

**EXPLANATORY MEMORANDUM TO
THE LEGAL OFFICERS (ANNUAL FEES) ORDER 2005**

2005 No.336

1. This explanatory memorandum has been prepared by the Legal Office of the National Institutions of the Church of England and is laid before Parliament by the General Synod of the Church of England.

2. **Description**

2.1 The Legal Officers (Annual Fees) Order 2005 ('the 2005 Order') sets the annual fees payable to diocesan registrars for carrying out certain duties as specified in the Order and also sets the annual fees payable to provincial registrars, all with effect from 1st January 2005.

2.2 The 2005 Order increases the total of annual fees payable to diocesan registrars as fixed by the Legal Officers (Annual Fees) Order 2003 (2003 No. 1936) ('the 2003 Order') by 3.2% (a weighted formula of 25% RPI and 75% AEI – 2.9% and 3.3% respectively in 2003), the increased total then being apportioned as to each diocesan registrar's fee according to a formula based on the number of parishes and stipendiary clergy in each diocese. The 2005 Order also increases the annual fees payable to provincial registrars by the weighted formula of 3.2%.

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

Not applicable: the 2005 Order does not fall within the terms of reference of this Committee. However, the relevant information is as follows:

(i) **Fees increases:** The increases applied by the 2005 Order are above RPI as a weighted inflationary formula is used consisting of RPI and AEI, largely to reflect the fact that staff costs are a significant element in the expenses incurred by most diocesan and provincial registrars. The decision as to which measure (or mix of measures) of inflation is used to increase these fees is agreed annually by the General Synod on a recommendation from the Fees Advisory Commission.

(ii) **21-day rule:** It has not been possible to observe this rule as the 2005 Order comes into force before it was laid (paragraph 3(iii) below refers).

(iii) **If the instrument comes into force before it was laid:** It does. The usual practice is for a draft Order to be approved and made by the General Synod and then laid before Parliament each July to come into force on the following 1st January. In July 2004, the General Synod rejected a draft Order ('the draft 2004 Order') prescribing new fees for 2005 and did not meet again until February 2005, when it approved and made the 2005 Order to have effect from

1st January 2005 (the date from which annual increases in these fees would normally be expected to come into force). The notification and explanation required by the proviso to section 4(1) of the Statutory Instruments Act 1946 was sent to the Speaker and the Lord Chancellor on 15th February 2005.

(iv) **If the instrument uses novel or especially complex powers:** It does not.

4. Legislative Background

4.1 Under section 5 of the Ecclesiastical Fees Measure 1986, the Fees Advisory Commission may (i) recommend to the General Synod the level of annual fees payable to legal officers (principally diocesan and provincial registrars) in respect of such duties as the Commission specifies and (ii) may make Orders to give effect to its recommendations.

4.2 Any such Order must be laid before the General Synod for its approval. Since the 1986 Measure came into force, the practice has been to make an Order each year, revoking the previous Order and providing for an annual up-rating of fees. The 2005 Order is the latest in this series of Orders and the fees it sets are in substitution for those prescribed in the 2003 Order.

4.3 The 2005 Order does not implement EU legislation.

5. Extent

5.1 The 2005 Order applies only to England (apart from a small number of parishes wholly or partly in England which are within the Church in Wales) and to about twenty parishes wholly or partly in Wales which are within the Church of England.

6. European Convention on Human Rights

6.1 Not applicable, as the 2005 Order is to be taken on the negative resolution procedure and does not amend primary legislation. However, the Legal Office is of the view that the 2005 Order is fully compatible with Convention rights.

7. Policy background:

7.1 The policy objective of the Ecclesiastical Fees Measure 1986 is the proper and adequate setting of ecclesiastical fees.

7.2 Statistics presented to the Fees Advisory Commission since the early 1990s have consistently shown a wide gap between the monetary value of the work done by a diocesan registrar in a median diocese and the median level of fees payable to a diocesan registrar under the fees Orders in force from time to time.

7.3 In each year between 1997 and 2002, the General Synod approved increases in the fees payable to diocesan registrars based on a mixed formula of 25% RPI and 75% AEI, plus further additional increases which were aimed at reducing

the gap referred to above (in each year between 1997 and 2000 of 2% and in both of the years 2001 and 2002 of 1%). The 2003 Order implemented an increase of RPI alone with no additional increase being applied. The move to RPI alone and the reduction and eventual ending of the additional increase came about (in the case of the latter with the diocesan registrars' consent) largely as a result of continuing financial pressures on the Church.

- 7.4 The draft 2004 Order would have provided for an increase in the fees payable to diocesan registrars calculated on a similar basis to the 2003 Order but the draft 2004 Order was rejected by a small majority at the group of sessions of the General Synod held in July 2004. In February 2005 the Synod approved the 2005 Order (which will increase the fees payable to diocesan registrars by the mixed formula with no additional increase).
- 7.5 The Fees Advisory Commission and the Synod will continue to monitor the gap between the monetary value of the work done by diocesan registrars and the fees payable to them for undertaking this work and, within the financial constraints on the Church, will be seeking to reduce the size of this gap through future fees Orders.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no significant impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is insignificant.

9. Contact

Mr Robert Wellen at the Legal Office, tel: 020 7898 1371 or e-mail: robert.wellen@c-of-e.org.uk can answer any queries regarding this instrument.