EXECUTIVE NOTE

THE VICTIM STATEMENTS (PRESCRIBED OFFENCES) (NO. 2) (SCOTLAND) ORDER 2009 SSI/2009/71

1. This Order is made in exercise of the powers conferred by section 14(2) of the Criminal Justice (Scotland) Act 2003 ("the 2003 Act"). The instrument is subject to a negative resolution procedure. This order should be read alongside the Victim Statements (Prescribed Courts) (Scotland) Order 2009 and accompanying Executive Note.

2. Section 14(2) of the 2003 Act confers upon victims of certain prescribed offences the right to be afforded an opportunity to submit a written statement to the Court about the impact of the crime upon them in cases reported to the Procurator Fiscal on or after 1 April 2009. This statement will be considered by the Court when determining the appropriate sentence.

Policy Objectives

3. The policies of the previous administration in relation to support of victims of crime were set out in the *Scottish Strategy for Victims*, which was published in January 2001. Paragraph 3.3 of that document sets out Ministers' aim to encourage victims' greater participation in the criminal justice system by ensuring that they are given a voice and that the system is more responsive to their needs.

4. Part 2 of the 2003 Act was intended to deliver Ministers' commitment to provide victims with an opportunity to feel that they are more involved in the criminal justice system and to improve the understanding of those agencies which deal with victims of crime by providing them with the victim's own personal account of the impact that the crime has had on them.

5. A two year pilot was carried out in the sheriff courts of Ayr, Edinburgh and Kilmarnock and in the High Court sitting at Edinburgh and Kilmarnock commencing in 2003. That pilot required the enactment of two SSIs, one to prescribe the courts in which statements could be laid and the other to prescribe the offences for which a statement could be made; those SSIs were laid in 2003 and revoked in 2005 when the pilot ended.

6. An evaluation of the pilot scheme was published in March 2007. Although the evaluation found that the majority of victims who took part in the pilot were glad that they had done so, the take-up rate varied considerably depending upon the severity of the crime (the overall take-up rate was just under 15%, but when individual offences were looked at the rate varied from 60% for murder to nil for some offences). This accorded with reasons given for not making a statement, where 53% of respondents did not feel like a victim or thought that the impact of the crime was not serious.

7. In the light of the evidence that victim statements were by far more likely to be made in serious cases, but that victims who did make statements benefitted from doing so, Scottish Ministers have concluded that victim statements ought to be introduced across Scotland, but only for serious cases. The legislation allows Ministers to prescribe offences and courts; and in order to cover serious cases but also capture as wide a range of offences as possible,

Scottish Ministers wish to limit victim statements to cases heard before a jury, that is in courts of solemn criminal jurisdiction (which covers the High Court of Justiciary and cases heard before a Sheriff and jury).

8. Consequently, this Order prescribes the offences, as set out in the Schedule at Article 2, for which a victim statement may be made where proceedings are taken or are likely to be taken in a court as prescribed in the Victim Statements (Prescribed Courts) (Scotland) Order 2009.

Administration

9. The Crown Office and Procurator Fiscal Service will be responsible for the administration of the victim statements. Once a case has been reported to the Procurator Fiscal (on or after 1 April 2009), they must determine the eligibility of the victim to make a statement and then write inviting them to do so. Once the victim has completed a victim statement form , the Procurator Fiscal will look at the statement and determine if any parts of it need to be made available to the defence agent at this point to help ensure a fair trial if the statement contains information that could have an effect on the trial or contradicts a witness statement. Once a finding of guilt has been reached the Procurator Fiscal will arrange for the statement to given to the Sheriff or Judge, and for a copy to be given to the defence.

Consultation

10. A consultation on the procedure for piloting victim statements was launched in November 2001, and a report on the outcome of the consultation published in March 2002. The outcome of that consultation (including a broad welcome for the idea of victim statements and that the preferred model was a written statement that victims would be invited to make only once it was likely that a prosecution would be undertaken) was reflected in the 2003 Act. The pilot itself was overseen by the Victim Statement Steering Group, which included a number of key stakeholders, and the views of Group were taken into account when the decision was taken to introduce victim statements to all courts of solemn criminal jurisdiction.

Financial effects

11. As a consequence of the introduction of victim statement the Crown Office and Procurator Fiscal Service will require to develop new IT and administrative systems to deal with the issuing of victim statement information packs and the processing of completed victim statement forms. In addition, the Scottish Government will publish guidance and an explanatory DVD for victims to explain the purpose of victim statements and to help them make an informed decision on whether or not to participate. The additional required for these measures will be met from within existing budgets.

Revocation of the Victim Statements (Prescribed Offences) (Scotland) Order 2009

12. This Order revokes the Victim Statements (Prescribed Offences) (Scotland) Order 2009 (SSI 2009/31), which, due to an oversight, did not explicitly include a coming into force date. To avoid any doubt about the *vires* of the list of prescribed offences, a new Order has been introduced.

Scottish Government Criminal Justice Directorate
Victims, Witnesses, Parole and Life Sentence Division

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