

GENERAL OPTICAL COUNCIL

Constitution Order

Introduction

1. The Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 will amend the Opticians Act 1989 allowing for the constitution of Council to be set out in an order of the Privy Council rather than it being set out, as is currently the case, in Schedule 1 of the Opticians Act. This amendment to the Act will make it easier for changes to be made to GOC's governing structure, allowing the constitution of GOC to adapt to changing circumstances over time. It is expected that the Health Care and Associated Professions (Miscellaneous Amendments) Order will receive Privy Council approval in July 2008. A further order, setting out the constitution of Council as from April 2009, will be consulted on by Government from July 2008 (henceforth referred to as 'the Constitution Order' or 'the Order'). The Order is expected to receive Privy Council approval in the early autumn, to come into force in April 2009 when the new Council will be established.

2. The changes to the Act will require the Constitution Order to include the following provisions:

- The number of registrant members and lay members of the Council;
- The terms of office of members of the Council;
- The appointment of the Chair and their term of office;
- Deputising arrangements in respect of the Chair;
- The quorum of Council; and
- The circumstances in which members cease to hold office or may be removed or suspended from office.

3. GOC has been in liaison with the Department of Health regarding the contents of the Constitution Order, and a first draft of the Order has been received. It had been hoped that a final draft would be available for Council to discuss at this meeting. However, this has not been forthcoming. Nevertheless, it is expected that the Constitution Order will include the provisions as set out below.

Composition of Council

4. The Order will set out the composition of Council. On the basis of Council's discussions on its size and composition, the Order will state that the

Council shall consist of 6 lay members and 6 registrant members. 4 of the registrant members shall be optometrists and 2 shall be dispensing opticians.

Terms of office of members

5. The term of office of each member will be determined by the Appointments Commission who will act on behalf of the Privy Council in the appointments process. The Order will specify the maximum term of office of any member.

6. Niall Dickson's report, *Implementing the White Paper Trust, Assurance and Safety: Enhancing confidence in healthcare professional regulators*, makes the recommendation that the term of office of Council members should be no longer than two terms of 4 years.

7. The Order will reflect this recommendation by stating that no member may hold office for more than an aggregate of 8 years during any period of 11 years. The same provision is to be included in the orders of all the other health regulatory bodies.

8. Time served as a member of Council after 1st April 2005 will count towards the computation of the total number of years served under the new arrangements. Thus time served on the current Council will count towards the total number of years served should a member be appointed to the new Council. However, any time served before 1st April 2005 will not be counted. Similar provisions are to be included in the orders of all the other health regulatory bodies.

Education and training of members

9. The Constitution Order will require the Council to make provision in standing orders with respect to the requirements for members to receive education and training.

Disqualification for appointment as a member

10. The Order will spell out the factors which would disqualify someone from being appointed as a member of Council. These will include criminal convictions; removal of office from the management or control of charities and public bodies; bankruptcy; and fitness to practise proceedings resulting in sanction.

11. In relation to the latter, an early draft of GOC's order only included fitness to practise proceedings resulting in the following sanctions as grounds for a person to be disqualified for being appointed as a member of Council: suspension; erasure; and conditions on practice. GOC has highlighted to the Department the need for financial penalty orders to be included in the list of

sanctions. The Department has also been advised of the need to include provisions which would disqualify directors of corporate bodies from membership of Council if the corporate body has been subject to investigation or proceedings concerning the body's fitness to carry on business as an optometrist or dispensing optician where the final outcome is erasure, suspension, conditions, or a financial penalty order.

12. GOC has also raised with the Department that the grounds for disqualification should include being listed as a person who has been barred from working with children and/or vulnerable adults. Whilst the fitness to practise provisions should adequately deal with the disqualification of registrant members in this regard, as any registrant included on a barred list is likely to face disciplinary sanction through the fitness to practise process, provision should be included in the Order to prevent any lay person becoming a member if they are barred from working with children and/or vulnerable adults.

13. At the time of drafting this paper, we await the Department's response on the points raised above.

Removal and suspension of members from office

14. The Order will set out provisions under which a Council member may be removed or suspended from office. These include resignation of the member; if a lay member becomes a registrant; the member obtains a criminal conviction; the member becomes bankrupt; if a registrant member is subject to fitness to practise proceedings resulting in sanction; unsatisfactory attendance at meetings; unsatisfactory education and training undertaken as required by the Council; adverse physical or mental health such that the member is no longer able to perform their duties; and continued membership would undermine public confidence.

15. GOC has raised with the Department points mirroring those raised in relation to disqualification with respect to financial penalty orders, directors of corporate bodies, and barred lists. We await the Department's response on these points.

The Chair and Deputy Chair

16. The Order will set out provisions relating to the appointment and term of office of the chair and deputy chair. The Department has been advised that GOC wishes to retain the current practice whereby the Chair is a separately appointed lay person. The Department has also been advised that GOC would wish the deputising arrangements for the Chair to be set out in standing orders, as is currently the case, rather than on the face of the Constitution Order.

Quorum of Council

17. The Order will set out the quorum of Council. The Department has been advised, following discussions by the Project Board, that GOC wishes the quorum to be seven members.

Council is asked to note the above, and consider what representations should be made to the Department of Health regarding the contents of the Order prior to its publication, for consultation, in July 2008. GOC will then have the opportunity to make further representations in its consultation response.