

## LEGAL OFFICERS (ANNUAL FEES) ORDER 2005

### Explanatory Memorandum

1. The constitution of the Fees Advisory Commission (“the Commission”) is laid down by section 4 of the Ecclesiastical Fees Measure 1986, as amended by section 16 of the Church of England (Miscellaneous Provisions) Measure 2000. The membership of the Commission for the current quinquennium is:

Appointed by:

The Rt Hon Lord Justice Laws (Chair)  
Geoffrey Tattersall QC\*

Canon Heather Morgan\*

Michael Chamberlain\*

Andreas Whittam Smith (First Church  
Estates Commissioner)\*  
Timothy Allen\*

The Lord Chancellor  
The Chairman of the  
Bar Council

The President of the  
Law Society  
The Archbishops’  
Council

The Church  
Commissioners  
The Appointments  
Committee

\* Members of Synod

2. The Commission is assisted by four consultants: one from the Ecclesiastical Judges Association (representing diocesan chancellors and other ecclesiastical judges), one from the Ecclesiastical Law Association (representing the diocesan registrars), one of the provincial registrars and a member of the Research and Statistics Department of the Archbishops’ Council.
3. The Legal Officers (Annual Fees) Orders made under section 5 of the 1986 Measure fix the annual fee payable to each diocesan registrar for the work specified in Schedule 2 to the Order (much of which they are required by law to carry out).

### Background

4. It is unusual for a draft Legal Officers (Annual Fees) Order to be brought to any Group of Sessions other than a July one. The

Commission is doing so at this Group of Sessions because the motion for the approval of the draft 2004 Order (GS 1537), which would have increased the retainers payable to diocesan and provincial registrars with effect from 1<sup>st</sup> January 2005, was defeated by 125 votes to 119 at last July's Group of Sessions. The 2003 Order continues in force but this draft 2005 Order (GS 1562) is required to provide the diocesan and provincial registrars with an increase in the retainer payable to them in 2005.

5. The explanatory memorandum for the draft 2004 Order (GS 1537X) outlined the background to that issue in detail. However, in brief, each year between 1997 and 2002<sup>1</sup> the Synod approved draft Orders that increased the total amount paid to all diocesan registrars by a 'mixed inflation formula' of the Retail Prices Index (RPI) (25% weighting) and the Average Earnings Index (AEI) (75% weighting), plus a further additional increase. In each year between 1997 and 2000 this additional increase was of 2%, while in both of the years 2001 and 2002 this additional increase was of 1%<sup>2</sup>. In 2003 the Synod approved a draft Order that provided for an increase by inflation, as measured by the RPI alone, with no additional upgrade.
6. At its meeting in May 2004, the Commission agreed, by a majority of those present, the draft 2004 Order, which was again calculated using RPI alone with no additional upgrade. The level of increase which was applied in the draft 2004 Order was therefore 2.9%.
7. The view of the majority of Commission members present in May was that RPI alone should again be used because it was lower than AEI and that increased productivity by the registrars could assist in making up the deficit. Also, the continued financial pressures being placed on the dioceses were cited as strong reasons for the using the lower inflation figure (namely RPI)<sup>3</sup>.
8. The view of the minority of Commission members present at that meeting was that despite the relative closeness in 2003 of RPI and

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<sup>1</sup>Each year, in support of these proposals, the Commission set out a sequence of supporting statistics that have been gathered and analysed by the Statistical Unit of the Central Board of Finance (now a Department of the Archbishops' Council), the latest of which was annexed to the 2004 explanatory memorandum and is repeated in the annex to this explanatory memorandum.

<sup>2</sup> This lower figure was agreed by the Commission in response to the financial constraints facing the Church (and with the support of the registrars' consultants).

<sup>3</sup> Fully reported in paragraph 13 of GS 1537X.

the mixed inflation formula<sup>4</sup>, the decision on which inflation figure to be used needed to be made on principle. The Commission's recent consultation<sup>5</sup> had shown that dioceses were overwhelmingly in favour of a return to a mixed inflation formula - largely reflecting a concern that average earnings should be reflected in the formula used because staffing costs are a significant element in the expenses incurred by most registrars. The minority also considered that the scope for economies and greater efficiency in most registrars' offices and operations was in practice extremely limited<sup>6</sup>.

9. The debate on the draft 2004 Order at the July 2004 Group of Sessions concentrated almost exclusively on the issue of whether the 'mixed inflation formula' or RPI alone should be used. As mentioned in paragraph 4 above, at the conclusion of this debate, the motion to approve the draft 2004 Order was defeated.

### **The 2005 draft Order**

10. The Commission met in October 2004 (with one member absent) to consider the level of fees to be contained in a draft Order to be brought to this Group of Sessions. Four options appeared open to the Commission. These were –
  - (a) a new Order based on RPI with no above inflation upgrade;
  - (b) a new Order based on the 'mixed inflation formula' with no above inflation upgrade;
  - (c) as (a) above but with an above inflation upgrade;
  - (d) as (b) above but with an above inflation upgrade.
11. Given the nature of the debate in July (the contributions to which focused on the question whether the increase should be in line with RPI alone or the mixed inflation formula) and the fact that the Commission itself had decided in May 2004, when agreeing the draft 2004 Order, that there would be no above inflation upgrade, all the Commission members present at the October meeting agreed that neither of the options (c) and (d) above should be adopted.

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<sup>4</sup> RPI for 2003: 2.9%; AEI for 2003: 3.3%

<sup>5</sup> Details in paragraphs 6 to 7 of GS 1537X.

<sup>6</sup> Fully reported in paragraph 14 of GS 1537X.

12. That left the issue of RPI or the ‘mixed inflation formula’ to decide. All the Commission members present at its October meeting agreed that as the Synod, albeit by a small majority, had in July rejected an Order to be applied in 2005 based on RPI alone, the Commission should bring a draft Order to the February 2005 Synod based on the alternative, namely the mixed inflation formula.
13. The level of increase which has therefore been applied in calculating the level of the diocesan registrars retainers provided for by the draft 2005 Order (GS 1562) is 3.2%<sup>7</sup>. Following the pattern of previous years, this increase has been applied to the **total** sum payable under the 2003 Order, which has then been divided amongst the dioceses in accordance with a weighted formula which takes account of both the number of parishes in a diocese and the number of clergy of incumbent status and above (excluding cathedral clergy).<sup>8</sup>
14. If approved by the Synod, this Order will be laid before Parliament later in February 2005 in the form of a Statutory Instrument and will have effect from 1<sup>st</sup> January 2005, subject to the satisfactory outcome of the negative resolution procedure.
15. Another draft Order will be brought to this July’s Group of Sessions to provide for an increase in the retainers of the diocesan and provincial registers with effect from 1<sup>st</sup> January 2006.

### *Constitution and functions of the Commission*

16. Members will recall that the results of the Commission’s consultation in 2003 with stakeholders on proposals from its Working Party were reported to Synod in GS Misc. 737. In response to that consultation the Commission had agreed unanimously, inter alia, that it should not proceed with the recommendation to abolish the nationally set retainer for diocesan registrars and that it would not itself pursue any of the other recommendations of the Working Party, but would report to the Archbishops’ Council.

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<sup>7</sup> See footnote 4 above.

<sup>8</sup> The published statistics for parishes and clergy in 2002 were used in calculating the draft 2004 and 2005 Orders.

17. It was reported to Synod in May 2004<sup>9</sup> that the Council, after careful consideration of the matters referred to it, had decided that it did not wish to pursue any of the recommendations of the Commission's Working Party. However, the Council did commit itself to explore further the possibility of bringing forward proposals to amend the Commission's membership and functions.
18. This the Council has done, having in the process consulted with the Commission. The outcome is that the Council proposes to bring forward proposals (which are supported by the Commission) (a) to give the Commission an express obligation to review which of the duties undertaken by registrars and ecclesiastical judges are to be covered by the fees its recommends (in place of the power to do so it enjoys at present) and (b) to establish a tripartite membership of nine members representing users, providers and an independent element, in equal proportions, with the chair elected from amongst the independent members by the Commission as a whole and with arrangements for a quorum that would require at least one member from each of the three elements to be present.
19. In order to enact these proposals amendments will be required to the Ecclesiastical Fees Measure 1986. It is the Council's view that these proposals are likely to be uncontroversial and the present intention is therefore to include the necessary amendments in the first Miscellaneous Provisions Measure to be introduced in the next quinquennium.

**15 November 2004**

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<sup>9</sup> Paragraph 11 of GS 1537X.

## **Annex - 2003 Diocesan Registrars' Retainers – a Statistical Report**

### **Introduction**

Each year since 1994 the Archbishops' Council's Research and Statistics Department (formerly the CBF Statistics Unit) has presented a report to the Fees Advisory Commission based on figures supplied by diocesan registrars for the work carried out in the previous year. Each year the data have shown a wide gap between the size of the overall retainer and the monetary value of the work covered by the retainer.

### **Median Diocese**

The concept of a 'median diocese' has been used in each report. The median of a set of values is defined as the middle point when the values are arranged in order of size and is used as a measure of "average" that is not unduly affected by extremes. For this analysis a median diocese is defined as one where the registrar and his/her staff worked the median number of hours for the median rate of pay.

The table below shows the median hours worked, the value of work done in a 'median diocese' and the median retainer since 1993.

Year	Median hours worked	Monetary Value of work done in median diocese	Median Retainer	Median Retainer as percentage of value of work done in a median diocese
1993	587	£39,800	£23,000	58%
1994	572	£41,200	£24,100	58%
1995	549	£39,400	£24,700	63%
1996	532	£40,200	£25,400	63%
1997	582	£42,400	£26,600	63%
1998	633	£49,200	£28,000	57%
1999	540	£45,700	£29,700	65%
2000	498	£47,800	£31,000	65%
2001	532	£48,500	£32,800	68%
2002	491	£54,800	£34,500	63%
2003	531	£56,900	£36,300	64%

Note: The 'monetary value of work done in a median diocese' is defined as the sum of: a) the median hourly rate for clerks multiplied by median hours worked by clerks; and b) the median hourly rate for registrars and solicitors multiplied by the median hours worked by registrars and solicitors.

## **Conclusion**

The above analysis shows there continues to be a wide gap between diocesan registrars' retainers and the monetary value of work carried out by diocesan registrars. Although the median hours worked has decreased over the last ten years, it must be noted that this does not take into account the nature of the work or the level of personnel performing it. The gap between the monetary value of the work and the median retainer has closed since 1993 but in recent years has remained as a proportion at approximately two-thirds.

*Research and Statistics Department  
Archbishops' Council*

*March 2004*