

**EXPLANATORY MEMORANDUM TO
THE GENERAL OPTICAL COUNCIL (COMMITTEE CONSTITUTION)
(AMENDMENT) RULES ORDER OF COUNCIL 2008**

2008 No. 3113

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Rules (“the 2008 Rules”) approved by this Order of the Privy Council make amendments to the General Optical Council (Committee Constitution) Rules 2005 (Scheduled to S.I. 2005/1474) (“the 2005 Rules”). They revise the constitutional arrangements for a number of the General Optical Council’s statutory committees.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The Opticians Act 1989 (“the 1989 Act”) requires the General Optical Council (“GOC”) to establish a number of committees (“statutory committees”) and to make rules setting out the constitutions of those committees. The current constitutions are set out in 2005 Rules.
 - 4.2 The 2008 Rules make amendments to the constitutional arrangements for a number of the statutory committees, and introduce new criteria for the disqualification, suspension and removal of committee members.
 - 4.3 The timing of most of the changes in the 2008 Rules is intended to coincide with new constitutional arrangements for the GOC itself. Amendments were made to the 1989 Act by virtue of the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 (S.I. 2008/1774) (“the 2008 Order”), which will require the GOC to be reconstituted in accordance with a new constitution Order that will be made under new powers inserted into the 1989 Act by the 2008 Order. It is anticipated that the new constitution Order for the GOC, although not yet made, will come into force on 1st April 2009.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.
6. **European Convention on Human Rights**

- 6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

- 7.1 The 2005 Rules set out the current constitutional arrangements for the Council's committees. They make provision with regard to the membership of each committee, the terms of office and criteria for appointment of committee members.
- 7.2 The White Paper *Trust, Assurance and Safety* put forward a number of reforms to the United Kingdom's system for the regulation of health care professionals. It proposed a number of changes to the constitutional arrangements for the Health Professions' Regulators, such as the GOC, including a move to a smaller, fully appointed Council. This move has since been made possible by the amendments to the 1989 Act made by the 2008 Order.
- 7.3 In the light of the amendments being made to the overall constitutional arrangements of the GOC, the Council has reviewed the constitutional arrangements for each of its statutory committees. The 2008 Rules make a number of amendments to the constitutional arrangements of the statutory committees, in line with the principles of the White Paper.
- 7.4 The 2008 Rules introduce new criteria for the disqualification, suspension and removal of statutory committee members. These are in line with the criteria that, it is anticipated, will be used for the appointment of members to the Council and are very similar to those already in use for the General Medical Council and the Nursing and Midwifery Council.
- 7.5 The amendments to the 2005 Rules give the Council greater flexibility to determine the composition of its statutory committees, within certain parameters. Given the anticipated reduction in the size of the Council, and its anticipated move towards a more strategic oversight role, the requirement that Council members must also be on some of the statutory committees is removed. There are also changes to the quora of the statutory committees that reflect their new compositions, and an increased number of the chairs of the statutory committees are now appointed by the Council itself. All these changes are in accordance with a Government policy framework which favours giving Health Professions' Regulators greater autonomy over deciding how they organise themselves internally.
- 7.6 In order to provide greater flexibility to the GOC, the Rules also remove the general bar on members of the Hearings Panel being involved at more than one stage of a case, although there are still some

procedural limitations in place, such as a bar on members of the Hearings Panel being able to sit on both the Investigation Committee and the Fitness to Practise Committee in any particular case. These arrangements continue to reflect established principles of natural justice.

7.7 The new provisions on the composition of the GOC's Registration Appeals Committee and Fitness to Practise Committee in joined cases, together with the provisions mentioned in paragraph 7.6 above will also make it easier for the GOC to find sufficient Panel members to sit at hearings who are not barred from the hearing on procedural grounds, without needing to increase the size of its Hearings Panel.

- ***Consolidation***

7.8 There are no plans to consolidate the legislation at this stage.

8. Consultation outcome

8.1 The General Optical Council (GOC) undertook a written consultation on the proposed rules. The consultation was for an 8 week period, and closed on 7th November 2008. The consultation document was issued to 73 organisations, including professional and representative bodies, patient groups, and other regulatory bodies. The document was also posted on the GOC's website. Twelve responses were received (including one joint response from two organisations). The responses received were mainly from the optical sector, including the main professional and representative bodies, regional bodies in Wales and Northern Ireland, the RNIB, and the International Glaucoma Association.

8.2 All bodies supported the provisions relating to the disqualification, removal and suspension of members of the committees. With respect to the membership of the committees, there was broad support with the exception that a number of respondents questioned whether registered medical practitioners should be included amongst the membership of the Education Committee, the Standards Committee, the Companies Committee and the Investigation Committee. The GOC's experience has been that registered medical practitioners bring a vital source of expertise to such committees, and notwithstanding the concerns raised in the consultation, intends to continue having registered medical practitioners on these committees.

8.3 A full analysis of the consultation responses, and the GOC's response to the issues raised, is posted on its website: www.optical.org.

9. Guidance

9.1 The Department of Health has not issued any guidance in relation to this Order. The GOC will be working closely with the Appointments

Commission on the arrangements for recruiting new members of the Committees

10. Impact

10.1 There is minimal impact business, charities or voluntary bodies. Costs of recruiting new Committee members will be offset by the reduction in the size of the committees. The GOC will be using the Appointments Commission to assist in making appointments to its Committees. The Appointments Commission are required to follow guidance issued by the Commissioner for Public Appointments. The appointments procedure will provide the necessary safeguards to ensure that there is no negative impact on equality issues.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This legislation will be subject to internal review after three years and the legislation may be amended accordingly.

13. Contact

Stuart Griffiths at the Department of Health Tel: 0113 254 5249 or email: stuart.griffiths@dh.gsi.gov.uk can answer any queries regarding the instrument.