EXECUTIVE NOTE

DRAFT : THE VICTIM NOTIFICATION SCHEME (SCOTLAND) ORDER 2008

1. This Order amends sections 16(1) and (3) of the Criminal Justice (Scotland) Act 2003 (asp 7) ("the 2003 Act"). It is made in exercise of the powers conferred by section 16(4)(a) and (b) of the 2003 Act and is subject to affirmative procedure.

Policy Objectives

2. Section 16 of the 2003 Act currently confers upon the victims of prescribed offences the right to receive certain information about the person convicted of perpetrating the offence against them if this results in a sentence of imprisonment or detention for a period of 4 years or more or life imprisonment or detention for life. Section 17 of the 2003 Act gives those victims the right to be given an opportunity to make written representations in connection with the release of an offender on licence before any decision is made to release that offender. The policy intention is to provide victims with information specific to their cases and to facilitate greater participation in the criminal justice system. The scheme for the provision of this information is known as the Victim Notification Scheme ("the VNS").

3. The criteria for eligibility for the VNS are that the victim must be an identifiable natural person; the offence committed must be one of the offences prescribed by virtue of the Victim Notification (Prescribed Offences) (Scotland) Order 2004 (SSI 2004/411); the offender must be sentenced to a period of imprisonment or detention of 4 years or more (this includes extended sentences where the aggregate of the custodial term and extension period of the sentence is 4 years or more), life imprisonment, or detention without limit of time; and the victim must have intimated a wish to receive the information and/or to make representations in connection with release.

4. Under section 16(3) of the 2003 Act, the victim has the right to be told the following: the date of the offender's release from prison (other than temporary release); if the offender dies prior to release, the date of the death; that the offender has been transferred outwith Scotland; that the offender has become eligible for temporary release (but not the date of each individual period of release); and if the offender is unlawfully at large from prison. This information is provided by the Scottish Prison Service

5. Section 17 of the 2003 Act gives victims the right, before a decision is taken by the Parole Board for Scotland as to whether to direct the release of the offender on licence, to be afforded an opportunity to make written representations as respects the release and as to conditions that might be specified in the licence. On reaching the point at which the Parole Board is to consider the offender's case, the Parole and Life Sentence Review Division of the Scottish Government will write to the victim to offer that opportunity. Thereafter the Parole Board notifies the victim of its decision. If the Board has directed release and has attached licence conditions that relate to contact with the victim or the victim's family, it will intimate the terms of those conditions.

6. This Order has two objectives. The first is to increase the number of victims eligible to apply to join the VNS. This is achieved by amending section 16(1)(a) of the 2003 Act to reduce from 4 years to 18 months the minimum period of imprisonment or detention which

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triggers the victim's right to receive the information specified in section 16(3). This will include extended sentences where the aggregate of the custodial term and the extension period is 18 months or more.

7. A second objective is to address an anomaly whereby victims can be notified when a prisoner is released or is unlawfully at large, but there is no provision for notifying victims of a prisoner's return to custody (for example, a victim can be notified if a prisoner escapes but not if the prisoner is recaptured). Therefore, this Order also amends section 16(3) of the 2003 Act to give the victim the right to receive information about the date on which a convicted person has been returned to custody during the currency of the original sentence. Victims will be told of a return to custody where the offender is to continue serving the original sentence. For example, victims can be notified if an offender who has been released from a sentence commits a further offence before the original sentence expires and is returned to custody by order of the court under section 16 of the Prisoners and Criminal Proceedings (Scotland) Act 1993, or following revocation of a release licence.

Administration

8. A number of agencies are involved in administering the VNS. After conviction and sentence, the Procurator Fiscal for the area where the crime took place or the relevant officer of Victim Information and Advice writes to the eligible victim with an explanation of the VNS and a set of forms to opt into the scheme.

9. Victims are given the opportunity to opt in to their rights under either section 16 or section 17, or to opt in to both sets of rights. If the victim does not intimate his or her wish to receive the information or to be invited to make representations, then sections 16 and 17 will not apply. Once the victim is registered, the Scottish Prison Service, the Parole and Life Sentence Review Division of the Scottish Government or the Parole Board for Scotland will write to the victim as appropriate to provide the relevant information. The victim is free to opt out of the VNS at any time. There is no formal time limit on opting into the VNS, and a victim who initially decides not to opt in may do so at a later date, provided that it is before the stage at which the offender has been released or the Parole Board has already started consideration of the offender's case.

Consultation

10. An evaluation of the existing scheme was completed in early 2007. The evaluation found that victims currently registered with the VNS welcomed the scheme. It is likely that victims of offenders sentenced to less than four years in prison will also welcome an opportunity to opt into the VNS.

11. The VNS provisions of the 2003 Act were developed to meet commitments set out in the Scottish Strategy for Victims, published in January 2001. The strategy itself drew on Scottish research as well as on wider international work relating to victims' issues and victims' rights. The strategy was developed by the main agencies making up the criminal justice system in Scotland, as well as relevant voluntary organisations.

12. The Crown Office and Procurator Fiscal Service, the Scottish Prison Service, the Parole and Life Sentence Review Division of the Scottish Government and the Parole Board for Scotland have key roles in delivering the extended scheme. These agencies have been

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closely involved in drawing up the plans for the extension of the VNS and in developing the process for delivery.

Financial effects

13. The Order enhances and extends the existing VNS and requires that both the Crown Office and Procurator Fiscal Service and the Scottish Prison Service develop new IT and administrative systems to deal with the anticipated increase in numbers of victims who will now become eligible to apply to join the VNS (it is estimated that an additional 1,700 victims a year will opt into the VNS). The additional funding required to put these systems in place will be met from within existing budgets.

Scottish Government Criminal Justice Directorate
Victims & Witnesses Unit

March 2008

SE Approved
Version 1.1