts of efficiencies that we expect of departments and public agencies”.¹⁸³

In its response to the Sub-Committee’s report, the Government promised to provide further details of funding arrangements for the new Statistics Board and the census “in due course”.¹⁸⁴ The Treasury’s response to the consultation process, published in November 2006, provided little in the way of further detail, although the Government confirmed that the expenditure of the Statistics Board would be “paid out of money voted for by Parliament”.¹⁸⁵ The Government remained of the view that a number of key criteria underpinned the funding arrangements for the new system:

- sufficient independence in relation to government spending controls to avoid a perception that statistical independence could be compromised;
- sufficient transparency in the funding mechanism to build public confidence in independence; and
- sufficient flexibility to meet changing needs; combined with
- adequate safeguards to encourage efficiency, secure value for money, and control public spending.

Given that statistics are a public good, it is appropriate – as now – for funding to come principally from general taxation. The Government intends that funding for the functions of the new Board be set outside the normal Spending Review process, via periodic review, with subsequent increases determined by formula. As is usual legislative practice, in order to maximise the flexibility, these arrangements will not be specified in legislation.¹⁸⁶

The Bill

Clause 26 obliges the Board to have due regard to efficiency and cost-effectiveness when making decisions in exercise of its functions. The Board is required to limit the costs that individuals, businesses, and other organisations will bear as a result of its activities, particularly in considering whether to acquire data “from existing administrative sources or whether to commission new data instead”.¹⁸⁷

¹⁸² House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 48

¹⁸³ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 48

¹⁸⁴ House of Commons Treasury Committee *Independence for statistics: Government Response to the Committee’s Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006, HC 1604, pp. 10-11

¹⁸⁵ HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 22

¹⁸⁶ HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 22

¹⁸⁷ *Statistics and Registration Service Bill* (Bill 8 of 2006-07), Explanatory Notes, p.18

V Statistical independence and devolution

The *Scotland Act 1998*, *Government of Wales Act 1998 and 2006*, and *Northern Ireland Act 1998* provided the legislative basis for the creation of Devolved Administrations and legislatures in Scotland, Wales, and Northern Ireland. A *Memorandum of Understanding* was published in 2001 between the UK Government and the Devolved Administrations in which it was agreed that the UK Government would not legislate on devolved matters without the consent of the devolved body. Attached to the Memorandum was a *Concordat on Statistics*, also signed in 2001.¹⁸⁸ The parties to the Concordat were the National Statistician and Director of ONS (as head of the Government Statistical Service), the Permanent Secretaries of the Scottish Executive and the National Assembly for Wales, the head of the Northern Ireland Civil Service, and the Cabinet Secretary (as head of the UK's Home Civil Service). However, the Concordat was non-statutory:

This concordat is not intended to constitute a legally enforceable contract or to create any rights or obligations which are legally enforceable. It is intended to be binding in honour only.

The Concordat gave a series of clear commitments to the production of coherent UK-wide statistics:

The administrations recognise that co-operation in statistical work is necessary to meet their respective policy and business objectives and their collective responsibility to deliver official statistics to the required standard. Each has a contribution to make to the provision of statistical advice and information in relation to both devolved and reserved matters, and to the production of coherent statistics about the UK whilst recognising that the priorities and objectives of the administrations may not always be identical. They have a common interest in promoting the integrity of official statistics and adherence to high professional standards.

[...]

In addition to ensuring exchanges of information, the administrations will co-operate to ensure that there are readily available, high quality and timely statistics about the UK, disaggregated as appropriate. They will agree mechanisms which ensure that these statistics are readily available to all four administrations - the Parliaments/Assemblies, international organisations, data providers and users, and the public - either by providing them directly or by providing information about sources. They will work together to ensure that all the statistics which are provided are coherent, reliable, are collected and compiled in a way which represents good value for money, and are consistent as far as data sources permit.¹⁸⁹

¹⁸⁸ Memorandum of Understanding *Concordat on Statistics* (2001)
http://www.statistics.gov.uk/about/national_statistics/downloads/concordat_on_statistics.pdf

¹⁸⁹ Memorandum of Understanding *Concordat on Statistics* (2001), paras E2 and E10.3.1

Despite the Concordat, comprehensive UK-wide statistics are absent in many key areas. As one commentator recently noted, “the 2001 population census, the most fundamental of statistics, was so fragmented that very few outputs are available for the UK as a whole”.¹⁹⁰ There are a number of other examples where UK-wide statistics designated as National Statistics are either unavailable or difficult to obtain, or otherwise limit themselves to the geographical extent of the producing department’s responsibilities. Most of the statistics produced by the Department for Work and Pensions on benefits and other aspects of social security relate to Great Britain, and separate statistics are published in Northern Ireland. Measures of deprivation are also impossible to compare, as the Royal Statistical Society noted:

Separate indexes of multiple deprivation are produced for England, Wales, Scotland and Northern Ireland. This makes it impossible to compare deprivation between different cities in parts of the UK and limits the use of the indicator as a means by which public policy or government spending can be applied or its effects monitored.¹⁹¹

Similar problems exist in the field of education statistics, where variable geographies make it difficult to compile aggregate statistics for the UK as a whole, as well as in a number of areas of public health, including obesity, diet, and nutrition (England), teenage conceptions and birth-weight (England and Wales), and alcohol consumption and smoking (Great Britain). However, statistics on the prevalence of HIV infection are available on a UK basis.

Rather misleadingly, the Home Office’s *British Crime Survey* provides data for England and Wales only, and separate statistics are published in Scotland and Northern Ireland, making it difficult to derive a truly comparable count of recorded crime or victimisation across the UK as a whole. As the Statistics Commission observed in a recent review of crime statistics:

At present it is not possible to easily compare UK countries. The BCS (British Crime Survey) no longer covers the whole of Britain, and although the Scottish crime survey exists, this has been run on a different basis. Thus, there are two different surveys, which are run using different methods and asking different questions, making comparison of these data particularly difficult.¹⁹²

In November 2006, the Home Office published the findings of its own review into crime statistics. The report concluded:

- A shift in emphasis is required in the production and communication of crime information. The focus must shift from the publication, by the Home Office, of the aggregate national picture to a system of communication

¹⁹⁰ Briscoe, S., *Britain in Numbers*, Politico’s, 2005, p. 37

¹⁹¹ Royal Statistical Society Statistics User Forum *UK Common Datasets – the response of the RSS Statistics User Forum* (2005)
<http://www.rss.org.uk/PDF/Response%20on%20UK%20Common%20Datasets.pdf>

¹⁹² Statistics Commission *Crime Statistics: User Perspectives* (September 2006), p. 59
http://www.statscom.org.uk/uploads/files/reports/Crime_Statistics_Review-final.pdf

which encompasses local data at local level between police and their neighbourhood communities.

- Both the scope and definitions of the national statistics that are produced need a radical overhaul. Significant groups of victims are not covered by current surveys and certain major current crime category definitions are confusing and misleading.
- Governance, management and organisation of the police and Home Office environments in which crime statistics are produced and reported must be revised to provide the public with complete assurance of actual and perceived independence and integrity of the statistics.¹⁹³

Similarly, until 2002 drug seizures and offender statistics were produced for the UK as whole, but since 2003 the Home Office has published these data on an England and Wales basis only. Despite the provisions of the Concordat, the Home Office's *National Statistics Review of Drug Seizure and Offender Statistics*, published in 2004, clearly recommended that separate statistics be published for Scotland and Northern Ireland to those published for England and Wales.¹⁹⁴

During its inquiry into the Government's proposals, the Treasury Sub-Committee heard from many witnesses who expressed concern at a lack of consistency and coherence in UK-wide statistics. The Royal Statistical Society told the Sub-Committee that while "it was hoped at the outset that UK statistics would not be jeopardised by devolution" this had "not been borne out in practice":

...Nor does the system as a whole support the legitimate needs of users in devolved territories by providing consistent, comparable statistics across the UK. There is an urgent need to engage the devolved administrations in recognising the failures of the present arrangements both in producing consistent, coherent UK statistics and in providing consistent statistics that allow each of the devolved administrations to compare itself to other components of the UK".¹⁹⁵

The Chief Statistician of the Scottish Executive told the Sub-Committee that his primary focus was on meeting the needs of users of statistics in Scotland rather than on ensuring that Scottish statistics were always consistent with data produced by other UK administrations. Mr. Wishart told the Sub-Committee that:

Users of Scottish information have a set of needs, some of which will be the same as users in other parts of the country. Since devolution, in particular, we have done a huge amount of work to improve the range and quality of statistics for Scotland on issues like education, and that is about meeting the needs of people in Scotland and, indeed, any clearly identified needs from elsewhere in

¹⁹³ Home Office *Crime Statistics: an independent review* (November 2006)

<http://www.homeoffice.gov.uk/rds/pdfs06/crime-statistics-independent-review-06.pdf>

¹⁹⁴ Home Office *National Statistics Review of Drug Seizure and Offender Statistics* (2004), p. 27
http://www.homeoffice.gov.uk/rds/pdfs2/nsqr29_drugs.pdf

¹⁹⁵ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 75

the world for that matter, but it is very much about understanding and responding to the needs of users for better statistics on Scotland.¹⁹⁶

The Sub-Committee heard that the 2001 Census was a particular example where fragmentation in UK-wide statistics had occurred. Simon Briscoe told the Sub-Committee that, in a number of areas, users of census data had to “fumble around on three different websites to try and cobble together a figure” for the UK as a whole.¹⁹⁷ The 2001 Census had suffered from a lack of codification of what was required at the UK level. For example, different versions of questions on religious identity and ethnicity were asked in England and Wales, Scotland, and Northern Ireland “to reflect local differences in the requirement for information”.¹⁹⁸ In effect, the UK ran three different censuses in 2001 since there was no “counterweight” pressing for consistent UK-wide statistics:

The Scottish Parliament decided to make some changes. That was not in itself a problem, but when the Welsh Assembly saw that the Scottish Parliament had made some changes, they wanted some changes, and the thing began to fragment because the forces pulling it apart were stronger than [England and Wales] sitting in a room in Whitehall with [their] counterparts. They were stronger than we were...so in fact we had three different censuses.¹⁹⁹

Since 2001, the Registrars General for England and Wales, Scotland, and Northern Ireland have found it difficult to arrive at a common position on some census questions to be asked in 2011 – the date of the next census – particularly regarding ethnicity “because of the apparent differences in the composition and views of the minority ethnic populations in Scotland and England”.²⁰⁰ The National Statistician told the Sub-Committee that, while ONS was working with the Devolved Administrations to achieve “a consistent set of UK outputs” from the 2011 Census, there was no necessity for “all the methods and questionnaires to be exactly the same” since the Registrars General would need to remain “sensitive to the different requirements” in each constituent country of the UK.²⁰¹

The Chief Statistician of Scotland agreed with other witnesses that the Concordat needed reviewing and updating “in light of devolution, the experience over the last period, but also the current issues”.²⁰²

¹⁹⁶ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 29

¹⁹⁷ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 6

¹⁹⁸ Office for National Statistics *Religion in Britain* www.statistics.gov.uk/cci/nugget.asp?id=293

¹⁹⁹ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 10

²⁰⁰ Office for National Statistics *The Conduct of the 2011 Censuses in the UK: Statement of Agreement between the Registrars General*, February 2005
<http://www.statistics.gov.uk/about/census/downloads/RGsAgreement.pdf>

²⁰¹ Office for National Statistics *The Conduct of the 2011 Censuses in the UK: Statement of Agreement between the Registrars General – Progress report*, April 2006
<http://www.statistics.gov.uk/about/census/downloads/RGsAgreement.pdf> (progress in italics)

²⁰² House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 29

The Financial Secretary to the Treasury told the Sub-Committee that the lack of coherence in UK-wide statistics was “not a new problem” and there would be inevitable variations between the different UK administrations:

The Scottish law, health and education systems are different. Some of their outputs are different. Some of the information, monitoring and statistical requirements will therefore be different, and that is a consequence of the devolved function and the differential decisions that are made.²⁰³

However, Mr. Healey agreed that it was important to maintain a body of comparable and compatible UK-wide datasets. While the Government would be keen to examine “renewing and perhaps reforming and strengthening the Concordat”, this would depend on the degree to which the Devolved Administrations were willing to do likewise. The Government did not wish to “interfere” with the devolution settlement, and the Devolved Administrations should continue to have “the responsibility and the scope to develop and run their statistical system as they choose”.²⁰⁴

Following its inquiry, the Sub-Committee remained concerned at the apparent fragmentation of UK statistics. In its report, the Sub-Committee recommended that the Concordat on Statistics be revised while the new Statistics Board should be given responsibility for oversight of the entire UK statistical system:

The Government [should] use the opportunity offered by its present consultation process to examine what it can do, both unilaterally and in co-operation with the devolved administrations, to improve co-ordination of the collection and production of statistics across the UK’s different administrations. One step which the Government could clearly initiate is a review of the 2001 Concordat on Statistics, which sets out arrangements for the UK statistical work agreed between the devolved administrations. We therefore welcome the Minister’s commitment, on behalf of the Government, to review the Concordat on Statistics, particularly in light of his suggestion that, while this fragmentation has been an issue for some time because of differing local circumstances and requirements, devolution has led to an inevitable intensification of the problem. We recommend that the Government negotiate a revised Concordat with the devolved administrations, that the National Statistician, in consultation with the chief statisticians for Scotland, Wales, and Northern Ireland, be given responsibility for drafting a revised Concordat and that the new independent board be given responsibility for monitoring the implementation of the revised Concordat.

[...]

It is important that the UK-wide scrutiny and audit function currently undertaken by the Statistics Commission is adequately replicated under the Government’s

²⁰³ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 48

²⁰⁴ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 49

proposals. We recommend that the new independent board be given responsibility for oversight of the statistical system throughout the United Kingdom.²⁰⁵

In the Government's response to the consultation process, the Treasury reiterated that the Devolved Administrations should retain authority for the production of statistics in policy areas that had been devolved as part of the devolution "settlement":

...reflecting a long history of decentralised statistical production in the UK, the devolved administrations retained authority over statistical processes and production within their respective countries as part of the 1998 devolution settlement. As such, it is a matter for the devolved administrations to decide what action they might take in response to the proposed reforms.²⁰⁶

The Treasury also confirmed that the Devolved Administrations in Scotland, Wales and Northern Ireland "have now each indicated a desire to participate in the new arrangements", enabling "the full benefits of the legislation to be realised, strengthening the statistical system for users across the UK". The remit of the Statistics Board would, therefore, extend across the UK, thereby facilitating "the delivery of coherent and comparable statistics across the UK in the future". The 2001 Concordat on Statistics would also be reviewed:

In addition to the legislation the UK Government will continue to work with the devolved administrations to develop other mechanisms to ensure the coherence and co-ordination of UK statistics into the future, including the possibility of revising the existing *Concordat on Statistics* agreed as part of the 2001 Memorandum of Understanding between the UK Government and the devolved administrations.²⁰⁷

The Bill

Three non-executive members of the Statistics Board will be appointed by the Treasury to represent the Devolved Administrations. **Clause 3(4)** provides for one non-executive member of the Statistics Board to be appointed by the Treasury after consultation with Scottish Ministers, one member appointed after consultation with Welsh Ministers, and a third non-executive member appointed after consultation with the Department of Finance and Personnel in Northern Ireland. The statutory requirement to consult the Devolved Administrations on the appointment of Board members represents something of a post-devolution constitutional innovation, and raises some issues if the results of the consultation are not acceptable. **Clause 3(2)** stipulates that there will be "at least five" non-executive members of the Statistics Board in addition to the Chair. Therefore, there is scope under this clause for the number of non-executive Board members to be increased, although this may need to be balanced against the need for the Board to meet the Government's expectations that the Board adhere to "good governance principles" by preventing the size of the Board from becoming too large.²⁰⁸

²⁰⁵ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, pp. 60-61

²⁰⁶ HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 10

²⁰⁷ HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 10

²⁰⁸ HM Treasury, *Independence for statistics: A Regulatory Impact Assessment*, 22 November 2006, p. 9

Clause 6(1)(a) provides that statistics currently produced by the Devolved Administrations will be defined as “official statistics” for the purposes of the legislation. Under **clause 6(1)(b)**, Scottish and Welsh Ministers, and the Northern Ireland Department of Finance and Personnel will each be able to add to coverage of official statistics, beyond that covered in clause 6(1)(a). The Bill specifies that the process for adding to the coverage of official statistics would be through statutory instruments subject to the affirmative procedure before the relevant devolved legislature.

Clause 8 requires the Statistics Board to monitor the production and publication of official statistics, enabling it to report on any concerns it may have about the quality and comprehensiveness of statistics produced by the Devolved Administrations.

Clause 10 requires the Statistics Board, in consultation with the Devolved Administrations, to prepare, adopt and publish a Code of Practice for National Statistics. The Code will contain the standards against which National Statistics will be assessed. The Board may revise the Code at any time, after due consultation with the Devolved Administrations.

Clause 15 requires the Board to prepare and publish a statement of principles and procedures it will adopt in order to carry out the assessment and re-assessment of National Statistics. The Board may revise the statement at any time. In preparing and revising the statement, the Board is required to consult the Devolved Administrations.

Under **clause 18**, the Board is given authority to produce and publish statistics on any matter relating to the United Kingdom or any part of it. However, the Board is required to gain the consent of Scottish and Welsh Ministers, and the appropriate department in Northern Ireland, before it can produce and publish statistics relating to areas that are currently devolved.

Clause 22 allows Scottish and Welsh Ministers, and Northern Ireland departments, to delegate to the Statistics Board any of their functions relating to the production of statistics. The delegation of these functions will be made by secondary legislation *without* parliamentary scrutiny. In a memorandum to the House of Lords Delegated Powers and Regulatory Reform Committee, the Treasury noted

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.²⁰⁹

²⁰⁹ House of Lords Delegated Powers and Regulatory Reform Committee *Memorandum from HM Treasury*, November 2006, para 21

Clause 25 requires that the Board, at the end of each financial year, lays a report before Parliament, the Scottish Parliament, the National Assembly for Wales, and the Northern Ireland Assembly providing details as to its activities and findings during the year, and its future work programme. This clause enables the Board, where it thinks it appropriate, to lay reports which are wholly on devolved matters before the relevant devolved legislature. All reports laid before Parliament and the devolved legislatures must be published.

Clause 27 allows the Chancellor of the Exchequer to give the Statistics Board such directions as the Chancellor considers appropriate in the event of a serious failure by the Board to perform any of its functions, or to comply with European Union obligations. Scottish and Welsh Ministers, and the Department of Finance and Personnel for Northern Ireland may, with the consent of the Chancellor, also give the board such directions as they consider appropriate to remedy a serious failure by the Board to comply with its objectives as set out in Clause 7, or in discharging any of its functions in relation to Scotland, Wales, or Northern Ireland respectively.

Clause 37 provides a limited qualification to section 44 of the *Freedom of Information Act 2000* with respect to information passed by the Statistics Board to other public authorities. The Bill does not explicitly provide for a similar qualification to the *Freedom of Information (Scotland) Act 2002*. The Scottish Parliament Finance Committee recently considered this. The Chief Statistician of the Scottish Executive, Rob Wishart, advised the Committee that officials would “need to come back” to the Committee regarding the specifics as they affect Scotland:

Mark Ballard: My understanding is that statistics that are produced by Scottish Executive departments fall within the realm of the Scottish information commissioner and the Scottish public services ombudsman. However, under clauses 37 and 60 of the bill, the statistics board will be under the jurisdiction of the UK information commissioner and the UK parliamentary commissioner. There appears to be no mention of the Scottish information commissioner and the public services ombudsman. Has the Executive consulted on whether the statistics board should fall within their jurisdiction?

George Lyon: I would have expected Scottish statistics to fall within the realm of the Scottish information commissioner and the public services ombudsman. However, if, as you suggest, that is the implication in the bill, and if the concern is raised in the consultation, we will examine it closely.

Rob Wishart: We have discussed the exact wording of those clauses, but we will need to come back to you on the specifics. The minister is right to suggest that the intention was certainly not to affect the Scottish information commissioner's jurisdiction over Scottish Administration statistics. However, if that is not the case, we will have to reconsider the matter.²¹⁰

Further information regarding clause 37 is provided in part VI.

²¹⁰ Scottish Parliament Finance Committee Official Report 12 December 2006, c4233
<http://www.scottish.parliament.uk/business/committees/finance/or-06/fi06-3202.htm#Col4221>

Clauses 45 and 46 provide Scottish Ministers and relevant Northern Ireland departments with the power to make regulations to authorise public authorities to disclose information to the Statistics Board. Regulations must be made with the consent of the Treasury. Similar provision for Welsh Ministers with respect to public authorities in Wales is made in **clause 44**. Further information regarding these clauses is provided in Part VI.

Clauses 49 and 50 provide Scottish Ministers and the relevant Northern Ireland departments with the power to make regulations to authorise the Statistics Board to disclose information held by the Board to public authorities in Scotland and Northern Ireland. Regulations must be made with the consent of the Treasury.²¹¹ Further information regarding these clauses is provided in part VI.

Regulations made under clauses 44 to 50 will be subject to parliamentary scrutiny in Parliament and the relevant devolved legislature under the affirmative procedure.

The Bill will require a **Legislative Consent Motion** (formerly a “Sewel Motion”) in the Scottish Parliament as it covers topics that have been devolved. A Legislative Consent Memorandum was lodged on 5 December 2006 and the explanatory memorandum is available online.²¹² The Bill was discussed by the Scottish Parliament’s Finance Committee on 12 December 2006 and the Committee took evidence.²¹³ The Legislative Consent Motion is expected to be debated in plenary session in the Parliament in February 2007.

On 11 December 2006, the Scottish Executive announced a consultation process on its proposals to improve statistical services in Scotland. The consultation paper is available online.²¹⁴ Scottish Ministers intend that the “scrutiny and standards aspect of the (Statistics and Registration Service) Bill” should be extended to Scotland, but that “Scotland should not replicate the organisational changes” involving the creation of a Scottish Statistics Board as a Non-Ministerial Department. The consultation is expected to help inform discussions in the Scottish Parliament on the Legislative Consent Motion itself (deadline for responses is 9 January 2007), as well as the Scottish Executive’s wider proposals to improve Scottish statistical services (deadline for responses is 5 March 2007).

VI Data sharing and access to administrative statistics

Administrative statistics are sources of data “containing information that is not primarily collected for statistical purposes” and are, therefore, distinct from data derived from

²¹¹ Further information on the anticipated role of Welsh Ministers in disclosing information held by the Statistics Board to public authorities in Wales is provided in Section VI of this paper, discussion of clause 48.

²¹² <http://www.scottish.parliament.uk/business/legConMem/pdf/StatisticsLCM.pdf>

²¹³ <http://www.scottish.parliament.uk/business/committees/finance/papers-06/fip06-32.pdf>

²¹⁴ <http://www.scotland.gov.uk/Publications/2006/12/04135102/0>

survey sources.²¹⁵ The Government's proposals highlighted the possible benefits from extending data sharing among Government Departments and public agencies, not least that it could help to reduce duplication:

Data sharing among government departments has been recommended as one way to reduce the burden of regulation on business and individuals. The 2005 report by the Better Regulation Taskforce, *Regulation – Less is More*, recommended increased data sharing between departments to reduce intrusion on business.²¹⁶ Similarly, the Confederation of British Industry (CBI) – echoing a recommendation of the Hampton Review²¹⁷ (2005) – noted that “it would, in principle, be helpful if government departments and regulators could share information to reduce duplication”.²¹⁸ A specific Ministerial committee has been established to “develop the Government’s strategy on data sharing across the public sector”.²¹⁹

However, the National Statistician has publicly acknowledged that there is a perception that data sharing might generate an adverse reaction among the public:

In the past it has been perceived that the public have reservations about the data they provide being passed from one organisation to another. This is not always a correct perception. For example, research carried out by the Department for Constitutional Affairs (DCA) has shown that the public expect data to be shared provided those granted access to the data use them for a purpose consistent with its original collection.

[...]

The legal authority and the benefits in professional competence that would result from information exchange, and more particularly information matching, need to be able to be compared with the likely degree of public concern such matching might generate. Consultation in advance is seen in official statistics as a critical step, so that risks can be properly seen before problems happen.²²⁰

The Government's proposals on statistical independence recognised that it was important to provide legal safeguards to protect individual confidentiality:

²¹⁵ Statistical Office of the European Commission (Eurostat), *Business Register Recommendations Manual*, (2003), Ch 20, para 20.3

http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-BG-03-001/EN/KS-BG-03-001-EN.PDF

²¹⁶ Specific recommendations from the report included creating “a universal identifier for each business to use across government”, and providing a “legal basis for data sharing”. The full report is available at <http://www.brc.gov.uk/publications/lessismoreentry.asp>.

²¹⁷ Hampton, P., *Reducing administrative burdens: Effective inspection and enforcement* (The Hampton Report) (2005), which recommended data sharing between regulators where legally possible, to reduce intrusion on business.

http://www.hm-treasury.gov.uk/budget/budget_05/other_documents/bud_bud05_hampton.cfm

²¹⁸ Confederation of British Industry *Comment on the Second Reading of the Legislative and Regulatory Reform Bill in the House of Commons*, 9 February 2006

<http://www.cbi.org.uk/pdf/legandregsecond0206.pdf>

²¹⁹ Ministerial Committee on Data Sharing (MISC31)

<http://www.cabinetoffice.gov.uk/secretariats/committees/misc31.asp>

²²⁰ Office for National Statistics *Data Sharing for Statistical Purposes: A Practitioner's Guide to the Legal Framework* (2005), http://www.statistics.gov.uk/downloads/theme_other/NSDataSharing.pdf

While extending access to administrative data may bring potential benefits, important arguments have been made against data sharing generally; in particular, that it may breach individual privacy rights. Parliament's Joint Committee on Human Rights, for example, has on occasion expressed the view that sufficient safeguards should be in place to prevent sharing of data from contravening Article 8 of the European Convention on Human Rights respecting personal privacy.²²¹ Any move to extend data access for statistical purposes would need to be accompanied by specific safeguards for privacy rights and enhanced data protection provisions.

The planned legislation will ensure that the statistics office retains the access to data as the ONS has currently. Similarly, the legislation will maintain the duty to protect the confidentiality of people and organisations from the unauthorised disclosure of information held about them for National Statistics or other statistical purposes. Indeed, the Government proposes that a core objective for the new board – regardless of possible moves on data access – be to protect the confidentiality of data provided.²²²

Mike Hughes, the ONS Director of National Statistics and Policy, told the Treasury Sub-Committee that ONS remained “very keen” to see legislation extending access to administrative data.²²³ ONS had previously observed that a number of UK central and local government organisations maintain “vast data resources” which the Government Statistical Service has “the professional competence and capacity to exploit”, but the lack of statistical legislation in this area has meant that government statisticians are “obliged to work within a complex and changing legislative framework to gain access to data obtained by others in government”. Gaining access to administrative records “may be the only cost effective way of regularly obtaining information about small groups in household or business populations”. Data sharing could lead to “improved statistical quality” and “much greater efficiency in terms of cost and timeliness” in the production of meaningful official statistics and related analysis.²²⁴

Without adequate data sharing arrangements, it is likely that local authority population estimates will continue to be subject to error while important data on the minority ethnic population cannot be updated regularly. Len Cook, the former National Statistician, told the Treasury:

Unless there is access to tax records the [Allsopp²²⁵] proposals for regional economic statistics, and redesigning British economic statistics, will not reach

²²¹ House of Commons and House of Lords Joint Committee on Human Rights *Scrutiny: Sixth Progress Report*, Thirteenth Report of Session 2004-05, HC 470 & HL 87, p. 7 ff

<http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/87/87.pdf>

²²² HM Treasury, *Independence for statistics: a consultation document*, 22 March 2006, p. 24

²²³ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 32

²²⁴ Office for National Statistics, *Data Sharing for Statistical Purposes: A Practitioners' Guide to the Legal Framework*, September 2005, p 3

http://www.statistics.gov.uk/downloads/theme_other/NSDataSharing.pdf

²²⁵ The Chancellor of the Exchequer asked Christopher Allsopp in February 2003 to undertake a review of statistics for economic policymaking, examining the information needed to support the Government's key regional policy objectives, and whether official economic statistics had properly reflected the changing economic structure of the UK. The Review Team began its work in June 2003, published its First Report

their final goal. The risk of population estimates containing significant errors at a local authority level will continue without access to administrative records. Statistics about ethnic populations exist mainly through the once every ten year population census, until access to administrative records is provided to ONS.²²⁶

Providing statisticians in the Government Statistical Service with the authority to have access to administrative records and to protect all statistical records, Len Cook observed, would be “the largest possible improvement to the quality of British statistics” that could be enabled by legislation.²²⁷

In its consultation document, the Government noted that there were a number of examples internationally where access to administrative data was given to national statistical offices, including Australia, Canada, Germany, Ireland and the Netherlands. Responding to the Government’s consultation paper, the Australian Statistician revealed that access to taxation data given to the Australian Bureau of Statistics had enabled it to reduce “compliance cost on the business sector by over 40% over the last 10 years”.²²⁸ The Chief Statistician of Canada told the Treasury Sub-Committee that the Canadian *Statistics Act* provided Statistics Canada with “unrestricted access” to all administrative records held by any level of government and any organisation, private or public:

Of course, the other side of that coin is extremely strong confidentiality guarantees, which are spelled out and which allow no exceptions. Not even the intelligence community, not even the police, not even the courts in the course of a prosecution can have access under the Statistics Act.²²⁹

In a recent presentation to the annual conference of the Statistics User Forum, Riita Harala, Director of Population Statistics at Statistics Finland, outlined the extent to which administrative and register-based statistics were central to the production of routine statistical outputs.²³⁰ In Finland, 96% of data originates from administrative sources and these, in turn, are used to supplement data derived from survey and business sources. In Finland, a wide variety of authorities are involved in the delivery of administrative data, including the Finnish population register centre, finance ministry, taxation authorities, pensions offices, and ministries of justice and labour. Since 1990, all data used in the compilation of population and housing censuses in Finland have been based on administrative statistics collected by these authorities. The widespread use of administrative sources has resulted in significant cost savings. For example, while the estimated cost of conducting a questionnaire-based census in the UK was €6.30 per person in 2000, in Finland the cost was just €0.20 because Statistics Finland could collect the data automatically from registers and did not need to undertake a questionnaire-based census. There are three basic types of statistical register in Finland:

on 10 December 2003 and its final report on 31 March 2004. See Allsopp, C., *Independent Review of Statistics for Economic Policymaking*, March 2004

http://www.hm-treasury.gov.uk/consultations_and_legislation/allsopp_review/consult_allsopp_index.cfm

²²⁶ Len Cook response to HM Treasury *Independence for statistics*

²²⁷ Len Cook response to HM Treasury *Independence for statistics*

²²⁸ Australian Statistician response to HM Treasury *Independence for statistics*

²²⁹ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 21

²³⁰ Presentation by Riita Harala to the Statistics User Forum annual conference *The Development and User of Registers in Finland* (November 2006)

- a business register, administered by Statistics Finland, in which each business organisation is given an individual organisation number;
- a population register, administered by the population register centre, in which each individual is given an individual personal identification number; and
- a register of buildings and dwellings, also administered by the population register centre, where each building and dwelling is given an identification number.

These registers mean that it is possible for Statistics Finland to identify individuals and their families, the houses in which they live, the businesses and enterprises in which they work, and to map these geographically using map co-ordinates in geographical information systems (GIS). The registers are also open to accredited researchers to undertake empirical research. Under Finland's *Statistics Act*, data supplied in confidence may be released anonymously for the purposes of approved social and scientific research, and these data are routinely provided in longitudinal form to enable measurement of longer-term trends in population, housing, employment, family formation, the impact of labour policy, living conditions, and key life events including causes of death.²³¹

The Financial Secretary to the Treasury told the Sub-Committee that the opportunity provided by statistics legislation enabled the Government to resolve many of the questions around access to administrative data:

The legislation evidently is an opportunity to deal with some of the questions that are around data access, in particular access to administrative data. The issues around access to administrative data are quite complex. However, we have clearly signalled our interest in hearing views during the consultation process of the extent to which the current arrangements – which will obviously need as a minimum to be entrenched in legislation – could be developed further. Also, how at the same time some of the appropriate safeguards on confidentiality, particularly of micro data that can identify individuals, can be safeguarded—because that is obviously the flip side to that.²³²

The Sub-Committee observed that “there appears to be strong feeling in the statistical community about the need to provide government statisticians with access to administrative data”. The Sub-Committee accepted that “such access could bring about the economic and social benefits set out by the ONS and others” although, as the Government indicated, these benefits needed to be balanced against important privacy considerations. The Sub-Committee recommended that:

...the Government use the opportunity offered by the forthcoming statistics legislation to allow government statisticians greater access to administrative data. The Government should ensure that appropriate safeguards are put in place to ensure that the integrity and security of personal information is not compromised,

²³¹ For further information see Statistics Finland *Use of Registers and Administrative Data Sources for Statistical Purposes* (2004) http://tilastokeskus.fi/tup/julkaisut/kasikirjoja_45_en.pdf

²³² House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 50

and that access extends no further than statisticians working in specified parts of government.²³³

In its response to the consultation process, the Treasury confirmed that the Government will “replicate existing data sharing arrangements in the legislation”. Given the strong support received from respondents, the Treasury announced that the Government would:

...also include an enabling delegated power in the legislation to allow for the sharing – to and from the [independent governing] Board – of data for statistical purposes, with any specific extensions of access to be agreed through subsequent statutory instruments, which will be subject to affirmative resolution. This will ensure further and specific parliamentary scrutiny, approval, and authorisation for any new data sharing arrangements.²³⁴

The Government confirmed that the legislation would make provision for the protection of confidentiality of individuals and organisations “from the unauthorised disclosure of information held about them for National Statistics or other statistical purposes”. The Statistics Board would be given a “core objective” of protecting the confidentiality of all data provided, irrespective of future changes to data access legislation.²³⁵

Len Cook, the former National Statistician, observed that the protection of individual records needed setting on a statutory footing since the protection of household survey records not covered by existing legislation, such as the Census Acts or the *Statistics of Trade Act 1947*, was only ensured by “custom and practice”, through “vigorous protection of this through the courts by ONS offic[ials]”, and overall the legal capacity to protect confidentiality appeared to be “declining”. Mr Cook also questioned whether the statutory responsibility for the protection of individual confidentiality should rest with the Statistics Board rather than the National Statistician:

For the board to have this responsibility...will quite wrongly remove from the National Statistician his/her authority and independence on this important matter. The future legislation must provide for the statistician to have the obligation in law to protect the confidentiality of all statistical records.²³⁶

In its response to the Treasury Sub-Committee’s report, the Government observed that “the National Statistician will also have an important role to play” in ensuring the Board meets its objective of protecting the confidentiality of all data provided to it. Subsequently, in the Treasury’s response to the consultation process, the Government recognised that:

Providing the necessary safeguards for privacy rights is fundamental, and should be secured on the face of the legislation. The proposed parliamentary scrutiny will be a key part of this and, in addition, any new data sharing will be subject to a public

²³³ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 64

²³⁴ HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 20

²³⁵ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, p. 24

²³⁶ Len Cook response to HM Treasury *Independence for statistics: a consultation document*

interest test, plus criminal penalties will be imposed on anyone found to have unlawfully disclosed personal data obtained for statistical purposes.²³⁷

The Bill

Clauses 35 to 51 set out the legal provisions necessary to allow for the use and disclosure of information by the Statistics Board, and information sharing between the Board and other public authorities.

Clause 35 allows the Board to use any information it holds (including census information previously held by the Registrar General) to carry out any of its functions. This clause permits the Board to produce statistics for one purpose using data collected for another purpose. The Board may not use information collected as part of its assessment and re-assessment functions (provided for in clauses 12 and 13) for other purposes without the consent of the department producing those statistics. Clause 35(4) prohibits the Board from using information where other legislation (e.g. *Finance Act 1969*) restricts the way in which that data can be used or disclosed.

Clause 36 specifies that personal information, whether held by the Statistics Board or disclosed to the Board by others, is confidential. Unauthorised disclosure of personal information is a criminal offence subject to a maximum of two years' imprisonment or fine, or both. "Personal information" is information that relates to, and identifies, an individual, including information that could identify a business. Clause 36(4) lists the circumstances where the restrictions on disclosure do not apply, including where:

- existing legislation requires or permits disclosure;
- a European Union obligation requires disclosure;
- it is necessary for the Board to exercise any of its functions (for example preparing statistics in respect of periods between one decennial census and another, as provided for in section 5 of the *Census Act 1920*);
- data has already been made public;
- data is disclosed following a court order;
- data is disclosed as part of a criminal investigation or proceedings; and
- the person to whom the personal information relates has consented to disclosure (for example where consent given in responses to voluntary surveys to onward disclosure for statistical purposes).

Confidentiality obligations on the Board do not apply where the Board provides information to "approved researchers". The Board is required under clause 36(6) to publish the criteria against which it will decide whether to grant access to approved researchers for statistical purposes. Approved researchers will be required to sign strict confidentiality agreements.

Clause 37 provides a limited qualification to section 44 of the *Freedom of Information Act 2000*. This section provides that information is regarded as "exempt information" if its disclosure by a public authority is prohibited by law. Information held by the Board or

²³⁷ HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 20

supplied by the Board to a public authority would be regarded as “exempt information” for the purposes of the *FoI Act 2000*. This clause qualifies the 2000 Act by providing that information supplied by the Board to public authorities will not be treated as exempt information for the purposes of the 2000 Act, and therefore public authorities may not refuse to disclose information by citing an exemption under section 44 of the 2000 Act.

Clause 38 permits the Board to pass any information to third parties who are operating under control of the Board in the provision of services to it. This would allow, for example, the Board to pass data to a third party (e.g. an IT supplier) who had been contracted by the Board to undertake data processing. Third parties receiving such data would not be permitted to use the data for any purpose other than the provision of services required by the Board.

Clause 39 provides for data sharing arrangements between the Registrar General and the Statistics Board. This clause ensures that the Board will continue to have the same access to registration data collected by the Registrar General as the Office for National Statistics currently enjoys, so that information collected at the registration of key life events, such as births and deaths, can be disclosed to the Board for the purposes of producing statistical outputs. The sharing of data between the Registrar General and the Board will be subject to a Memorandum of Understanding between both parties which will cover the means and frequency of data sharing and onward transmission of data.²³⁸

Clause 40 enables an information gateway to be established whereby information collected as part of the National Health Service Central Register (NHSCR) can be shared with the Board for the purposes of producing population statistics. The NHSCR compiles and maintains a record of all persons registered with a General Practitioner in England. The categories of patient information that may be shared with the Board include their address, date of birth, sex, patient identification number, and registration history. Clause 40(4) prohibits the disclosure to the Board of information about the health or condition of, or care or treatment provided to, an individual registered on the NHSCR.

Clause 41 replicates the effect of clause 40 in respect of information relating to those registered with a NHS General Practitioner in Wales.

Clause 42 permits the Commissioners or officers of HM Revenue and Customs to disclose to the Board information held by HM Revenue and Customs in connection with any of the Board’s statistical functions, with the exception of its functions under clause 18 where the Board provides statistical services to other persons. This clause does not permit the disclosure of personal information, defined in clause 36, with the exception of information relating to the import or export of goods to or from the United Kingdom.

Clause 43 makes supplementary amendments to existing enactments, listed in Schedule 2, necessary to allow information flows to the Board as the legal successor to the Office for National Statistics. The enactments include the *Census Act 1920*, *Population (Statistics) Act 1938*, *Finance Act 1969*, *Agricultural Statistics Act 1979*,

²³⁸ *Statistics and Registration Service Bill* (Bill 8 of 2006-07), Explanatory Notes, p. 24

Social Security Administration Act 1992, Value Added Tax Act 1994, and Bank of England Act 1998.

Clause 44 provides a mechanism to provide the Statistics Board with wider access to information held by public authorities. The Treasury will make regulations to authorise the disclosure of information from a public authority to the Board to enable it to carry out its functions, with the exception of providing statistical services under clause 20. Regulations must be made with the consent of the Minister responsible for the public authority concerned, or Welsh Ministers where the public authority exercises functions mainly in Wales. Data sharing between public authorities and the Board would be permissive rather than mandatory, therefore public authorities would be permitted to share information with the Board but not compelled to do so.

Regulations made under this clause will remove barriers in any enactment which received Royal Assent before the Bill, although these regulations may not amend the provisions of the *Data Protection Act 1998* or *Human Rights Act 1998*. Regulations will be made in the form of a draft Order subject to parliamentary scrutiny under the affirmative procedure. These powers could be used, for example, to provide the Board with wider access to information, to improve the range or quality of the statistics being produced, thereby improving policy-making or resource allocation, and reducing burden on data providers by removing the need to collect information already held by Government or public authorities.

Clauses 45 and 46 provide Scottish Ministers and Northern Ireland departments with the power to authorise Scottish or Northern Ireland public authorities to disclose information to the Board in the same way as the Treasury can make regulations to authorise disclosure to the Board under clause 44. Regulations will be made in the form of a draft Order subject to scrutiny by the appropriate devolved legislature.

Clause 47 provides the Treasury with the power to make regulations permitting the Statistics Board to *use* information received from a public authority to carry out its functions (except the function of providing statistical services to any person defined in clause 20) where there is an existing legal barrier preventing the Board from doing so.

Clause 48 sets out the mechanism for providing the Board with the power to disclose information held by the Board to other public authorities. The Treasury, with the consent of the Minister responsible for the public authority concerned, will make regulations to authorise disclosures of data by the Board for the statistical purposes of the public authority receiving the data. Any disclosures would be permissive rather than mandatory, authorising the Board to share information with public authorities without compelling the Board to do so. This clause is similar to clause 44 which provides a mechanism for public authorities to share information with the Board. Regulations will be made in the form of a draft Order subject to parliamentary scrutiny under the affirmative procedure.

This clause does not explicitly mention that the consent of Welsh Ministers is required where the public authority concerned operates mainly in Wales. The Treasury have advised that the Welsh Assembly Government expressed to them the view that, in a situation where it is considered that the Board needs to be able to share information with Welsh public authorities for purposes of this clause, there is no practical necessity for

Welsh Ministers to be required to give consent to such regulations given that it should provide a benefit to Welsh public authorities.²³⁹

Clauses 49 and 50 provide Scottish Ministers and Northern Ireland departments with the power to authorise the Board to disclose information to Scottish or Northern Ireland public authorities in the same way as the Treasury can make regulations to authorise disclosure to the Board under clause 48. Regulations will be made in the form of a draft Order subject to scrutiny by the appropriate devolved legislature.

Clause 51 sets out that regulations made under clauses 44 to 50 may not amend the provisions of the *Data Protection Act 1998* or the *Human Rights Act 1998*.

VII Transfer of responsibility for the Retail Prices Index

The Retail Prices Index (RPI) is a measure of change in the average prices of goods and services bought for the purpose of consumption by the vast majority of households in the UK. The RPI is compiled and published monthly. Once published, it is never revised. The RPI continues to be used for the indexation of pensions, state benefits and index-linked gilts. Wage agreements, leases, maintenance and child support payments are often linked directly to the RPI, and utility regulators impose restrictions on price movements based on the RPI.²⁴⁰

Since 2003, the Bank of England's inflation target has no longer been based on the RPI-X (RPI less mortgage interest payments); instead the Bank's target is based on the harmonised index of consumer prices (HICP). The HICP is an internationally comparable measure of inflation calculated by each Member State of the European Union. HICPs are used to compare inflation rates across the European Union. The UK HICP has been known as the Consumer Prices Index (CPI) since 10 December 2003. Many countries still compile their own national indices of prices as well as calculating their HICP to meet EU obligations.

The HICP is defined in a series of legally binding EU regulations. Council Regulation (EC) No. 2494/95 (23 October 1995) "concerning harmonised indices of consumer prices" provides the legal basis of the HICP and a series of subsequent Council and Commission Regulations define the construction and coverage of the HICP.²⁴¹

HICP Regulations are drafted by the Statistical Office of the European Commission (Eurostat) in conjunction with Member States through the HICP Working Party. This work is overseen and approved by the Statistical Program Committee (SPC) which comprises the Heads of EU national statistical offices, including the UK's National Statistician, and the Head of Eurostat.²⁴²

²³⁹ House of Commons Library correspondence with HM Treasury (December 2006)

²⁴⁰ <http://www.statistics.gov.uk/cci/nugget.asp?id=21>

²⁴¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995R2494:EN:HTML>

²⁴² <http://www.statistics.gov.uk/cci/nugget.asp?id=953>

During its inquiry, the Treasury Sub-Committee considered the governance arrangements for the RPI. The Sub-Committee observed that the RPI “has a special status among statistics in the UK”.²⁴³ The *Framework for National Statistics* provides that the National Statistician will be responsible for “developing and maintaining statistical standards, definitions and classifications”, except in the case of the RPI where special arrangements apply:

...the National Statistician will take the lead in advising on methodological questions concerning the RPI but the scope and definition of the index will continue to be matters for the Chancellor of the Exchequer.²⁴⁴

The Chancellor has been responsible for the scope and definition of the RPI since 1989, when the Central Statistical Office took over responsibility for the production of the RPI from the Department of Employment. Previously, the Secretary of State for Employment had responsibility. In determining the scope and definition of the RPI, the Chancellor of the Exchequer refers issues to a RPI Advisory Committee which he convenes as appropriate. Membership of the Advisory Committee typically includes experts on the matters being discussed and representatives of users of the RPI. The Advisory Committee makes recommendations to the Chancellor who, in theory, can accept or reject them. However, since the first Advisory Committee was established in 1904, no recommendation has ever been rejected.²⁴⁵

The Sub-Committee had earlier considered the anomalous treatment of the RPI on several occasions. In 1998, the Sub-Committee concluded that it saw “no justification” for the Chancellor of the Exchequer retaining control of the scope and definition of the RPI under the new arrangements for National Statistics.²⁴⁶ In 2001, the Committee concluded that it had heard “no sound argument why the scope and definition of the RPI, like the features of any other important statistical series produced by the ONS, should not be under the control of the National Statistician”.²⁴⁷ In the course of the recent inquiry, the Statistics User Forum and the Society of Business Economists argued that the anomalous position of the RPI should end.²⁴⁸ Countries with statistical systems comparable to the UK do not treat the RPI in the same way as the UK. The table below, based on a survey of selected national statistical offices by the House of Commons Library, reports the governance arrangements for national indices of prices.

²⁴³ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 22-4

²⁴⁴ Office for National Statistics, *Framework for National Statistics*, 2000, para 3.4

²⁴⁵ Office for National Statistics, *The Retail Prices Index: A Technical Manual*, 1998, paras 1.7–1.7.1 http://www.statistics.gov.uk/downloads/theme_economy/RPI_TECHNICAL_MANUAL.pdf

²⁴⁶ House of Commons Treasury Committee, *Office for National Statistics*, First Report of Session 1998–99, 17 December 1998, HC 43 para 48

²⁴⁷ House of Commons Treasury Committee, *National Statistics*, Second Report of Session 2000–01, 18 January 2001, HC 137, para 12

²⁴⁸ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 96; Ev 76

Responsibilities for the governance of national indices of prices

Country	Definition and scope of index	Methodology	Advisory Committee	Appointment of AC	AC reports
Australia	Australian Statistician	Australian Statistician	Periodic	Australian Statistician	Australian Statistician
Canada	Chief Statistician	Chief Statistician	Permanent	Chief Statistician	Chief Statistician
France	Director General, national statistics office	Director General, national statistics office	None		
Germany	President, national statistics office	President, national statistics office	Periodic	President, national statistics office	President, national statistics office
Netherlands	Director General, national statistics office	Director General, national statistics office	Permanent	Director General, national statistics office	Statistics Commission
New Zealand	Government Statistician	Government Statistician	Periodic	Government Statistician	Government Statistician
Sweden	Parliament	Index Board	Permanent	Chief Statistician*	Government
UK	Chancellor of the Exchequer	National Statistician	Periodic	Chancellor of the Exchequer	Chancellor of the Exchequer
USA	Commissioner, Bureau of Labor Statistics	Commissioner, Bureau of Labor Statistics	Permanent	Commissioner, BLS and Secretary of Labor	Commissioner, Bureau of Labor Statistics

* Sweden - the Chief Statistician appoints eight of the nine members of the advisory board; the Government appoints the ninth member

Source: House of Commons Library correspondence with national statistical institutes (July 2006)

Sweden is the only country other than the UK in which a senior government statistician does not have responsibility for the definition and scope of the index. In Sweden's case, however, it is Parliament rather than the Government which is responsible for definition and scope of the index, and eight out of the nine members of the permanent advisory committee, the Index Board, are appointed by Sweden's Chief Statistician.

In oral evidence to the Sub-Committee, the Financial Secretary to the Treasury explained the Government's justification for continuing the anomalous treatment of the RPI:

[The RPI] has traditionally been the responsibility directly of the Chancellor, essentially because of its unique place and its unique role. It is used for policy, for legislative, for contractual purposes. It is used for up-rating pensions and benefits. It is used for indexing tax thresholds [...] Up to this point, there has been a very strong view that ... the degree of government exposure from changes to the RPI made it appropriate to leave the ultimate say on any changes to the Chancellor.²⁴⁹

The Sub-Committee reached the following conclusions:

We have considered the Minister's justification of the current anomalous treatment of the Retail Prices Index, whereby the Framework for National Statistics gives the National Statistician responsibility for "developing and maintaining statistical standards, definitions and classifications" of all statistics other than the RPI. We question whether the degree of Government exposure from changes to the RPI is such that the Chancellor of the Exchequer needs to retain control of its scope and definition, particularly given that equivalent indices in comparable countries are not treated as 'special cases'. We invite the Government to explain more fully why it

²⁴⁹ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, Ev 46

considers that the RPI should be treated differently from other key macroeconomic statistics.²⁵⁰

In its response to the Sub-Committee's report, published in October 2006, the Government disagreed with the Sub-Committee's conclusions, noting the potential implications of a change to RPI governance arrangements on "investor confidence" and the "disruptive impact on the (financial) market more generally":

The current RPI governance arrangements reflect the importance of the RPI as a key economic indicator, used for a wide range of policy, legislative and contractual purposes including: up-rating pensions and social security benefits; indexing tax thresholds; and calculating the inflation uplift on index-linked gilts (ILGs). In particular, changes to the RPI have the potential for widespread economic consequences, especially through the impact on ILGs.

Like other gilts, ILGs' terms and conditions are covered in the prospectuses under which they are issued. ILGs first issued before July 2002 were issued under prospectuses that contained an early redemption delegated power to protect investors' interests. This requires the Government to offer to redeem ILGs at (inflation-adjusted) par if there is a change to the way that RPI is constructed which "in the opinion of the Bank of England, constitutes a fundamental change in the Index which would be materially detrimental to the interests of the stockholders". If this delegated power were triggered while the ILGs were trading below par (that is, where the prices of the relevant ILGs in the secondary market were below the inflation-adjusted face-value of the bonds), then rational investors would be expected to take up the offer in the prospectus; the costs to Government in this case could be significant. The potential implications of such a change on investor confidence, also has the potential to have a disruptive impact on the market more generally, requiring large-scale refinancing, and fragmenting the market.²⁵¹

However, the Treasury reconsidered its position in the Government's response to the consultation process, published in November 2006. While repeating its earlier assessment of the importance of the RPI as a key economic indicator, the Government conceded that, in light of the Treasury Sub-Committee's inquiry and the consultation process, it had decided to legislate to "devolve responsibility for the governance of the RPI to the independent board, subject to necessary safeguards". This was in keeping with the Government's wider commitment "to devolve power within the statistical system to the new independent statistics board".²⁵²

Arrangements would be put in place whereby the opinion of the Bank of England would be sought as to whether any future changes to the RPI would constitute a "fundamental change" to the RPI which would be "materially detrimental" to the interests of holders of index-linked gilts. Where the Bank considered such a change to be "fundamental" or

²⁵⁰ House of Commons Treasury Committee *Independence for statistics*, Tenth Report of Session 2005-06, 26 July 2006, HC 1111, p. 24

²⁵¹ House of Commons Treasury Committee, *Independence for statistics: Government Response to the Committee's Tenth Report of Session 2005-06*, Seventh Special Report of Session 2005-06, 16 October 2006. HC 1604, para 12

²⁵² HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 23

“materially detrimental”, the matter would be referred to the Chancellor of the Exchequer otherwise the decision would be taken by the Statistics Board alone “without the need for the Chancellor’s consent”.²⁵³

The prospectuses of eight index-linked gilts issued before July 2002 with maturities ranging from 2009 to 2030 contain a redemption clause:

If any change should be made to the coverage or the basic calculation of the [Retail Prices] Index which, in the opinion of the Bank of England, constitutes a fundamental change in the Index which would be materially detrimental to the interests of the stock-holders, Her Majesty's Treasury will publish a notice in the London Gazette immediately following the announcement to the relevant Government Department of the change, informing stockholders and offering them the right to require Her Majesty's Treasury to redeem their Stock in advance of the revised index becoming effective...

The aggregate outstanding amount of these gilts is “very substantial”.²⁵⁴ The Bank of England advised that, where the Statistics Board recommended a change in the calculation or coverage of the RPI, they would take a view in the normal way in applying a contractual test taking account of the economic situation of the time.²⁵⁵ The Debt Management Office confirmed the eight gilts had a total value outstanding of £90.8 billion as at 6 December 2006:

- 2½% Index-linked Treasury Stock 2009 (outstanding: £8.2bn)
- 2½% Index-linked Treasury Stock 2011 (outstanding: £12.2bn)
- 2½% Index-linked Treasury Stock 2013 (outstanding: £16.2bn)
- 2½% Index-linked Treasury Stock 2016 (outstanding: £18.5bn)
- 2½% Index-linked Treasury Stock 2020 (outstanding: £15.0bn)
- 2½% Index-linked Treasury Stock 2024 (outstanding: £13.2bn)
- 4⅛% Index-linked Treasury Stock 2030 (outstanding: £7.3bn)²⁵⁶

The Bill

Clause 19 sets out the governance arrangements for the Retail Prices Index. The Statistics Board is required to compile and maintain the RPI, and to publish the Index each month. Before making changes to the coverage or basic calculation of the RPI, the Board must consult the Bank of England on whether the proposed change constitutes a fundamental change in the index that would be materially detrimental to the interests of the holders of relevant index-linked gilts. If the Bank considers the change to be “fundamental”, then the Board must refer the change to the Chancellor of the Exchequer for his consent.

²⁵³ HM Treasury, *Independence for statistics: the Government response*, 15 November 2006, p. 24

²⁵⁴ *Statistics and Registration Service Bill* (Bill 8 of 2006-07), Explanatory Notes, p. 14

²⁵⁵ House of Commons Library communication with Bank of England (December 2006)

²⁵⁶ House of Commons Library correspondence with Debt Management Office (December 2006)

VIII The General Register Office and local registrars

The Director of ONS is also Registrar General for England and Wales, and her duties as Registrar General are different from those of National Statistician and Director, notably in terms of her statutory responsibility for the decennial census, the registration of births, deaths and marriages, and the publication of certain statistics. The Government's proposals include ending the historical link between the General Register Office and the National Health Service Central Register with the Statistics Board (as the successor to the Office for National Statistics) by locating the GRO and NHSCR elsewhere within the public service. The National Statistician would no longer perform the role of Registrar General for England and Wales.

Currently, the legal responsibility for the conduct of the decennial census in England and Wales rests with the Registrar General, and officials from the Office for National Statistics undertake this work on her behalf. The Government proposes that the legal responsibility for the census is formally transferred to the Statistics Board, and Board employees would continue to undertake the preparation and completion of the census, and the publication of data from it.²⁵⁷

The ONS is also currently responsible for the creation and maintenance of the National Health Service Central Register (NHSCR) in England and Wales, although this is not formally part of the General Register Office. The NHSCR is a record of all persons registered with a General Practitioner in England and Wales. ONS's responsibilities for the NHSCR will cease when the Statistics Board comes into existence, and the NHSCR will be transferred to elsewhere in the public service. Clauses 40 and 41 of the Bill provide for an information gateway to ensure that the Statistics Board may receive information from the NHSCR to allow the Board to continue producing vital population and other statistics.

A. Reforming registration services

Civil registration of births, marriages and deaths began in England and Wales in 1837 and, since then, many aspects of the administration of the service and the process of registration have remained largely the same. For example, people still have to give information about births, deaths and marriages in person in the area where the event occurred, and paper records are kept of all registrations. Registration services now also cover stillbirths, adoptions, and civil partnerships registered under the *Civil Partnership Act 2004*, which came into force in December 2005.²⁵⁸

The General Register Office (GRO), which is part of the Office for National Statistics, works in partnership with local authorities and oversees a local registration service to members of the public. The GRO also provides support and guidance to local registration officers.

²⁵⁷ HM Treasury *Independence for statistics: a consultation document*, 22 March 2006, pp. 28-9

²⁵⁸ Further guidance on the process of registering a civil partnership is available from the General Register Office at <http://www.gro.gov.uk/gro/content/civilpartnerships/>

The *Registration Service Act 1953* (RSA 1953) established the office of Registrar General, enabled him to appoint staff to carry out the functions assigned to him, and imposed certain duties in relation to the provision of registration services. Local authorities also have responsibilities and duties in relation to registration services and must prepare a local service delivery plan (known as a “scheme”) for approval by the Chancellor of the Exchequer.

Registration officers (superintendent registrars and registrars) are appointed and paid, but not employed, by the local authority. Registration officers have no legal employer, and by virtue of their statutory post holder status can be dismissed only by the Registrar General. Registration officers also have duties and responsibilities in relation to registration services.

The current position relating to the provision and administration of registration services was summarised in a GRO consultation document published in July 2003:

Currently responsibility for the provision and administration of the registration service in England and Wales is divided between the Registrar General, local authorities and registration officers (Sections 1–4 of the RSA 1953).

Her Majesty the Queen appoints a Registrar General for England and Wales who exercises any powers and performs the duties conferred on the Registrar General by statute. Only the Queen can remove the Registrar General from office. Currently the role of the Registrar General is combined with that of the National Statistician and the Director of the Office for National Statistics.

The Registrar General and his officials are responsible for administering the Registration Acts, including those relating to marriage, for England and Wales. This includes advising registration officers, local authorities, and members of the public and others on the interpretation of the relevant Acts and regulations, and ensuring that they are applied consistently. The Registrar General receives and recommends for approval (by the Financial Secretary to the Treasury) the local schemes submitted by each local authority...Local schemes are required under s.13 of the RSA 1953. The Registrar General has responsibilities to appoint local registration staff and prepare local registration schemes where a local authority fails to do so...Additionally, some of the Registrar General's officials have delegated authority (s.3 of RSA 1953) to carry out statutory functions such as the issue of a Registrar General's licence for marriage, or the granting of a reduction in the 15 clear days waiting period for marriage.

[...]

The Registrar General and the General Register Office are funded by central Government although some of the costs are offset by income from the issue of certificates. Any place where records are held in the custody of the Registrar General is deemed to be part of the General Register Office (s.2 of RSA 1953). The General Register Office is sited in Southport, Merseyside and in London at the Family Records Centre.

The Registrar General may with the approval of the Chancellor of the Exchequer make regulations (s.20 of RSA 1953) that:

- prescribe the duties of statutory post-holders and proper officers;
- regulate access to records held by the General Register Office; and

- deal with other matters set out in the Registration Acts.²⁵⁹

The Government has advocated the reform and modernisation of the civil registration system in England and Wales for some time. A consultation document *Registration: Modernising a vital service*, published in 1999, was followed by a White Paper, *Civil Registration: Vital Change*, published in 2002.²⁶⁰ According to the White Paper, the registration system has adapted to reflect changes in society, but reform was needed if the system is to respond to further social change and to make use of the opportunities given by the advance of technology. Proposed reforms included:

- establishing a central database, in place of the current register books;
- changing the structure of the registration service and the legal position of various persons within it: responsibility for delivering the local registration service would be transferred to local authorities with registrars and superintendent registrars becoming local authority employees;
- new ways of registering births and deaths;
- greater choice of venue and time for couples wishing to marry; and
- introduction of a new regime for accessing registration information and different arrangements for storing the original registers.²⁶¹

The Government intended that the legislative changes would be brought about by using the order-making powers in the *Regulatory Reform Act 2001*. In July 2003, the Government published its Regulatory Reform Order consultation document, *Civil Registration: Delivering Vital Change*, on the reform of the civil registration service in England and Wales.²⁶² This document set out the legal changes necessary to deliver the proposals for modernising the civil registration service.

The proposals were to be implemented in two stages: first those relating to the registration of births and deaths and then, subsequently, those relating to marriage. However, both of the parliamentary committees which considered the proposals relating to registration of births and deaths concluded that they were not appropriate for the regulatory reform order procedure.²⁶³ In March 2005, the then Financial Secretary to the Treasury, Stephen Timms MP, said that, in the light of the committees' decision, he no longer intended to put forward a draft Regulatory Reform Order to reform marriage law.

²⁵⁹ *Civil Registration: Delivering Vital Change*, July 2003

http://www.gro.gov.uk/Images/01chapters1-11_tcm69-3577.pdf

²⁶⁰ *Civil Registration: Vital Change – Birth, Marriage and Death Registration in the 21st Century*, January 2002 (Cm 5355)

<http://www.statistics.gov.uk/registration/whitepaper/downloads/wpeng.pdf>

²⁶¹ Further information about the proposals in the Civil Registration White Paper is provided in Library Standard Note, *The Civil Registration White Paper* (SN/HA/1943)

²⁶² *Civil Registration: Delivering Vital Change*, July 2003

http://www.gro.gov.uk/Images/01chapters1-11_tcm69-3577.pdf

²⁶³ Regulatory Reform Committee, *Proposal for the Regulatory Reform (Registration of Births and Deaths) (England and Wales) Order 2004*, 20 December 2004, HC 118

<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmdereg/118/118.pdf>

Delegated Powers and Regulatory Reform Committee, *Proposal for the draft Regulatory Reform (Registration of Births and Deaths) (England and Wales) Order 2004*, 14 December 2004, HL 14

<http://www.publications.parliament.uk/pa/ld200405/ldselect/lddelreg/14/14.pdf>

He added that he was actively looking for ways of delivering the key elements of civil registration modernisation and would be working with stakeholders to agree a way forward.²⁶⁴

In November 2005, Brian Iddon MP introduced the *Registration Service Bill* as a Ten Minute Rule Bill.²⁶⁵ The Bill sought to regularise the employment position of registrars by making them local authority employees. The Office for National Statistics prepared Explanatory Notes which were published with the Bill.²⁶⁶ The Bill did not proceed any further.

A consultation document, *Registration Modernisation*, also published in November 2005, set out revised proposals showing how the Government intended to take forward the modernisation of civil registration.²⁶⁷ It set out changes being progressed under existing legislation, changes to be progressed through secondary legislation, and changes which would require primary legislation. The consultation paper also invited comments on specific proposals relating to the governance arrangements between central government and local authorities for the delivery of the local registration service.

The outcome to the consultation was published in May 2006.²⁶⁸ It stated that there was “overwhelming agreement from the full range of respondents that a new governance framework is long overdue for the delivery of the local registration service, and almost unanimous support from local authorities and regional groups to the proposed revised framework”.²⁶⁹

Clause 65 establishes the Registrar General for England and Wales as a corporation sole. The effect of this clause is to separate the rights and liabilities of the post of Registrar General from the office holder. Currently the General Register Office, National Health Service Central Register, and secretariat to the Boundary Commission for England are administratively part of the Office for National Statistics. **Clause 56** permits the Statistics Board to provide services and facilities to the Registrar General, the Boundary Commission for England, or the Secretary of State or another public authority with respect to the NHSCR, in order for them to carry out their functions more efficiently.

B. Employment status of registration officers

Part 2 of the Bill covers the employment status of those holding offices established under the *Registration Service Act 1953*. **Clauses 66 to 69** provide that registration officers will be employees of the relevant local authority under their existing terms and conditions

²⁶⁴ HC Deb 1 March 2005 c77WS

²⁶⁵ *Registration Service Bill* (Bill 78 of 2005-06)

<http://www.publications.parliament.uk/pa/cm200506/cmbills/078/2006078.pdf>

²⁶⁶ *Registration Service Bill* (Bill 78 of 2005-06), Explanatory Notes

<http://www.publications.parliament.uk/pa/cm200506/cmbills/078/en/06078x--.htm>

²⁶⁷ http://www.gro.gov.uk/Images/Registration%20Modernisation%20v4_tcm69-28234.pdf

²⁶⁸ http://www.gro.gov.uk/Images/Govcon3report_250506_tcm69-35140.pdf

²⁶⁹ General Register Office *Registration Modernisation: Outcome of consultation*, May 2006, p. 3

http://www.gro.gov.uk/Images/Govcon3report_250506_tcm69-35140.pdf

and make various minor and consequential amendments to the *Registration Service Act 1953*. These provisions extend only to England and Wales.

Registration officers are often referred to as “statutory officers” or “statutory post holders”. They share this designation with other local authority officials such as Chief Executives, Monitoring Officers, Heads of Paid Service, and Chief Financial Officers. There are other examples in the clergy, probation service, and the Civil Service.

Employment law, in general, does not apply to “office-holders” who are not regarded as “employees” in employment protection legislation.²⁷⁰ Under common law, “office holders” are distinguished from “servants” who are employees engaged under a contract of employment. Their rights and duties are defined by the office they hold rather than a contract. Company directors are also office holders, but may also be servants under a service agreement with the company at the same time. Recent case law on the employment rights of clergy has confirmed that individuals could be office holders and employees at the same time without any presumption against employment status.²⁷¹

Most of the rights under the *Employment Rights Act 1996*, including the rights to claim unfair dismissal, redundancy pay and maternity and parental leave are conferred exclusively on “employees”. An “employee” is defined as:

...an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.²⁷²

A “contract of employment” is defined as:

...a contract of service or apprenticeship, whether express or implied, and (if it is express) whether it is oral or in writing.²⁷³

Other employment rights, such as the National Minimum Wage, four weeks’ paid annual leave, and limits on working hours are conferred on “workers”. A “worker” is defined as:

...an individual who has entered into or works under (or, where the employment has ceased, worked under) –

- (a) a contract of employment, or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.²⁷⁴

²⁷⁰ Library Standard Note *Employment Status* (SN/BT/198) deals with these distinctions in detail

²⁷¹ *Percy v Church of Scotland* [2006] IRLR 195; and *New Testament of God v Stewart* [2006] UKEAT 293/06

²⁷² *Employment Rights Act 1996*, section 230(1)

²⁷³ *Employment Rights Act 1996*, section 230(2)

²⁷⁴ *Employment Rights Act 1996*, section 230(3). The *National Minimum Wage Act 1998* and the *Working Time Regulations 1998* use the same definition

While a statutory officer would not have employment rights as an employee, they may have rights as a “worker”. The term “worker” appears in a number of legislative provisions, for example:

- *Trade Union and Labour Relations (Consolidation) Act 1992*, section 296;
- *Employment Rights Act 1996*, section 230;
- *The Working Time Regulations, 1998*, regulation 2; and
- *National Minimum Wage Act 1998*, section 54(3).

There are examples of specific provisions which bring certain office holders within the scope of the term “worker”. For example, regulation 41 of the *Working Time Regulations 1998* brings police officers and cadets within the working time rules.

Under a Northern Ireland appeal decision, a full-time judge was held to be a worker within the meaning of European legislation, even though, by domestic legislation they were statutory officers, and so excluded. It was held that the word “worker” has a special community meaning, and it is not open to national legislation to use a narrower definition. Such judicial officers were, therefore, held to be covered by sex discrimination legislation.²⁷⁵

Section 23 of the *Employment Relations Act 1999* gives the Government the power to extend rights contained in employment legislation to “individuals of a specified description” and make provision as to the identity of their employers. Sub-section 5 allows amendments to both primary and secondary legislation to achieve this purpose. This power could be used to extend employment rights to office holders. Section 23 states:

23 Power to confer rights on individuals

(1) This section applies to any right conferred on an individual against an employer (however defined) under or by virtue of any of the following—

- (a) the *Trade Union and Labour Relations (Consolidation) Act 1992*;
- (b) the *Employment Rights Act 1996*;
- (ba) the *Employment Act 2002*;
- (c) this Act;
- (d) any instrument made under section 2(2) of the *European Communities Act 1972*.

(2) The Secretary of State may by order make provision which has the effect of conferring any such right on individuals who are of a specified description.

(3) The reference in subsection (2) to individuals includes a reference to individuals expressly excluded from exercising the right.

(4) An order under this section may—

- (a) provide that individuals are to be treated as parties to workers' contracts or contracts of employment;
- (b) make provision as to who are to be regarded as the employers of individuals;

²⁷⁵ *Perceval-Price, Davey and Brown v Department of Economic Development, Department of Health and Social Services and Her Majesty's Attorney General for Northern Ireland*, CANI [2000] NIECA 9; *The Times* 28 April 2000

- (c) make provision which has the effect of modifying the operation of any right as conferred on individuals by the order;
 - (d) include such consequential, incidental or supplementary provisions as the Secretary of State thinks fit.
- (5) An order under this section may make provision in such way as the Secretary of State thinks fit.
- (5A) The ways in which an order under this section may make provision include, in particular—
- (a) amending any enactment;
 - (b) excluding or applying (whether with or without amendment) any enactment.
- (5B) In subsection (5A) “enactment” includes an enactment comprised in subordinate legislation made under an Act.
- (6) Section 209(7) of the Employment Rights Act 1996 (which is superseded by this section) shall be omitted.
- (7) Any order made or having effect as if made under section 209(7), so far as effective immediately before the commencement of this section, shall have effect as if made under this section.

Section 23 was brought into force on 25 October 1999. The Government issued a discussion document in July 2002.²⁷⁶ The discussion document summarised the current position of office-holders as follows:

Office holders

76. Office holders are often found not to be employees when applying the common law tests, but they are liable for Schedule E tax and Class 1 National Insurance Contributions by legislation (i.e. they are taxed as employees). The distinction between officeholders and employees lies in the fact that while an employee’s rights and duties are defined by an employment contract, the rights and duties of an office holder are defined by the office held and exist independently of the person who fills it. With office holders, there is usually no intention to create legal relations. Examples of some office holders include the clergy, police officers, company directors, prison officers, trade union officers, club secretaries, registration officers, and trustees. The position of registration officers is complex. They are appointed to a registration post by the local authority, which is also responsible for their pay and accommodation. However, they answer to the Registrar General for the performance of their registration duties and he or she has the sole power of dismissal.

77. In some cases, an office holder can be held to be an employee as well as an office holder; this is determined by applying the usual criteria for deciding whether an individual has a contract of employment according to the facts of the case.²⁷⁷ Police officers are specifically covered by certain employment rights, along with other categories of working person who might not be employees (in particular crown servants, House of Commons and House of Lords staff).

²⁷⁶ Department of Trade and Industry *Discussion document on employment status in relation to statutory employment rights* (URN 02/1058), July 2002, available on the DTI website at: http://www.delni.gov.uk/employment_status_consultation_document.pdf

²⁷⁷ *102 Social Club & Institute Ltd v Bickerton* [1977] ICR 911

The *Employment Relations Act 2004*, made a technical amendment to section 23 of the 1999 Act. As the words of the section stood, the order was allowed only to achieve these results by means of provisions that amend the legislation conferring the right, and not by means of a provision simply saying that the right applies to the individuals in question (a free-standing provision). The new provisions have the effect that an order will be able to extend employment rights either by the use of a free-standing provision or by amending the legislation conferring the right.

The Government has decided that primary legislation is required on the grounds that Part 2 goes further than what would be possible under section 23 of the 1999 Act. This is based on a distinction that is drawn between being an employer and “being regarded” as an employer under sub-section 4(b).²⁷⁸

IX Reaction to the proposals and the Bill

The Royal Statistical Society broadly welcomed the Government’s proposals when they were published in March 2006, although it expressed concern in a number of key areas, notably the ongoing responsibility of Ministers for statistics produced in their departments, and a possible role for the governing board in the executive delivery of statistics:

We are pleased to see that the proposals reflect the need for this legislation to be drawn broadly, encompassing not just those statistics produced by ONS but also statistics on crime, education, health and other areas of important public interest. We are concerned, however, that leaving 'Ministers wholly responsible for statistics produced within their departments' will create a two-tier system.

We are also pleased to see that the proposals recognise the need for a clear responsibility for independent oversight of the system by a Governing Board, coupled with a clear accountability for the delivery of trustworthy statistics given to the Chief Statistician. We will wish to explore, however, whether the proposals really do separate executive delivery from oversight.

The details will need careful consideration to ensure that the selection, compilation, presentation and release of statistics across the UK reflect the public interest and will deliver trustworthy statistics that allow us to assess the state of the nation and judge the performance of government. We will be contributing fully to the debate on these proposals.²⁷⁹

Simon Briscoe, writing in the *Financial Times*, observed:

Although the thrust of the Chancellor’s proposals received support, there was concern the statistics produced outside the ONS, including some of the most sensitive on crime, health, and education, would not be under such firm control.²⁸⁰

²⁷⁸ House of Commons Library correspondence with HM Treasury (December 2006)

²⁷⁹ Royal Statistical Society *Chancellor announces consultation on statistical legislation* (22 March 2006) <http://www.rss.org.uk/main.asp?page=2614>

²⁸⁰ *Financial Times Independent statistics office planned* (23 March 2006)

In the *Times*, Gabriel Rozenberg suggested that the proposals had “come under fire”:

...the Royal Statistical Society said last night that the new plans, although improving the situation for the ONS, would still leave largely unchanged the status of statistics produced by government departments.

The proposals say that: “All statisticians, regardless of their location in government, have a responsibility to the National Statistician for the professional quality of their work.” Yet they add: “Statisticians outside of the statistics office will, as at present, remain within the formal line management of their departments, and be accountable to departmental ministers for other aspects of their responsibilities.”²⁸¹

The Statistics Commission, recommended for abolition in the Government’s proposals, broadly welcomed them:

The responsibilities, accountability and constitution of the proposed Governing Board will be crucial, particularly if, as we understand, the Board will be expected to subsume the role of the existing Statistics Commission.

We have already set out in correspondence with HM Treasury a number of key points that we believe the legislation will need to embrace and we will be considering the current proposals against these criteria:

- The new governance arrangements should relate to all official statistics – not just those selected by government departments.
- The National Statistician should play a central, UK-wide, role and have the authority to create a statutory code of practice, subject to Parliamentary approval, which would be binding on all departments and agencies which produce official figures.
- The Governing Board should be able to commission investigations at its own discretion, audit compliance with the code of practice and report to Parliament in relation to the statistical activities of all departments. It should also be responsible for approving annual plans covering all the statistical activities of government.
- Planning and funding arrangements for official statistics should be transparent and coherent and subject to independent audit.
- The arrangements for the devolved administrations should reflect the value of consistent information across the United Kingdom whilst supporting a focus on meeting local requirements where that is appropriate.²⁸²

The Treasury Sub-Committee’s report following its inquiry into the Government’s proposals was welcomed by the statistics community. The Royal Statistical Society observed:

²⁸¹ *Times Plans for solo ONS ‘will create two-tier system’* (23 March 2006)

²⁸² Statistics Commission *Statistics Commission highlights issues for consultation* (22 March 2006)
http://www.statscom.org.uk/uploads/files/pressreleases/scpr2006_02.pdf

We welcome this report as it reinforces the arguments that the Royal Statistical Society and many others have made. Public trust in official statistics is at a low ebb. Barely a sixth of adults believe that they are produced without political influence. Although what the Government is proposing is welcome, it is not enough fundamentally to tackle this problem of trust. The Royal Statistical Society urges the Government to heed the Commons report and looks forward to their response.²⁸³

The Statistics Commission also endorsed “all the main arguments in the Treasury Committee’s Report” and urged the Government “to develop its own proposals accordingly”. In particular, the Commission called for:

- The new statutory arrangements must cover all official statistics, not just those produced by the Office for National Statistics.
- Clear separation is needed between the role of the National Statistician in the executive delivery of statistics and the new Board’s responsibility for oversight and scrutiny.
- Ministers should not be free to place important departmental statistics outside the ambit of the new statutory arrangements.
- Pre-release access to statistics should be further restricted though we recognise the case for the introduction of limited pre-release access for opposition spokespeople under strict embargo arrangements.
- The concordat on statistics between the four UK administrations should be reviewed and revised to ensure closer co-ordination.
- There is a need for a strong presumption in favour of statisticians having access to administrative data for statistical purposes.²⁸⁴

The Commission concluded that the Government’s legislative proposals would be “judged by whether they have a beneficial impact on public perceptions and on the quality of the statistical service as a whole”.

The National Statistician, Karen Dunnell, welcomed the announcement in the Queen’s Speech of the Government’s intention to legislate, particularly the role envisaged for the National Statistician:

I see legislation as an important step in helping to build public confidence in official statistics. I believe these new arrangements will reinforce the independence and quality of statistics produced within the UK’s long-standing decentralised system. I am pleased the legislation will leave the National Statistician as the government’s Chief Advisor on statistical matters, with responsibility for the day-to-day running of the ONS and the leader of the Government Statistical Service.²⁸⁵

Following the publication of the *Statistics and Registration Service Bill*, Bill McLennan, former Director of the Central Statistical Office and Australian Statistician, wrote to the *Financial Times* expressing his disappointment:

²⁸³ <http://www.rss.org.uk/main.asp?page=2614>

²⁸⁴ http://www.statscom.org.uk/C_1060.aspx

²⁸⁵ Office for National Statistics *Press Notice* (15 November 2006)
<http://www.statistics.gov.uk/pdfdir/nsa1106.pdf>

Unfortunately, the *Statistics and Registration Service Bill* does not produce independence for statistics, notwithstanding claims to the contrary. The government has produced a bill that does not achieve its stated aims. The bill gives the board power to decide what Office for National Statistics figures are produced and published. It also allows the chancellor (and the Scottish, Welsh and Northern Irish people) should he (or they) wish to direct the board to do something other than what it has determined. Even this proposed board does not have independence!

Furthermore, even though the board may delegate its powers to the national statistician, the board can direct how the statistician should exercise a particular function or direct that he/she not exercise a particular function at all. So the bill allows for the situation where the statistician may not be the final decision-maker for any statistical issue. This is really an absurdity.

The current (National) Statistician welcomes the legislation because she says it clearly distinguishes between the board's role to scrutinise the UK statistical system and the ONS's operational role. On my reading, the legislation does the opposite. This bill, if enacted, will set back official statistics in the UK for at least a few generations. Hopefully, the government might yet see that this bill is a big step backwards and do something about it: it is not too late.²⁸⁶

During the House of Commons debate on the Queen's speech, the Shadow Chancellor, George Osborne MP, welcomed the announcement that the Government intended to legislate to provide for independence for statistics in order to enhance confidence in official statistics. However, Mr. Osborne expressed some reservations:

...the Bill published last week falls far short of what was promised. The Treasury claims to be establishing an independent statistics office, yet Ministers, not that independent office, will decide which statistics it can scrutinise and release. That is like putting the Sopranos in charge of the neighbourhood watch. The Audit Commission says that the Treasury's approach will "only seek to generate low public trust in statistics and reinforce the perception of political interference in the production and publication of statistics."

It is not too late for the Government to deliver what they first promised back in 1995, when the right hon. Member for Blackburn (Mr. Straw), who is now Leader of the House, spoke to the Royal Statistical Society. In a memorable speech, he said that the national statistical service "should be placed at arms length to Ministers, on a similar basis to that of the National Audit Office, and should report principally to a powerful Committee of the Commons." We agree with the Leader of the House. That is what is needed, that is what the Government promised, and that is what they should deliver in the Bill.²⁸⁷

In a House of Lords debate, also on the Queen's Speech, Lord Moser expressed concerns:

In today's debate it would be improper to deal with details. So let me just mention three points which seem to me to be of particular importance. By far the most

²⁸⁶ *Financial Times* "Independence for statistics has not been achieved" (29 November 2006)

²⁸⁷ HC Deb 27 November 2006, c834

important relates to our decentralised statistical system. At the centre is the ONS with enormous responsibility, basically for economic data. As we know, all departments and some agencies have their own statistical offices. I have always believed in this system and I am glad that it is to remain. But it needs to be run and monitored as a single integrated system, a point which I think is recognised in the Bill. It means that the National Statistician—the role I occupied for many years—should have the authority not only to run the ONS if it is recreated in some form—as it must be—but should also have professional responsibilities throughout the whole of the government statistical service. That is why Prime Minister Wilson, the first Prime Minister I served directly, gave me the double title of director of the CSO (Central Statistical Office) and head of the GSS (Government Statistical Service). The same must apply now.

Equally—and much more important now—the new independent board must have a clear responsibility, a non-executive authority, not only for the ONS but for statistics throughout all policy ministries. I cannot stress enough that the problems of public trust relate not to the ONS statistics, but to departmental statistics in fields such as crime, migration, waiting lists and so on. That is where the trouble arises and so the system must be run as a single system.

I have three more points of substance. First, where will the non-ministerial department be placed? I understand that there will be some residual—I think that is the term—role for Ministers, supported of course by civil servants and political advisers. I understand that the intention is for these residual responsibilities to remain with the Treasury. Secondly, there is the alternative...that the statistical office should be placed in the Cabinet Office. That was my position. I was in the Cabinet Office and reported through the Cabinet Secretary directly to the Prime Minister. It makes much more sense to have the statistical office located there finally, rather than in a key policy department like the Treasury.

My third point of substance concerns the trickiest issue of all; namely, the pre-release of government statistics. In this country a number of people get sight of key statistics 40 hours before they are published. Compare that with the President of the United States—not an unimportant person—who gets sight of the figures 30 minutes before they are published. This is the source of most public trust problems. Unfortunately, the legislation contains the proposal that this should be subject to secondary legislation, which is another point for discussion.²⁸⁸

Lord (Patrick) Jenkin of Roding, the former Secretary of State for Health and Social Security responsible for the 1981 Census of Population, also expressed concerns at the Government's proposals, particularly the continuing residual responsibilities envisaged for the Treasury:

...which government department ought to act as the spokesman in Parliament for what is to be a new, non-ministerial department? Somebody must report to Parliament; some department must answer questions. The noble Lord, Lord Moser, can confirm that, in his day, this was the role of the Cabinet Office. As chief statistician, he had direct access to the Prime Minister. Why does this now have to be the exclusive preserve of the Treasury? Of course Treasury statistics

²⁸⁸ HL Deb 27 November 2006, c600

are a hugely important element of the range of official statistics, but not so important that other departments should have a subordinate role in the process of accountability. I shall quote two recent examples illustrating this point.

Earlier this month a report of the review of crime statistics chaired by Professor Adrian Smith was published. In that document...I read the terms of reference: "The Home Secretary is concerned that public trust in the crime statistics produced by the Home Office has declined to such an extent that it is no longer possible to have a debate about alternative criminal justice policies on the basis of agreed facts about the trends in crime". In the executive summary, one can read: "Both the scope and definitions of the national statistics that are produced need a radical overhaul. Significant groups of victims are not covered by current surveys and certain major current crime category definitions are confusing and misleading".

What has that got to do with the Treasury? Is there not some other part of government that would better exercise an oversight on that?²⁸⁹

The Royal Statistical Society recently published its views on the *Statistics and Registration Service Bill*. While welcoming the legislation, the Society judged that the Bill failed to meet the Government's overall objectives and suggested a number of ways that the Bill could be amended:

Official statistics are vital to decision making in Government and to holding the Government to account....But for several decades now, a lack of trust due to a wide perception of political interference has devalued and undermined official statistics to an extent not seen elsewhere. We believe that trust in official statistics and public confidence in the system that produces them is fundamental to the Government's objectives for the Bill and it should be judged by whether it addresses these. As drafted, the Bill will not meet this standard and we identify a number of ways in which the Bill needs amendment if it is to succeed in its purpose. The main issues can be summarised as follows:

- *The scope of the Bill* – to include statistics on crime, health, education and so on. The statistical output of the ONS is only a fraction of government statistics. The much wider Government Statistical Service (GSS) is responsible for many high-profile statistics but is not dealt with adequately in the Bill. The Bill therefore needs to ensure that its provisions apply across the GSS.
- *Lack of trust due to perception of political interference*. This perception is strongest for statistics produced by policy departments. In general the public doubt that there is adequate separation between statistical producers and ministers and their policy advisers since official statistics are used to judge the effectiveness of public policy and government itself. This concern is particularly heightened because of the perceived political influence on the dissemination of statistics and the textual explanation that accompanies them. Ministers and their advisers have the final figures well in advance of others. Additionally policy departments handle the release of statistics and often ministers issue their own selective

²⁸⁹ HL Deb 27 November 2006, c573-4

interpretation of the statistics at the same time as they are released. It is very important that 'pre-release' is minimised (indeed we would like to see it reduced to zero if it were practicable) and the statistics are prepared and released in a way that does not distort their content and demonstrates their freedom from political interference.

- *The National Statistician and the Statistics Board.* The Bill establishes a Statistics Board and retains the post of the National Statistician who would be an executive member of the Board. We agree that the National Statistician should be a member of the Board, but we feel that the Bill does not differentiate clearly enough the roles of the Board and the National Statistician.
- *Statistical Coordination and Residual Ministerial Responsibilities.* The current statistical system is fragmented and lacks the required level of coordination to produce statistics on issues that cut-across different government departments. This requires allocated responsibilities to the National Statistician and the Board. In addition the residual powers retained by the Treasury would be better assigned to the Cabinet Office.
- *Statistical Confidentiality and Access to Administrative Information.* The willingness of the public and businesses to supply personal data for statistical purposes depends on confidence that the data will be held securely, not divulged and not used for other than statistical purposes. This assurance is inadequate in the Bill as there are provisions for disclosure by ministerial order in several clauses.²⁹⁰

The Statistics Commission published a statement of its views on the *Statistics and Registration Service Bill* on 12 December 2006. While welcoming the intent of the Bill, the Commission expressed concern in a number of areas. The Bill, as presently drafted:

- does not secure a sufficiently clear separation of executive and scrutiny roles;
- gives the Board responsibility for, but not authority over, official statistics in government bodies other than ONS;
- does not place government bodies under an explicit obligation to observe the Code of Practice;
- continues to let Ministers - rather than the Board on behalf of Parliament - determine the rules for access to statistics before they are published.²⁹¹

The Commission contended that "the Bill should provide for a demonstrable separation of the governance and scrutiny functions of the [Statistics] Board from the production functions of the executive office". Moreover, clause 7 of Bill "confers the responsibility to safeguard the quality of all official statistics without the commensurate authority over those statistics produced by government departments other than ONS". The Commission

²⁹⁰ Royal Statistical Society *Statistics and Registration Service Bill: views of the Royal Statistical Society* (11 December 2006)

<http://www.rss.org.uk/docs/Statistics%20and%20Registration%20Services%20Bill%20-%20RSS%20comment%20December%202006.doc>

²⁹¹ Statistics Commission *Briefing Note: Statistics and Registration Service Bill* (12 December 2006)

<http://www.statscom.org.uk/uploads/files/other/SC%20Stats%20Bill%20Sec%20Reading%20Brief.pdf>

urged that the new Code of Practice for National Statistics should be “binding on all government bodies producing official statistics” so that the Code applies “to the government body as a whole” and to all statistical work within it. The Commission also expressed particular concern that the Bill, as presently drafted, affords “Ministers rather than the Board the power to determine the pre-release access to official statistics”:

The Statistics Commission wish to see the Bill give this power to the [Statistics] Board, in consultation with Ministers. We believe this is the only way of giving sufficient public assurance that official statistics are free from government “spin”.

The Commission advanced the case for a series of non-statutory measures, including a “strong concordat” between the four UK administrations on the production of statistics, an “explicit recognition” by the UK administrations that departments are expected to follow the advice of the Statistics Board on the interpretation of the Code of Practice for National Statistics, and arrangements for direct access to the Prime Minister for the Chair of the Statistics Board on “matters of national importance”. Overall, the Commission felt that:

Done right, this [Bill] should provide genuinely independent oversight of the production and publication of official statistics and thus give the public good reason to trust the statistical service.