THE CHURCH OF ENGLAND

THE GENERAL SYNOD

EXPLANATORY MEMORANDUM TO THE

ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS (FEES) 2005

2005 No. 2020

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 Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2005 ('the 2005 Order') fixes fees for faculty proceedings and some other proceedings in ecclesiastical courts, and also provides for certain fees for diocesan registrars, the Provincial Registrars and annual fees for the Vicars-General, as well as making provision for certain fees for Synod elections.

2.2 The 2005 Order increases most of the fees payable under the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2004 (2004 No. 1888) ('the 2004 Order') by 4.05% (a weighted formula of 25% RPI and 75% AEI – 3.0% and 4.4% respectively in 2004) with effect from 1st January 2006.

2.3 The 2005 Order also contains certain new provisions (primarily in a new Table IV) which establish fees for proceedings under the Clergy Discipline Measure 2003, which is expected to fully come into force at the end of 2005.

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 chancellors 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:** The Order does not breach this rule.

(iii) **If the instrument comes into force before it was laid:** It does not.

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

4. Legislative Background

4.1 **General:** Under section 6 of the Ecclesiastical Fees Measure 1986, the Fees Advisory Commission may recommend to the General Synod fees in respect of a number of matters (including those to be paid in respect of ecclesiastical judges and legal officers for faculty proceedings and other proceedings in ecclesiastical courts) and may make orders to give effect to their recommendations. Any such order must be laid before the General Synod for its approval. Since the 1986 Measure, the practice has been to make a fresh Order each year, revoking the previous order to provide an annual up-rating of fees.

4.2 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 weighted inflationary formula' (as defined in paragraph 2.2 above) whilst the inflation figure used in 2003 and 2004 was based on RPI alone. (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).

4.3 As paragraph 2.2 above indicates, the 2005 Order is calculated on the basis of the weighted inflationary formula (as this has been used to calculate the Legal Officers (Annual Fees) Order 2005). The 2005 Order is the latest in this series of orders and the fees it sets are in substitution for those prescribed in the 2004 Order.

4.4 **EU legislation:** 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. The 2005 Order increases the fees to be paid to ecclesiastical judges, provincial registrars and others in respect of proceedings in ecclesiastical courts and tribunals.

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

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