

EXPLANATORY MEMORANDUM TO
THE GENERAL OPTICAL COUNCIL (CONSTITUTION)
ORDER 2009

2009 No. 442

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 Optical Council (GOC). The Council will consist of 6 lay and 6 appointed 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 GOC, the circumstances in which its members may be suspended or removed from office, and the chairing arrangements for the GOC.
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) established the constitutional arrangements for the GOC. Before 1st April 2009, the constitution was set out, essentially, in Schedule 1 to the 1989 Act. It provided that the Council was to be made up of 28 members in total: 11 members who were chosen to represent registered opticians; 4 registered medical practitioners; 2 members nominated by the College of Optometrists; 2 members nominated by other providers of relevant education; and 9 lay persons appointed by the Privy Council (in practice by the Appointments Commission).
 - 4.2 Amendments were recently made to the 1989 Act by the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 (SI 2008/1774: the 2008 Order) revised those constitutional arrangements. Notably, the 2008 Order provided for the constitution of the GOC to be set out in a separate Order of the Privy Council, rather than the 1989 Act, for its members simply to be registrant and lay members, 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 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 28 to 12 members – 6 of which will be lay members and 6 registrant members). The smaller council will, therefore, be able to act strategically in a board-like manner. In addition, parity in lay and professional membership will dispel any perceptions that the GOC 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. It would also allow the Appointments Commission to agree staggered appointments, as happens with other Health Professions' Regulators. This independent appointments process will enhance confidence in the GOC.

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 GOC 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 GOC is carrying out its own investigation. A balance is therefore struck between the independence of the Regulator, the GOC, and the effectiveness of independent oversight of the Regulator.

7.6 As regards the appointment of the Chair, there is a transitional provision in place to ensure continuity by providing that the person holding the position of Chair immediately prior to implementation of the new constitution shall serve as the first Chair of the newly appointed GOC should they be reappointed as a member of the new Council. Directions are indeed being given to the Appointments Commission to reappoint the current Chair as

a new member. The deputising arrangements for the Chair will ensure business continuity in the event of the Chair's indisposition or a vacancy.

- **Consolidation**

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

8. Consultation outcome

8.1 The General Optical Council (Constitution) Order was published in draft for public consultation on 15 August 2008. It ran for 12 weeks, and consultation closed on 7 November. The consultation document was issued to professional and representative bodies as well as being posted on the Department of Health's website. Eleven responses were received, mainly from the optical sector, including the main professional and representative bodies, regional bodies in Wales and the RNIB.

8.2 There was widespread support for the key features of the proposed new GOC 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 optometrists and dispensing opticians (with 4 of the former and 2 of the latter being favoured).

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
- 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. It includes an explanation of the changes to the arrangements for suspending and removing members from office that were made in the light of the consultation.

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 after 3 years.

13. Contact

Stuart Griffiths at the Department of Health Tel: 0113 254 5429 or email: Stuart.Griffiths@dh.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: DH	Title: Impact Assessment of GOC Constitution Order	
Stage: Implementation	Version: 2.0	Date: 2 January 2009
Related Publications: White Paper – Trust, Assurance and Safety; Health Care and Associated Professions (Miscellaneous Amendments) Order 2008		
Contact for enquiries: Stuart Griffiths		
		Telephone: 0113 2545249

What is the problem under consideration? Why is government intervention necessary?
 To enhance public confidence in the GOC, strengthening their ability to act independently and strategically. Government intervention is necessary to secure the legislative changes required to reconstitute the GOC with parity of lay and professional appointed membership, to guard against perceptions that Health Regulator Councils with a majority professional representation are partial to professionals. A smaller sized council will enable the GOC to act strategically in a board-like manner.

What are the policy objectives and the intended effects?
 Key objective: to enhance public confidence in the GOC and to enable it to act more strategically. This will be achieved by setting out the constitutional arrangements of the GOC in a new Constitution Order making a number of changes to the governing structure of the GOC including a move to a smaller, fully appointed council. This is intended to enhance public confidence in the work of the GOC as well as offering better value for money.

What policy options have been considered? Please justify any preferred option.
 The policy options considered were (1) do nothing - discarded as no improvements would be made, and, (2) provide for the GOC'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? June 2011

Ministerial Sign-off For Final/Implementation Impact Assessment:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Ben Bradshaw Date: 15 February 2009

Summary: Analysis & Evidence

Policy Option: 2 (over option 1)	Description: Adoption of a smaller, fully appointed Council for the GOC.
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' DH currently covers the cost of appointing lay members to the Council. This support would cease under the new Council arrangements'. Costings cover the next two 4-year appointment cycles, but a similar cost pattern would follow				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">One-off (Transition)</td> <td style="width: 40%; text-align: center;">Yr</td> </tr> <tr> <td style="text-align: center;">£ 0</td> <td></td> </tr> </table>		One-off (Transition)	Yr	£ 0	
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£ -45k (in PV)						
Total Cost (PV)		£ -375k				
Other key non-monetised costs by 'main affected groups'						

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Costs to the GOC (covered by fees) would reduce due to lower membership and altered pattern of meetings. This saving would be partially offset by withdrawal of DH support on lay member appointment costs. Savings cover the next two 4-year appointment cycles				
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<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Average Annual Benefit</td> <td></td> </tr> <tr> <td style="text-align: center;">£ 140k (in PV)</td> <td></td> </tr> </table>	Average Annual Benefit		£ 140k (in PV)			
Average Annual Benefit						
£ 140k (in PV)						
Total Benefit (PV)		£ 1.1m				
Other key non-monetised benefits by 'main affected groups' GOC 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

Costings rely on GOC estimates on the level and profile of appointment/election and running costs under both the old and proposed arrangements

Price Base Year	Time Period Years 8	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ 1.5m
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	April 2009				
Which organisation(s) will enforce the policy?	GOC				
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)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Micro</td> <td style="width: 25%;">Small</td> <td style="width: 25%;">Medium</td> <td style="width: 25%;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Yes/No</td> <td style="width: 25%;">Yes/No</td> <td style="width: 25%;">N/A</td> <td style="width: 25%;">N/A</td> </tr> </table>	Yes/No	Yes/No	N/A	N/A
Yes/No	Yes/No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease £	Net Impact £

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 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. Firstly, some are seen to be partial to professionals as they form a majority on their Councils. Secondly, some are seen to be partial because their councils are thought to be elected to represent the particular interests of health professionals.

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
- 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

These reforms were further considered in the consultation document on the Health Care and Associated Professions (Miscellaneous Amendments) Order published for consultation on 22 November 2007.

The consultation on the draft legislation closed on 22 February. Responses to the consultation supported the proposed constitutional amendments.

Further to that consultation legislation has been approved by Parliament to reform the constitution of the General Optical Council. The Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 was approved by Her Majesty in Council on 9 July 2008. This Order amends the Opticians Act 1989 to require the details of the new constitution of the GOC to be set out in a separate "constitution" order.

A draft constitution was prepared and published for consultation on August 15th 2008. The consultation period closed on November 7th. This impact assessment reflects the outcome of that consultation.

GOC Constitution Order

The draft Order provides for the new Council of the GOC to consist of 12 members made up of 6 lay and 6 professional members. All members will be independently appointed, rather than the current mix of nominated or appointed lay members and elected professional members. This is a reduction in council membership from the current 28 members.

Estimated costs:

The costs of the new council arrangements are assessed in relation to the baseline of existing council costs. These are split into two broad cost groups: election/appointment costs and running costs.

Current Council Costs:

Election costs:

Elections of registered members and appointments lay members occur over a 4 year cycle. The next election / appointment year would be 2012 under the existing arrangements. In interim years some costs are expected to be incurred replacing attrition from the Council. This suggests the following 4 year cost profile.

	Estimated costs (in current prices) by year (£k)			
	2009	2010	2011	2012
Elections in election year	0	0	0	350
Appointments in election year (paid by DH)	0	0	0	200
Interim replacement costs	75	75	75	0

Running costs:

Estimated £500 per member per meeting to cover attendance allowance and travel/subsistence expenses. Four two-day meetings per year

Also, GOC currently holds two 2-day events for all 23 members plus 12 alternate members:

Costs of current council are:

Council meetings $23 \times 8 \times £500 = £92k$

Away days $35 \times 4 \times £500 = £70k$

Total running costs of current council = £162k

Other costs such as secretariat costs are incurred in support the Council but these are not covered as they are not thought to vary across options.

New Council Costs

Appointment costs:

Under the new arrangements both lay and registered members of the Council would be appointment. This would also take place over a 4 year cycle, with some interim replacement costs for attrition, but there would be an immediate need for an appointment year in 2009 (rather than waiting until the planned 2012 election year). This suggests the following 4 year cost profile.

	Estimated costs (in current prices) by year (£k)			
	2009	2010	2011	2012
Appointments in election year (paid by DH)	200	0	0	0
Interim replacement costs	0	75	75	75

Running Costs:

New council will have 12 members. Current plans are for 6 one day meetings a year.

Running costs of new council estimated at $12 \times 6 \times £500 = £36k$

This suggests the New Council arrangements would achieve annual running cost savings of $£162k - £36k = £126k$

Aggregate savings

Over two 4 year appointment cycles the new Council arrangements are estimated to produce savings generating a net benefit of £1.5m in present value terms. This is made up of:

- £374k (PV) (£47k p.a.) saving by DH from ceasing to support appointment costs.
- £1,113k (PV) (£139k p.a.) saving by GOC from reduced election / appointment costs (less newly incurred appointment cost) from smaller membership and reduced running costs from smaller membership and different activity profile.

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 the move to a fully appointed council. All appointments will be made by the Appointments Commission, who are required to follow guidance issued by the Commissioner for Public Appointments. The appointments procedure will provide those legal safeguards to ensure that there will be no negative impact on these groups.

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

In addition, the GOC also operates an Equality and Diversity Scheme which is cognisant that that all of the functions the GOC exercises are subject to Race, Disability and Gender equality duties, as well in relation to equality in respect of age, religion and religious belief and sexual orientation. In the Scheme also provides that the GOC acts in a way to ensure that the exercise of the following functions are free from discrimination:

- access to optometry and dispensing optics training in the UK
- registration as an optometrist or dispensing optician in the UK
- access to our registers, public meetings and information
- our complaints and Fitness to Practise processes
- employment with or appointment to the GOC, its Council and committees.

Human Rights

No issues identified

Rural Proofing

No issues identified