EXPLANATORY MEMORANDUM TO

THE VICTIMS AND WITNESSES (SCOTLAND) ACT 2014 (CONSEQUENTIAL MODIFICATION) ORDER 2020

2020 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Office of the Secretary of State for Scotland and is laid before Parliament by Command of Her Majesty.

1.2 This explanatory memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

2.1 This Order makes provision in consequence of the Victims and Witnesses (Scotland) Act 2014 ("the 2014 Act"), which inserted provisions into the Criminal Procedure (Scotland) Act 1995. It follows provisions for the introduction of a new financial penalty – the restitution order – in the 2014 Act, which will be imposed on persons who are convicted of assaulting a police officer (or certain other prescribed persons). The Order specifically makes provision for the deduction of sums from benefits to ensure that the restitution order is paid. This is to be done by prescribing that the restitution order is to be regarded as a fine for the purposes of the legislation underpinning the deduction from benefits regime. There are already provisions to deduct from benefits to ensure payment of fines, and no further changes to subordinate legislation are therefore required. This designation will thus be sufficient to allow existing processes to be extended to cover payment of the restitution order. The relevant provisions of the 2014 Act are to be commenced once this Order has been passed.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

3.1 This Order is similar to the Victims and Witnesses (Scotland) Act 2014 (Consequential Modification) Order 2019 (S.I. 2019/1092) ("2019 Order"). The need for this Order was notified by the Scottish Government at a time when the 2019 Order had already been laid in the UK Parliament and was scheduled for imminent debate in both Houses. It was decided that the 2019 Order's provisions should come into force as soon as possible to facilitate the Scottish Government's new provisions for collecting the surcharge and to prevent delay in providing additional support to victims.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales and Scotland.

4.2 The territorial application of this instrument is England, Wales and Scotland.

5. European Convention on Human Rights

5.1 The Secretary of State for Scotland has made the following statement regarding Human Rights:

"In my view the provisions of the Victims and Witnesses (Scotland) Act 2014 (Consequential Modification) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 On a practical level, there need to be enforcement measures to ensure that the restitution order is paid. One such measure is deduction of sums of money from the relevant offender's benefit payments. As social security schemes for making deductions from benefits are reserved to the UK Government under Section F1 of Part II of Schedule 5 to the Scotland Act 1998, any amendment to the relevant legislation – the Criminal Justice Act 1991 ("the 1991 Act") or the Fines (Deductions from Income Support) Regulations 1992 ("the 1992 Regulations") – would require to be undertaken by the UK Government.

6.2 Section 104 of the Scotland Act 1998 allows provision to be made which is necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament. This includes provision for the UK Parliament to pass a section 104 Order which can amend UK primary legislation in reserved areas.

6.3 The 2014 Act inserts new sections into the Criminal Procedure (Scotland) Act 1995, which introduce the restitution order and related provisions. An amendment to the 1991 Act is required to prescribe restitution orders as a financial penalty under section 24 of the 1991 Act. This is to be achieved by inserting a new subsection 24(3B) into the 1991 Act. This will reference the restitution order and indicate that it should be treated as a fine for the purposes of sections 24(1) and 24(3) of the 1991 Act.

6.4 The 1992 Regulations, made under the powers in section 24(1) of the 1991 Act, indicate that where a fine has been imposed on an offender by a court, and that offender is entitled to certain benefits, the court can apply to the Secretary of State to deduct sums from those benefits to ensure payment of the fine.

6.5 Therefore, by amending the 1991 Act in the way proposed, the restitution order will be treated in the same way as a fine covered by the 1992 Regulations (and no amendments to the 1992 Regulations or other subordinate legislation are required). The Scottish Courts and Tribunals Service ("SCTS") will be able to apply to the Secretary of State for a Deductions from Benefits Order ("DBO") to ensure the restitution order is paid.

7. Policy background

What is being done and why?

7.1 The 2014 Act introduces various measures to increase the support available to victims and witnesses of crime in Scotland. Included in these measures is the restitution order, which is to be imposed on offenders who assault a police officer (or certain other prescribed persons), as set out in section 90(1) of the Police and Fire Reform (Scotland) Act 2012. This new penalty can be imposed instead of, or in addition to, any other sentence which the court may impose for that offence. The money received in relation to a restitution order is to be placed into a separate fund known as the Restitution Fund. The purpose of the Fund is to secure the provision of support

services for the persons who are victims of the offence; this can include caring for, treating, or rehabilitating the victims.

7.2 The 1991 Act gives the Secretary of State the power to introduce a process whereby courts can apply for a deduction from an offender's benefits to pay for a fine or compensation order. This Order therefore amends the 1991 Act to facilitate recovery of the order via deduction from benefits.

7.3 Currently, once the SCTS has secured a DBO, the Department for Work and Pensions (part of the UK Government) recovers fines and compensation orders on behalf of SCTS, upon application, by direct deduction from an offender's benefits. This Order extends the current arrangements to accommodate recovery of the new order as well, where appropriate.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 Though the Order amends primary legislation, the modifications are minor and their effect is simply to bring the restitution order within the scope of section 24 of the 1991 Act.

10. Consultation outcome

10.1 There has been no consultation exercise specific to this Order. However, a public consultation paper was published in July 2012 prior to the introduction of the Victims and Witnesses Bill in the Scottish Parliament.

10.2 Consultation with victims support groups and the justice organisations affected by the legislation was undertaken throughout this Bill's passage.

10.3 The Scottish Government has also engaged with the SCTS and police staff associations, trade unions and support organisations, in preparation for the introduction of the restitution order in Scotland.

11. Guidance

11.1 This Order stands alone and guidance is not necessary.

12. Impact

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

12.2 There is no significant impact on the public sector. Research undertaken ahead of the introduction of the victim surcharge in Scotland estimated a recurring annual cost of £115,000 on the SCTS for collecting the surcharge, which included the cost for restitution orders. These figures were not considered significant in this context.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on business is expected.

13. Regulating small business

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

14. Monitoring & review

14.1 The Order is consequential upon the 2014 Act. No formal monitoring or review is considered necessary.

14.2 The Order does not include a statutory review provision and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Secretary of State for Scotland has made the following statement: "There is no need for review or monitoring as the Order does not regulate businesses."

15. Contact

15.1 Ella Morrell at the Office of the Secretary of State for Scotland (telephone: 0207 270 6759 or email: ella.morrell@scotlandoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Rachel Irvine or Alison Evans (job share), Deputy Directors for Constitutional Policy, at the Office of the Secretary of State for Scotland confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for Scotland at the Office of the Secretary of State for Scotland confirms that this Explanatory Memorandum meets the required standard.