

**EXPLANATORY MEMORANDUM TO**  
**THE GENERAL DENTAL COUNCIL (CONSTITUTION)**  
**ORDER 2009**

**2009 No.1808**

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 This Order will revise the constitutional arrangements of the General Dental Council (GDC). The Council will consist of 12 lay and 12 registrant members, all of whom will be appointed by the Privy Council (although in practice the Privy Council's appointments functions will be delegated to the Appointments Commission). This Order also sets out the criteria for disqualification from appointment to the GDC, the circumstances in which its members may be suspended or removed from office, and the chairing arrangements for the GDC.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Context**
  - 4.1 The constitution of the GDC was set out Section 1 to, and Schedule 1 of, the Dentists 1984 Act and the General Dental Council (Constitution) Order of Council 2006. This provided for the Council to be made up of 29 members in total: 15 Dentists, 4 Dental Care Professionals elected by the professions regulated by the GDC and 10 lay members appointed by the Privy Council (in practice, by the Appointments Commission).
  - 4.2 Amendments were recently made to revise the constitutional arrangements set out in the 1984 Act by the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (SI 2009/1182) ("the 2009\_Order"). Notably, the 2009 Order provided for the constitution of the GDC to be set out in a separate Order of the Privy Council, for its members simply to be registrant and lay members (although a lay majority is ruled out), and for all the members of the Council to be appointed by the Privy Council (in practice, by the Appointments Commission). This Order is the new separate Order.
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 White Paper *Trust, Assurance and Safety* put forward a programme of reform to the system of regulation for the health care professions. The main emphasis of the reforms was

to increase accountability of the Health Professions' Regulators whilst at the same time increasing their independence from Government.

- 7.2 Chapter One of the White Paper (*Assuring independence: the governance and accountability of the professional regulators*) included a number of recommendations in relation to the constitutions of the Health Professions' Regulators. These were that:
- The Councils of the Regulators should have, as a minimum, parity of membership between lay and professional members, to ensure that purely professional concerns are not thought to dominate their work;
  - To enhance public confidence in the Health Professions Regulators, council members should be independently appointed;
  - To enable councils to focus more effectively on strategy and the oversight of their executives, they should become smaller and more board-like, with greater consistency of size and role across regulatory bodies.
- 7.3 This Order provides for a smaller Council, with parity of lay and professional membership (reducing from 29 to 24 members – 12 of which will be lay members and 12 registrant members). The policy intention is that the smaller council will act strategically in a board-like manner. In addition, parity in lay and professional membership will dispel any perceptions that the GDC may act partially towards its registrants.
- 7.4 The terms of office of Council members will be determined by the Privy Council on appointment, although in practice this function will be delegated to the Appointments Commission. It is envisaged that members will be appointed for a term of four years from the start of the new constitution, but the flexibility of allowing the Appointments Commission to determine terms of office on appointment will allow for flexibility over matters such as determining the duration of appointments to fill vacancies. This independent appointments process will enhance confidence in the GDC.
- 7.5 The Appointments Commission will also be responsible, on behalf of the Privy Council, for the suspension or removal from office of members, in accordance with criteria set out in the Order. However, the GDC may provisionally suspend its members under its own standing orders, pending the outcome of the Appointment Commission's consideration of the matter. This Order also allows the Appointments Commission to stay its own consideration of whether or not to suspend a member while the GDC is carrying out its own investigation. A balance is therefore struck between the independence of the Regulator, the GDC, and the effectiveness of independent oversight of the Regulator.

- **Consolidation**

- 7.7 This is a self-standing instrument that does not amend other legislation.

## **8. Consultation outcome**

- 8.1 The General Dental Council (Constitution) Order was published in draft for public consultation between 16 December 2008 and 27 March 2009. The consultation document was issued to professional and representative bodies as well as being posted on the Department of Health's website. 6 responses were received,
- 8.2 There was widespread support for the key features of the proposed new GDC Constitution. However, there were concerns raised in the consultation as to the composition of the

Council namely, a desire for there to be reserved places for Dentists and Dental Care Professionals on the Council.

8.3 As regards the issue of reserved places, the Working Group chaired by Niall Dickson in 2008 looking at Enhancing Confidence in Healthcare Professional Regulators, made a number of recommendations on the size and composition of Councils of Health Professions Regulators. In particular, it recommended that:

- No group should have guaranteed places on the council; and
- Members, including those who are registrants, should be appointed because of their knowledge, experience and judgement.

In light of these clear recommendations it was considered that there was not sufficient justification for departing from the Government's established position on this issue.

8.4 A full analysis of the consultation responses is posted on the Department of Health website.

## **9. Guidance**

9.1 The Department of Health has not issued any guidance in relation to this Order.

## **10. Impact**

10.1 There is minimal impact business, charities or voluntary bodies. There is no negative impact on equality issues.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is attached to this Memorandum.

## **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 within the Department of Health after 3 years.

## **13. Contact**

Stuart Griffiths at the Department of Health Tel: 0113 254 5249 or email: [Stuart.Griffiths@dh.gsi.gov.uk](mailto:Stuart.Griffiths@dh.gsi.gov.uk) can answer any queries regarding the instrument.

Summary: Intervention & Options		
<b>Department /Agency: Department of Health</b>	<b>Title: Impact Assessment of the General Dental Council (Constitution) Order 2009</b>	
<b>Stage:</b> Implementation	<b>Version:</b> 1.0	<b>Date:</b> 12 June 2009
<b>Related Publications:</b> White Paper - "Trust, Assurance and Safety"		

**Available to view or download at:**

<http://www.dh.gov.uk>

**Contact for enquiries:** Stuart Griffiths

**Telephone:** 0113 254 5249

What is the problem under consideration? Why is government intervention necessary?

Public perception that the regulatory bodies are dependent on or attached to particular interests has continued to weaken confidence in the actions of the regulators. The composition of the regulatory bodies is central to that perception.

Government intervention is necessary as changes to the composition of the regulatory bodies requires legislation.

What are the policy objectives and the intended effects?

Key objective: to enhance public confidence in the General Dental Council (GDC) by making changes to the composition of the governing council. The General Dental Council (Constitution) Order provides for a smaller, independently appointed council, with parity between lay and registrant members with the intention of removing perceptions that the Council is dependent on or attached to any particular interest.

What policy options have been considered? Please justify any preferred option.

The policy options considered were

(1) do nothing

(2) provide for the GDC Council's constitution, contained in an Order of the Privy Council, to detail revised proposals for governance - including lay and professional membership parity, and appointment of members by the Privy Council. It was decided to adopt option 2 as this provided a flexible approach that allowed the constitution of the Council to reflect the number and range of registrants, and to provide the clear basis for the appointment, removal, and suspension of members.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy will be reviewed by the Department of Health in June 2011

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.*

Signed by the responsible Minister:

Summary: Analysis & Evidence	
<b>Policy Option: OPTION2 (over Opt 1)</b>	<b>Description:</b> Adoption of a smaller, fully appointed Council for the HPC

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'	
	<b>One-off</b>	<b>Y</b>		
	<b>£ 0</b>	8		
	<b>Average Annual Cost (excluding one-off)</b>			
	<b>- £26,799</b>		<b>Total Cost (PV)</b>	<b>- £214,395</b>
Other <b>key non-monetised costs</b> by 'main affected groups'				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' The benefits cannot be monetised	
	<b>One-off</b>	<b>Y</b>		
	<b>£ 0</b>			
	<b>Average Annual Benefit (excluding one-off)</b>			
	<b>£ 0</b>		<b>Total Benefit (PV)</b>	<b>£</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' GDC enjoys enhanced confidence as a Regulator through a smaller council, independently appointed, safer treatment of service users, improved treatment and management of regulated professionals.				

Key Assumptions/Sensitivities/Risks The GDC is assumed to have an unchanged number of meetings / year and unchanged costs per Council Member. Administrative costs of training a smaller, fully appointed council assumed to be less than training a larger Council (based on inability to predict whether existing members would be re-elected or re-appointed)

Price Base Year 2009	Time Period Years 5	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b>
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			October 2009		
Which organisation(s) will enforce the policy?			GDC		
What is the total annual cost of enforcement for these organisations?			£		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£		
What is the value of changes in greenhouse gas emissions?			£		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline (2005 Prices)</b>			(Increase - Decrease)	
Increase of £	Decrease of £	<b>Net Impact</b>	£	

Key: Annual costs and benefits: (Net) Present

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the

information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

## **Background**

The White Paper *Trust, Assurance and Safety – the Regulation of Health Professionals in the 21st Century* (published in February 2007) set out a substantial programme of reform to the United Kingdom's system for the regulation of health care professionals. This was based on consultation on the two reviews of professional regulation published in 2006: *Good Doctors, Safer Patients* and the *Regulation of the Non-Medical Health Care Professions*.

Over recent years, most of the Health Care Regulators have made changes to provide greater reassurance that they are even-handed in their deliberations and decisions but perceived dependence, or attachment to, a particular interest has continued to weaken or threaten confidence in those actions. The composition of the Regulators is central to those perceptions.

The White Paper therefore proposed that:

- The Councils of the regulatory bodies should have, as a minimum, parity of membership between lay and professional members, to ensure that purely professional concerns are not thought to dominate their work;
- To enhance public confidence in the health care professional regulators, Council members will be independently appointed; and,
- To enable councils to focus more effectively on strategy and the oversight of their executives, they will become smaller and more board-like, with greater consistency of size and role across regulatory bodies.

Legislation amending the constitutional arrangements for the other Health Care Regulators, in line with these recommendations, was put forward in the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 SI No. 1774. These reforms will be continued in the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009.

At present each Health Regulator Council consists of a number of lay members appointed by the Privy Council (who in practice delegate this task to the Appointments Commission) and a number of registrant members who are elected by the registrants themselves. In future all members of Councils will be appointed by the Privy Council. All organisations need to adapt to changing circumstances over time. These amendments will make it easier for changes to be made to a regulatory body's overall governing structure in the future.

## **GDC Constitution Order**

The GDC is a Health Regulator, and was set up to protect the public. They deliver this function by keeping a register of health professionals who meet requisite standards for their training, professional skills, behaviour and health. The GDC currently regulate dentists and dental care professionals (being clinical dental technicians, dental hygienists, dental nurses, dental technicians, dental therapists, and orthodontic therapists).

Amendments to the Dentists Act 1984 made in the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order allow the Privy Council to provide for the numbers of lay and registrant members on the GDC Council, their terms of office, arrangements for appointing a chair, and provisions with respect to the suspension or removal of members.

The Constitution Order provides for the new Council of the GDC to consist of 24 members made up of 12 lay and 12 professional members. This is a reduction in Council membership from the current 29 members (10 members of the public, 15 dentists, and 4 dental care professionals). All members of the Council will be appointed by the Privy Council (who in practice will delegate this task to the Appointments Commission).

## **Consultation**

The proposed new constitution was published for public consultation between 16 December 2008 and 27 March 2009. Respondents were asked to fill in a questionnaire response form and return either electronically or by post to the Department of Health. In total 6 responses were received by the closing date. Overall the consultation supported the proposed constitution. A copy of the report of the consultation will be published on the Department of Health website to accompany this impact assessment

### **Estimated costs associated with change in governance**

The figures below have been provided by the GDC themselves, and reflect expenditure in relation to the current Council, and expected changes to this expenditure to be delivered by the reforms.

#### Current Council

##### *Running Costs*

Average attendance allowance/travel subsistence for members:  
(Estimated £659/per meeting – c.4 meetings/yr)= £2,636

Annual meeting costs for current council:  
(29 members x £2,636)= £76,444

##### *Elections/appointments*

Admin costs of elections/appointments in 2008\* £143,768

#### New Council

##### *Running Costs*

Average attendance allowance/travel subsistence for members:  
(Estimated £659/per meeting – c.4 meetings/yr)= £2,636

Annual meeting costs for current council:  
(24 members x £2,636)= £63,264

##### *Appointments*

Estimated costs of appointments in 2009 £79,312

##### *Contingency*

#### Projected savings

##### Election/appointment costs

Old Council costs:- £143,768

New Council costs:- £79,312

Difference:- £64,456

\*elections in Nov 2008 did not take place because of an extension of terms of office in new council as interim measure, in anticipation of legislation for new Council.

#### Ongoing costs

##### Annual meeting costs

Old Council £76,444

New Council £63,264

Difference £13,180

Administrative costs of training a smaller, fully appointed council assumed to be less than training a larger Council (based on inability to predict whether existing members would be re-elected or re-appointed)

**Estimated benefits associated with change in governance (non-monetary)**

Estimated benefits

Parity of membership between lay and professional members, and independently appointed Council members, will enhance confidence in the GDC. A smaller Council will allow the GDC to focus more effectively on strategy and the oversight of its executive, acting in a more board-like manner. As such these benefits are “invisible” and have not therefore been monetised.



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

**Competition Assessment**

No issues have been identified

**Small Firms Impact Test**

No impact on small firms

**Legal Aid**

No legal issues identified

**Sustainable development**

No issues identified

**Carbon Assessment**

No impact

**Other environment**

No environmental issues identified

**Health Impact Assessment**

No issues identified

**Race/Disability/Gender Equality**

In drafting the Order, we have considered the possible impact on equality issues (age, disability,

gender, race, religion or belief, and sexual orientation) of each of the policies described in this

Impact Assessment. When exercising the powers to appoint delegated to them by the Privy Council the directions providing the Appointments Commission with such authority oblige them: (i) to apply good practice in relation to equality and diversity issues, and (ii) make appointments which reflect the desirability for the GDC to have persons a range of backgrounds, qualifications, competencies, interests and experience on its Council.

The GDC Council also have in place Equality and Diversity Strategy with the aim of helping the GDC to:

- Ensure and actively demonstrate that current and prospective Council Members, members of Council staff and job applicants, registrants, complainants and providers of services are treated solely on the basis of their merits, abilities and potential (and relevant legal requirements) without any unjustified discrimination;
- Promote good relations between people from different racial groups;
- Recognise and develop the diversity of skills and talent within its current and potential staff;
- Foster mutual respect and trust;
- Ensure that all its services are free from unjustified discrimination;
- Ensure that effective mechanisms are in place to monitor its equality and diversity policies on a regular basis ;
- Communicate its equality and diversity policy to Council Members, staff, associates, stakeholders, customers and others; and,
- Tackle discrimination and promote equality.

### **Human Rights**

No issues identified

### **Rural Proofing**

No issues identified