EXPLANATORY MEMORANDUM TO

THE GENERAL OSTEOPATHIC COUNCIL (CONSTITUTION OF THE STATUTORY COMMITTEES) RULES ORDER OF COUNCIL 2009

2009 No. 468

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 The Rules ("the 2009 Rules") approved by this Order of the Privy Council revise the constitutional arrangements for the statutory committees of the General Osteopathic Council (GOsC).

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

3.1 None.

4. Legislative Context

4.1 The Osteopaths Act 1993 ("the 1993 Act") established a number of committees (the statutory committees) of the GOsC: the Professional Conduct Committee, the Health Committee, the Investigating Committee, and the Education Committee. The constitutions of these committees used to be set out in part in the General Osteopathic Council (Constitution and Procedure) Rules 1998 ("the 1998 Rules") and in Part 2 of the Schedule to the 1993 Act.

4.2 Amendments were recently made to the 1993 Act by the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 (SI 2008/1774: "the 2008 Order"). Notably, the 2008 Order provided for less of the constitution of each statutory committee to be set out in the 1993 Act and more to be set out in rules made by the GOsC but subject to Privy Council approval. The 2008 Order also contained the revocation of the 1998 Rules.

4.3 The 2008 Order also provided for new constitutional arrangements for the council itself. The GOsCs own constitution is now set out in a new constitution Order, the General Osteopathic Council (Constitution) Order 2009 ("the Council Constitution Order"), which comes into force, like the 2009 Rules, on 1st April 2009. The 2009 Rules are therefore part of a package of new governance arrangements for the GOsC that come into force on that date.

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 a number of reforms to the United Kingdom's system for the regulation of health care professionals. It proposed a number of changes to the constitutional arrangements for the Health Professions' Regulators in order to provide stakeholders with stronger assurance of their independence from government, employers and the health professionals themselves. This led to the changes to the Osteopaths Act 1993 which were made by the 2008 Order that will afford GOsC greater autonomy over the running of its internal structures and committees.

7.2 The 2009 Rules set out the constitutional arrangements for all of the GOsCs statutory committees. They make provision with regard to the composition, quora and chairing arrangements for each committee, the criteria for appointment of committee members, and the criteria for suspending and removing members from office. There are new criteria for the disqualification, suspension and removal of statutory committee members. These are similar to the criteria that have already been included in the Council Constitution Order in relation to the appointment of members to the Council, and are also similar to those that have also been put in place for the General Chiropractic Council and its statutory committees, and for other Health Professions' Regulators. Accordingly, they are indicative of a significant degree of consensus on the appropriate grounds for restricting membership of Health Professions' Regulators and their statutory committees.

7.3 The 1993 Act requires that each statutory committee be made up not only of ordinary members appointed by the GOsC Council, but also, potentially, of co-opted members whom the statutory committees may put forward themselves (subject to confirmation by the GOsC Council). The provisions on co-option are intended, essentially, to do no more than reflect the underlying statutory framework. Given the separation of function that has been achieved between the GOsC Council and its Investigating, Professional Conduct and Health Committees by virtue of the current reforms, there would be no expectation that any member of Council would be co-opted to any of those committees.

7.4 As regards the ordinary membership of the statutory committees, the Education Committee will be reduced in size from 13 members to 9, only five of whom will be Council members whereas the current committee is made up exclusively of Council members. This is intended to allay any concerns that the committee might focus on concerns that are internal to the Council.

7.5 The changes to the ordinary membership of the other statutory committees ("the practice committees") are even more fundamental. Their ordinary membership will cease to be drawn from the General Council and will instead be public appointments. This is in line with the Government's view that the Council's of the Health Care Professions should be more board-like and Council members should be focusing on strategy and the oversight of their executives. The change will enable the Council to appoint to its committees that are responsible for health and conduct matters people with specific expertise that is relevant to the work that the practice committees do. The Investigating Committee will have a membership of not more than 15 people, and the Health and Professional Conduct Committees memberships of not more than 18 people, from which will be drawn panels to meet for particular hearings. Similar panel systems are already used by other Health Professions' Regulators and are thought to allow for more effective and efficient disposal of health and conduct cases than traditional practice committees. Permitting the GOsC to move to such a system is also in line with the present overarching policy of allowing Health Professions' Regulators greater autonomy over their internal structures.

7.6 There are further provisions to ensure that proceedings of statutory committees are not invalidated by defects in appointments, vacancies, or disciplinary action against committee members. This is a standard provision to obviate the need to repeat such proceedings.

- ***Consolidation***

7.7 The 2009 Rules are a self-standing set of Rules that do not amend other legislation.

8. Consultation outcome

8.1 The draft General Osteopathic Council (Constitution of Statutory Committees) Rules Order of Council 2009 was published for consultation by the GOsC on 6 December 2008. The consultation took place over a two month period, between 6 December 2008 and 5 February 2009. The consultation paper was published on the GOsC's website and the GOsC notified interested parties of the consultation.

8.2 Eleven responses were received, from existing members of professional conduct committees, representatives of osteopathic schools, and another healthcare regulator.

8.3 The package was welcomed overall, but the following particular concerns were raised:

- In relation to the Education Committee, there was a concern that the reduced size of the GOsC's Council (it is being reduced to 14) would make it difficult for the necessary numbers to be recruited to this Committee; the GOsC is however confident it will be able to do so.

- Concern was expressed by one respondent at the reduced quorums for both the Investigating and Professional Conduct Committees, in view of the importance and sensitivity of their work. The GOsC considers that the work of the IC and PCC can nevertheless be done effectively with reduced quorums, and the lower numbers permitted for a quorum will assist the GOsC to process cases more efficiently. However, a strong preference was expressed amongst those responding for having a minimum of two osteopaths at Investigating Committee meetings, as this would inform the debate and discussion at IC meetings more broadly in the light of the different forms of therapeutic modalities in osteopathy. The GOsC accepts this argument and a change has been made to the draft, to provide for the quorum of five to contain at least two osteopaths and two lay members.

- One respondent was also concerned that financial penalty orders by a licensing body were not an automatic ground for disqualification from committee membership. The GOsC believes that the current provisions, allowing for disqualification or removal where the Council is satisfied that a person's membership of a statutory committee would be liable to undermine public confidence in the regulation of registered osteopaths, are sufficient in this type of case.

- There have also been drafting changes to the Rules to clarify the intent of particular provisions.

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 on business, charities or voluntary bodies. Appointments to the statutory committees must be ratified by the GOsC Council. The Council itself is subject to the GOsC's Race

Equality scheme, which affords protection of equality and diversity within the Osteopathic profession, as well as within the GOsCs own workforce. This provides the necessary safeguards to ensure that there is no negative impact on equality issues.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

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, within the Department of Health, after three years.

13. Contact

Stuart Griffiths at the Department of Health Tel: 0113 254 5249 or email: Stuart.Griffiths@dh.gsi.gov.uk can answer any queries regarding the instrument.