EXPLANATORY MEMORANDUM TO

THE JUDICIAL APPOINTMENTS (AMENDMENT) ORDER 2014

2014 No. [DRAFT]

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 Section 10(2) of the Intellectual Property Act 2014 inserted new section 27A in the Registered Designs Act 1949, under which the Lord Chancellor appoints an "Appointed Person" to hear appeals against decisions of the Intellectual Property Office (IPO) in relation to design rights.

2.2 This instrument amends the Judicial Appointments Order 2008 to include an Appointed Person in the list of those offices for which Registered Patent Attorneys and Registered Trade Mark Attorneys can satisfy the judicial appointment eligibility condition.

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

3.1 Whilst the majority of the Intellectual Property Act 2014 will be commenced in April 2015, those parts of s.10(2) of the Act that enable the appointment of an Appointed Person who meets the judicial appointment eligibility condition will be commenced before this Order is made.

4. Legislative Context

4.1 Section 27A of the Registered Designs Act 1949, as inserted by section 10(2) of the Intellectual Property Act 2014, provides new routes of appeal against decisions made by the IPO relating to design rights. It offers those involved a choice of using either a person appointed by the Lord Chancellor (Appointed Person) or the court, and reflects the system already in place for challenging trade mark decisions of the IPO.

4.2 New section 27B provides for the process for the appointment and removal of an Appointed Person by the Lord Chancellor, including the requirement to meet the judicial appointment eligibility condition. In view of the specialist nature of this area of law, this instrument ensures that those people with 5 years of relevant

technical expertise, in this instance a Registered Patent Attorney or a Registered Trade Mark Attorney, can satisfy the eligibility condition.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary-Under Secretary of State, Shailesh Vara, has made the following statement regarding Human Rights:

In my view the provisions of The Judicial Appointments (Amendment) Order 2014 are compatible with the Convention rights.

7. Policy background

7.1 The Intellectual Property Act 2014 modernises intellectual property law to help UK businesses better protect their intellectual property rights in the UK and abroad. The provisions all aim to support business in driving economic growth, encourage innovation and expand the range of economic sectors in the UK. The Intellectual Property Act 2014 also implements reforms to the design framework following the *Hargreaves Review of Intellectual Property and Growth* in 2011 - http://www.ipo.gov.uk/ipreview.htm and subsequent consultation, *Reform of the UK Designs Legal Framework* in 2012 - http://www.ipo.gov.uk/consult-2012-designs.pdf.

7.2 The Appointed Person will offer users a quicker, more informal and low-cost alternative to the courts. Although a user may choose to appeal to the appointed person, it is possible, for example where the issue is of general legal importance, for the appointed person to refer the appeal to the court. The Appointed Persons role offers a lighter-touch approach but needs to be backed by technical expertise to be fully effective.

7.3 To ensure consistency with the pre-existing process for the Trade Marks Appointed Persons, and so there is a degree of visible independence from the IPO, the Government intends to enable the Judicial Appointments Commission to undertake the appointments process for these roles on behalf of the Lord Chancellor.

7.4 Judicial recruitment is generally limited to those with legal qualifications and experience. However, in some instances, it will be appropriate for those with wider qualifications and experience that are relevant to the area of law under consideration to be appointed as judges. Design law is one of these areas given its specialist and complex nature. Expanding the range of eligible candidates will enable Judicial Appointments Commission to recruit on this basis.

8. Consultation outcome

8.1 The respondents to the *Reform of the UK Designs Legal Framework* consultation confirmed that the existing mechanism for appealing against designs decisions of the IPO (RDAT), which offered a single route of appeal and without the possibility of further appeal, did not offer the flexibility users may require. They agreed that the Appointed Person, which was already well used in relation to trade mark cases, would provide a suitable low cost appeal route, with the court offering an alternative, should further appeals be required. This legislation gives effect to these proposals. See http://www.ipo.gov.uk/response-2012-designs.pdf, page 25.

9. Guidance

9.1 The Government does not intend to produce specific guidance in relation to this Order due to its specific nature and limited effect. However, the IPO will be consulting on the operation of the new design rights appeals system ahead of full commencement in April 2015. It will also issue guidance on the new system once it is in place.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument. An Impact Assessment on the amended appeal route for designs decisions of the Intellectual Property Office is available here http://www.ipo.gov.uk/consult-ia-bis0373.pdf.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The impact of this particular order will not be monitored as it has no impact itself. The IPO will be consulting on the operation of the new appeals system ahead of full commencement of s.10(2) in April 2015. It will also issue guidance on the new system once it is in place.

13. Contact

Luke Fusi at the Ministry of Justice Tel: 0203 334 3468 or email: luke.fusi@justice.gsi.gov.uk can answer any queries regarding the instrument.