EXECUTIVE NOTE

DRAFT SSI: THE SEXUAL OFFENCES (SCOTLAND) ACT 2009 (SUPPLEMENTAL AND CONSEQUENTIAL PROVISIONS) ORDER 2010 (S.S.I 2010/)

The above instrument is made in exercise of the powers conferred by section 58 of the Sexual Offences (Scotland) Act 2009. The instrument is subject to affirmative resolution procedure.

Policy Objectives

The instrument makes supplemental and consequential provisions required as a result of the Sexual Offences (Scotland) Act 2009 (the "2009 Act").

Part 1 of the Schedule to the Order makes supplemental and consequential amendments to primary legislation. The majority of the amendments to primary legislation are required to clarify that existing references to the offences of 'assault with intent to rape' and 'abduction with intent to rape' can be read as applying both to the common law offence of rape and to the statutory offences of rape and rape of a young child at sections 1 and 18 of the 2009 Act.

The Order makes amendments to this effect to provisions at sections 19A, 210A and 288C of the Criminal Procedure (Scotland) Act 1995 (concerning the power to take samples from persons convicted of sexual and violent offences, extended sentences for sex and violent offenders and the prohibition against the personal conduct of a defence in cases of certain sexual offences), to the list of offences against a child at schedule 1 to the Protection of Children (Scotland) Act 2003 (conviction of which may result in a person being prohibited from working with children) and to Schedule 3 to the Sexual Offences Act 2003 (which provides for a list of offences conviction of which will lead to an offender being subject to the Sex Offender Notification Requirement – often referred to as the 'sex offenders register').

Supplemental provision has been made to amend schedule 3 to the 2009 Act. Section 50 of the 2009 Act provides that where a charge is brought under certain provisions in the Bill but the court or the jury are not satisfied that the accused committed the offence charged, it may be open to convict the accused of a specified alternative offence. Schedule 3 specifies the alternative offences of which the accused may be convicted where section 50 applies.

The common law offence of assault is listed as an alternative offence of which the accused may be convicted where he or she is charged with an offence at sections 1-6 and 18-21. However, it is not clear that, in itself, this would enable a court to convict of the offence of assault with intent to rape. The offence of 'abduction with intent to rape' is also not available as an alternative verdict in the Act as passed. To ensure that this is available as an alternative verdict in suitable cases, this instrument amends schedule 3 to add 'assault with intent to rape' and 'abduction with intent to rape' to that schedule. Following discussions with COPFS, the Order adds offences at sections 1 and 2 of the Criminal Law (Consolidation) (Scotland) Act 1995, of incest

and intercourse with a step-child, to the list of alternative verdicts to a charge of rape under section 1.

Part 2 of the Schedule to the Order makes consequential amendments to secondary legislation to update references to sexual offences to reflect the offences created by the 2009 Act. The SSIs which the Order amends are the Victim Notification (Prescribed Offences) (Scotland) Order 2004, the Victim Statements (Prescribed Offences) (No. 2) (Scotland) Order 2009, and the Adoptions with a Foreign Element (Scotland) Regulations 2009.

Consultation

There was no statutory requirement to consult on this Order and we did not feel that any consultation was necessary, as the Order is intended solely to make provisions supplemental and consequential to the Sexual Offences (Scotland) Act 2009, which was subject to full consultation.

Impact Assessments

An Equality Impact Assessment was prepared for the Sexual Offences (Scotland) Bill and shared with the Justice and Equal Opportunities Committees to assist their consideration of the Bill in its passage through Parliament. A separate Equality Impact Assessment was not considered necessary as the Order is intended solely to make provisions supplemental and consequential to the Sexual Offences (Scotland) Act 2009.

Financial Effects

The Order does not have any new financial effects that were not anticipated when the Sexual Offences (Scotland) Act 2009 was enacted. A Financial Memorandum was produced for the Bill which sets out the financial implications of the Bill.

Criminal Justice Directorate
September 2010