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STATUTORY INSTRUMENTS

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**2001 No. 3057**

**OPTICIANS**

The General Optical Council  
(Membership) Order of Council 2001

*Made* - - - - 5th September 2001  
*Laid before Parliament* 6th September 2001  
*Coming into force* - - 27th September 2001

At the Council Chamber, Whitehall, the 5th day of September 2001  
By the Lords of Her Majesty's Most Honourable Privy Council

Whereas in pursuance of paragraph 3 of Schedule 1 to the Opticians Act 1989<sup>(1)</sup>, the General Optical Council have submitted to the Privy Council a Scheme as set out in the Schedule to this Order:

And whereas by virtue of section 34(1) of the said Act such a Scheme shall not come into force until approved by Order of the Privy Council:

And whereas the Scheme on coming into force will revoke and replace the Scheme approved by the Privy Council on 13th May 1974<sup>(2)</sup>:

Now, therefore, Their Lordships, having taken the said Scheme into consideration, are hereby please to approve the same, and hereby revoke with effect from 27th September 2001 the General Optical Council Election Scheme (Approval) Order of Council 1974.

This Order may be cited as the General Optical Council (Membership) Order of Council 2001.

*A. K. Galloway*  
Clerk of the Privy Council

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<sup>(1)</sup> 1989 c. 44.

<sup>(2)</sup> The General Optical Council Election Scheme (Approval) Order of Council 1974 was made under the Opticians Act 1958, which did not require the Order to be exercised by statutory instrument.

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## SCHEDULE

### THE GENERAL OPTICAL COUNCIL ELECTION SCHEME, 2001

The General Optical Council, in exercise of their powers under paragraph 3(2) of Schedule 1 to the Opticians Act, 1989, hereby make the following Scheme.

#### Part I—

##### Citation, Commencement and Interpretation

1. This Scheme may be cited as the General Optical Council Election Scheme 2001 and shall come into operation on 27th September 2001.

2. In this Scheme the following expressions shall have the following meanings respectively:

“the Act” means the Opticians Act 1989;

“the Council” means the General Optical Council established under the Act;

“registered address” means the address entered in either of the registers of ophthalmic opticians or the register of dispensing opticians maintained by the Council in accordance with the Act as the permanent address of a registered optician.

3. A document is published for the purposes of this Scheme, if a copy thereof—

(i) is sent to the bodies appearing to the Council to be representative of ophthalmic or dispensing opticians, and to the optical press as the Council directs;

(ii) is made available for inspection at the address specified under sub-paragraph (2) of paragraph 7 of this scheme; and

(iii) is sent to any person on request.

4. The requirements in paragraphs 8, 9, 13, 19, 25 and 27 of this Scheme that documents conveying respectively nominations, withdrawal of candidates, votes, returns and protests shall be received by days fixed under any of those paragraphs mean that such documents shall be valid only if delivered to or received by post at the address specified under sub-paragraph (2) of paragraph 7 of this Scheme not later than 5 p.m. on the day fixed for the purpose.

5.—(1) Section 36 of the Act shall apply for the interpretation of this Scheme as it applies for the interpretation of the Act.

(2) The Interpretation Act 1978 shall apply for the interpretation of this Scheme as it applies for the interpretation of an Act of Parliament.

#### Part II—

##### Returning Officer

6.—(1) Not less than six months before the date on which the members of the Council for the time being chosen to represent registered opticians are due to retire the Council shall appoint a Returning Officer for the election of persons to represent registered opticians in succession to such members and a Deputy Returning Officer entitled to carry out the functions of the Returning Officer at such times as he is absent or unable to act. Any person (including the Registrar of the Council) except a member of the Council shall be eligible to be appointed as Returning Officer or Deputy Returning Officer.

(2) A Returning Officer or Deputy Returning Officer appointed under this Scheme shall cease to hold office when the election for which he is appointed (including any further election held under paragraph 23 of this Scheme) has been completed, and if he should previously resign his office or die or be unable to act the Council may appoint another person in his place.

(3) The Returning Officer may appoint persons to assist him in the conduct of the election for which he is appointed.

7.—(1) Not less than five months before the date on which the members of the Council for the time being elected to represent registered opticians are due to retire the Returning Officer shall fix a nomination day and shall publish the date he has fixed for his purpose.

(2) Not less than twenty-one days before the nomination day thus fixed and published the Returning Officer shall send to all registered ophthalmic opticians whose registered addresses are in the United Kingdom a notice in the form set out in Appendix A to this Scheme, specifying the address to which all nomination forms are to be returned, and the date of the nomination day, accompanied by a nomination paper in the form set out in Appendix B to this Scheme, and to all registered dispensing opticians whose registered addresses are in the United Kingdom a similar notice accompanied by a nomination paper in the form set out in Appendix C to this Scheme.

### **Part III— Nominations**

8.—(1) A candidate for election as a person to represent registered ophthalmic opticians in England, Northern Ireland, Scotland or Wales shall be nominated in writing by not less than six registered ophthalmic opticians whose registered addresses are in the country for which the candidate is nominated in accordance with paragraph 11 of this scheme.

(2) A nomination shall be valid only if received by the nomination day and made in the form set out in Appendix B to this Scheme and signed by the person or persons nominating the candidate.

(3) The nominations may be comprised in more than one form but every form shall include a statement signed by the candidate identifying himself and confirming his willingness to stand as the candidate for the vacancy for which he has been nominated.

9.—(1) A candidate for election as a person to represent registered dispensing opticians shall be nominated in writing by not less than six registered dispensing opticians whose registered addresses are in the United Kingdom.

(2) A nomination shall be valid only if received by the nomination day and made in the form set out in Appendix C to this Scheme and signed by the person or persons nominating the candidate.

(3) The nominations may be comprised in more than one form but every form shall include a statement signed by the candidate identifying himself and confirming his willingness to stand as candidate for the vacancy for which he has been nominated.

10.—(1) The Returning Officer shall invite each candidate for nomination to supply by the nomination date—

- (a) particulars of his qualifications and career and an election address in a statement of not more than 150 words in all; and
- (b) a passport-size photograph of himself, preferably monochrome.

(2) Subject to the provisions of this paragraph such a statement and such a photograph shall be printed at the cost of the Council and sent along with the voting papers issued under paragraph 18 of this Scheme to all registered opticians eligible to vote for the candidate.

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(3) Nothing in this paragraph shall require the Returning Officer to issue a statement of a length greater than specified in this paragraph or to issue anything which in his opinion is or may be libellous or scandalous or untrue on matters of fact.

(4) Every candidate who supplies such a statement shall be deemed to have agreed—

- (a) that the decision of the Returning Officer not to issue the same or any part thereof shall be final; and
- (b) to indemnify the Returning Officer and the Council against any liability to any third party which he or they may incur by reason of issuing the same.

**11.**—(1) Except in relation to an election held in pursuance of the provisions of paragraph 23 of this Scheme, a registered ophthalmic optician whose registered address is in England may nominate not more than three candidates whose registered addresses are situated, or if any is not a registered optician whose principal place of residence is situated, in England.

(2) A registered ophthalmic optician whose registered address is in Northern Ireland, Scotland or Wales may nominate for the country in which his registered address is situated not more than one candidate, whose registered address is situated, or if he is not a registered optician his principal place of residence is situated, in the country for which he is nominated.

(3) Except in relation to an election held in pursuance of the provisions of paragraph 23 of this Scheme, a registered dispensing optician may nominate not more than five candidates.

(4) If a registered ophthalmic optician attempts to nominate more candidates than he is entitled to do his signature, in the case of a nomination for England, shall be valid only on the first three forms in order received by the Returning Officer, or in the case of a nomination for Northern Ireland, Scotland or Wales, on the first form so received.

(5) If a registered dispensing optician purports to nominate more candidates than he is entitled to do, his signature shall be valid only on the first five forms in order received by the Returning Officer.

(6) When two or more forms are received simultaneously at the address specified by the Returning Officer under sub-paragraph (2) of paragraph 7 of this Scheme they shall be deemed for the purpose of the foregoing sub-paragraph to have been received by the Returning Officer in the order in which he in fact sees them.

**12.**—(1) A person may be nominated as a candidate for election as a person to represent registered opticians whether or not he is a registered optician.

(2) The Returning Officer may require such evidence as he considers necessary as to a candidate's principal place of residence and a person shall not be accepted as a candidate if he fails to produce such evidence to the satisfaction of the Returning Officer.

**13.** A candidate may withdraw his candidature by notice in writing signed by him and received by the Returning Officer by the nomination day, and in that event the nomination of that candidate shall be disregarded for the purposes of Parts IV to VIII of this Scheme.

## **Part IV—**

### **Elections**

**14.** If after the expiration of the time allowed under this Scheme for nominations of candidates—

- (a) no more candidates have been nominated than there are vacancies to be filled, the Returning Officer shall forthwith declare the candidates so nominated to have been elected to fill those vacancies;

- (b) more candidates have been nominated than there are vacancies to be filled, the Returning Officer shall cause a poll to be held.

**15.—**(1) When a poll is to be held the Returning Officer shall fix a polling day and shall publish—

- (a) the date thereof, which shall not be less than twenty-one days later than the date of such publication and shall, wherever practicable, be a date preceding the day on which members of the Council for the time being elected to represent registered opticians are due to retire;
- (b) the names and addresses of all candidates; and
- (c) subject as provided in the next following sub-paragraph, the names and addresses of the registered opticians nominating each candidate.

(2) If the Returning Officer receives more than six nominations in relation to any one candidate, he shall invite the candidate to state which six nominations should be published in connection with the candidature.

(3) If the Returning Officer cannot obtain within four days such a statement from the candidate, he shall publish in connection with the candidature for six nominations earliest received, or where several nominations are on one form, those first mentioned therein.

(4) For the purpose of the foregoing sub-paragraph the provisions of sub-paragraph (6) of paragraph 11 of this Scheme shall apply where necessary for determining the order of time in which nominations shall be deemed to have been received by the Returning Officer.

(5) The Returning Officer shall send a copy of this Election Scheme to each person nominated as a candidate, and shall draw attention to paragraphs 10, 24, 25 and 26 of this Scheme, which relate respectively to the publicity available through the Returning Officer, to the restrictions on expenditure, to the return and statutory declaration which candidates are required to make, and to the publication of returns.

**16.—**(1) On a poll to elect a person or persons to represent registered ophthalmic opticians every registered ophthalmic optician whose registered address is in the United Kingdom shall be entitled to vote for as many candidates as there are vacancies to be filled.

(2) On a poll to elect a person or persons to represent registered dispensing opticians every registered dispensing optician whose registered address is in the United Kingdom shall be entitled to vote for as many candidates as there are vacancies to be filled.

## **Part V— Conduct of Polls**

**17.—**(1) Where a poll is to be held the Returning Officer shall prepare voting papers and lists of candidates and nominators together with envelopes for them.

(2) The envelopes shall be addressed to the Returning Officer at the address specified under sub-paragraph (2) of paragraph 7 of this Scheme.

(3) Where the poll is for the election of representatives of registered ophthalmic opticians voting papers shall be in the form set out in Appendix D, and lists of candidates and nominators shall be in the form set out in Appendix F to this Scheme, and where the poll is for the election of representatives of registered dispensing opticians the voting papers shall be in the form set out in Appendix E, and the lists of candidates and nominators shall be in the form set out in Appendix G to this Scheme.

**18.—**(1) The Returning Officer shall at least eight days before the polling day send to the registered address of each registered optician entitled to vote in the poll (but not to any registered

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optician who has informed him in writing that on the grounds of conscience he does not wish to be so entitled) a voting paper, a list of candidates and nominators, an envelope prepared in accordance with the provisions of this Scheme along with any statements which he is required to issue under paragraph 10 of this Scheme.

(2) Each registered optician entitled to vote in the poll shall be entitled to receive one voting paper, one envelope, and no more, and votes shall not be valid unless made upon a voting paper received from the Returning Officer and in accordance with the requirements of this Scheme.

Provided that the Returning Officer may replace a voting paper or an envelope inadvertently spoiled or destroyed if application is made to him in writing to include an undertaking that he has not marked and will not mark more than one voting paper in the election for this purpose on or before the polling day.

**19.** Votes shall be cast as follows—

- (a) The voter shall record his vote or votes on the voting paper in accordance with the instructions thereon:
  - (i) Registered ophthalmic opticians whose registered addresses are in the United Kingdom are entitled to vote for not more than three candidates from those nominated for England and not more than one candidate from those nominated for each of Northern Ireland, Scotland or Wales.

The voter must record his vote by putting a mark thus X against the name in the voting paper of not more than three of the candidates for England and not more than one candidate for each of Northern Ireland, Scotland or Wales.
  - (ii) Registered dispensing opticians whose registered addresses are in the United Kingdom are entitled to vote for five candidates.
- (b) The voter shall enclose the voting paper in the envelope and seal such envelope without making on it any distinguishing mark.
- (c) The voter shall return the envelope and its contents to the address given on the envelope so that it is received there by polling day.

**20.—**(1) Immediately after the polling day the Returning Officer shall cause the—

- (i) withdrawing of the voting papers from the envelopes; and
- (ii) counting of the votes validly cast for each candidate.

(2) For the purposes of this paragraph a vote shall be deemed to have been validly cast if, but only if, it has been cast in accordance with paragraph 19.

**21.** If in any poll the same number of votes is cast for each of two or more candidates, the Returning Officer shall, where necessary to decide the result of the election, determine by lot which of the candidates shall be deemed to have obtained the highest or the next highest number of votes for the purposes of this Scheme.

## **Part VI—**

### **Declaration of Election**

**22.—**(1) When the Returning Officer declares the result of an election, he shall certify in writing—

- (a) the name of each person elected, the category registered opticians which he has been chosen to represent and, in the case of a person chosen to represent registered ophthalmic opticians, the country in respect of which he was elected;

(b) if a poll has been held, the names of all other candidates, and the numbers of votes cast respectively for the persons elected and for every other candidate.

(2) The Returning Officer shall publish his certificate and shall forthwith send a copy of the same to all candidates named therein and to all members of the Council, and shall submit the certificate to the Council at their next meeting.

**23.** If—

- (i) after the nomination day a candidate dies before an election in respect of the vacancy for which he has been nominated has taken place; or
- (ii) a candidate who has been elected as a person chosen to represent registered opticians dies or resigns before the date upon which the members for the time being chosen to represent registered opticians shall have retired; or
- (iii) after an election has taken place in accordance with the foregoing provisions of this Scheme there remains any vacancy unfilled due to an insufficiency of nominations, or the withdrawal of candidates, or the Council has under paragraph 29(3) declared a person's election invalid, or any other cause:

the Returning Officer shall in respect only of the vacancy for which the deceased or resigning candidate was nominated or which remains unfilled as a result of such death or other cause (as the case may be) cause a further election to be held as soon as practicable and for that purpose shall forthwith fix another nomination day, and publish the date thereof, and thereafter if necessary fix another polling day and publish the date thereof, and shall proceed with the further election in accordance with the foregoing provisions of this Scheme with such modifications only as the circumstances may require:

Provided that the death or resignation of a candidate shall not affect the validity of the nomination of another candidate any such nomination duly made in respect of the first election shall (subject to the provisions of paragraph 29 of this Scheme) be deemed to be a valid nomination for a further election for the same vacancy held pursuant to this paragraph.

**24.—**(1) The expenditure incurred by or on behalf of a candidate in the conduct or management of the election (other than any expenditure incurred on his behalf by the Council under sub-paragraph (2) of paragraph 10 of this Scheme) shall not exceed £500.

(2) For the purposes of this Scheme, “expenditure” means all relevant expenditure made or incurred between the date on which the Returning Officer issued the notice required by sub-paragraph (2) of paragraph 7 of this Scheme and the polling day, other than reasonable travelling and subsistence expenses of the candidate and of his family, and reasonable travelling and subsistence expenses of other persons not defrayed by or on behalf of the candidate.

(3) Without prejudice to the generality of the foregoing sub-paragraphs of this paragraph, “expenditure” includes the cost of the preparation of pamphlets or circulars, the cost of advertisements in newspapers or elsewhere, the cost of meetings specially convened for the purpose (including a share in the costs of such meetings arranged by or for candidates jointly) and postal and telephone charges incurred in connection with the election.

**25.** Not later than the fourteenth day after declaration of the result of an election, every candidate declared to have been elected shall furnish to the Returning Officer a true and complete return in the form specified in Appendix H to this Scheme of all expenditure incurred by him or on his behalf in the conduct or management of the election, supported by a statutory declaration in the form specified in Appendix I to this Scheme.

**26.** As soon as possible the Returning Officer shall publish all statements of expenditure received under paragraph 25 of this Scheme and shall send copies to all persons entitled to receive his certificate of the result of the election under paragraph 22 of this scheme.

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## **Part VIII—**

### **Validity of Election**

**27.** The certificate of the Returning Officer published under paragraph 22 of this Scheme shall be conclusive evidence of the facts stated therein unless in respect of the election of any person a written notice of protest signed by not less than twenty-five registered opticians is received by the Returning Officer not later than the twenty-eighth day after the publication of the certificate. Such protest may be made on one or more of the following grounds—

- (a) that the election of that person was not in accordance with the requirements of this Scheme;
- (b) that the election of that person was furthered by the conduct which in the case of an election regulated by the Representation of the People Act 1983 (amended by s.17 and Schedule 3, paragraphs 1 and 30 of the Greater London Authority Act 1999) would be a corrupt practice by way of bribery, treating or undue influence under sections 113, 114 and 115 of that Act (which are reproduced as Appendix J to the Scheme);
- (c) that the person elected contravened the requirements of paragraph 24, or did not comply with the requirements of paragraph 25, of this Scheme.

**28.** If any candidate declared to have been elected fails to submit a return of expenditure and statutory declaration in accordance with the requirements of paragraph 25 of this Scheme, or if a return submitted under the requirements of that paragraph indicates that expenditure has been incurred in excess of that authorised under paragraph 24 of this Scheme, the Returning Officer shall forthwith make a report on the matter to the Council and shall send a copy thereof to every person entitled to receive a copy of his certificate under paragraph 22 of this Scheme.

**29.—**(1) Any protest under paragraph 27, or any report by the Returning Officer under paragraph 28 of this Scheme, shall be considered by the Council at their next meeting.

(2) The Council shall afford the person concerned an opportunity of making a reply in writing to the protest or the report, and may if they think fit hear oral statements from representatives of the persons signing the protest, from the Returning Officer and from the person concerned.

(3) If the Council are satisfied—

- (a) that the expenditure incurred by him or on his behalf in the conduct or management of the election exceeded the limit specified in paragraph 24 of this Scheme,
- (b) that he has failed to furnish a true and complete return of expenditure as required by paragraph 25 of this Scheme,
- (c) that the election of the person concerned was furthered by such conduct as is described in paragraph 27(b) of this Scheme, or
- (d) that this election was in some other respect not in accordance with the requirements of this Scheme,

then (unless, in case (d), it appears to the Council that the election was conducted substantially in accordance with the requirements of this Scheme and that non-compliance with those requirements did not affect the result) the Council may declare that person's election invalid, and in that event the resulting vacancy shall be filled by a further election as provided by paragraph 23 of this Scheme.

(4) If the Council declare the election of any person invalid they shall forthwith proceed to consider whether in the circumstances of the case they should also declare that person to be disqualified from being nominated as a candidate in such further election, and if they declare him so disqualified any nomination of that person shall be rejected as invalid by the Returning Officer.

**30.** Any declaration made by the Council under paragraph 29 of this Scheme shall be published and shall be binding upon all persons.



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31. A person elected under this Scheme shall come into office as a member of the Council immediately after the expiration of the term of office of the members previously elected to represent registered opticians:

Provided that any person who is the subject of any protest made under paragraph 27 of this Scheme or of any report made under paragraph 28 of this Scheme shall not come into office unless and until such protest or report shall have been considered and disposed of by the Council.

## **Part XI—**

### **Revocation**

32. The General Optical Council Election Scheme 1965, the General Optical Council Election Scheme Amendment Scheme 1966, the General Optical Council Election Amendment Scheme 1970, the General Optical Council Election Scheme 1974, the General Optical Council Election (Amendment) Scheme 1981 and the General Optical Council Election (Amendment) Scheme 1986 are hereby revoked.

Sealed on the thirteenth June two thousand and one.

Attested by:



*D. V. L. Perkins*  
Member of Council

*D. A. Barnes*  
Member of Council

*Peter C. Coe*  
Registrar

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### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order approves the election Scheme submitted to the Privy Council by the General Optical Council that revokes and replaces the 1974 Scheme. The Order also revokes a previous Order of Council that becomes spent on the revocation of the Scheme scheduled to it. The new Scheme reflects the changes to the membership of the General Optical Council made by the General Optical Council (Membership) Order of Council 1998.

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