EXPLANATORY MEMORANDUM TO

THE GENERAL OSTEOPATHIC COUNCIL (CONSTITUTION) ORDER 2009

2009 No. 263

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 This Order sets out the new constitutional arrangements of the General Osteopathic Council (GOsC). The Council will consist of 7 lay and 7 professional members, all of whom will be appointed by the Privy Council (although in practice the Privy Council's appointment functions will be delegated to the Appointments Commission). This Order also sets out the criteria for disqualification for appointment as a member of the Council, the circumstances in which members may be suspended or removed from office, and the chairing arrangements for the GOsC.

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

3.1 None

4. Legislative Context

4.1 Prior to this Order, the GOsC was made up of 12 professional members who were registered osteopaths elected by other osteopaths registered with the GOsC, 8 lay members appointed by the Privy Council (although in practice appointed by the Appointments Commission), 3 members appointed by the GOsC's own Education Committee and one member appointed by the Secretary of State. The constitution of the GOsC was set out, essentially, in the Schedule to the Osteopaths Act 1993 ("the 1993 Act"), but those constitutional arrangements have been revised.

4.2 Amendments have been made to the 1993 Act by the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 (SI 2008/1774: the 2008 Order), which provided a new constitutional framework for the GOsC. Notably, the 2008 Order amended the 1993 Act so as to require that the Council be fully appointed, rather than the mix of appointed members and elected professional members described above, and provided for the constitution of the GOsC to be set out in a separate Order of the Privy Council, rather than in the 1993 Act itself. This Order is that new separate Order.

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 substantial programme of reform to the system of regulation for the health care professionals. A desired outcome of the reforms was to increase accountability of the Health Professions' Regulators whilst at the same time increasing their independence from Government.

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 Health Professions' Regulators. These were that:

- The Councils of the Regulators 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 Health Professions' Regulators, council members will 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 Health Professions Regulators

7.3 The arrangements set out in this Order mean that the GOsC has parity of lay and professional membership and is smaller (down from 24 to 14 members). The smaller council will, therefore, be able to act strategically in a board-like manner. In addition, parity in lay and professional membership will dispel perceptions that the GOsC may act partially towards its registrants.

7.4 The Order provides that terms of office of GOsC Council members will be determined by the Privy Council on appointment, although in practice this function will be delegated to the Appointments Commission. It is envisaged that members will be appointed for a term of four years from the start of the new constitution, but the flexibility of allowing the Appointments Commission to determine terms of office on appointment, will allow for flexibility over matters such as determining the duration of appointments to fill vacancies. It would also allow the GOsC and the Appointments Commission to agree staggered appointments, as happens with other Health Professions Regulators.

7.5 The Appointments Commission will also be responsible, on behalf of the Privy Council, for the suspension or removal from office of members, in accordance with criteria set out in this Order. However, the GOsC may also provisionally suspend its members under its own standing orders, pending the outcome of the Appointments Commission's consideration of the matter. The Order also allows the Appointments Commission to stay its own consideration of whether or not to suspend a member while the GCC is carrying out its own investigation. A balance is therefore struck between the independence of the Regulator, the GOsC, and the effectiveness of independent oversight of the Regulator.

7.6 As regards the appointment of the Chair, there is a transitional provision to ensure continuity by providing that the person holding the position of Chair immediately prior to implementation of the new constitution shall serve as the first Chair of the newly appointed GOsC should they be reappointed as a member of the new Council. Directions are indeed being given to the Appointments Commission to reappoint the current Chair as a new member.

- ***Consolidation***

7.7 This is new legislation that does not amend existing legislation.

8. Consultation outcome

8.1 The General Osteopathic Council (Constitution) Order was published in draft for public consultation on 15 August 2008. It ran for 12 weeks, and consultation closed on 7 November. The consultation document was issued to professional and representative bodies as well as being posted on the Department of Health's website. Four responses were received.

8.2 There was general support for the key features of the proposed new GOsC Constitution. However, two of the four who responded expressed some disagreement regarding the composition of the Council. A full analysis of the consultation responses is posted on the Department of Health website, www.dh.gov.uk.

8.3 Although a response was not received from the GOsC itself, they have been involved throughout in the process of producing this Order and are in agreement with its contents.

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 business, charities or voluntary bodies. There is no negative impact on equality issues.

10.2 There is no negative impact on the public sector.

10.3 An Impact Assessment is attached to this Memorandum.

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 after 3 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.

Summary: Intervention & Options

Department /Agency: DH	Title: General Osteopathic Council (Constitution) Order 2009	
Stage: Implementation	**Version: 1.0**	**Date: January 2009**
Related Publications: White Paper - "Trust, Assurance and Safety"		

Available to view or download at:
http://www.dh.gov.uk

Contact for enquiries: Stuart Griffiths **Telephone:** 0113 254 5249

What is the problem under consideration? Why is government intervention necessary?

The problem concerns the need to address the lack of public confidence in the Health Professions Regulators, in this particular case the General Osteopathic Council (GOsC). This legislation delivers enhanced confidence in regulation through a smaller council, independently appointed, with parity between lay and professional members. Government intervention is necessary to secure the legislative changes required to reconstitute the GOsC's council, to guard against perceptions that Heatlh Professions Regulators' councils with a majority professional representation are partial to professionals. A smaller sized council will enable the GOsC Council to act strategically in a board-like manner.

What are the policy objectives and the intended effects?

Policy objectives: to enhance public confidence in the GOsC, strengthening their ability to act independently and strategically. This will be achieved by setting out the constitutional arrangements of the GOsC in a new Constitution Order which makes a number of changes to the governing structure of the GOsC including a move to a smaller, fully appointed council. The intended effect of this is enhanced public confidence in the work of the GOsC.

What policy options have been considered? Please justify any preferred option.

The policy options considered were (1) do nothing - discarded as no improvements would be made, and, (2) provide for the GOsC Council's constitution, contained in an Order of the Privy Council, which includes the detail of revised proposals for governance - including lay and professional membership parity and revised chairing arrangements. It was decided to adopt option 2 as this provided a flexible approach that allowed the constitution of the Council to reflect the number and range of registrants, and to provide the clear basis for the appointment, removal, and supsension of members.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? June 2011

Ministerial Sign-off For final proposal/implementation Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

..... Date January 2009

Summary: Analysis & Evidence

Policy Option: OPTION2 (over Opt 1)	Description: Adoption of a smaller, fully appointed Council

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected Estimated difference in selection and running costs for the proposed Council. Selection costs are front loaded in the review period such that assessment over a longer period suggests lower average discounted annual costs implications in the order of £6.5k p.a. to 9.5k p.a.	
One-off	**Y**		
£ 0K	1		
Average Annual Cost (excluding one-off)			
£ 17K		**Total Cost** (PV)	**£ 50K**
Other **key non-monetised costs** by 'main affected groups'			

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups' The benefits cannot be monetised	
One-off	**Y**		
£ 0			
Average Annual Benefit (excluding one-off)			
£ 0		**Total Benefit** (PV)	**£ 0**
Other **key non-monetised benefits** by 'main affected groups' GOsC enjoys enhanced confidence as a Regulator through a smaller independently appointed council (see page 5 for full discussion of key non-monetised benefits)			

Key Assumptions/Sensitivities/Risks The GOsC is assumed to have an unchanged number of meetings / year and unchanged costs per Council Member.

Price Base Year 2009-	Time Period Years 3	**Net Benefit Range** (NPV) **£-£48k to - £54k**	**NET BENEFIT** (NPV Best estimate)

What is the geographic coverage of the policy/option?			UK	
On what date will the policy be implemented?			April 2009	
Which organisation(s) will enforce the policy?			GOsC	
What is the total annual cost of enforcement for these organisations?			£	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£	
What is the value of changes in greenhouse gas emissions?			£	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of £	Decrease of £	**Net Impact**	**£**

Key:	**Annual costs and benefits:**	**(Net) Present**

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

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

Over recent years, most of the Health Professions Regulators have made changes to provide greater reassurance that they are even-handed in their deliberations and decisions but perceived dependence, or attachment to, a particular interest has continued to weaken or threaten confidence in those actions. The composition of the Regulators is central to those perceptions.

The White Paper therefore proposed 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 Health Professions Regulators, council members will be independently appointed; and,
- 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.

Legislation amending the framework for the constitutional arrangements for the GOsC, along with three other Health Professions Regulators, in line with these recommendations, was put forward in the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 SI No. 1774. These reforms will be continued in the Health Care and Associated Professions (Miscellaneous Amendments) Order 2009 that is to be laid before parliament in early 2009.

At present, each Health Professions Regulator's council consists of a number of lay members appointed by the Privy Council (who in practise delegate this task to the Appointments Commission) and a number of registrant members who are elected by the registrants themselves or are nominated by other bodies. In future all members of councils will be appointed by the Privy Council. All organisations need to adapt to changing circumstances over time. By having the constitutions of these councils set in Orders of the Privy Council will make it easier for changes to be made to a regulatory body's overall governing structure in the future.

GOsC Constitution Order

This Impact Assessment follows publication of a consultation on the proposed new GOsCs Constitution. The consultation on the draft legislation closed on 7 November 2008. Responses to the consultation supported the proposed constitutional amendments. A report on the outcomes of the consultation will be published on the Department of Health's website to accompany this impact assessment.

The GOsC's role as a Health Profession Regulator is to develop and regulate the profession of osteopathy in the interests of protecting patients and the public. They maintain a register of all osteopaths eligible to practise within the UK. They set standards for the education of osteopaths, and also set standards of practice and conduct of osteopaths, and investigate any allegations about the fitness of individuals to practise as osteopaths, whether on grounds of capability, conduct or health.

This Order sets the numbers of lay and registrant members on the GOsC Council (to consist of 14 members made up of 7 lay and 7 professional members), their terms of office (which are to be determined by the Appointments Commission, on appointment), arrangements for appointing a chair, and provisions with respect to the suspension or removal of members. In particular, it provides for a smaller Council for the GOsC than is in place at present. All members will be independently appointed (by the Appointments Commission), rather than the current mix of nominated or appointed lay members and elected;

Estimated costs:

The cost differences between the current and proposed versions of the Council relate to both the costs of selecting members (through appointment or election) and the running costs of the Council itself (such as remuneration and travel and subsistence). These two types of cost are treated differently.

Running costs

Current council:

Appointed/elected members	Attendance	£92k		
	Travel		£16k	
	Subsistence		£3k	= £111k
Co-opted members	Attendance		£18.6k	
	Travel		£3k	
	Subsistence		£0.3k	= £22.3k

Total costs of current council = £133.3k p.a.

Proposed council:

New council will have 14 members. New remuneration policy giving annual fee plus expenses taking effect from 1 April 2009 as follows:

Council members x 13		£6.5k per year = £84.5
Chair	£22k	
Treasurer – responsibility allowance	£5k	
Plus Travel and subsistence expenses	£19k	

Total costs of current council = £130.5k p.a.

Cost of selecting members

Current council – assumptions

- 8 lay members are appointed for two-year terms (with a possibility of reappointment for a further two years).

  In 2008, two lay members were appointed at a cost of £18k suggesting an appointment cost of £9k per member

  In 2008, six lay members were reappointed at a cost of £1k suggesting a reappointment cost of £167 per member

  Assuming full terms are served six appointments and two reappointments would be expected in 2010, 2014, 2018 etc and two appointments and six reappointments would be expected in 2012, 2016, 2020 etc

- 12 registrant members are elected for four-year terms

  In 2006, twelve registrant members were elected at a cost of £8k suggesting an election cost of £167 per member

  Assuming full terms are served the elections for twelve members would be expected to take place in 2010, 2014, 2018 etc

- 1 SoS appointee is appointed for a two-year term with a possibility of reappointment for a 2nd two-years

  Last appointment was in 2006 at a cost of £500. Assumed reappointment costs of £167 as per other reappointments.

  Assuming full terms appointments are due in 2010, 2014, 2018 etc and reappointments due in 2012, 2016, 2020 etc.

- 3 Education Committee members are appointed for a two-year term with a possibility of reappointment for a 2nd two-years

  Last appointments were in 2006 at a cost of £8k (suggesting £2.67k) each. Assumed reappointment costs of £167 as per other reappointments.

  Assuming full terms appointments are due in 2010, 2014, 2018 etc and reappointments due in 2012, 2016, 2020 etc.

Proposed council – assumptions

- 14 members are usually appointed for four-year terms.

  The new council will require 14 new members in 2009. This large scale appointment is expected to cost £70k.

  To prevent terms expiring en masse and spreading the loss of expertise as membership changes, terms for the initial members are expected to be 2 years for half and 3 years for the other half.

  Assuming full terms are served seven appointments are expected in 2011, 2012, 2015, 2016, 2019, 2020 etc

  The cost of seven appointments is expected to be £60k suggesting a cost per appointment of £8.6k

Total costs

Based on the assumptions above, the total additional costs of the proposed council can be estimated. The results are presented in the tables below.

The time profile of selection costs is uneven and differs between the current and proposed council arrangements. This means the average annual cost difference differs across difference assessment periods. A choice of assessment periods is given below.

The assumption that all members serve full terms could also be questioned. The tables below includes results of a sensitivity analysis exploring the effects of assumptions around members serving half-terms.

% of members leaving mid term	Discounted cost (£k) over assessment period of: 3 years	10 years	12 years	15 years
0%	16.5	3.9	8.8	6.2
10%	18.1	6.7	9.4	8.0
25%	17.2	8.0	8.8	8.6
50%	15.8	9.0	8.9	9.5

% of members leaving mid term	Total PV cost (£k) over assessment period of: 3 years	10 years	12 years	15 years
0%	49.6	39.3	105.8	92.3
10%	54.2	67.5	112.5	119.6
25%	51.6	79.6	105.7	128.3
50%	47.4	90.2	106.4	141.8

Assessed over the review period of 3 years the average annual discounted cost of the proposed Council is in the order of £16k p.a. to £18k p.a. with a central estimate of approximately £17k p.a.. This translates into a total present value cost of £48k to £54k with a central estimate of approximately £50k.

However, if the new Council were to exist in a similar form after the review in 2011 then a short term assessment of 3 years skews the assessment of the average annual cost implications of the new Council. The selection of members for the new Council operates on a 4-yearly cycle with front loaded costs. Over its lifetime, average annual costs are expected to be lower.

Bearing in mind the ambiguities around the assessment period and the impact of members serving less than full terms, an average annual cost in the range of £6.5k to £9.5k seems reasonable with a central estimate of £8.5k.

.Key non-monitised benefits

This assessment shows a small overall cost to the GOsC. However, this will be offset by benefits that cannot be monetised. The reforms to the GOsC will improve public confidence in the work of the GOsC through a smaller, independently appointed council able to focus more effectively on the oversight of its executive.

These reforms are part of an overall programme set out in the White Paper *Trust, Assurance and Safety* that will apply to all the Health Professions Regulators. The option of not taking forward the reforms to

the GOsC because of the increased cost was discounted as none of the benefits would be achieved and it may also have an adverse affect on public opinion of the GOsC, were it not reformed in the same way as the other Regulators.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

Competition Assessment

No issues have been identified

Small Firms Impact Test

No impact on small firms

Legal Aid

No legal issues identified

Sustainable development

No issues identified

Carbon Assessment

No impact

Other environment

No environmental issues identified

Health Impact Assessment

No issues identified

Race/Disability/gender equality

In drafting the Order, we have considered the possible impact on equality issues (age, disability, gender, race, religion or belief, and sexual orientation) of each of the policies described in this Impact Assessment.

The Appointments Commission, when exercising the powers to appoint members to the GOsC's council which are delegated to them by the Privy Council in directions, is obliged by virtue of the directions: (i) to apply good practice in relation to equality and diversity issues, and (ii) make appointments which reflect the desirability for the GOsC to have persons a range of backgrounds, qualifications, competencies, interests and experience on its Council.

The GOsC has in place an Equality and Diversity Scheme and Action plan (accessible at: http://www.osteopathy.org.uk/about_gosc/GOsCdraftEqualityScheme.pdf). Its objectives in respect of equality and diversity are:

- to promote equality of opportunity and access to the profession for all;
- to ensure a regulatory framework which maintains the profession's integrity and affords adequate protection to a diverse public;

- to ensure a system of governance for the profession that supports diversity; and
- to promote an inclusive and accessible environment as an employer and provider of
- information and services.

In preparing this Scheme, all heads of GOsC departments were asked to assess the equality and diversity implications of their teams' work, and to consider what action might be required to meet best practice. The detailed Action Plan that forms part of the Equality Scheme sets out how the GOsC intends to achieve its overall objectives. The Scheme and Action Plan also take into the GOsCs duties as an employer. These include how the GOsC recruit, develop, train, reward and support those who work for then. The GOsC aim to create an inclusive working environment where people from backgrounds and experience can thrive.

Human Rights

No issues identified

Rural Proofing

No issues identified