EXPLANATORY MEMORANDUM TO

THE JUDICIAL APPOINTMENTS (AMENDMENT) ORDER 2013

2013 No. [DRAFT]

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

2. Purpose of the instrument

2.1 This Order makes fellows of CILEX (the Chartered Institute of Legal Executives) eligible to be appointed as coroners under the Coroners and Justice Act 2009.

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

3.1 None.

4. Legislative Context

4.1 Paragraph 3 of Schedule 3 to the 2009 Act states that in order to be eligible for appointment as a coroner someone must have satisfied the "judicial appointment eligibility criteria" for at least 5 years. Sections 50 to 52 of the Tribunals, Courts and Enforcement Act 2007 (the 2007 Act) state that a person satisfies the eligibility condition if he or she holds a relevant qualification and, whilst holding that qualification, gains experience in law. A person holds a relevant qualification if he or she is a solicitor or barrister, or holds a qualification specified in an order under section 51(1) of the 2007 Act.

4.2 The Judicial Appointments Order 2008 (the 2008 Order) made under section 51(1) of the 2007 Act provides that CILEX fellows hold a relevant qualification for the purposes of being eligible for the judicial offices listed in its schedule. The Judicial Appointments (Amendment) Order 2013 adds coroners to that list.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Lord Chancellor has made the following statement regarding Human Rights:

In my view the provisions of the Judicial Appointments (Amendment) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 The intention behind the 2007 Act and the 2008 Order is to remove barriers to judicial appointments and to encourage greater diversity. The 2008 order makes Fellows of the Chartered Institute of Legal Executives (CILEX) eligible for a range of judicial posts such as Deputy District Judge and Judge of the First-tier Tribunal, but not coroner.

7.2 The Judicial Appointments (Amendment) Order 2013 **t**herefore amends the 2008 Order by adding the offices of senior coroner, area coroner and assistant coroner to Schedule 1 of that Order, thereby allowing CILEX Fellows to be eligible for coronial appointment in line with the policy on encouraging greater judicial diversity.

8. Consultation outcome

8.1 Between 1 March and 12 April 2013 the Department consulted on secondary legislation to be made under the 2009 Act. The consultation included our proposal to amend the Judicial Appointments Order 2008 to make fellows of CILEX eligible for coronial appointments.

8.2 Around a third of respondents said they supported the proposal; a third said they did not; and a third expressed no view. Some felt that extending eligibility in this way could lead to a diminution in standards. Others welcomed the proposed amendment because of its potential to increase the diversity of coroners and competition for the role.

8.3 The consultation response document, published on 4 July 2013, confirmed that we would amend the Judicial Appointments Order as proposed to extend eligibility for coroner roles to CILEX fellows. It addressed concerns about lowering standards by stressing that this change related solely to eligibility for coroner appointments. CILEX fellows wishing to apply for coroner posts would still be assessed alongside all other applicants (i.e. those from solicitors and barristers) and appointments would be based purely on merit.

8.4 The consultation response document also confirmed that the Department would implement the change shortly after the commencement date of the rest of the coroner reforms.

9. Guidance

9.1 Guidance on Part 1 of the 2009 Act has been issued to coroners and local authorities. This covers the appointment of CILEX fellows.

10. Impact

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

11. Regulating small business

11.1 These changes will have no impact on small businesses.

12. Monitoring and review

12.1 The Department has committed to reviewing the impact of the implementation of the 2009 Act eighteen months after implementation. We will review the impact of this order at that time.

13. Contact

Elizabeth Knapp or Judith Bernstein at the Department can answer any queries regarding the instrument.

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