EXPLANATORY MEMORANDUM TO

THE CROWN COURT (RECORDING) ORDER 2016

2016 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument sets out the conditions under which visual and sound recording of judge's sentencing remarks in specific venues of the Crown Court may take place.

3. Matters of special interest to Parliament

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

3.1 This instrument is made under section 32 of the Crime and Courts Act 2013. It is the second use of the power under which this order is made.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England and Wales.

3.3 The instrument does not give rise to minor or consequential effects outside England and Wales.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

4. Legislative Context

4.1 Section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981 prohibit visual and sound recording and broadcast of court proceedings.

4.2 Section 32 of the Crime and Courts Act 2013 provides that the Lord Chancellor, with concurrence of the Lord Chief Justice, may make an order to disapply the statutory prohibitions if prescribed conditions are met.

4.3 This instrument prescribes the conditions under which the visual and sound recordings of remarks in the Crown Court will be permitted.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State, Shailesh Vara MP has made the following statement regarding Human Rights:

In my view the provisions of the Crown Court (Recording) Order 2016 are compatible with the Convention Rights.

7. Policy background

7.1 The policy aim of court broadcasting is to increase public engagement with, and understanding of, what happens in courts. The UK Supreme Court has allowed broadcasting since it was established in 2009 and legislation was made under the Crime and Courts Act 2013, to enable television broadcasting from the Court of Appeal in limited circumstances. Broadcasting began on 31 October 2013.

7.2 The purpose of this instrument is to enable the carrying out of test recordings of judges sentencing remarks in certain Crown Court proceedings. The recordings made will not be broadcast to the public. The aim of the test is to establish whether recordings of proceedings in the Crown Court is feasible and in advance of a decision by the Lord Chancellor and Lord Chief Justice on whether to seek Parliament's approval to allow broadcasting of Crown Court proceedings in the future. The move to broadcasting of any part of those recordings will require another Order to be laid before Parliament in accordance with Section 32 of the Crime and Courts Act 2013.

7.3 During the Parliamentary debate on the 2013 Act, concerns were expressed about maintaining the dignity of the trial process while supporting victims and witnesses, if broadcasting were allowed to commence in the Crown Court. The Lord Chancellor considered these points with the Lord Chief Justice and agreed to restrict filming in the Crown Court to the recording of judges sentencing remarks only to maintain the integrity of the trial process as the outcome of the cases will have been established. The filming of any other court user, especially victims and witnesses, will remain prohibited. Any breach may be treated as a contempt of Court.

7.4 The test Order will allow the recording of sentencing remarks given by specific judges in named Crown Court locations. We anticipate the test running for no more than four months. The recording may only take place with the permission of the relevant judge. In addition, the recording can only be done by a person who has been given specific permission to make the recording by the Lord Chancellor. The recordings made cannot be broadcast to the public. The test has been structured in this way to ensure that we are able to strike the right balance in protecting the dignity of the Court and the integrity of the trial process, while considering how to allow the public to see what happens in court and to hear decisions in the judges' own words. Only the judge sitting in the case will be filmed and normal reporting restrictions will continue to apply to protect victims or witnesses involved in the case to protect their interests.

8. Consultation outcome

8.1 The (then) Department of Constitutional Affairs consulted on allowing cameras in court in 2005. The overall response was mixed. While there was no strong support for filming or broadcasting overall, the majority of respondents thought that judges'

decisions and sentencing remarks should be allowed, and that broadcasting would educate the public about what happens in court. The current proposals support the results of that consultation and the lessons learnt from broadcasting in the Court of Appeal where cases have been broadcast successfully since 2013. The proposed test has been agreed by the Lord Chancellor and Lord Chief Justice to enable them to consider the lessons learnt and whether further consultation is required, before considering the long-term vision for broadcasting in the Crown Court.

9. Guidance

9.1 The purpose of the test is to develop court processes and procedures to ensure that sufficient safeguards are in place to protect the dignity of the Court and the integrity of the trial process, including victims and witnesses. The test will also inform the development of a new HMCTS court protocol document, setting out the process for recording of cases in the Crown Court for broadcasters.

9.2 HMCTS will provide signage and a small number of leaflets to advise court users and members of the public that filming will be taking place for the purposes of the not for broadcast test.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The test will involve feedback being gathered, which will then be reviewed post-test, along with the recorded footage by the Ministry of Justice, Her Majesty's Courts and Tribunal Service and the Judicial Office. This will help inform the development of new processes and training in advance of a decision to seek the support of Parliament to permit broadcasting of judges sentencing remarks in the future.

13. Contact

13.1 Vincent Couch at the Ministry of Justice. Telephone: 020 3334 3555 or email: vincent.couch@justice.gsi.gov.uk can answer any queries regarding the instrument.