

**LEGAL OFFICERS (ANNUAL FEES) (No.2) ORDER 2005  
ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS  
(FEES) ORDER 2005**

**Explanatory Memorandum**

1. The membership of the Fees Advisory Commission (“the Commission”)<sup>1</sup> 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

All are members of Synod, except the Chair.

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.
- (a) *Legal Officers (Annual Fees) (No.2) Order 2005*
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 1 to the Order (much of which they are required by law to carry out).

---

<sup>1</sup> The constitution of 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.

## **Background up to February 2005**

4. As members of the Synod will be aware, the evidence supplied to the Commission over a substantial period has consistently demonstrated that the amount paid to the registrars by way of annual fees falls some way short of what would be reasonable remuneration for their work. In 1996 the Commission therefore informed the Synod that it proposed:- “that in 1997 and in subsequent years if the information which registrars supply annually....continues to reveal a substantial shortfall, it will ask the Synod to agree to an increase of 2% on top of that which is calculated in accordance with the usual inflationary formula.” (GS 1225X). The term “usual inflationary formula” was used at that time, and is still used, to refer to a combination of the increases in RPI (25% weighting) and AEI (75% weighting) for the previous year (both published by the Government).
5. Each year between 1997 and 2002<sup>2</sup> the Synod approved draft Orders that increased the total amount paid to all diocesan registrars by the ‘usual inflationary formula’ plus a further additional increase. In each year between 1997 and 2000 this additional increase was 2%, while in both of the years 2001 and 2002 this additional increase was 1%<sup>3</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. In May 2004 the Commission agreed, by a majority of those present, to recommend to Synod a draft Order that was again calculated using RPI alone, with no additional upgrade (GS 1537X). The motion for the approval of this draft Order was defeated at the July 2004 Group of Sessions. In October 2004 the Commission agreed (with one member absent) to recommend a revised draft Order calculated using the ‘usual inflationary formula’ (GS 1562X). The motion for the approval of this Order was carried at the February 2005 Group of Sessions and is now in force with effect from 1<sup>st</sup> January 2005.

## **The 2005 (No.2) Order**

7. In April 2005 the Commission agreed without dissent (with one member absent), that the inflation figure to be used to calculate the level of fees

---

<sup>2</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 (for 2004) is annexed to this explanatory memorandum.

<sup>3</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).

contained in the Legal Officers (Annual Fees) (No.2) Order 2005 (to come into force on 1<sup>st</sup> January 2006) should be the **usual inflationary formula**<sup>4</sup> with no above inflation top up. The level of increase which has been applied is therefore **4.05%**. As in previous years, this increase is applied to the **total** sum payable under the Order currently in force, which is then 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).

*(b) Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2005*

8. The Ecclesiastical Judges, Legal Officers and Others (Fees) Order fixes fees for faculty proceedings and some other proceedings in ecclesiastical courts, and also provides for the fees of the Provincial Registrars and the Vicars-General and certain fees for Synod elections.
9. In past years, the Commission has restricted the increase in the fees payable under the Ecclesiastical Judges, Legal Officers and Others (Fees) Order to the inflation figure used that year to calculate the increase in the Legal Officers (Annual Fees) Order, but always without an additional upgrade. In the period 1997-2002 this resulted in an annual upgrade calculated on the basis of the 'usual inflationary formula' (as defined in paragraph 4 above) whilst the inflation figure used in 2003 and 2004 was based on RPI alone<sup>5</sup>.
10. In April 2005 the Commission agreed without dissent (with one member absent and another member abstaining having declared an interest) that the policy outlined above should again be applied in calculating the fees payable under the 2005 Order, which have therefore been increased by **4.05%**, that is the 'usual inflationary figure', with no additional upgrade.

**Amendments to both Orders resulting from the Clergy Discipline Measure 2003**

11. It is expected that the Clergy Discipline Measure 2003 ("the CDM") will be coming into force at the end of this year provided that the Code of Practice and the Clergy Discipline Rules are approved by the Synod. The Commission has therefore agreed on certain consequential changes to

---

<sup>4</sup> The RPI figure for 2004 is 3.0% and for AEI is 4.4%, giving a 'mixed' figure of 4.05%

<sup>5</sup> It should be noted that the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2004 (based on RPI alone) was approved by the Synod in July 2004 and is currently in force although the draft Legal Officers (Annual Fees) Order 2004 (also based on RPI alone) was not approved.

both the Legal Officers (Annual Fees) Order and the Ecclesiastical Judges, Legal Officers and Others (Fees) Order (in the former primarily in Table II and paragraph 4(7) of Schedule 2, and in the latter primarily to insert a new Table IV in the Schedule).

12. It should be noted that the CDM, when fully in force, will replace the Ecclesiastical Jurisdiction Measure 1963 (“the EJM”) in respect of misconduct not involving matters of doctrine, ritual or ceremonial. (Misconduct involving such matters will continue to be covered by the EJM, hence the provisions in the fees orders relating to the EJM are preserved).

#### *Changes to the Legal Officers (Annual Fees) Order*

13. Diocesan registrars will be given specific duties under the CDM, including the carrying out of a ‘preliminary scrutiny’ of a complaint in order to provide a report to the bishop advising him as to whether a complaint is of sufficient substance to justify proceeding with it and whether the complainant is entitled to make the complaint. Registrars may also be asked by the bishop to advise him generally on disciplinary matters under or in relation to the CDM.
14. Under the EJM, the registrar’s advisory and other work was excluded from the annual fee<sup>6</sup>. With the insertion of a new paragraph 4(7) into Schedule 2 of this Order the registrar’s advisory and other work in relation to the CDM will be similarly excluded from that fee<sup>7</sup>.
15. If a complaint were to be made under the CDM against a bishop or archbishop, then it would be the provincial registrar who would carry out the registrar’s functions. Accordingly, a new Part B has been inserted into Table II of Schedule 1 of the Order in order to provide similar exclusions from the annual fee for provincial registrars (with a consequential amendment to paragraph 1(2) of the Order). However, provincial registrars will also have judicial functions, so Part B of Table II ensures there is no overlap with fees payable to them under the Ecclesiastical Judges, Legal Officers and Others (Fees) Order.

---

<sup>6</sup> Schedule 2, paragraph 4(6) of the EJM.

<sup>7</sup> The reference to section 30 and 31 of the CDM covers procedures whereby penalties can be imposed following sentences of imprisonment or certain matrimonial breakdowns.

*Changes to the Ecclesiastical Judges, Legal Officers and Others (Fees) Order*

16. A new Table IV has been inserted to provide for fees for proceedings under the CDM. The Table (including the fees it prescribes) is based on the existing corresponding and relevant provisions for the EJM (Table III).
17. Specifically –
  - Paragraph 1 provides for fees for the “Judge”, Registrar of Tribunals or others when giving directions otherwise than at a hearing.
  - Paragraph 2 proposes standard fees for all types of hearings under the CDM.
  - Paragraph 3 concerns fees for preparing judgments or orders.
  - Paragraph 4 covers the work of the Registrar of Tribunals and provincial registrar in administering the tribunal, Vicar-General’s Court, Court of the Arches or Chancery Court, as the case may be.
  - Paragraph 5 defines “Judge” to mean the person presiding over a tribunal or court (and expressly includes the President of Tribunals and Deputy President of Tribunals when sitting).
18. Table V contains a new note to cover the CDM.
19. Table VI now prescribes annual fees for the President and Deputy President of Tribunals for their work when not presiding over a tribunal (the President in particular has many duties under the CDM, and the Deputy President will act for the President when the President is absent or is unable or unwilling to act).

**1<sup>st</sup> June 2005**

## Annex – 2004 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%
2004	473	£59,100	£36,900	62%

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 eleven 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 is now returning to its level earlier in the period at approximately 40%.

*Research and Statistics Department  
Archbishops' Council*

*April 2005*