EXPLANATORY MEMORANDUM TO

THE JUDICIAL APPOINTMENTS COMMISSION (AMENDMENT) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 David Lammy, Lord Chancellor at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

2.2 Jane Sigley, Deputy Director for Judicial Policy, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Beatrice Keyte at the Ministry of Justice can be contacted by email at the following address with any queries regarding the instrument: judicial_policy_correspondence@justice.gov.uk. Alternatively, the department can be contacted by telephone: 02033343555

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The legislation amends the Judicial Appointments Commission Regulations 2013 to provide for:

a) The appointment of a third Commissioner who is a person practising or employed as a lawyer (a Professional Commissioner) to the Judicial Appointments Commission (JAC) and for it to remain the case that each Professional Commissioner must hold a different qualification to the others.

b) The expansion of the eligibility criteria for the Senior Tribunal Commissioner role at the JAC to address current inconsistencies.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument is UK-wide.

4.3 The territorial application of this instrument is UK-wide.

5. Policy Context

What is being done and why?

5.1 The JAC is responsible for selecting candidates for judicial office in England and Wales, and for some tribunals with UK-wide powers. The JAC Board of Commissioners is responsible for ensuring that judicial appointments are made solely on merit, through fair and open competition, and with regard to diversity and good character. Commissioners oversee selection processes, review recruitment strategies,

and make final recommendations for judicial appointments to the appointing authority. The Commissioners have a 28 day per year time commitment. They are public appointments through open competition, except for four selected by the relevant Judges Council.

5.2 Providing for an additional Commissioner will support the JAC to efficiently meet the level of annual judicial recruitment they are requested to undertake. This legislation increases the number of Professional Commissioners from two to three. It requires that each hold a different legal qualification thereby ensuring diversity in the qualifications of the Commissioners who are persons practising or employed as lawyers. It also brings greater parity in the offices eligible for the Senior Tribunal Commissioner role by including a wider range of salaried offices of the Upper Tribunal and Employment Appeal Tribunal.

5.3 The Constitutional Reform Act (CRA) 2005 established the JAC, with Schedule 12 setting out the size and balance of Commissioner membership. The Crime and Courts Act 2013 replaced some of the detailed provisions of Schedule 12 with new regulation-making powers, to be enacted with agreement of the Lord/Lady Chief Justice. The resulting regulations are the Judicial Appointment Commission Regulations 2013. These are being amended to:

a) Allow for the appointment of another non-judicial office holder Commissioner, to increase the JAC's capacity to effectively deliver higher levels of judicial recruitment. There are currently around 36 exercises for around 1000 recommendations per annum, compared to 36 exercises for 597 recommendations in 2012/13, when the regulations were last changed.

   i) Achieve the above by increasing the number of Professional Commissioners. The requirement that the Professional Commissioners hold different qualifications (barrister, solicitor or Chartered Institute of Legal Executives (CILEX) fellow) will be retained. In practice this will mean that there will always be a Commissioner from each of these areas. As historically the Professional Commissioner roles have tended to be held by barristers and solicitors, this will provide a more certain route for a CILEX fellow to be appointed as a Commissioner. Providing for Commissioners from all three legal professions is consistent with a change made in the Judicial Appointments (Amendment) Order 2023 which extended CILEX eligibility to more judicial offices.

   ii) Consideration has been given to how the addition of a third Professional Commissioner affects the balance of role types within the JAC. The change maintains the position that the number of non-judicial office holder Commissioners is more than those who are judicial office holders. This is consistent with the requirement in the Constitutional Reform Act 2005 (sch 12, para 3A). The addition of a third Professional Commissioner marginally alters the proportion of Commissioners, measured as percentage, between holders of judicial office, lay members and persons practising or employed as lawyers. This small percentage change is considered proportionate to achieve improvements to the JAC's capacity. It retains the overall balance, with persons practicing or employed as lawyers, remaining the minority group.

b) Address current inconsistencies in the eligibility criteria for the Senior Tribunal Commissioner. Equality of opportunity for those holding broadly equivalent offices will be provided by including more salaried judicial office holders of the Upper Tribunal and the Employment Appeals Tribunal and Deputy Chamber Presidents of the First-tier Tribunal. High Court, Court of Appeal and Court of Session judges, who can sit in as Upper Tribunal or Employment Appeal Tribunal judges, will continue to be excluded, since they are eligible for other senior judicial Commissioner roles. Specifically, the above will be achieved by expanding eligibility to include:

   i) Deputy Chamber Presidents of the Upper Tribunal and First-tier Tribunal as senior salaried judges who provide leadership to office holders that are eligible for the Senior Tribunal Commissioner role.

   ii) Salaried non-legal members of the Upper Tribunal (i.e. Surveyor Members of the Upper Tribunal (Lands)) given their equivalence to judicial members. The exclusion of fee-paid office holders will be retained. Reserving eligibility to salaried judicial office holders is considered an appropriate means of ensuring that the Senior Tribunal Commissioner has sufficient depth and breadth of experience.

   iii) Salaried judges of the Employment Appeal Tribunal (i.e Circuit Judges appointed to the Employment Appeal Tribunal), consistent with the approach taken to salaried Upper Tribunal offices (as per ii) above). For consistency this includes salaried judges that are eligible to be judges of the Employment Appeal Tribunal (i.e. the Judge Advocate General and District Judges) but are not usually appointed.

What was the previous policy, how is this different?

5.4 Previously, the JAC had a Chair and 14 Commissioners, including two Professional Commissioners with different qualifications. This amendment increases the number of non-chair Commissioners to 15 by adding a third Professional Commissioner and retaining the requirement that they be from different professions.

5.5 It also expands eligibility for the Senior Tribunal Commissioner role to include salaried members of the Upper Tribunal, certain judges of the Employment Appeal Tribunal and Deputy Chamber Presidents of the First-tier Tribunal. The Regulations state that there be seven Commissioners who were appointed as holders of judicial office, one of which must be a non-legally qualified judicial member and one of which must be a senior tribunal office-holder member. They set out the eligibility criteria for this latter role. These included Upper Tribunal Judges, First-tier Tribunal and Upper Tribunal Chamber Presidents and the Presidents of the Employment Tribunal (England and Wales) and (Scotland). The amendments expand the eligibility as outlined above at 5.3 b). It mirrors the previous exclusion of High Court and Court of Appeal judges from eligibility. Reference in the regulations to holders of judicial office leaves scope for it to be interpreted as including judges and non-legal members (as the term judicial office holder includes both legal and non-legal roles appointed to be a member of a court or tribunal), although the previous eligibility for the Senior Tribunal Commissioner role only included judges.

6. Legislative and Legal Context

How has the law changed?

6.1 The law has changed in the following ways:

a) Regulation 3 of the Judicial Appointment Commission Regulations 2013 (the Regulations) which provides that there are to be 15 Commissioners, to provide for 16 Commissioners.

b) Regulation 4(1) which refers to 14 Commissioners to refer to 15.

c) Regulation 4(1)(c) of the Regulations which provides for the appointment of two Professional Commissioners, to provide for the appointment of three Professional Commissioners.

d) Regulation 4(4) and (5) of the Regulations which provides for the two members not to hold the same qualification as each other, to provide the three members to hold different qualifications

6.2 Regulation 5 which sets out the eligibility for the Senior Tribunal Commissioner under paragraphs (a) to (e) to provide that the following roles also be considered eligible:

a) Deputy Chamber President of a chamber of the First-tier Tribunal, or of a chamber of the Upper Tribunal, by appointment under paragraph 5(1) or 5(2) of Schedule 4 to the Tribunals, Courts and Enforcement Act 2007, but not a High Court, Court of Appeal or Court of Session Judge.
b) Other Members of the Upper Tribunal: Members of the Upper Tribunal who are not judges, either appointed under paragraph 2 of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007 or transferred-in, who hold their office on a salaried basis.
c) Judge of the EAT: a judge of the Employment Appeal Tribunal nominated under section 22(1)(a) of the Employment Tribunals Act 1996(a) who is a judge within section 22(2A) of that Act but who is not otherwise eligible, or a fee-paid judge, or a High Court, Court of Appeal or Court of Session Judge.

6.3 These Regulations come into force in line with regulation 1. The early commencement of these Regulations would not impose duties on people that are significantly more onerous than those in the 2013 Regulations and the early commencement allows for the Judicial Appointments Commission to start the process for recruiting an additional Commissioner at the earliest possibility.

Why was this approach taken to change the law?

6.4 There are no alternatives to changing the number of Commissioners or to review Commissioner eligibility, other than making amendments to the regulations via a statutory instrument.

7. Consultation

Summary of consultation outcome and methodology

7.1 The 2013 Regulations were the result of public consultation ('Appointments and Diversity: A Judiciary for the 21st Century', which launched in November 2011 and closed on 13 February 2012) and concurrent inquiry by the House of Lords Constitution Committee into the judicial appointments process. A further public consultation in respect of these amendments was not considered necessary given that the changes principally will increase the JAC's capacity for judicial recruitment and address anomalies in the eligibility for one Commissioner. We consulted the Senior President of Tribunals, the Judicial Appointments Commission Chair (on behalf of the JAC board), the Bar Council, The Law Society, CILEX, the Legal Services Board, the

Lady Chief Justice of Northern Ireland, and the Lord President who agree with the changes or made no comments.

7.2 The order is laid with the agreement of the Lady Chief Justice.

8. Applicable Guidance

8.1 This legislation is not to be accompanied by guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the statutory instrument relates only to composition of the Judicial Appointments Commission. A diversity impact assessment has not been prepared as the intent of the amendments is positive for the make-up of the JAC; as providing for the Professional Commissioner to be appointed from all three legal professions and extending the eligibility of Senior Tribunal Commissioner to a broader range of Upper Tribunal members, have the potential to widen the diversity of the eligible persons.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies, small or micro businesses or on the public sector because the statutory instrument relates only to the composition of the Judicial Appointments Commission.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation will be proportionate to the modest nature of the changes. As such, monitoring will be undertaken through the normal reviews of the JAC.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 There are no matters of special interest for the Joint Committee on Statutory Instruments.

12. European Convention on Human Rights

12.1 The Minister of State for Justice has made the following statement regarding Human Rights: “In my view the provisions of the Judicial Appointments (Amendment) Regulations 2025 are compatible with the Convention rights.”

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).