

## SCHEDULE

### The General Optical Council (Committee Constitution) (Amendment) Rules 2008

The General Optical Council makes the following Rules in exercise of the powers conferred by sections 2(2), 3(2), 4(3), 5(2), 5A(3), 5B(2), 5C(3), 5D(5) and 31A of, and paragraph 12A of Schedule 1 to, the Opticians Act 1989.

Before making the Rules, in accordance with section 3(3) of that Act, the General Optical Council consulted with such organisations representing the interests of substantial numbers of business registrants as it considered appropriate.

#### Citation and commencement

1. These Rules may be cited as the General Optical Council (Committee Constitution) (Amendment) Rules 2008 and—

- (a) this rule and rules 13, 15 and 16 come into force on 5th January 2009; and
- (b) the remaining provisions of these Rules come into force on 1st April 2009.

#### Amendments to the General Optical Council (Committee Constitution) Rules 2005

2. The General Optical Council (Committee Constitution) Rules 2005(1) are amended in accordance with the following rules.

#### Amendment of rule 2

3. In rule 2 (interpretation)—

- (a) in paragraph (1), insert each of the following definitions at the appropriate place in the alphabetical order—

““final outcome”, in relation to any proceedings where there are rights of appeal, means the outcome of the proceedings—

- (a) once the period for bringing an appeal has expired without an appeal being brought; or
- (b) if an appeal is brought in accordance with those rights, once those rights have been exhausted;”;

““interim order hearing” means a hearing for the purpose of considering whether or not to make, or for the purpose of reviewing, an order under section 13L(2) (interim orders);”;

““licensing body” means any body, other than the Council, anywhere in the world that licenses or regulates any profession;”;

““member”, unless the context otherwise requires, means a registrant member of a Committee or a member of a Committee who is a lay person;”;

““procedural hearing” means a hearing before a Fitness to Practise Committee other than an interim order hearing or a substantive hearing;”;

““responsible officer” has the meaning given in section 30(2)(3) (offences by body corporate);”;

““spent conviction” means—

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(1) [S.I. 2005/1474](#).

(2) Inserted by [S.I. 2005/848](#).

(3) Subsection (2) of section 30 was inserted by [S.I. 2005/848](#).

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- (a) in relation to a conviction by a court in Great Britain, a conviction that is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974<sup>(4)</sup>; or
- (b) in relation to a conviction by a court in Northern Ireland, a conviction that is a spent conviction for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978<sup>(5)</sup>;

““substantive hearing” means any hearing at which the Fitness to Practise Committee may—

- (a) make a finding of impairment or otherwise in respect of the fitness to practise, fitness to carry on a business or fitness to undertake training of a registrant; or
  - (b) make an order or direction under sections 13F to 13I<sup>(6)</sup> (which relate to the powers of the Fitness to Practise Committee after findings of impairment);”;
- and

- (b) in paragraph (2), omit sub-paragraph (b) and the “and” preceding it.

#### **New Part 1A**

- 4. After Part 1 (citation, commencement and interpretation) insert the following Part—

### **“PART 1A**

#### **Disqualification, removal and suspension**

##### **Disqualification from appointment as a member**

**2A.** A person is disqualified from appointment as a member of a Committee if that person—

- (a) has at any time been convicted of an offence involving dishonesty or deception in the United Kingdom and the conviction is not a spent conviction;
- (b) has at any time been convicted of an offence in the United Kingdom, and—
  - (i) the final outcome of the proceedings was a sentence of imprisonment or detention, and
  - (ii) the conviction is not a spent conviction;
- (c) has at any time been removed—
  - (i) from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners, the Charity Commission, the Charity Commission for Northern Ireland or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity—
    - (aa) for which the person was responsible or to which the person was privy, or
    - (bb) which the person by their conduct contributed to or facilitated, or
  - (ii) under—

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<sup>(4)</sup> 1974 c. 53.

<sup>(5)</sup> S.I. 1978/1908 (N.I. 27).

<sup>(6)</sup> Sections 13F to 13I were inserted by S.I. 2005/848.

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- (aa) section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(7) (powers of Court of Session to deal with management of charities), or
- (bb) section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005(8) (powers of the Court of Session),  
from being concerned with the management or control of any body;
- (d) has at any time been removed from office as the chair, member, convenor or director of any public body on the grounds, in terms, that it was not in the interests of, or conducive to the good management of, that body that the person should continue to hold that office;
- (e) at any time has been adjudged bankrupt or sequestration of the person's estate has been awarded, and—
  - (i) the person has not been discharged, or
  - (ii) the person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(9) or Schedule 2A of the Insolvency (Northern Ireland) Order 1989(10) (which relate to bankruptcy restrictions orders and undertakings);
- (f) has at any time made a composition or arrangement with, or granted a trust deed for, the person's creditors and the person has not been discharged in respect of it;
- (g) is subject to—
  - (i) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986(11),
  - (ii) a disqualification order under Part II of the Companies (Northern Ireland) Order 1989(12) (company directors disqualification),
  - (iii) a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002(13), or
  - (iv) an order made under section 429(2) of the Insolvency Act 1986(14) (disabilities on revocation of a county court administration order);
- (h) has been included by—
  - (i) the Independent Barring Board in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006(15) or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(16)), or
  - (ii) the Scottish Ministers in the children's list or the adults' list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007(17));
- (i) has at any time been subject to any investigation or proceedings concerning the person's fitness to practise by any licensing body, the final outcome of which was—

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(7) 1990 c.40; section 7 was repealed by the Charities and Trustee Investment (Scotland) Act 2005 (asp 10), Schedule 4, paragraph 7(b).

(8) 2005 asp 10.

(9) 1986 c.45; Schedule 4A was inserted by section 257 of, and Schedule 20 to, the Enterprise Act 2002 (c.40).

(10) S.I. 1989/2405 (N.I. 19); Schedule 2A was inserted by S.I. 2005/1455 (N.I. 10).

(11) 2006 c.47.

(12) S.I. 1989/2404 (N.I. 18).

(13) S.I. 2002/3150 (N.I. 4); relevant amendments were made by S.I. 2005/1454 (N.I. 9).

(14) Section 429(2) was amended by the Enterprise Act 2002 (c.40), Schedule 23, paragraph 15.

(15) 2006 c.47.

(16) S.I. 2007/1351 (N.I. 11).

(17) 2007 asp 14.

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- (i) the person's suspension from a register held by the licensing body, and that suspension has not been terminated,
  - (ii) the person's erasure from a register held by the licensing body or a decision that had the effect of preventing the person from practising the profession licensed or regulated by the licensing body,
  - (iii) a decision that had the effect of only allowing the person to practise that profession subject to conditions, and those conditions have not been lifted, or
  - (iv) a financial penalty order was made against the person, and less than two years have elapsed since the period within which the sum specified in that order needed to be paid expired;
- (j) has at any time been subject to any investigation or proceedings concerning the person's fitness to practise by the Council, in the course of which or where the final outcome has been that—
- (i) the person's registration in the register has been suspended (including by an interim suspension order or an order under section 13I(18) (power to order immediate suspension etc. after a finding of impairment of fitness to practise)) and that suspension has not been terminated,
  - (ii) the person has been erased from the register (for a reason connected to the person's fitness to practise),
  - (iii) the person's registration in the register has been made conditional upon their compliance with any requirement (including by an order for interim conditional registration or an order under section 13I) and that requirement has not been lifted, or
  - (iv) a financial penalty order was made against the person, and less than two years have elapsed since the period within which the sum specified in that order needed to be paid expired;
- (k) has at any time been subject to any investigation or proceedings relating to an allegation that the person's entry in the register was fraudulently procured—
- (i) in the course of which the person's registration was suspended and that suspension has not been terminated, or
  - (ii) the final outcome of which was the removal of the person's entry in the register;
- (l) is subject to any investigation or proceedings concerning the person's fitness to practise by—
- (i) any licensing body, or
  - (ii) the Council,
- and the Council is satisfied that the person's membership of a Committee would be liable to undermine public confidence in the regulation of registrants;
- (m) is a responsible officer of a business registrant, and that business registrant—
- (i) is subject to any investigation or proceedings by the Council and the Council is satisfied that the person's membership of a Committee would be liable to undermine public confidence in the regulation of registrants, or
  - (ii) has been subject to any investigation or proceedings by the Council, and—

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(18) Inserted by S.I. 2005/848.

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- (aa) the final outcome was a finding that the business registrant's fitness to carry on business as an optometrist or dispensing optician or both is impaired, and
- (bb) the Council is satisfied that the person's membership of a Committee would be liable to undermine public confidence in the regulation of registrants; or
- (n) has at any time been convicted of an offence elsewhere than in the United Kingdom and the Council is satisfied that the person's membership of a Committee would be liable to undermine public confidence in the regulation of registrants.

### **Removal of a member from a Committee**

- 2B.—**(1) The Council must remove a member from a Committee if—
- (a) the member resigns, which a member may do at any time by a notice in writing to the Council;
  - (b) in the case of—
    - (i) a registrant member, that member is removed from the register (for a reason that is not connected to the member's fitness to practise), or
    - (ii) a member who is a lay person, that member ceases to be a lay person;
  - (c) the member becomes a person of the type mentioned in rule 2A(a), (b) or (e) to (h) (irrespective of whether or not they subsequently cease to be a person of the type mentioned in those provisions);
  - (d) the member becomes a person of the type mentioned in rule 2A(c) or (d);
  - (e) in the case of a registrant member, the member becomes subject to any investigation or proceedings concerning the member's fitness to practise by the Council, as a result of which—
    - (i) the member's registration in the register is suspended,
    - (ii) the member is erased from the register,
    - (iii) the member's registration in the register has been made conditional upon the member's compliance with any requirement, or
    - (iv) a financial penalty order was made against the person,and the proceedings relating to that particular sanction have reached their final outcome;
  - (f) in the case of a registrant member, the member becomes subject to any investigation or proceedings relating to an allegation that the person's entry in the register was fraudulently procured or incorrectly made, the final outcome of which is the removal of the person's entry in the register;
  - (g) the member is a responsible officer of a business registrant, and that business registrant becomes subject to any investigation or proceedings by the Council—
    - (i) the final outcome of which is a finding that the business registrant's fitness to carry on business as an optometrist or dispensing optician or both is impaired, and
    - (ii) the Privy Council is satisfied that the person's membership of the Council would be liable to undermine public confidence in the regulation of registrants;

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- (h) the Council is satisfied that the member's level of attendance at meetings of the Committee to which the member is appointed falls below a minimum level of attendance acceptable to the Council, having regard to whether or not there were reasonable causes for the member's absences;
  - (i) the Council is satisfied that the member has failed, without reasonable cause, to undertake a minimum level of education and training acceptable to the Council;
  - (j) the Council is satisfied that the member is no longer able to perform their duties as a member of the Committee because of adverse physical or mental health;
  - (k) the Council is satisfied that the member's continued membership of the Committee would be liable to undermine public confidence in the regulation of registrants.
- (2) A member who becomes, or may be about to become, a person to whom paragraph (1) (b) to (g) applies must notify the Council in writing of that fact as soon as the person becomes aware of it.
- (3) If a member of a Committee who is also a member of the Hearings Panel is removed by the Council under paragraph (1), the Council must also remove that person from the Hearings Panel.

### **Suspension of a member from a Committee**

**2C.—**(1) The Council may suspend a member from a Committee by a notice in writing served on the member—

- (a) if the Council has reasonable grounds for suspecting that the member has become a person to whom rule 2B(1)(b)(ii) to (d) applies, for the purposes of determining whether or not the member has become such a person;
- (b) while the Council is considering whether or not it is satisfied as to the matters set out in rule 2B(1)(h) to (k);
- (c) if the member is subject to any investigation or proceedings concerning the member's fitness to practise by—
  - (i) any licensing body, or
  - (ii) the Council,

and the Council is satisfied that it would not be appropriate for the member to continue to participate in proceedings of the Committee while the investigation or proceedings concerning the member's fitness to practise is or are ongoing;

- (d) if the member is subject to any investigation or proceedings concerning whether the member's entry in the register was fraudulently procured or incorrectly made and the Council is satisfied that it would not be appropriate for the member to continue to participate in proceedings of the Committee while the investigation or proceedings concerning the member's entry in the register is or are ongoing;
- (e) if the member is a responsible officer of a business registrant that is subject to any investigation or proceedings concerning the business registrant's fitness to carry on business as an optometrist or dispensing optician, or both, by the Council and the Council is satisfied that it would not be appropriate for the member to continue to participate in the proceedings of the Committee while the investigation or proceedings is or are ongoing;
- (f) if the member is subject to any investigation or proceedings in the United Kingdom relating to a criminal offence, or in any other part of the world relating

to an offence which, if committed in any part of the United Kingdom, would constitute a criminal offence, and—

- (i) either—
  - (aa) the investigation or proceedings relate to an offence involving dishonesty or deception, or
  - (bb) the final outcome of the investigation or proceedings may be that the person is sentenced to a term of imprisonment or detention, and
- (ii) the Council is satisfied that it would not be appropriate for the member to continue to participate in proceedings of the Committee while the investigation or proceedings is or are ongoing.

(2) The Council shall suspend a registrant member from office by a notice in writing served on the member if the member is the subject of an order under section 13I or 13L of the Act<sup>(19)</sup> (power to order immediate suspension etc. after a finding of impairment of fitness to practise, and interim orders).

(3) The notice in writing under paragraph (1) or (2) shall set out the reasons for the suspension and the duration of the period of suspension, which shall (in the first instance) not be for more than six months.

- (4) The Council—
  - (a) may at any time review a suspension of a member by it; and
  - (b) shall review any suspension of a member by it after three months from the start of the period of suspension, if requested to do so by the suspended member.
- (5) Following a review, the Council may—
  - (a) terminate the suspension;
  - (b) if that review is within three months of the end of a period of suspension, extend the suspension for a further period of up to six months from the date on which the suspension would otherwise come to an end.

(6) The Council shall notify the suspended member in writing of the outcome of any review and that notice shall include the reasons for any decision taken.”

### **Amendment of rule 3**

- 5. In rule 3 (which relates to the Education Committee)—
  - (a) in paragraph (1), for “fourteen” substitute “a minimum of nine and a maximum of eighteen”;
  - (b) for paragraph (2) substitute the following paragraph—
    - “(2) The members of the Committee shall be appointed so that at least—
      - (a) three are registered optometrists;
      - (b) two are registered dispensing opticians;
      - (c) three are lay persons; and
      - (d) one is a registered medical practitioner.”; and
  - (c) omit paragraph (3).

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<sup>(19)</sup> Both these sections were inserted by [S.I. 2005/848](#).

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**Amendment of rule 6**

6. In rule 6 (which relates to the Companies Committee)—
- (a) omit “selected from amongst the members of Council and”; and
  - (b) for paragraphs (a) to (d) substitute—
    - “(a) one is a registered optometrist;
    - (b) one is a registered dispensing optician;
    - (c) one is a lay person; and
    - (d) one is a registered medical practitioner.”

**Amendment of rule 9**

7. In paragraph (2) of rule 9 (which relates to the Investigation Committee)—
- (a) omit “selected from amongst the members of Council and”; and
  - (b) for sub-paragraphs (a) to (d) substitute—
    - “(a) three are registered optometrists;
    - (b) two are registered dispensing opticians;
    - (c) three are lay persons; and
    - (d) one is a registered medical practitioner.”

**Amendment of rule 11**

8. In rule 11 (which relates to the Registration Committee)—
- (a) in paragraph (1), for “nine” substitute “a minimum of seven and a maximum of fourteen”; and
  - (b) for paragraph (2) substitute the following paragraph—
    - “(2) The members of the Committee shall be appointed so that at least—
      - (a) two are registered optometrists;
      - (b) two are registered dispensing opticians;
      - (c) two are lay persons; and
      - (d) one is a responsible officer.”

**Amendment of rule 12**

9. In rule 12 (which relates to the Registration Committee), for “five” substitute “three”.

**Amendment of rule 14**

10. In rule 14 (which relates to the Registration Appeals Committee), for “an optometrist or a student undertaking training as an optometrist” substitute “one or more optometrists or one or more students undertaking training as an optometrist (including a combination of both of these types of individuals)”.

**Amendment of rule 15**

11. In rule 15 (which relates to the Registration Appeals Committee), for “a dispensing optician or student undertaking training as a dispensing optician” substitute “one or more dispensing opticians”.



or one or more students undertaking training as a dispensing optician (including a combination of both of the types of individuals)”.

### **Amendment of rule 16**

**12.** In rule 16 (which relates to the Registration Appeals Committee), for “a body” substitute “one or more bodies”.

### **New rule 16A**

**13.** After rule 16, insert the following rule—

“**16A.**—(1) This rule applies where—

(a) the Registration Appeals Committee is considering making a direction under rule 16 of the General Optical Council (Registration Appeals) Rules 2005(20) (joinder) that one hearing is to be held in relation to two or more appellants or applicants, and—

(i) either—

(aa) at least one of them is a registered optometrist or a registered student undertaking training as an optometrist, and

(bb) at least one of them is a registered dispensing optician or a registered student undertaking training as a dispensing optician, or

(ii) at least one of them is a body corporate and at least one of them is a person mentioned in sub-paragraph (i); or

(b) a direction has been made in the circumstances described in sub-paragraph (a) and there are further proceedings in the case to which the direction relates before the Registration Appeals Committee.

(2) In the circumstances described in paragraph (1), the Registration Appeals Committee shall consist of—

(a) one registered optometrist;

(b) one registered dispensing optician; and

(c) three lay persons,

who are each selected in accordance with rule 29.”.

### **Amendment of rule 19**

**14.** In rule 19 (which relates to the Standards Committee)—

(a) in paragraph (1), for “nine” substitute “a minimum of nine and a maximum of eighteen”; and

(b) for paragraph (2) substitute the following paragraph—

“(2) The members of the Committee shall be appointed so that at least—

(a) three are registered optometrists;

(b) three are registered dispensing opticians;

(c) two are lay persons; and

(d) one is a registered medical practitioner.”

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**Substitution of rules 22 to 24 and new rule 24A**

15. For rules 22 to 24 substitute the following rules—

“22. Subject to rule 24A, when considering any matter relating to the fitness to practise of one or more registered optometrists or registered students undertaking training as optometrists (including a combination of both those types of registrant)—

(a) at a procedural hearing or an interim order hearing, the Fitness to Practise Committee shall consist of—

(i) one registered optometrist, and

(ii) two lay persons,

who are each selected in accordance with rule 29; or

(b) at a substantive hearing, the Fitness to Practise Committee shall consist of—

(i) two registered optometrists, and

(ii) three lay persons,

who are each selected in accordance with rule 29.

23. Subject to rule 24A, when considering any matter relating to the fitness to practise of one or more registered dispensing opticians or registered students undertaking training as dispensing opticians (including a combination of both those types of registrant)—

(a) at a procedural hearing or an interim order hearing, the Fitness to Practise Committee shall consist of—

(i) one registered dispensing optician, and

(ii) two lay persons,

who are each selected in accordance with rule 29; or

(b) at a substantive hearing, the Fitness to Practise Committee shall consist of—

(i) two registered dispensing opticians, and

(ii) three lay persons,

who are each selected in accordance with rule 29.

24. When considering any matter relating to the fitness to practise of one or more business registrants to carry on the business of an optometrist or dispensing optician or both—

(a) at a procedural hearing or an interim order hearing, the Fitness to Practise Committee shall consist of—

(i) one registered optometrist or registered dispensing optician, and

(ii) two lay persons,

who are each selected in accordance with rule 29; or

(b) at a substantive hearing, the Fitness to Practise Committee shall consist of—

(i) one registered optometrist,

(ii) one registered dispensing optician, and

(iii) three lay persons,

who are each selected in accordance with rule 29.

24A.—(1) This rule applies where—

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- (a) the Fitness to Practise Committee is considering making a direction under rule 22 of the General Optical Council (Fitness to Practise) Rules 2005(21) (joinder) that one hearing is to be held in relation to two or more registrants, and—
    - (i) either—
      - (aa) at least one of them is a registered optometrist or a registered student undertaking training as an optometrist, and
      - (bb) at least one of them is a registered dispensing optician or a registered student undertaking training as a dispensing optician, or
    - (ii) at least one of them is a business registrant and at least one of them is an individual registrant; or
  - (b) a direction has been made in the circumstances described in sub-paragraph (a) and there are further hearings in the case to which the direction relates before the Fitness to Practise Committee.
- (2) If the hearing is a procedural hearing or an interim order hearing, the Fitness to Practise Committee shall consist of—
- (a) one registered optometrist or registered dispensing optician, and
  - (b) two lay persons,
- who are each selected in accordance with rule 29.
- (3) If the hearing is a substantive hearing, the Fitness to Practise Committee shall consist of—
- (a) one registered optometrist;
  - (b) one registered dispensing optician; and
  - (c) three lay persons,
- who are each selected in accordance with rule 29.”

#### **Amendment of rule 29**

16. In rule 29 (which relates to the Hearings Panel), in paragraph (2), for sub-paragraph (b) substitute the following sub-paragraph—

- “(b) ensure that—
  - (i) a person who is selected to serve as a member of the Fitness to Practise Committee for an interim order hearing in any case is not selected to serve as a member of the Fitness to Practise Committee at any subsequent procedural hearing or substantive hearing in that case, and
  - (ii) a person who served as a member of the Investigation Committee when it considered a case is not selected to serve as a member of the Fitness to Practise Committee on any occasion when it considers that case; and”.

#### **Amendment of rule 30**

17. In rule 30 (term of appointment etc.) omit paragraph (2).

#### **Amendment of rule 31**

18. In rule 31 (casual vacancies) for paragraph (1) substitute the following paragraph—

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(21) Scheduled to [S.I. 2005/1475](#).

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“(1) Where a casual vacancy occurs on a Committee, other than the Registration Appeal Committee or the Fitness to Practise Committee, and that person was appointed by virtue of being a registered optometrist, a registered dispensing optician, a lay person or a registered medical practitioner, the Council shall fill the vacancy by appointing a person of the same type.”

### **Substitution of rule 32**

19. For rule 32 (chairmen) substitute the following rule—

#### **“Chairs**

32. The Council shall appoint a chair for each Committee, other than the Registration Appeals Committee and the Fitness to Practise Committee, from amongst the members of the Committee.”

### **New rule 33A**

20. After rule 33, insert the following rule—

#### **“Transitional arrangements**

33A.—(1) Subject to paragraph (2), where the composition of any Committee that is considering a case is altered by the General Optical Council (Committee Constitution) (Amendment) Rules 2008 (“the 2008 Rules”), where the Registrar so directs the composition for that Committee for its remaining consideration of that case shall be the composition of that Committee before it was altered by the 2008 Rules.

(2) A direction under paragraph (1) may specify that the composition of the Committee is only to be altered by that direction for a particular stage in the Committee’s remaining consideration of that case.”