EXPLANATORY MEMORANDUM TO

THE JUDICIAL APPOINTMENTS (AMENDMENT) ORDER 2023

2023 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by Ministry of Justice and is laid before Parliament by Command of His 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 Judge of the Upper Tribunal and Deputy Judge of the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act") and Recorder under the Courts Act 1971 ("the 1971 Act").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) for which the instrument forms part of the law) is England, Wales, Northern Ireland and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, Northern Ireland and Scotland.

5. European Convention on Human Rights

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

"In my view the provisions of the Judicial Appointments (Amendment) Order 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 Paragraph 1 of Schedule 3 to the 2007 Act states that in order to be eligible for appointment as a Judge of the Upper Tribunal someone must have satisfied the "judicial appointment eligibility condition" for at least 7 years.

6.2 Paragraph 7 of Schedule 3 to the 2007 Act states that in order to be eligible for appointment as a Deputy Judge of the Upper Tribunal someone must be eligible for appointment as a Judge of the Upper Tribunal.

6.3 Section 21(2) of the 1971 Act states that in order to be eligible for appointment as a Recorder someone must have satisfied the "judicial appointment eligibility condition" for at least 7 years.

6.4 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.

6.5 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 2023 adds judges of the Upper Tribunal, deputy judges of the Upper Tribunal and Recorders to that list.

7. Policy background

7.1 The intention behind the 2007 Act and the 2008 Order was 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 District Judge and Judge of the First-tier Tribunal.

7.2 The Judicial Appointments (Amendment) Order 2023 amends the 2008 Order by adding the offices of Judge of the Upper Tribunal, Deputy Judge of the Upper Tribunal and Recorder to Part 2 of Schedule 1 of that Order, thereby allowing CILEX Fellows to be eligible for additional judicial appointments in line with the policy of broadening the pool of potential applicants for judicial appointment and encouraging greater judicial diversity.

7.3 The Order will also make changes to reflect other amendments to underlying legislation.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 The Ministry of Justice has no plans to consolidate the legislation at this time.

10. Consultation outcome

10.1 Under Section 51 (9) of the 2007 Act the Lord Chancellor must consult the Lord Chief Justice and the Judicial Appointments Commission before making an order under section 51(1). There has been statutory consultation, as required under Section 51 (9) of the 2007 Act, with the Lord Chief Justice and Judicial Appointments Commission. The Lord Chief Justice had no comments on the Order. The Judicial Appointments Commission had no comments on the Order. This consultation occurred between 21 March 2023 and 12 April 2023. A draft of the Order and of the Explanatory Memorandum were shared and discussed with officials in the Judicial Office and the Judicial Appointments Commission.

10.2 In March 2022 informal consultation took place on a broader proposal to extend judicial eligibility to all judicial offices in England and Wales with the Lord Chief Justice, the Judicial Appointments Commission, the Legal Services Board, the Bar Council, the Law Society and the Chartered Institute of Legal Executives. As a result of the views expressed, the Lord Chancellor decided to pursue a more limited approach to extending eligibility at this time, as per this Order. This will allow CILEX Fellows more opportunities to gain experience for senior judicial office by

entering the judiciary through a wider range of offices than they currently are able to.

11. Guidance

11.1 No guidance will be issued.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 A full impact assessment has not been prepared for this instrument because there is no impact on private sector business or charities, and there is no significant public sector impact as the order only determines eligibility to apply for judicial offices.

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 approach to monitoring of this legislation will be via a general review of the annual data on applications and appointments for judicial office.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 The Lord Chancellor has made the following statement "It is not necessary to make statutory provisions for review. All data on applications and appointments from members of different legal professional bodies to the judiciary is reviewed and published on an annual basis by the Ministry of Justice as part of my statutory responsibility to encourage diversity of the judiciary."

15. Contact

15.1 John Culley at the Ministry of Justice, john.culley@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jane Sigley, Deputy Director for Judicial Resourcing and Diversity at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Lord Chancellor at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.