

## GENERAL SYNOD

## DRAFT ECCLESIASTICAL FEES (AMENDMENT) MEASURE

## Explanatory Memorandum

**Introduction**

1. The draft Ecclesiastical Fees (Amendment) Measure amends the Ecclesiastical Fees Measure 1986 ('the 1986 Measure'). The amendments are largely concerned with the legal framework for parochial fees; however, Part 2 of the draft Measure amends the current provisions for the constitution of the Fees Advisory Commission and the making of Ecclesiastical Judges and Legal Officers (Annual Fees) Orders.
2. The amendments to the law relating to parochial fees give effect, so far as legislation is required in order to do so, to the recommendations contained in the report of the Fees Review Group constituted under the auspices of the Deployment, Remuneration and Conditions of Service Committee (GS Misc 877).
3. The main changes to parochial fees are the replacement of the incumbent's fee by a fee payable to the diocesan board of finance, the establishment of a list of services and other matters in respect of which parochial fees may be prescribed (to which reference will be had instead of the current definition of 'parochial fees'), power for the Archbishops' Council ('the Council') to prescribe fees (including increases) for a period of up to five years, and provision of an express power to prescribe what costs and expenses are included within the statutory fees.

**Notes on clauses****Clause 1: Preparation of Parochial Fees Order**

4. The Council will continue to make Parochial Fees Orders (subject to the same procedure as at present); however, the fees prescribed will be payable to the parochial church council ('PCC') and/or to the relevant diocesan board of finance ('DBF') rather than, in the latter case, to the incumbent. (See subclause (1).) There will therefore cease to be an incumbent's fee; this is, however, subject to transitional provisions that will permit incumbents in office at the time the new provisions come into force to retain their entitlement to fees if they have not already assigned them to the DBF (see clause 5(2)).
5. The Council will have power to prescribe parochial fees in respect of any of the matters set out in the list contained in the new Schedule A1 where those duties are carried out by a priest or deacon, or by a deaconess, reader or lay worker. (See subclause (1).) Subject to the approval of the General Synod, the Council will have power to amend the list of services and other matters in Schedule A1 by Order. (See subclause (6).) This will mean that it will not be necessary to resort to a further amending Measure should it subsequently be considered desirable to prescribe fees in relation to a service or other matter not currently listed.
6. The Council will have the power to set any fee at nil should it think fit to do so. (See subclause (2).) In making a Parochial Fees Order the Council will have power to include within the Order incidental provision, including provision specifying costs and expenses that are included in the

statutory fee: see subclause (3). It is envisaged that this power might be used to specify, for example, that heating and lighting are included in the fee.

7. It will be possible for a Parochial Fees Order to prescribe fees for a period or periods not exceeding 5 years in total; and an Order may contain provision prescribing increases in any of the fees over the period of the Order either by reference to an arithmetical formula or a formula related to a published index such as the retail prices index: see subclause (4).
8. If, for any reason, a new Order has not been made before a current Order expires, the fees contained in the current order will continue in force until the new Order is made and comes into force: see subclause (5).
9. Provision is made for identifying the PCC and DBF to which any fee is payable. Because burials and funerals do not always take place in a church or churchyard, express provision is made to deal with such cases. Where a burial or funeral does take place in a church or churchyard then the fees are payable to the PCC of the parish, and the DBF of the diocese, where that church or churchyard are situated. But where a burial or funeral takes place elsewhere (at a cemetery or crematorium) then the fees are payable to the PCC of the parish, and the DBF of the diocese, where the deceased was on the electoral roll or – where the deceased was not on an electoral roll – where the deceased had his/her usual place of residence. Where the deceased was on more than one electoral roll, fees are shared. (These provisions reflect the established legal position that the duty of conducting funerals and burials is placed on the incumbent of the parish where the deceased was a parishioner.)
10. In relation to services other than burials and funerals (e.g. marriages) the fees are payable to the PCC of the parish, and the DBF of the diocese, where the service takes place. (See subclause (7).)
11. The incumbent (or priest in charge) will have a discretion to waive fees in particular cases. In the case of a fee payable to the DBF the incumbent must consult the person nominated by the bishop for that purpose before waiving the fee. (See subclause (8).) In the case of a fee payable to the PCC the incumbent must consult the churchwardens before waiving that fee. (See subclause (9).) Provision is made for the rural dean to exercise the discretion to waive fees where there is no incumbent or priest in charge.

## **Clause 2: Amendment of section 2 of the 1986 Measure**

12. The procedure that currently applies to the making of a Parochial Fees Order (i.e. laying a draft order before General Synod for approval with or without amendment, followed by the Archbishops' Council making the Order - subject to the power of either House of Parliament to annul it) will also apply to the making of any Order (called a 'Scheduled Matters Amending Order') amending the list of matters in respect of which fees may be prescribed set out in the new Schedule A1.

## **Clause 3: Constitution of Fees Advisory Commission and Ecclesiastical Judges and Legal Officers (Annual Fees) Orders**

13. This clause brings into legislative effect the proposals for reform of the constitution and functions of the Fees Advisory Commission that were reported to the Synod by the Commission in February 2005 (see GS 1562).

14. Clause 3(a) substitutes a new provision for section 4 of the 1986 Measure. This will establish a Fees Advisory Commission with a tripartite membership of nine, representing, in equal proportion, users and providers of legal services and an independent element. Users will be represented by a diocesan bishop, a Church Commissioner (or nominated officer) and the chair of a DBF, and providers by a diocesan registrar, a diocesan chancellor and a provincial registrar. The three independent members must include at least one member of the House of Clergy or the House of Laity of the General Synod. The Chair of the Commission will be one of the independent members, chosen by the Commission as a whole. A quorum will require at least one member from each of the three groups to be present.
15. Clause 3(b) substitutes a new provision for section 5(1) of the 1986 Measure, which strengthens the Commission's functions by imposing upon it an obligation to review which of the duties undertaken by registrars and ecclesiastical judges are to be covered by the fees it recommends, in place of the power to do so that exists at present.

#### **Clause 4: Consequential amendments and repeal**

16. Section 3 of the 1986 Measure will be repealed since its provisions will be redundant once the provisions of the draft Measure come into force. The definition of 'parish' in section 10 of the 1986 Measure will no longer be required and will therefore be omitted; and the definition of 'parochial fees' in that section is replaced with a new definition relating to the list-based provisions of the draft Measure. (See subclause (1).)
17. Subclause 2 and Schedule 2 make consequential amendments to other legislation.
18. Subclause (3) amends section 20(1) of the Marriage Act 1949 so that, when licensing a public chapel for marriages, a bishop will no longer be able to include provision in the relevant licence in relation to fees. This is because such chapels will come within the general framework of parochial fees under the provisions of the draft Measure.

#### **Clause 5: Transitional Provisions**

19. Under subclause (1) existing members of the Fees Advisory Commission will continue to hold office until a new member is appointed to fill their place under the amended provisions contained in Part 2 of the draft Measure.
20. Under subclause (2) an incumbent who holds office when the new provisions relating to parochial fees come into force and who has not already assigned his fees to the DBF will be able to retain his entitlement to receive fees if he notifies the bishop in writing within 2 months of the new provisions coming into force.
21. Under subclause (3) the Parochial Fees Order that is in force when the new provisions relating to parochial fees come into force (i.e. a Parochial Fees Order made under the old provisions) will continue in force until it is replaced by a new Order made under the new provisions.

#### **Clause 6: Citation, commencement and extent**

22. This makes provision in relation to the short title of the Measure, the procedure for bringing it into force and its territorial extent.

## **Schedule 1**

23. Schedule 1 of the draft Measure contains what will become Schedule A1 of the 1986 Measure. Part 1 of that Schedule lists the matters (i.e. services and other duties) in respect of which parochial fees may be prescribed in a Parochial Fees Order. These are under 5 general headings: baptisms, marriages, funerals and burials, monuments in churchyards, and searches in church registers etc. Detailed provision is made under each heading. Part 2 contains explanatory notes that clarify and qualify the contents of Part 1. New provision is made at paragraph 2 of Part 2 that no fee is to be payable for the funeral or burial of a child aged under 16.
24. Paragraph 8 of Part 2 contains a number of definitions. The definition of ‘church’ relates to the use of that term in Part 1 of the Schedule (for example ‘Marriage service in church’). ‘Church’ has been defined such that the statutory provisions relating to parochial fees will apply to services in parish churches, places licensed by the bishop for public worship and parish centres of worship, and also – in the case of marriages – to public chapels licensed by the bishop for that purpose. (Fees will also apply in relation to services at crematoria and at cemeteries, but this depends upon the provision contained in the list in Part 1 of the Schedule rather than on the definition of ‘church’ in Part 2.) The parochial fees regime will not apply to churches or chapels in extra-parochial places (such as the old ‘Dean and Chapter’ cathedrals or Royal peculiars) or to military or naval chapels.

## **Schedule 2**

25. This Schedule contains amendments to other legislation that are required as a consequence of changes made by the main provisions of the draft Measure.
26. Paragraph 2 amends section 63(1) of the Marriage Act 1949 so that fees for searches in marriage registers currently payable to an incumbent will instead be payable to the PCC of the parish concerned.
27. Paragraph 3 amends the Local Authorities Cemeteries Order 1977 to provide that fees that are currently payable to individual clergy of the Church of England will be payable to the relevant diocesan board of finance in line with the general policy of Part 1 of the draft Measure.

**Church House  
London SW1**

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