EXPLANATORY MEMORANDUM TO

THE GENERAL MEDICAL COUNCIL (CONSTITUTION) (AMENDMENT) ORDER 2012

2012 No. 1654

AND

THE GENERAL DENTAL COUNCIL (CONSTITUTION) (AMENDMENT) ORDER 2012

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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 These instruments make changes to the constitution orders of the General Medical Council and the General Dental Council. They reduce the size of the councils from twelve lay members and twelve registrant members; to six lay members and six registrant members and enable the chairs of the councils to be appointed rather than elected by the Council. These changes have been subject to a twelve week consultation and are in line with recommendations from the Council for Healthcare Regulatory Excellence (CHRE). They come into force on the date of the next whole Council appointments in each case.

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

None

4. Legislative Context

4.1 The Council of the General Dental Council is constituted in accordance with section 1 of, and Schedule 1 to, the Dentists Act 1984 and the General Dental Council (Constitution) Order 2009 (S.I. 2009/1808).

4.2 The Council of the General Medical Council is constituted in accordance with section 1(2) of, and Part I of Schedule 1 to, the Medical Act 1983 and the General Medical Council (Constitution) Order 2008 (S.I. 2008/2554).

5. Territorial Extent and Application

These instruments extend and apply to the whole of the United Kingdom.

6. European Convention on Human Rights

As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 In 2011, the Department of Health published a command paper *Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers*. This paper set out proposals for the regulatory system for healthcare workers across the UK and social workers in England. The command paper can be found at the following link:

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_124374.pdf

7.2 Following the command paper, the Department wrote to the CHRE asking for its advice on the merits of appointing chairs rather than electing them from within the governing council and also whether there was a case for moving to smaller councils for regulatory bodies as a way of delivering more board-like and effective governance.

7.3 In September 2011, the CHRE reported on both these issues in their report *Board size and effectiveness: advice to the Department of Health regarding professional regulators.* It recommended that; the chairs of the regulatory bodies should be appointed rather than elected from within their membership and, that the optimum size, to be conducive to effectiveness, for council membership was between eight and twelve members.

7.4 Based on a review of literature and its own experiences in overseeing the regulators the CHRE found a number of benefits to having smaller governing councils. These included the following:

- Smaller boards struggle to involve themselves in operational management issues that should be delegated to the executive, therefore a smaller size of council helps them to focus their efforts on core governance issues;

- Governing councils cannot operate in a 'board-like' manner if they are too large; and

- Smaller sized groups are able to communicate more effectively and reach decisions more quickly than larger ones.

7.5 In respect of whether chairs should be elected or appointed CHRE's report highlighted some relevant indicators of board effectiveness, including;

- need for the right mix of skills and experience for the board to fulfil their functions;
- better management from the chair;

7.6 Having an appointed chair supports this by increasing the openness and transparency of the recruitment process, enabling the regulators to seek applicants from a wider field and ensure that people with specific qualities to be a chair, could be appointed.

7.7 The full report can be found at the following link:

http://www.chre.org.uk/_img/pics/library/pdf_1320922005.pdf

7.8 These changes require amendments to the current legislation. The two amended orders make changes to the constitutions of the General Medical Council (GMC) and the General Dental Council (GDC) to reduce their council to twelve and to enable the appointment of the chair of their councils by the Privy Council rather than by election from within the Council's members.

7.9 Of the health care regulators, we are making these changes to the GMC and the GDC in the first instance. This is for two reasons, first, the GMC and the GDC are the only councils to still have elected chairs and therefore it makes sense to consider moving them to a system of appointment in line with the councils of other regulatory bodies. Secondly, the GMC and the GDC are the regulators with the biggest councils, with 24 members on each and they will gain most benefit from a reduced governing council.

Consolidation

7.10 These instruments amend the General Dental Council (Constitution) Order 2009 and the General Medical Council (Constitution) Order 2008. Both such instruments have only been subject to one prior minor amendment each and so consolidation was not considered to be necessary.

8. Consultation outcome

8.1 The General Medical Council and the General Dental Council (Constitution) Orders were published in draft for consultation between 20th February 2012 and the 15th May 2012. The consultation document was issued to professional and representative bodies as well as being posted on the Department of Health's website. We received twenty two responses that consisted of four from individuals and eighteen from organisations.

8.2 68% of respondents agreed that the necessary expertise could be ensured with a reduced council size. 68% disagreed with the Department's proposed reduction to eight members arguing that it would be difficult to ensure the right mix of skills, knowledge and experience with just eight members. However, 75% of respondents who answered the question on the appropriate range, including the GMC and the GDC, considered a council size of 12 to be acceptable.

8.3 73% of respondents, including the GMC and the GDC, agreed that it made sense to move to a system of appointed chairs.

8.4 The Department has looked at the consultation responses and analysed the results and, having considered the evidence, believes that reducing the size of the council to twelve members (instead of the initially proposed eight members) will help to improve the effectiveness and efficiency of the GMC and the GDC.

8.5 In addition, the Department believes that moving to a system of appointed chairs will increase the openness and transparency of the recruitment process and it will enable the regulators to seek applicants from a much wider field. It would also help to ensure that people with the specific qualities needed to be chair could be appointed.

8.6 A full analysis of the consultation responses will be posted on the Department of Health website.

9. Guidance

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

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument as the cost impact is likely to be minimal.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

This legislation will be subject to internal review within the Department of Health after 3 years.

13. Contact

Elaine Plumb at the Department of Health Tel: 0113 254 5998 or email: elaine.plumb@dh.gsi.gov.uk can answer any queries regarding the instrument.