

EXPLANATORY MEMORANDUM TO
THE ALTERATION OF JUDICIAL TITLES (REGISTRAR IN BANKRUPTCY OF
THE HIGH COURT) ORDER 2018

2018 No. 130

1. Introduction

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

2. Purpose of the instrument

- 2.1 This Order alters the title of the judicial office of Registrar in Bankruptcy of the High Court to become Insolvency and Companies Court Judge. It also changes the way that deputies to that office are referred to from Deputy Registrar in Bankruptcy of the High Court to Deputy Insolvency and Companies Court Judge. The purpose of these name changes is to provide judicial titles which better reflect what those judges do, provide clarity to court users and to bring the titles of these judicial offices in line with the name of the Bankruptcy and Companies Courts in which these judges sit.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Under section 64(1) of the Courts Act 2003 the Lord Chancellor has power to alter the name of a judicial office listed in subsection (2) of the Act. That list includes the Registrar in Bankruptcy of the High Court (a judicial office created by section 89 of, and Part 2 of Schedule 2 to, the Senior Courts Act 1981).
- 4.2 Subsection (3) of that section allows the Lord Chancellor also to change the way in which deputies or temporary additional officers appointed under section 91(1)(a) of the Senior Courts Act 1981, which includes office holders who deputise for the Registrar in bankruptcy of the High Court, are to be styled.
- 4.3 Subsections (5) and (6) allow the Lord Chancellor to make consequential amendments to other enactments as a result of the changes referred to above.
- 4.4 This is the first exercise of this legislative power.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales only.
- 5.2 This instrument applies to England and Wales only.

6. European Convention on Human Rights

6.1 The Lord Chancellor and Secretary of State for Justice, David Gauke MP has made the following statement regarding Human Rights:

“In my view, the provisions of the Alteration of Judicial titles (Registrar in Bankruptcy of the High Court) Order 2018 are compatible with the Convention rights”.

7. Policy background

What is being done and why

7.1 The Bankruptcy and Companies Courts are part of the Chancery Division of the High Court. It is responsible for the Insolvency and Companies List within the Business and Properties Courts.

7.2 The Bankruptcy Court deals with the insolvency of individuals, while the Companies Court deals with the insolvency of companies, applications in company law and applications for the disqualification of company directors.

7.3 The work is for the most part dealt with by five Bankruptcy Registrars and approximately twelve fee paid Deputy Registrars. Appeals from the decisions of these judges are to a single judge of the Chancery Division.

7.4 The creation of the Business and Property Courts in June 2017 brought together the specialist courts and lists of the High Court, including the Commercial Court, the Technology and Construction Court, and the courts of the Chancery Division (including those dealing with financial services, intellectual property, competition, and insolvency). It was a key step in bringing transparency to the specialist courts. This change follows on from that. It will replace the title of ‘Registrar’ with ‘Judge’ so that both the businesses and individuals using the court are clear that their case is being heard by a judge, giving greater clarity to court users and bring the judicial title in line with the name of the court itself.

7.5 This change has been requested by the judges of the court to allow them to be identified with the court they sit in, and has been requested and is supported by the Lord Chief Justice, the Master of the Rolls, the Chancellor, the President of the Family Division, the President of the Queen’s Bench Division, the Chief Bankruptcy Registrar, and Insolvency and Companies List users (it is minuted that the users’ group actively desires this change). The change has also been previously approved by the Judicial Executive Board.

7.6 The change would require alterations to stationary and signage, but HMCTS considers these to be “minimal”.

Consolidation

7.7 No consolidation is applicable to this instrument.

8. Consultation outcome

8.1 The Order is made with the concurrence of the Lord Chief Justice. There has been statutory consultation with the Master of the Rolls, the Chancellor of the High Court, the President of the Queen’s Bench Division and the President of the Family Division, all of whom support this change.

9. Guidance

9.1 No specific guidance is necessary for this order.

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 therefore not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 As the proposed amendments are only to the name of the office, and do not include any change to the nature of the role, there is no requirement to include a monitoring and review provision.

13. Contact

13.1 Graham Driver at the Ministry of Justice can answer any queries regarding the instrument: - telephone: 07980 915983 or email: graham.driver2@justice.gov.uk