

EXPLANATORY MEMORANDUM TO
THE GENERAL MEDICAL COUNCIL (CONSTITUTION) ORDER 2008

2008 No. 2554

1. This Explanatory Memorandum has been prepared by the Department of Health and is laid before Parliament by command of Her Majesty.
2. **Description**
 - 2.1 This Order sets out the new constitution of the General Medical Council (GMC). It makes provision for the Council to consist of 24 members, made up of 12 lay and 12 professional members. All members of the Council are to be appointed by the Privy Council, although in practice this function will be delegated to the Appointments Commission through Directions made by the Privy Council.
 - 2.2 This Order also sets out the criteria for disqualification for appointment as a member of the Council, and the circumstances in which members may be suspended or removed from office.
 - 2.3 Provision is made for the chair of the Council to be elected from amongst the 24 members, and in respect of the deputising arrangements for that chair.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.2 Prior to this Order, the membership of the GMC was made up of a number of lay members appointed by the Privy Council and a number of professional members who are elected representatives of doctors registered with the GMC or chosen by designated appointing bodies. The constitution of the GMC is set out in Schedule 1 to the Medical Act 1983 and a Constitution Order made by the Privy Council under section 1(2) of the 1983 Act.
 - 4.3 The amendments made to the 1983 Act by the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 (S.I. 2008/1774: “the 2008 Order”) made a number of changes to the constitutional arrangements for the GMC. In particular, instead of a mix of measures in Schedule 1 to the 1983 Act and a constitution Order, the new constitution is now simply set out in this Order. As a consequence of the changes made in the 2008 Order, that constitution now gives the GMC a fully appointed Council, rather than the current mix of appointed lay members and elected and appointed professional members.
5. **Territorial Extent and Application**

5.1 The Order extends to the United Kingdom

6 European Convention on Human Rights

6.1 As the Order is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7 Policy Background

7.1 The White Paper *Trust, Assurance and Safety – the Regulation of Health Professionals in the 21st Century* (published in 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*.

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 constitution of the professional regulators. It was recommended 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 healthcare professional regulators, council members should 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

7.3 The arrangements set out in this Order do now mean that the GMC has parity of lay and professional members, and it is smaller (down from 35 to 24 members). The appointment of members will be carried out by the Appointments Commission by virtue of a separate set of directions given by the Privy Council.

7.4 The Appointments Commission will also be responsible, by virtue of the directions, for the suspension or removal from office of members, in accordance with the criteria set out in this Order. However, the GMC may also provisionally suspend its members under its own standing orders, pending the outcome of the Appointments Commission’s consideration of the matter, and the Order also allows the Appointments Commission to stay its own consideration of whether or not to suspend a member while the GMC is carrying out its own internal investigation. A balance is therefore duly struck between the independence of the regulator, the GMC, and the effectiveness of the independent oversight of the regulator.

Consultation

- 7.5 The General Medical Council (Constitution) Order was published in draft for public consultation on 16 May 2008. Consultation closed on 11 July. The Cabinet Office Code of Practice on consultations suggests best practice is for consultations to run for a minimum of 12 weeks, at least once during the formulation process of each policy. However, Ministers decided in this case to shorten the consultation period to 8 weeks. This was essentially for three reasons:
- i) extensive consultation on the principles underpinning the constitution order had already taken place. The consultation document *Good doctors, safer patients* (which preceded the White Paper) and the 2008 Order had both been published for 12 week public consultations.
 - ii) the GMC (the key stakeholder) has been closely involved in the process of producing the Order
 - iii) the terms of office of the elected membership of the GMC are all due to expire on 31st December 2008. In the circumstances, 1st January 2009 seemed to be the most appropriate start date for the new Council and the intention was to be in a position to put in place the new legislative arrangements as soon as practicable after the 2008 Order was made.
- 7.6 A full report on the outcome of the consultation on the draft Order is published on the Department of Health website. There were 35 responses, and amongst the full range of those responses, there were majorities in favour of the proposals, ranging from 51% to 71% on 9 of the 14 questions put in the consultation document. On the central question of the composition of the new Council, 62% were against the proposals.
- 7.7 A large number of the respondents were opposed on the grounds that they wished to see a professional majority on the Council. The Government has maintained its position that there should be parity between lay and registrant members. In the Government's view, regulators of the health care professions must be seen to be independent and impartial in their actions. Doubts based on a perceived partiality have threatened to undermine patient, public and professional trust in the regulatory bodies generally. The composition of the regulators is, in the Government's view, central to these perceptions. The regulators may be seen as partial to their professionals because they form the majority on the councils, or may be seen to be partial because their councils are thought to be elected to represent the particular interests of health professionals. Hence the moves to parity of membership and having independently appointed councils rather than professional members being elected by the profession.
- 7.8 A wide range of views were expressed on the overall size of the Council, amongst the negative responses, some wanting an even smaller Council, others a Council closer to the present size. In principal, the Government believes that smaller, more board like Council's for all the regulators will enable them to focus more effectively on strategy and oversight of their executives, and the reduction of the current GMC to approximately two thirds of its previous size

represents a balanced response in the context of conflicting views on what size would be appropriate.

7.9 The GMC, the key stakeholder, are in overall agreement with the Order.

8 Impact

8.1 An impact assessment is attached to this Memorandum

9 Contact

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