



## DIOCESAN SYNOD

### Southwark Diocesan Board of Education (SDBE)

#### Executive Summary

1. The General Synod has produced legislation to allow for a more structured legal approach to the governance and integration of Boards of Education and dioceses. A statutory Scheme is required to be submitted to the Archbishops' Council for approval by the end of 2022.
2. The SDBE and the Diocese intends **not to change the current relationship between the Diocese and the SDBE**. This would mean that the SDBE would remain a charitable company limited by guarantee, which is registered in the register of charities and at Companies House.
3. The Diocese and the SDBE would, however, like a small Working Group to review and recommend to the Synod, at its July 2022 meeting, following consultation with key stakeholders, a new Scheme which includes recommendations of Board membership, updated Articles of Association (for SDBE to adopt), and a Memorandum of Understanding between the DBF and SDBE.

Michael Hartley to move, that:

“this Synod takes note of the intention for the Southwark Diocesan Board of Education to remain a charitable company limited by guarantee, and for a review of keys areas to be undertaken by a Working Group, prior to formal submission and approval of the new Scheme under the Diocesan Boards of Education Measure 2021 by the Diocesan Synod at its July 2022 meeting.”

#### Background

4. At its November 2020 Group of Sessions the General Synod approved new legislation for Diocesan Boards of Education (DBE). The [new DBE Measure](#) (which can be found at Appendix A) replaces the 1991 Measure (last updated in 2006) to reflect the changes in the education system and legislation over the last decade.
5. The Measure permits three possible structures for the DBE; an incorporated charity (which may be in the form of a Company Limited by Guarantee or a Charitable Incorporated Organisation (CLG/CIO); an unincorporated charity (which may be in the form of an unincorporated association or a trust); and a statutory committee of the DBF.

6. It is for Diocesan Synod to decide on the right structure to fit their own context. Each diocese will need to discuss and agree what steps they will need to take to implement the Measure and agree a timetable for those steps to be taken. What will need to be done and how long the process may take will, in part, depend on the DBE's current structure and whether there will need to be a change to a different structure.
7. Section 22 of the new Measure (preparatory steps) provides that, before a provision in the new Measure comes into force, the DBE, Diocesan Board of Finance (DBF), Diocesan Synod and the Diocesan Bishop may take such steps as are considered necessary or appropriate in order to facilitate the implementation of that provision.
8. The new Measure makes it much easier for the composition of the membership to be reviewed and changed when needed. The Measure also captures some of the developments in collaboration and cross working between Dioceses such as shared Diocesan Boards of Education and other joint endeavours. It also simplifies the process of updating legislation in response to future developments in line with the modernisation and simplification of structures and processes whilst also aiming to affirm and consolidate the way in which DBEs operate as a key part of their Dioceses; strengthens the foundation of the relationship between the Diocese and both the governing boards of our schools (academies as well as voluntary schools) and the historic trustees of those schools; and it enables us to modernise structures more flexibly as we keep pace with future developments in the world of education and educational governance.
9. The adoption of the Measure ensures that DBEs and church schools, whether voluntary or academies, can see more clearly the statutory underpinning of the relationship; this frees both sides to work together more productively. The Measure prescribes that the DBE for each diocese must:
  - Promote education in the diocese that is consistent with the faith and practice of the Church of England
  - Promote religious education and religious worship in schools in the Diocese
  - Promote co-operation between itself and other persons concerned with education in the Diocese

## The Diocese of Southwark

10. The Measure allows for single or joint DBEs within a scheme to remain or become a company limited by guarantee, or a charitable incorporated organisation (CIO), which is registered in the register of charities, as an unincorporated charity or as a committee of the Diocesan Board of Finance (referred to in the Measure as "the Board of Finance" for the Diocese).
11. In preparation for this Synod, and following consultation with the Board of Education and discussion at DCT and with other stakeholders, it was agreed that it is **not the intention to change the current relationship between the Diocese and the SDBE**. This would mean that the SDBE would remain a charitable company limited by guarantee, which is registered in the register of charities and at Companies House.
12. As it stands, the Board of Education successfully supports its 104 schools in fulfilling the terms of the Measure. It has developed its strategic objectives not only align with the wider diocesan mission, but actively help to deliver these goals - with SDBE contributing to the work of the diocese linked to Climate Justice and Eco-Diocese;

more recently there has been a significant focus on addressing Equality, Diversity and Inclusion - bringing the diocesan anti-racist charter alive in schools. There are strengthening relationships between the SDBE and JPIC, CYP and the SDBE is a strategic lead for Growing Faith.

13. The DBF is currently represented on a committee of the Board of Education strengthening the accountability of the SDBE to DBF. There is a longstanding close relationship between the Diocesan Secretary, via termly 1:1 with the Director of Education, to ensure the work of the Board remains in alignment with the wider Diocesan objectives and the Diocesan Director for Education (DDE) is line managed by the Chair of the Board of Education.
14. The role of the SDBE as sponsor of the SDBE Multi Academy Trust (MAT), is closely linked with the Diocese with the Diocesan Secretary and Chair of the Board of Education as 2 of the 3 Members; a member of DBF is Chair of the Finance Committee of the MAT.
15. As a member of Bishop's Staff, the Diocesan Director for Education reports to senior leaders on education matters; the Chair of the Board is an area bishop or nominated archdeacon. The Board has revived the dormant Further and Higher Education Committee (F&HE) and appointed an interim Chaplaincy Adviser to deliver this strand of diocesan mission.
16. In the year ahead the SDBE will also support the work of the new interfaith adviser and will join the Diocesan Director of Communication to support the diocesan Communication strategy. The SDBE works closely with Welcare, with pilot projects introduced in 2 of our schools during the pandemic.
17. The SDBE benefits from an annual grant from DBF which makes up some 17% of the delivery of the Diocesan Measure, with the additional costs covered by rental and letting income, partnership agreements with schools and other grants and fees/recharges.

## Proposals

18. A Scheme is required by the Measure which is passed to the Archbishops' Council for formal adoption. A Scheme proforma can be found at Appendix A. The new diocesan Scheme needs to be ready for implementation by 1 January 2023. The Diocesan Synod must agree a Scheme by November 2022 but our intention is that a final draft be brought to the Diocesan Synod in July 2022, with Archbishops' Council already having given an informal view on it.
19. The Diocese and the Board of Education, however, would like to review the membership of the Board of Education, in line with and in the spirit of Fit for Purpose, to enable a smaller, less complex, and more effective Board in which vacancies can be filled and which reflects the wide diversity within the Diocese of Southwark.
20. In addition to this review, we would also like to review the Articles of Association and Memorandum of Understanding in relation to the Board of Education, its sub-committees, and the Board of Finance.
21. Bishop Christopher, following consultation, has asked that a small Working Group be established to review and recommend to the Synod, at its July 2022 meeting, following consultation with key stakeholders, a new Scheme which includes recommendations of

Board membership, updated Articles of Association (to be recommended to the Board of Education, for the Board of Education to submit to the Charity Commission as its new constitution, consistent with the Scheme), and a Memorandum of Understanding between the DBF and SDBE.

22. The Working Group will report to the Bishop of Southwark and include:

- The Chair of the SBDE (The Ven Dr Rosemarie Mallett)
- The Diocesan Secretary
- A Member of the Diocesan Synod and DCT (Michael Hartley)
- A Lay and Clergy member of the Board of Education
- The Legal Adviser to the SDBE (Winckworth Sherwood)

23. Synod Members will be presented with a brief update and an opportunity to discuss and feedback prior to voting on the motion:

Michael Hartley to move, that:

“this Synod takes note of the intention for the Southwark Diocesan Board of Education to remain a charitable company limited by guarantee, and for a review of keys areas to be undertaken by a Working Group, prior to formal submission and approval of the new Scheme under the Diocesan Boards of Education Measure 2021 by the Diocesan Synod at its July 2022 meeting.”



# Diocesan Boards of Education Measure 2021

2021 No. 1

A Measure passed by the General Synod of the Church of England to make provision about Diocesan Boards of Education. [29th April 2021]

*The DBEs*

## **1 Continuation**

For each diocese, there is to continue to be a Diocesan Board of Education (referred to in this Measure as the “DBE” for a diocese).

## **2 General functions**

- (1) The DBE for each diocese must—
  - (a) promote or assist in the promotion of education in the diocese that is consistent with the faith and practice of the Church of England;
  - (b) promote or assist in the promotion of religious education and religious worship in schools in the diocese;
  - (c) promote or assist in the promotion of church schools in the diocese;
  - (d) promote co-operation between itself and other persons concerned with education in the diocese.
- (2) The DBE for each diocese also has the functions conferred by sections 7 to 15.
- (3) In this Measure, “function” means power or duty.

*Structure***3 Single DBE**

- (1) Each diocesan synod must make a scheme designating one of the following as the DBE for the diocese—
  - (a) a company limited by guarantee, or a charitable incorporated organisation (“CIO”), which is registered in the register of charities,
  - (b) an unincorporated body which is registered in the register of charities, or
  - (c) the Diocesan Board of Finance (referred to in this Measure as “the Board of Finance” for the diocese).
- (2) The first scheme under this section must implement a proposal made by the bishop of the diocese with the consent of the existing DBE.
- (3) A subsequent scheme under this section must implement a proposal which—
  - (a) if the existing DBE comes within subsection (1)(a) or (b), is made by the bishop of the diocese with the consent of the existing DBE;
  - (b) if the existing DBE comes within subsection (1)(c), is made by the bishop of the diocese after consultation with the existing DBE and with the consent of the Board of Finance.
- (4) If the archbishop of the province in which the diocese is situated considers that consent under subsection (3) is being unreasonably withheld or delayed, the archbishop may authorise the bishop to make the proposal to the diocesan synod without having obtained that consent; and subsection (3) is accordingly to be read subject to this subsection.
- (5) Before giving an authorisation under subsection (4), the archbishop must consult the Charity Commission on the proposed terms of the scheme; and if the Charity Commission does not respond within the period of 90 days beginning with the day on which the proposed terms are sent to the Charity Commission for that purpose, the Charity Commission is to be regarded as having no comments on the proposed terms.
- (6) Where the first scheme under this section provides that the existing DBE for a diocese is to be designated as the DBE for the diocese, the existing DBE must, pending the coming into operation of the scheme, take such steps as it considers necessary for securing compliance with the requirements of this Measure.
- (7) On the coming into operation of a scheme under this section which designates the Board of Finance as the DBE for the diocese, a committee of the Board of Finance is established under this section; and the purpose of that committee is to exercise the DBE’s functions on behalf of the Board of Finance.
- (8) Accordingly, in the application of this Measure to a case where the Board of Finance is so designated, a reference to the DBE for the diocese is to be read as a reference to the committee established under this section.
- (9) Schedule 1 makes further provision about a scheme under this section.
- (10) The provisions in Schedule 2 apply in relation to the DBE for each diocese.

#### 4 Joint DBE

- (1) A diocesan synod may make a scheme with one or more other diocesan synods designating either of the following as joint DBE for both or all of the dioceses concerned—
  - (a) a company limited by guarantee, or a CIO, which is registered in the register of charities, or
  - (b) an unincorporated body which is registered in the register of charities.
- (2) A scheme under this section may not, accordingly, designate the Board of Finance as a joint DBE.
- (3) Where there is a joint DBE, the diocesan synods concerned may make a scheme with one or more other diocesan synods designating the joint DBE as the DBE for the other diocese or dioceses too.
- (4) A scheme under this section must implement a proposal made by the diocesan bishops concerned acting jointly—
  - (a) except in so far as paragraph (b) applies, with the consent of each of the DBEs concerned (including in the case of a scheme under subsection (3), the consent of the joint DBE), and
  - (b) if any of the DBEs concerned comes within section 3(1)(c), after consultation with that DBE and with the consent of the Board of Finance of the diocese concerned.
- (5) If the archbishop of the province in which one or more of the dioceses concerned is situated considers that consent under subsection (4) is being unreasonably withheld or delayed, the archbishop may authorise the bishop or bishops concerned to join in making the proposal to the diocesan synod without having obtained that consent; and subsection (4) is accordingly to be read subject to this subsection.
- (6) Before giving an authorisation under subsection (5), the archbishop must consult the Charity Commission on the proposed terms of the scheme; and if the Charity Commission does not respond within the period of 90 days beginning with the day on which the proposed terms are sent to the Charity Commission for that purpose, the Charity Commission is to be regarded as having no comments on the proposed terms.
- (7) Where a scheme is made under this section, each of the diocesan synods which made the scheme is to be regarded as having complied with section 3(1).
- (8) Schedule 1 (except paragraph 3) applies to a scheme under this section as it applies to a scheme under section 3; and a reference in this Measure to a scheme under section 3 includes a reference to a scheme under this section.
- (9) Where there is a joint DBE, this Measure has effect in relation to each of the dioceses concerned as if a reference to the DBE were a reference to the joint DBE.
- (10) In section 19 of the Dioceses, Pastoral and Mission Measure 2007 (schemes for discharge of functions of diocesan bodies), in subsection (1), at the end insert “or a Diocesan Board of Education”.”

#### 5 Incorporation

- (1) A DBE which is an unincorporated body may, if it has obtained the consent of the bishop of the diocese and the diocesan synod, take such steps as it considers necessary

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for securing its incorporation as a company limited by guarantee, or a CIO, which is capable of being registered in the register of charities.

- (2) Where the Board of Finance is designated as the DBE for the diocese under section 3, the committee established under that section may, if it has obtained the consent of the bishop of the diocese, the diocesan synod and the Board of Finance, take such steps as it considers necessary for there to be a scheme under section 3 designating as the DBE for the diocese a company limited by guarantee, or a CIO, which is registered in the register of charities.
- (3) The power under subsection (1) may be exercised before the first scheme is made under section 3 or subsequently.
- (4) Any conflict of interest or loyalty which would or might arise on the incorporation of a DBE as a result of one or more of the charity trustees of the charity in its unincorporated form being charity trustees of the charity in its incorporated form is authorised by virtue of this subsection; but this subsection applies only where the value of the assets being transferred on the incorporation exceeds the amount of any liabilities being transferred.
- (5) For the purposes of each of the following provisions, “trust corporation” includes a DBE which is a company limited by guarantee or CIO—
  - (a) section 117(1)(xxx) of the Settled Land Act 1925;
  - (b) paragraph (18) of section 68(1) of the Trustee Act 1925;
  - (c) section 205(1)(xxviii) of the Law of Property Act 1925;
  - (d) section 55(1)(xxvi) of the Administration of Estates Act 1925;
  - (e) section 128 of the Senior Courts Act 1981.
- (6) In the case of a joint DBE which is an unincorporated body, subsection (1) has effect as if—
  - (a) the reference to the bishop of the diocese were a reference to the diocesan bishops concerned acting jointly, and
  - (b) the reference to the diocesan synod were a reference to each of the diocesan synods concerned.

## **6 Director of education**

- (1) For each diocese, there is to continue to be a director of education.
- (2) The director of education for a diocese is appointed by the bishop of the diocese after consultation with the DBE.
- (3) Each person who is the director of education for a diocese immediately before the commencement of this section continues as such after that commencement in accordance with the terms of the person’s appointment; but, after the commencement of section 3(10) and Schedule 2, this subsection has effect subject to subsection (5) of this section.
- (4) The person who is the director of education for a diocese—
  - (a) serves also as secretary to the DBE for the diocese, but
  - (b) is not a member of the DBE, and
  - (c) where the DBE is a separately registered charity, is not a charity trustee of the DBE.

- (5) Where there is a joint DBE, there is a single director of education for both or all of the dioceses appointed by the diocesan bishops concerned acting jointly; and subsection (4) accordingly applies to both or all of the dioceses.
- (6) The director of education for a diocese may speak at any meeting of the DBE but may not vote.

### *Responsibilities*

## **7 Advice**

- (1) The DBE for a diocese may (apart from whatever advice it is required to give under the following provisions of this section) give advice on matters affecting church schools in the diocese to—
  - (a) the governing bodies or proprietors of those schools,
  - (b) the trustees of church educational endowments, and
  - (c) such other persons concerned with education in the diocese as the DBE considers appropriate.
- (2) The governing body of a voluntary or foundation school which is a church school must obtain the advice of the DBE before—
  - (a) publishing proposals under section 15(2) of the Education and Inspections Act 2006 for the discontinuance of the school,
  - (b) publishing proposals under section 19(3) of that Act for an alteration to the school,
  - (c) serving notice under section 30(1) of the School Standards and Framework Act 1998 of an intention to discontinue the school, or
  - (d) beginning consultation under section 88C(2) of that Act about the admission arrangements proposed for the school.
- (3) The duty under subsection (2)(b) does not apply in a case where the DBE's consent is required under section 8(1) or (2).
- (4) The proprietor of an Academy which is a church school must obtain the advice of the DBE before—
  - (a) seeking the consent of the Secretary of State for the discontinuance of the school;
  - (b) seeking the consent of the Secretary of State for an alteration to the school;
  - (c) beginning consultation about the admission arrangements proposed for the school.
- (5) The governing body or (in the case of an Academy) the proprietor of a church school or, where there is a church educational endowment held wholly or partly in connection with a church school, the trustees of the endowment must obtain the advice of the DBE before—
  - (a) making an application in connection with a proposed disposal of the whole or part of the premises of the school, or
  - (b) entering into an agreement for the disposal of the whole or part of the premises of the school.

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- (6) The trustees of a church educational endowment held wholly or partly in connection with a church school must obtain the advice of the DBE before making or agreeing to make an alteration to the purposes for which the endowment may be applied.
- (7) The DBE for a diocese must give advice on whatever matters advice is sought from it under subsections (2) to (6).
- (8) Where the giving of advice under subsections (2) to (6) is to be considered at a meeting of the DBE, the following persons may attend the part of the meeting dealing with the consideration of the matter—
  - (a) the head teacher of the school concerned,
  - (b) the chair of the governing body, board of directors or trustees (as the case may be), and
  - (c) one or two other persons (or such greater number as the DBE may allow) nominated by the governing body, the board of directors or the trustees.
- (9) Where a person who is entitled to attend a meeting of the DBE in reliance on subsection (8)(a) or (b) is unable to do so, the person may nominate another person to attend the meeting in his or her place.
- (10) A person attending a meeting of the DBE in reliance on subsection (8) or (9)—
  - (a) may make an oral presentation or oral submissions to the meeting, and
  - (b) may speak in response to a question put by a member of the DBE.
- (11) A person to whom the DBE for a diocese gives advice must, in carrying out a function to which the advice is relevant, have due regard to that advice.
- (12) The references in subsection (5) to a disposal of land are references to the sale of the land or to the transfer or grant of any other interest in or over the land.

## **8 Consent**

- (1) The governing body of a voluntary school which is a church school must obtain the consent of the DBE before publishing proposals under section 19 of the Education and Inspections Act 2006 for a change of category to foundation school.
- (2) The governing body of a foundation school which is a church school must obtain the consent of the DBE before publishing proposals under that section for a change in the instrument of government which would result in the majority of governors being foundation governors.
- (3) The governing body of a voluntary or foundation school which is a church school must obtain the consent of the DBE before applying for an Academy order under section 3 of the Academies Act 2010.
- (4) The governing body or (in the case of an Academy) the proprietor of a church school which is on land in which a freehold or leasehold interest is held on trust for the purposes of a church school must obtain the consent of the DBE before entering into an agreement or arrangement in connection with an alteration to or repair of the premises of the school.
- (5) The duty under subsection (4) does not apply if the estimated cost of the alteration or repair is less than such amount as the DBE may from time to time determine.

- (6) Where the giving of consent under this section is to be considered at a meeting of the DBE, the following persons may attend the part of the meeting dealing with the consideration of that matter—
- (a) the head teacher of the school concerned,
  - (b) the chair of the governing body or board of directors (as the case may be), and
  - (c) one or two other persons (or such greater number as the DBE may allow) nominated by the governing body or the board of directors.
- (7) Where a person who is entitled to attend a meeting of the DBE in reliance on subsection (6)(a) or (b) is unable to do so, the person may nominate another person to attend the meeting in his or her place.
- (8) A person attending a meeting of the DBE in reliance on subsection (6) or (7)—
- (a) may make an oral presentation or oral submissions to the meeting, and
  - (b) may speak in response to a question put by a member of the DBE.

## **9 Consultation**

- (1) A local authority, before appointing a person to represent the Church of England as a member of a standing advisory council on religious education under section 390 of the Education Act 1996, must consult the DBE for each diocese in the area of which the local authority exercises its functions.
- (2) The duty under subsection (1) does not affect section 392(2) of the Education Act 1996 (which requires a local authority, before appointing a person as a representative of a religion, denomination or association on a standing advisory council, to assure itself that the person is such a representative).

## **10 Directions**

- (1) The DBE for a diocese may give a direction to the governing body or (in the case of an Academy) the proprietor of a church school in the diocese if the DBE is satisfied that the governing body or proprietor—
- (a) is failing to exercise, or to exercise properly, its functions so far as relating to relevant alterations to the school or to the discontinuance of the school, and
  - (b) is accordingly acting in a manner which is not in the interests of the school or of church schools generally.
- (2) The DBE for a diocese may give a direction to the trustees for a church educational endowment held wholly or partly for a church school in the diocese if it is satisfied that the trustees—
- (a) are exercising their functions in relation to the endowment in a manner such that the endowment is not being applied in the best interests of the school, or
  - (b) have failed to exercise, or to exercise properly, their functions in relation to the endowment.
- (3) Where the DBE for a diocese has concerns about the quality of the denominational education provided by a church school in the diocese or about the content of the collective worship of a church school in the diocese, it may direct the governing body or (in the case of an Academy) the proprietor of the school to permit the inspection by such person as the DBE appoints of the education or worship concerned.

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- (4) A direction under subsection (1) or (2) must specify the function or functions concerned.
- (5) The governing body or proprietor or the trustees must comply with a direction given under this section—
  - (a) in the case of a direction under subsection (1) or (2), within six months of being given it;
  - (b) in the case of a direction under subsection (3), within such period as the direction specifies.
- (6) Where the giving of a direction under this section is to be considered at a meeting of the DBE, the following persons may attend the part of the meeting dealing with the consideration of that matter—
  - (a) the head teacher of the school concerned,
  - (b) the chair of the governing body, board of directors or trustees (as the case may be), and
  - (c) one or two other persons (or such greater number as the DBE may allow) nominated by the governing body, the board of directors or the trustees.
- (7) Where a person who is entitled to attend a meeting of the DBE in reliance on subsection (6)(a) or (b) is unable to do so, the person may nominate another person to attend the meeting in his or her place.
- (8) A person attending a meeting of the DBE in reliance on subsection (6) or (7)—
  - (a) may make an oral presentation or oral submissions to the meeting, and
  - (b) may speak in response to a question put by a member of the DBE.
- (9) Where the DBE for a diocese gives a direction under this section, it must lay a report—
  - (a) before the diocesan synod, or
  - (b) in the case of a joint DBE, before the diocesan synod for the diocese to which the direction relates.
- (10) An alteration to a school is “relevant” if it is an alteration which—
  - (a) in the case of a voluntary or foundation school, is for the time being prescribed in regulations under section 18 of the Education and Inspections Act 2006;
  - (b) in the case of an Academy, corresponds to an alteration which is for the time being so prescribed.

## **11 Engagement**

- (1) The DBE for a diocese may engage on matters of common interest with persons concerned with education in another diocese if it has obtained the consent of the DBE for the other diocese.
- (2) Where the DBE for a diocese has, by virtue of section 15(2), functions in connection with the other charitable work of the Church of England in relation to children and young people, it may engage on matters of common interest with persons concerned with such work in another diocese if it has obtained the consent of the DBE for the other diocese.

## 12 Information

- (1) The DBE for a diocese may require the governing body or (in the case of an Academy) the proprietor of a church school in the diocese to provide information to assist the DBE in carrying out its functions.
- (2) Where there is a question as to whether the governing body or proprietor is prevented by law from providing information required under subsection (1), or as to whether information required under that subsection would assist the DBE in carrying out its functions, either the DBE or the governing body or proprietor may refer the question to the consistory court of the diocese for determination.
- (3) A question referred under subsection (2) for determination is to be disposed of on the basis of written representations; and the court's determination is final.
- (4) The references in subsections (2) and (3) to the consistory court of the diocese are, in the case of the diocese of Canterbury, to be read as references to the commissary court of that diocese.

## 13 Safeguarding

- (1) In section 5(2) of the Safeguarding and Clergy Discipline Measure 2016 (persons required to have due regard to the House of Bishops' guidance), after paragraph (f) insert “;  
(g) the Diocesan Board of Education for a diocese (see subsection (2A))”.
- (2) After section 5(2) of that Measure insert—
  - “(2A) The reference in subsection (1)(g) to the Diocesan Board of Education for a diocese is a reference—
    - (a) where the Board is a company or charitable incorporated organisation, to the Board itself;
    - (b) where the Board is an unincorporated body, to a member of the Board;
    - (c) where the Diocesan Board of Finance for the diocese is designated as the Diocesan Board of Education under section 3 of the Diocesan Boards of Education Measure 2021, to a member of the committee established by virtue of that section.”

## 14 Government contributions to capital works in church schools

A DBE may enter into arrangements with one or more other DBEs for the purpose of securing that the dioceses concerned are to be regarded as a single entity in respect of the annual contribution from the Secretary of State towards the cost of capital works in certain church schools in any of those dioceses.

## 15 Other responsibilities

- (1) The DBE for a diocese has such other functions as are conferred on it by provision made by or under any other Measure or an Act of Parliament (whether the DBE is for that purpose referred to as the DBE or as “the appropriate diocesan authority” or “the appropriate religious body” or by some other description).

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- (2) The DBE for a diocese has such other functions in connection with education or with the other exclusively charitable work of the Church of England in relation to children and young people as the diocesan synod may confer on it by a scheme under section 3.
- (3) But a function may not be conferred under subsection (2) which—
  - (a) relates to church schools or church educational endowments,
  - (b) is inconsistent with the DBE's charitable purposes, or
  - (c) conflicts with a provision of this Measure or with provision made by or under any other Measure or an Act of Parliament.
- (4) In a case where the Board of Finance is designated as the DBE for the diocese by a scheme under section 3, the reference in subsection (3)(b) of this section to the DBE's charitable purposes is to be read as a reference to the Board of Finance's charitable purposes so far as they relate to its functions as the DBE for the diocese.
- (5) In a case where there is a joint DBE, this section has effect as if the power conferred by subsection (2) on the diocesan synod were a power conferred on the diocesan synods concerned acting jointly.
- (6) The DBE for a diocese may do anything to facilitate, or anything which is conducive or incidental to, the exercise of its functions.

## 16 Consequential amendments

- (1) The Archbishops' Council may, in consequence of provision about education made by or under an Act of Parliament, amend this Measure by order so as to add, vary or omit provision—
  - (a) conferring a function on the DBE for a diocese;
  - (b) requiring the governing body or (in the case of an Academy) the proprietor of a church school or the trustees of a church educational endowment or a local authority to obtain the advice or consent of or to consult, or to comply with a direction given by, the DBE for a diocese.
- (2) An order under this section—
  - (a) may make different provision for different purposes;
  - (b) may include supplementary, incidental, consequential, transitional or saving provision.
- (3) An order under this section may not be made unless—
  - (a) a draft of the order has been laid before the General Synod and approved by it with or without amendment, and
  - (b) the draft so approved has been referred to the Archbishops' Council.
- (4) Before a draft of an order under this section is laid under subsection (3)(a), the Archbishops' Council must consult the Secretary of State; and if the Secretary of State does not respond within the period of 90 days beginning with the day on which the draft is sent to the Secretary of State for that purpose, the Secretary of State is to be regarded as having no comments on the draft.
- (5) On referral of the draft under subsection (3)(b), the Archbishops' Council must—
  - (a) if the draft was approved without amendment, make the order by applying its seal, or
  - (b) if the draft was approved with amendment—

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- (i) make the order by applying its seal, or
  - (ii) withdraw the draft for further consideration.
- (6) An order under this section may not come into force unless it has been sealed by the Archbishops' Council.
- (7) If the Business Committee of the General Synod determines that a draft of an order under this section does not need to be debated by the Synod, the draft is to be treated as approved without amendment for the purposes of this section unless a member of the Synod gives notice in accordance with its Standing Orders that the member—
  - (a) wishes the draft order to be debated, or
  - (b) wishes to move an amendment to it.
- (8) The power to make an order under this section is exercisable by statutory instrument; and the Statutory Instruments Act 1946 applies—
  - (a) as if the order had been made by a Minister of the Crown, and
  - (b) as if this Measure were an Act of Parliament providing for the instrument containing the order to be subject to annulment in pursuance of a resolution of either House of Parliament.

#### *Miscellaneous*

### **17 Review**

- (1) Each diocesan synod must keep under review the exercise of functions by the DBE.
- (2) The DBE for each diocese must, as soon as practicable after the end of each year—
  - (a) make a report to the diocesan synod on the exercise of its functions in that year, or
  - (b) in a case where there is a joint DBE, make a report to each of the diocesan synods concerned on the exercise of the DBE's functions in that year in that diocese.

### **18 Guidance**

- (1) In exercising a function under this Measure, the DBE, the Board of Finance and the diocesan synod for a diocese, and the bishop of a diocese, must each have due regard to such guidance as the Archbishops' Council may from time to time issue for the purposes of this Measure.
- (2) Before issuing guidance for the purposes of this Measure, the Archbishops' Council must carry out such consultation as it considers appropriate.

#### *Interpretation*

### **19 Meaning of “church school”**

- (1) This section applies for the purposes of this Measure.
- (2) A foundation or voluntary school is a “church school” if it meets at least one of the following conditions.

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- (3) Those conditions are—
- (a) that at least one member of the governing body of the school is a foundation governor appointed for the purpose of securing that the Church of England character of the school is preserved and developed;
  - (b) that the premises provided for the school when it was first established were so provided on trust that, if the school were to be discontinued, the property concerned was to be held for, or to be sold and the proceeds of sale applied for, the benefit of the Church of England;
  - (c) that some or all of the premises currently occupied by the school were provided on trust in connection with the conduct of an educational institution or the provision of education according to the tenets of the Church of England.
- (4) An Academy is a “church school” if it meets at least one of the following conditions.
- (5) Those conditions are—
- (a) that the directors of the company that is the proprietor of the Academy are required by the proprietor’s articles of association to secure that the Church of England character of the Academy is preserved and developed;
  - (b) that the proprietor’s articles of association provide that the conduct of the Academy or the provision of education there must be in accordance with the tenets of the Church of England;
  - (c) that the premises provided for the Academy when it was first established were so provided on trust that, if the Academy were to be discontinued, the property concerned was to be held for, or to be sold and the proceeds of sale applied for, the benefit of the Church of England;
  - (d) that some or all of the premises currently occupied by the Academy were provided on trust in connection with the conduct of an educational institution or the provision of education according to the tenets of the Church of England.
- (6) A foundation or voluntary school or an Academy is a “church school” if, despite not meeting any of the conditions in subsection (3) or (5) (as the case may be), it is nonetheless designated as “Church of England” by an order under section 69(3) of the School Standards and Framework Act 1998 (in a case where it has been decided that the conduct of the school or Academy or the provision of education there is in accordance with the tenets of the Church of England).
- (7) In subsection (5)(b), the reference to the requirement for the provision of education at an Academy to be in accordance with the tenets of the Church of England is not to be read as a requirement for all the education provided there to be in accordance with those tenets.
- (8) The Archbishops’ Council may, in consequence of provision about education made by or under an Act of Parliament, by order amend the definition of “church school” for the purposes of this Measure; and subsections (2) to (8) of section 16 apply in relation to an order under this section as they apply in relation to an order under that section.

## 20 Other interpretation

- (1) In this Measure—
- “Academy” has the same meaning as in the Education Act 1996 (see section 579(1) of that Act);

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“Board of Finance”, in relation to a diocese, means the Diocesan Board of Finance for the diocese;

“church educational endowment” means an endowment which, or the income of which, may be applied for purposes of education which include the purposes of religious education according to the faith and practice of the Church of England;

“CIO” means charitable incorporated organisation;

“consent” means written consent;

“DBE” means diocesan board of education (see also subsection (2) of this section and section 3(8));

“foundation governor” means a person appointed as a foundation governor in accordance with regulations under section 19 of the Education Act 2002;

“function” has the meaning given in section 2(3);

“proprietor”, in relation to an Academy, has the same meaning as in the Academies Act 2010;

“register of charities” means the register kept under section 29 of the Charities Act 2011.

- (2) A reference in this Measure to the DBE, in relation to a church school, is a reference to the DBE for the diocese in the area of which the school is situated.
- (3) A reference in this Measure to a scheme under section 3 is to be construed in accordance with section 4(8).
- (4) In this Measure, “head teacher” includes an acting head teacher; and—
  - (a) in the case of a foundation or voluntary school which forms part of a federation, a reference in this Measure to the head teacher is to be read as a reference only to the head teacher of the federation (with “federation” having the meaning given in section 24(2) of the Education Act 2002);
  - (b) in the case of an Academy the principal of which is not also the chief executive officer of the proprietor, a reference in this Measure to the head teacher is to be read as a reference only to the chief executive officer.
- (5) A reference in this Measure to an endowment includes a reference to property which is not subject to any restriction on the expenditure of capital.
- (6) A reference in this Measure (except in subsection (7)(a) and (b) of this section) to the archbishop of a province is, if there is a vacancy in the archbishopric or the archbishop is unable to exercise a function under this Measure, to be read as a reference to the archbishop of the other province.
- (7) A reference in this Measure to the archbishop of a province in which a diocese is situated is a reference—
  - (a) in the case of the diocese of Canterbury, to the Archbishop of York;
  - (b) in the case of the diocese of York, to the Archbishop of Canterbury.
- (8) A reference in this Measure to provision made by or under another Measure or an Act of Parliament includes a reference to provision made after the passing of this Measure.

*Repeals***21 Repeal of the 1991 Measure**

- (1) The Diocesan Boards of Education Measure 1991 (“the 1991 Measure”) is repealed, except for—
  - (a) section 11(1)(a) (which amends section 5(5) of the Parochial Church Councils (Powers) Measure 1956), and
  - (b) section 13 (short title, commencement and extent), so far as necessary for the purposes of section 11(1)(a).
- (2) Accordingly, each order of the Secretary of State under section 1 of the Diocesan Boards of Education Measure 1991 which was in force immediately before the commencement of this section is revoked.
- (3) In consequence of the repeal made by subsection (1), the following provisions (which amend the Diocesan Boards of Education Measure 1991) are repealed—
  - (a) in the Education Act 1996, in Schedule 37, paragraph 104 and the preceding cross-heading;
  - (b) in the School Standards and Framework Act 1998, in Schedule 30, paragraphs 29 to 32 and the preceding cross-heading;
  - (c) in the Education Act 2002, in Schedule 4, paragraph 13 and the preceding cross-heading;
  - (d) in that Act, in Schedule 7, paragraph 3 and the preceding cross-heading;
  - (e) in the Education and Inspections Act 2006, in Schedule 3, paragraphs 4 and 5 and the preceding cross-heading;
  - (f) in the School Standards and Organisation (Wales) Act 2013, in Schedule 5, paragraph 15 and the preceding cross-heading.
- (4) This section is subject to section 23(8) (which makes transitional and saving provision in relation to the commencement of this section).

*Preliminary steps***22 Preparatory steps**

- (1) Before the commencement of a provision of this Measure, the DBE, the Board of Finance and the diocesan synod for a diocese may each take such steps as it considers necessary or appropriate, and the bishop of a diocese may take such steps as he or she considers necessary or appropriate, for facilitating the implementation of that provision.
- (2) If, before the passing of this Measure, the DBE, the Board of Finance or the diocesan synod for a diocese has taken steps which it, or the bishop of a diocese has taken steps which he or she, considers necessary or appropriate for facilitating the implementation of a provision of this Measure, those steps are to be treated as if they had been taken in reliance on subsection (1) after the passing of this Measure.
- (3) Subsections (1) and (2) do not affect the operation of section 13 of the Interpretation Act 1978 (anticipatory exercise of powers) in relation to this Measure.

## **23 Steps for making first scheme**

- (1) If the Archbishops' Council is satisfied that a diocesan synod is ready to make the first scheme under section 3 in relation to that diocese in time for the scheme to come into operation by 1 January 2023, the Archbishops' Council must certify to the diocesan synod that—
  - (a) the scheme will come into operation on the date specified in or determined in accordance with the certificate, and
  - (b) section 3(10) and Schedule 2 will come into force in relation to that diocese on that date.
- (2) If, on 1 November 2022, the Archbishops' Council is not satisfied as mentioned in subsection (1) in relation to a diocese, it must refer the matter to the archbishop of the province in which the diocese is situated.
- (3) The archbishop, on receiving a referral under subsection (2), must make a scheme for the diocese in such terms as the archbishop considers appropriate in all the circumstances.
- (4) Before making a scheme under subsection (3), the archbishop must consult the Charity Commission on the proposed terms of the scheme; and if the Charity Commission does not respond within the period of 90 days beginning with the day on which the proposed terms are sent to the Charity Commission for that purpose, the Charity Commission is to be regarded as having no comments on the proposed terms.
- (5) A scheme made under subsection (3) is to be treated for the purposes of this Measure as the first scheme made under section 3 in relation to the diocese concerned.
- (6) The DBE for a diocese continues, pending the coming into operation of the first scheme under section 3 in relation to the diocese, to be constituted as it was immediately before the commencement of this section.
- (7) Accordingly, the period of office of each person who, at the end of 2021, is serving as a member of the DBE for a diocese continues pending the coming into operation of the first scheme under section 3 in relation to the diocese, even if, in the case of an elected member of the DBE, that person ceases to be a member of the diocesan synod after the end of 2021.
- (8) Sections 1 and 10 of, and the Schedule to, the Diocesan Boards of Education Measure 1991, and any order of the Secretary of State under section 1 of that Measure in force immediately before the coming into operation of the first scheme under section 3 in relation to a diocese, continue in force so far as necessary for the purposes of subsections (6) and (7) of this section, in spite of the repeals made by section 21.

### *Final provision*

## **24 Short title, commencement and extent**

- (1) This Measure may be cited as the Diocesan Boards of Education Measure 2021.
- (2) This section and section 22 come into force on the day on which this Measure is passed.
- (3) The remaining provisions of this Measure, apart from section 3(10) and Schedule 2, come into force two months after the day on which this Measure is passed.

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- (4) Section 3(10) and Schedule 2 come into force in relation to each diocese on the day certified in relation to that diocese under section 23(1).
- (5) The Archbishops' Council may by order make transitional, transitory or saving provision in connection with the commencement of a provision of this Measure.
- (6) The power to make an order under this section is exercisable by statutory instrument; and the Statutory Instruments Act 1946 applies as if the order had been made by a Minister of the Crown and as if this Measure were an Act of Parliament.
- (7) This Measure extends to—
  - (a) the whole of the province of Canterbury, except the Channel Islands (subject to subsection (8)), and
  - (b) the whole of the province of York, except the Isle of Man (subject to subsection (9)).
- (8) This Measure may be applied to the Channel Islands or either of them, with or without modifications, under any procedure for doing so which has effect in the Islands or (as the case may be) the Island in question; and for this purpose, the references to the Channel Islands or either of them have the same meaning as references to the Bailiwicks or either of them have in the Channel Islands Measure 2020.
- (9) If an Act of Tynwald or an instrument made under an Act of Tynwald so provides, this Measure extends to the Isle of Man subject to such exceptions, adaptations or modifications as are specified in the Act or instrument.

## SCHEDULES

### SCHEDULE 1

Sections 3(9) and 4(8)

#### DBE: SCHEME FOR DESIGNATION

##### *Company or CIO*

- 1 (1) This paragraph applies in the case of a scheme under section 3 which designates a company limited by guarantee or a CIO as the DBE for a diocese.
- (2) The scheme must specify—
  - (a) the name of the designated body,
  - (b) the number with which it is registered in the register of charities, and
  - (c) in the case of a company limited by guarantee, the number with which it is registered in the register of companies.
- (3) Where, immediately before the coming into operation of the scheme, the Board of Finance or another body was holding funds or other property on trust in connection with the provision of church schools in the diocese, the scheme may make provision in relation to that property.
- (4) For the purposes of sub-paragraph (3), the scheme may in particular provide for the transfer of the property concerned to the designated body subject to the same trusts; but property held as permanent endowment is to be held by the designated body as corporate trustee.
- (5) The scheme may not provide for the transfer of property—
  - (a) the transfer of which would trigger a right of reverter, or
  - (b) which is held on the uniform statutory trusts set out in Schedule 36 to the Education Act 1996.
- (6) Where, immediately before the coming into operation of the scheme, the Board of Finance was a member (whether or not as nominee of the DBE) of a relevant company, or had the power to appoint members or directors of a relevant company, the scheme may make provision in relation to that membership or power.
- (7) In sub-paragraph (6), “relevant company” means—
  - (a) the proprietor of one or more Academies,
  - (b) any other company established in connection with the provision of Academies, or
  - (c) a company established to provide educational services in the diocese.
- (8) For the purposes of sub-paragraph (6), the scheme may in particular provide for the substitution of the designated body for the Board of Finance as a member of the relevant company or (as the case may be) as the body entitled to exercise the power of appointment concerned.

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- (9) Where provision made in the scheme for the purposes of sub-paragraph (6) has the effect of altering the company’s constitution, section 34 of the Companies Act 2006 (notice to registrar of companies where constitution altered by enactment) applies to the alteration as if it were an alteration made by an enactment; and, for that purpose, a reference in that section to an enactment is to be treated as a reference to the provision in the scheme.

#### *Unincorporated body*

- 2 (1) This paragraph applies in the case of a scheme under section 3 which designates an unincorporated body as the DBE for a diocese.
- (2) The scheme must specify—
- (a) the name of the designated body, and
  - (b) the number with which it is registered in the register of charities.
- (3) Where, immediately before the coming into operation of the scheme, the Board of Finance or another body was holding funds or other property on trust in connection with the provision of church schools in the diocese, the scheme may make provision in relation to that property.
- (4) For the purposes of sub-paragraph (3), the scheme may in particular provide—
- (a) for the Board of Finance to hold or (as the case may be) to continue to hold the property as trustee subject to the same trusts, but
  - (b) for those trusts to be administered by the members of the designated body.
- (5) The scheme may not provide for the transfer of property—
- (a) the transfer of which would trigger a right of reverter, or
  - (b) which is held on the uniform statutory trusts set out in Schedule 36 to the Education Act 1996.

#### *Diocesan Board of Finance*

- 3 (1) This paragraph applies in the case of a scheme under section 3 which designates the Board of Finance for a diocese as the DBE for the diocese.
- (2) The scheme must specify—
- (a) the name of the Board of Finance,
  - (b) the number with which it is registered in the register of charities, and
  - (c) the number with which it is registered in the register of companies.
- (3) The scheme must provide for the delegation of the functions which the Board of Finance has as the DBE to the committee of the Board of Finance established under section 3 (referred to in this paragraph as “the DBE committee”).
- (4) The scheme must provide that the Board of Finance in its own right (rather than the Board acting through the DBE committee) may not exercise a function delegated to the DBE committee or a sub-committee unless it is satisfied—
- (a) that the DBE committee or the sub-committee is failing to act in accordance with this Measure or the scheme in relation to that function, and
  - (b) that the failure is significant.

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- (5) The scheme must include provision as to the procedure of the DBE committee and of any sub-committee; and the scheme may for that purpose authorise the Board of Finance to make such provision.
- (6) Where, immediately before the coming into operation of the scheme, the Board of Finance or another body was holding funds or other property on trust in connection with the provision of church schools in the diocese, the scheme may make provision in relation to that property.
- (7) For the purposes of sub-paragraph (6), the scheme may in particular provide—
  - (a) for the Board of Finance to hold or (as the case may be) to continue to hold the property as trustee subject to the same trusts, but
  - (b) for those trusts to be administered by the members of the DBE committee.
- (8) The scheme may not provide for the transfer of property—
  - (a) the transfer of which would trigger a right of reverter, or
  - (b) which is held on the uniform statutory trusts set out in Schedule 36 to the Education Act 1996.

#### *General provisions*

- 4 The provisions contained in the memorandum and articles of association of each Board of Finance by virtue of section 1(2)(b) of the Diocesan Boards of Finance Measure 1925 are to be taken to include provision authorising the Board to further the work of the Church of England by the exercise of—
  - (a) the functions conferred on the Board by virtue of paragraph 3, and
  - (b) the functions which the Board has in its own right (rather than through the DBE committee within the meaning of paragraph 3).
- 5 Every scheme under section 3 must include provision about—
  - (a) the composition of the DBE in accordance with Schedule 2;
  - (b) reporting to the diocesan synod in accordance with section 17(2).
- 6 (1) A scheme under section 3 may include provision—
  - (a) for the transfer of property or rights for which provision is not made in paragraphs 1 to 3;
  - (b) for the transfer of rights and liabilities under or in connection with a contract of employment;
  - (c) for the transfer of other rights and liabilities.
 (2) For the purposes of sub-paragraph (1)(a), the scheme may provide for property which was held on trust immediately before the transfer to continue to be held subject to the same trusts.
 (3) But any property which was held immediately before the transfer as permanent endowment is, if the transferee is a company limited by guarantee or CIO, to be held by the transferee as corporate trustee.
- 7 (1) A scheme under section 3 may include supplementary, incidental, consequential, transitional or saving provision and may in particular—
  - (a) create rights or impose liabilities in relation to property or rights transferred;

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- (b) make provision about the continuing effect of things done, or the continuation of things in the process of being done, in respect of anything transferred;
  - (c) make provision about the interpretation of references to the DBE in an instrument or other document in respect of anything transferred.
- (2) The reference in sub-paragraph (1)(c) to an instrument or other document does not include a reference to a Measure or an Act of Parliament or to legislation made under a Measure or an Act of Parliament.
- 8 (1) The consent of the DBE for the purposes of section 3(2) or (3) may be signified by a certificate signed by the bishop of the diocese and by the director of education of the diocese.
- (2) The consent of the DBE for the purposes of section 4(4) may be signified by a certificate signed by the bishop, and by the director of education, of each of the dioceses concerned.
- (3) A certificate under this paragraph is to be treated as conclusive for all purposes.

*Amendment or revocation*

- 9 (1) A scheme under section 3 may be amended or revoked; and the scheme must, subject to sub-paragraph (2), make provision as to the procedure for doing so.
- (2) An amendment to a scheme under section 3 has effect only if—
- (a) the DBE has consented to it, and
  - (b) it is approved by the diocesan synod.
- (3) A scheme under section 3 may be supplemented by a further scheme under that section (which may itself be amended or revoked).
- (4) In the application of this paragraph to a scheme under section 4, sub-paragraph (2) (b) has effect as if the reference to the diocesan synod were a reference to each of the diocesan synods concerned.
- 10 (1) Where a scheme under section 3 is revoked, the body which the scheme had designated as the DBE ceases to be the DBE; and the diocesan synod must secure that a scheme of a kind coming within sub-paragraph (3) will come into operation immediately after the revocation.
- (2) Where a scheme under section 4 is revoked, the body which the scheme had designated as the joint DBE ceases to be the joint DBE; and each of the diocesan synods concerned must secure that a scheme of the kind coming within sub-paragraph (3) will come into operation immediately after the revocation.
- (3) A scheme comes within this sub-paragraph if it is—
- (a) a scheme under section 3 designating a body as the DBE for the diocese;
  - (b) a scheme under section 4 made with one or more other diocesan synods designating a body as the joint DBE for the diocese and the other diocese or dioceses concerned;
  - (c) a scheme under section 4 made with one or more other diocesan synods designating an existing joint DBE as the DBE for the diocese too.

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- (4) In the case of a scheme under section 4, a diocesan synod may give reasonable notice in writing to the other diocesan synod or synods concerned that it no longer wishes the joint DBE to be the DBE for that diocese.
- (5) Where a diocesan synod has given (and not withdrawn) notice under sub-paragraph (4) on the expiry of which there would be only one diocese for which the joint DBE was designated as the DBE, the scheme under section 4 is revoked on the expiry of the notice and sub-paragraph (2) applies accordingly.
- (6) Where a diocesan synod has given (and not withdrawn) notice under sub-paragraph (4) on the expiry of which there would still be at least two dioceses for which the joint DBE was designated as the DBE—
  - (a) the joint DBE ceases on the expiry of the notice to be the joint DBE for the diocese whose diocesan synod gave the notice,
  - (b) that diocesan synod must secure that a scheme of a kind coming within sub-paragraph (3) will come into operation immediately after the expiry of the notice, and
  - (c) the other diocesan synods must make a scheme to amend or supplement the scheme under section 4 so far as they consider necessary or appropriate to enable the joint DBE to continue to operate.
- (7) The revocation of a scheme under section 3 or 4 has effect only if the scheme under section 3 or 4 which is to come into operation immediately after the revocation is approved by the diocesan synod.
- (8) Section 4(9) does not apply to this paragraph.

*Copy for Secretary of State*

- 11 (1) The DBE for a diocese must, within 90 days of a scheme under section 3 being made, send a copy of the scheme to the Secretary of State.
- (2) Sub-paragraph (1) applies also to any instrument amending, supplementing or revoking a scheme under section 3.

*Vesting of property*

- 12 (1) Where a scheme under section 3 provides for the transfer of property, the legal title to that property is by virtue of the scheme itself to be transferred in accordance with the scheme, without the need for any further document.
- (2) The transfer of property by a scheme under section 3 does not operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

*Meaning of “reverter”*

- 13 In this Schedule, a reference to a transfer of property which would trigger a right of reverter is a reference to a transfer of property which would give rise to a trust under section 1 of the Reverter of Sites Act 1987.

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## SCHEDULE 2

Section 3(10)

## DBE: GOVERNANCE

*Composition*

- 1 (1) The DBE for a diocese consists of—
  - (a) the bishop of the diocese, and
  - (b) at least 10 other members.
- (2) The joint DBE for two or more dioceses consists of—
  - (a) each of the diocesan bishops concerned, and
  - (b) a sufficient number of other members to give a total membership of at least 12.
- (3) In the case of a DBE which is a separately registered charity, each member is, by virtue of that membership, a charity trustee of the DBE.
- (4) In the case of a DBE which is a company limited by guarantee or a CIO, each member of the DBE, and no other person, is a member of the company or CIO.
- (5) In a case where the Board of Finance is designated as the DBE for the diocese, each member of the committee established by virtue of section 3 must be a person who is not disqualified from being a charity trustee.
- (6) A person other than the bishop of the diocese may become a member of the DBE by being—
  - (a) appointed by the bishop,
  - (b) elected by the diocesan synod, or
  - (c) co-opted by the DBE.
- (7) A scheme under section 4 for the designation of a body as a joint DBE must include provision for the appointment, election or co-option of members; and that provision must include—
  - (a) provision for each of the diocesan bishops concerned to appoint at least one person, and
  - (b) provision for each of the diocesan synods concerned to elect at least one person.
- (8) In the application of this paragraph to a joint DBE, sub-paragraph (6) has effect subject to the provision which, for the purposes of sub-paragraph (7), is included in the scheme under section 4.
- (9) In making an appointment or co-option to the DBE for a diocese or selecting candidates for election to it, regard must be had to the desirability of securing that a variety of relevant skills is available among the members.
- (10) A scheme under section 3 must include provision as to the term of office of a member of the DBE, including the circumstances in which a person ceases to hold office and the grounds on which a person may be removed or suspended from office; and the scheme may for that purpose make different provision depending on whether a person became a member by virtue of sub-paragraph (6)(a), (b) or (c).

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*Status: This is the original version (as it was originally enacted).*

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- (11) A conflict of loyalty which would or might arise as a result of a member of the DBE for a diocese also being a director of the Board of Finance or a member of the diocesan synod, or both, is authorised by virtue of this sub-paragraph if—
- (a) the conflict relates to a duty of loyalty owed to the Board of Finance or diocesan synod and does not involve a direct or indirect benefit of any nature to the member or a connected person, and
  - (b) the member in question declares the conflict.
- (12) In sub-paragraph (11)(a), “connected person”, in relation to a member of the DBE of a diocese, has the meaning it has in accordance with section 188 of the Charities Act 2011 in relation to a charity trustee.

### *Chair*

- 2 (1) The chair of the DBE for a diocese is, subject to sub-paragraph (2)—
- (a) the bishop of the diocese, or
  - (b) another member of the DBE appointed by it after consultation with the bishop.
- (2) In the case of a joint DBE, the chair is a member of the joint DBE appointed by it after consultation with the diocesan bishops concerned; and the member so appointed may be one of the bishops.

### *Committees and delegation*

- 3 (1) The DBE for a diocese (except in a case where the Board of Finance is designated as the DBE for the diocese) may delegate functions to—
- (a) an officer or member of staff of the DBE, or
  - (b) a committee established by the DBE.
- (2) Where the Board of Finance is designated as the DBE for the diocese by a scheme under section 3, the committee established by virtue of that section may delegate functions exercisable by it by virtue of paragraph 3(3) of Schedule 1 to—
- (a) an officer or member of staff of the Board of Finance, or
  - (b) a sub-committee established by the committee.
- (3) The members of a committee referred to in sub-paragraph (1)(b) or a sub-committee referred to in sub-paragraph (2)(b) may include persons who are not members of the DBE.
- (4) The director of education for a diocese may not be a member of a committee or sub-committee of the DBE but may attend any meeting which a committee or sub-committee holds; and, at any meeting which the director of education attends, he or she may speak but may not vote.
- (5) Each DBE must set terms of reference in relation to the delegation of functions.
- (6) A scheme under section 3 must include provision requiring a committee or sub-committee of the DBE to report its proceedings to the DBE.

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*Status: This is the original version (as it was originally enacted).*

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### *Proceedings*

- 4 The DBE for a diocese may regulate its own procedure and the procedure and membership of any committee or sub-committee (as the case may be), subject to—
- (a) the provisions of this Measure,
  - (b) the provisions of the scheme under section 3 which provides for the designation of a body as the DBE, and
  - (c) the provisions of the designated body’s governing instrument or, where the Board of Finance is the designated body, such provisions as may be made by the Board by virtue of paragraph 3(5) of Schedule 1.
- 5 The validity of proceedings of the DBE for a diocese is not affected by a vacancy among its members or a defect in the appointment, election or co-option of a member.

### *Application of charity law*

- 6 Nothing in this Measure, so far as relating to membership of the DBE for a diocese, affects the application of any enactment providing for the disqualification of a person from being a charity trustee.

## DIOCESAN BOARD OF EDUCATION SCHEME

### [TEMPLATE FOR COMPANY/CIO FOR SINGLE DIOCESE<sup>12</sup>]

The Diocesan Synod for the Diocese of [ ], in exercise of the powers conferred by the Diocesan Boards of Education Measure 2021, makes this Scheme on [*insert date*].

[This Scheme is the first scheme made for the Diocese under section 3 of that Measure and implements a proposal made by the Bishop with the consent of the body which, immediately before this Scheme was made, was the Diocesan Board of Education for the Diocese.]<sup>3</sup>

#### *Preliminary*

##### **Commencement**

1. This Scheme comes into operation on [ ].

#### *The DBE*

##### **Designation of incorporated body**

2. (1) The Diocesan Synod designates as the DBE for the Diocese the [company] [charitable incorporated organization] known as [ ].  
(2) The [company/charitable incorporated organisation is registered in the register of charities with the number [ ]]

##### **Duty to promote education etc.**

3. The DBE must, as required by section 2(1) of the Measure—
  - (a) promote or assist in the promotion of education in the Diocese that is consistent with the faith and practice of the Church of England;
  - (b) promote or assist in the promotion of religious education and religious worship in schools in the Diocese;
  - (c) promote or assist in the promotion of church schools in the Diocese;
  - (d) promote co-operation between itself and other persons concerned with education in the Diocese.

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<sup>1</sup> This is a template scheme and is designed to be amended to suit the circumstances in each diocese. Legal advice should be taken on the amendments to make to this template to ensure that your scheme is compliant with the requirements of the Diocesan Boards of Education Measure 2021 and deals properly with legal issues particular to your diocese – for example, in relation to the transfer of trusteeship, property and other rights.

<sup>2</sup> Note that the scheme is not the governing document of the body designated as the DBE; that governing document must comply with the Diocesan Boards of Education Measure 2021 and with the scheme and will set out the detailed provisions on the workings of the designated body.

<sup>3</sup> For subsequent schemes, amend accordingly.

### Membership

#### Members

4. (1) The members of the DBE are<sup>4</sup>—
- (a) the Bishop<sup>5</sup>,
  - (b) at least [ 2 ] [but not more than [ 4]] [*specify numbers*]<sup>6</sup> members appointed by the Bishop<sup>7</sup>,
  - (c) at least [ 3 ] [but not more than [ 4 ]] [*specify numbers*]<sup>8</sup> members elected by the Diocesan Synod<sup>9</sup> [, and
  - (d) at least [ 10] [but not more than [ ]] [*specify numbers*]<sup>10</sup> members co-opted by the DBE]<sup>11</sup>.
- (2) In making an appointment or co-option or selecting candidates for election, regard must be had to the desirability of securing that a variety of relevant skills is available among the members.<sup>12</sup>
- (3) Each member of the DBE is, by virtue of that membership, a charity trustee of the DBE; and, accordingly, a person is not eligible to be a member of the DBE if the person is disqualified by law from being a charity trustee<sup>13</sup>.

#### Appointments

5. (1) The Bishop must, after appointing a member of the DBE, give written notice of the appointment to the Director of Education for the diocese<sup>14</sup>.
- (2) The appointment takes effect—
- (a) on the date specified in the notice, or
  - (b) if no date is specified in the notice, on the date on which the Director of Education receives the notice.
- (3) The appointment comes to an end (unless it has already come to an end under Article 9 or 10)—
- (a) on the date specified in the notice,
  - (b) at the end of the term of years specified in the notice,

<sup>4</sup> The total number of members under Article 4(1)(b), (c) and (d) must be at least 10.

<sup>5</sup> See paragraph 1(1)(a) of Schedule 2 to the Measure.

<sup>6</sup> Amend as appropriate.

<sup>7</sup> See paragraph 1(5)(a) of Schedule 2 to the Measure. All appointments to the DBE are made by the Bishop in accordance with that provision.

<sup>8</sup> Amend as appropriate.

<sup>9</sup> See paragraph 1(5)(b) of Schedule 2 to the Measure.

<sup>10</sup> Amend as appropriate.

<sup>11</sup> See paragraph 1(5)(c) of Schedule 2 to the Measure. There is no requirement for a DBE to co-opt members and so this should only be included if appropriate.

<sup>12</sup> This is a requirement under paragraph 1(9) of Schedule 2 to the Measure.

<sup>13</sup> There is no reference here to disqualification as a company director, because a person who is disqualified as such is automatically disqualified as a charity trustee – see section 178(1) of the Charities Act 2011.

<sup>14</sup> The notice is to be given to the Director of Education in the capacity as the secretary of the DBE.

- (c) in the case of an ex officio appointment, at the time when the person ceases to hold the office by virtue of which the appointment is made, or
- (d) if none of paragraphs (a) to (c) apply, at the end of a term of [ ] years.<sup>15</sup>

### **Election**

- 6. (1) The Diocesan Synod must hold the elections required for the purposes of Article 4(1)(c).
- (2) Each election is to be conducted in the manner determined by the Diocesan Synod in accordance with its Standing Orders.
- (3) Before holding an election, the Diocesan Synod must by resolution specify—
  - (a) the timetable and date for the election,
  - (b) the manner in which it is to be conducted, and
  - (c) the period to be served by each person who is elected.
- (4) The period specified for the purposes of paragraph (3)(c) must not exceed three years.

### **Co-options**

- 7. It is for the DBE, subject to its [Constitution] [Articles of Association] and the other provisions of this Scheme, to decide [the manner in which a co-option is to be made and] the term of office which a co-opted member of the DBE is to serve.

### *Term of office*

#### **Term of office**

- 8. (1) An appointed member of the DBE holds office for the period provided for by Article 5(3).
- (2) An elected member of the DBE holds office for the period specified in the resolution of the Diocesan Synod under Article 6(3).
- (3) A co-opted member of the DBE holds office for a period which begins and ends on the dates specified in the co-option.
- (4) [A member of the DBE who has served [[specify number] consecutive terms of office] is not eligible to be appointed, elected or co-opted as a member until at least [specify period] have passed since the member last ceased to hold office as a member of the DBE.]
- (5) [The reference in paragraph (4) to a term of office [includes] [does not include] a reference to a term of office served in consequence of an election to fill a casual vacancy.]<sup>16</sup>

### **Resignation**

- 9. (1) A member of the DBE may resign the office by giving notice in writing to—
  - (a) the Director of Education for the diocese<sup>17</sup>, and
  - (b) the Diocesan Secretary.

<sup>15</sup> Delete if not required – but it may be helpful to include.

<sup>16</sup> If Article 8(5) is included, it is a matter for the Diocese to decide whether it should or should not apply to a term of office which a person serves as a result of having been elected to fill a casual vacancy.

<sup>17</sup> . The notice is to be given to the Director of Education in the capacity as the secretary of the DBE.

- (2) A resignation under this Article takes effect—
- (a) on the date specified in the notice, or
  - (b) if no date is specified in the notice, on the date on which the Director of Education receives the notice.

### **Disqualification, removal or suspension from office**

10. (1) A member of the DBE who is disqualified by law from acting as a charity trustee or who is removed as a charity trustee by the Charity Commission ceases, on the disqualification or removal taking effect, to be a member of the DBE and, accordingly, to be a member of the [company] [CIO].
- (2) A member of the DBE who is suspended by the Charity Commission from acting as a charity trustee of the DBE is, for the period of that suspension, suspended as a member of the DBE.
- (3) The DBE may, *[by resolution passed by [75%] of members present and voting at a meeting of the DBE]*<sup>18</sup>, remove a member of the DBE from office on any of the grounds set out in the DBE's [Articles of Association] [Constitution]<sup>19</sup>.
- (4) In the case of a member of the DBE who is appointed or elected, the power under paragraph (3) may be exercised only if the Bishop has given written approval.

### **Casual vacancies**

11. (1) Where a casual vacancy arises among the appointed members of the DBE, the Bishop must appoint a person to fill the vacancy in accordance with Article 5.
- (2) Where a casual vacancy arises among the elected members of the DBE, an election to fill the vacancy is to be held in accordance with Article 6.
- (3) Where a casual vacancy arises among the co-opted members of the DBE, the DBE may (but need not) co-opt a person to fill the vacancy.
- (4) Where the unexpired part of the term of office in question is less than six months, there is no need to fill the vacancy.
- (5) A person appointed to fill a casual vacancy holds office only for the unexpired part of the period provided for under Article 5(3) for the preceding appointment.
- (6) A person elected to fill a casual vacancy holds office only for the unexpired part of the period specified in the preceding resolution under Article 6(3).
- (7) A person co-opted to fill a casual vacancy holds office only for the unexpired part of the period specified in the preceding co-option.

### ***Safeguarding***

#### **Duty on DBE<sup>20</sup>**

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<sup>18</sup> Amend as appropriate.

<sup>19</sup> Delete as appropriate.

<sup>20</sup> The first wording is to be used until the commencement of the Safeguarding (Code of Practice) Measure 2021; the second wording is to be used after the commencement of that Measure.

12. The DBE is required by section 5 of the Safeguarding and Clergy Discipline Measure 2016 to have due regard to guidance issued by the House of Bishops on matters relating to the safeguarding of children and vulnerable adults.

**OR**

The DBE is required by section 5A of the Safeguarding and Clergy Discipline Measure 2016 to comply with requirements imposed on it by the code of practice issued by the House of Bishops on safeguarding children and vulnerable adults.

*Governance*

**Chair**

13. The chair of the DBE, as required by paragraph 2(1) of Schedule 2 to the Measure, is—
- (a) the Bishop, or
  - (b) another member of the DBE appointed by it after consultation with the Bishop.

**Proceedings**

14. (1) The DBE may regulate its own procedure and the procedure and membership of any committee or sub-committee, subject to its [Articles of Association] [Constitution]<sup>21</sup>, the provisions of the Measure and the other provisions of this Scheme.
- (2) A committee or sub-committee of the DBE must report its proceedings to the DBE in accordance with the requirements set out in its [Articles of Association] [Constitution]<sup>22</sup> or in any terms of reference set for the purposes of paragraph 3(5) of Schedule 2 to the Measure.

**Conflicts of loyalty<sup>23</sup>**

15. A conflict of loyalty which would or might arise as a result of a member of the DBE also being a director of the Board of Finance or a member of the Diocesan Synod, or both, is authorised (see paragraph 1(11) of Schedule 2 to the Measure) if—
- (a) the conflict relates to a duty of loyalty owed to the Board of Finance or Diocesan Synod and does not involve a direct or indirect benefit of any nature to the member or a connected person, and
  - (b) the member in question declares the conflict.

*[Functions and] Reporting*

**[Additional functions**

16. *[Include any additional functions in connection with education or with the other charitable work of the Church of England to be conferred on the DBE by the Diocesan Synod.]*

**Reporting**

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<sup>21</sup> Delete as appropriate.

<sup>22</sup> Delete as appropriate.

<sup>23</sup> It is essential that provision on conflicts of interest is included in the [Articles of Association] [Constitution].

17. (1) The DBE must, as soon as practicable after the end of each year, make a report to the Diocesan Synod on the exercise of the DBE's functions in that year.
- (2) [*Insert any requirements relating to when and how such a report must be made.*]

***Property<sup>24</sup> and memberships***

**Property held in connection with church schools<sup>25</sup>**

18. (1) The following property, which was held immediately before this Scheme came into operation by [the Board of Finance] [*or specify other body*] on trust in connection with the provision of church schools in the Diocese, [continues to be held by] [is transferred to] the DBE for it to hold on the same trusts—

[*list relevant property*]<sup>26</sup>

- (2) The following property, which is held as permanent endowment and which was held immediately before this Scheme came into operation by the Board of Finance [*or specify other body*] on trust in connection with the provision of church schools in the Diocese, is transferred to the DBE to be held by the DBE as corporate trustee on the same trusts—

[*list relevant property*]

- (3) [*Supplementary etc. provision under paragraph 7 of Schedule 1 to the Measure*]

**Memberships<sup>27</sup>**

19. (1) The DBE is to replace the Board of Finance as a member of each of the following companies—

[*list relevant companies, as defined by paragraph 1(7) of Schedule 1 to the Measure*]

- (2) The DBE is to replace the Board of Finance as a body entitled to appoint [members] [directors] of the following companies—

[*list relevant companies, as defined by paragraph 1(7) of Schedule 1 to the Measure*]

- (3) [*Supplementary etc. provision under paragraph 7 of Schedule 1 to the Measure*]

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<sup>24</sup> If the transfer of the property would trigger a right of reverter, or if the property is held on a Uniform Statutory Trust (see Schedule 36 to the Education Act 1996), it cannot be transferred using this scheme (see paragraph 1(5) of Schedule 1 to the Measure).

<sup>25</sup> Consider if any such trusts may be special trusts under section 12(1) of the Charities Act 2011 and so need to be registered with the Charity Commission as a linked charity to the DBE or, if the DBE is linked to the Board of Finance, as a linked charity to the Board of Finance.

<sup>26</sup> List here, or in a Schedule if that is more convenient, the property held in connection with church schools to be retained by or transferred to the DBE as trustee. The list should specify the name of the school or charity for which the property is held, whether the land is held freehold or leasehold (and, if leasehold, the date of and parties to the lease) whether the DBE holds the property as trustee or custodian trustee, the title number at HM Land Registry (if registered land), and the account details and value. Be careful not to exclude property inadvertently by, for example, assuming that the Land Registry title number includes all the land held by the trust where there might also be unregistered land.

<sup>27</sup> If Article 19(1) or (2) has the effect of altering the constitution of a company of which the Board of Finance is a member and that membership is being transferred to the DBE, section 34 of the Companies Act 2006 applies. Therefore, that company must give notice of the alteration to the registrar of companies, specifying the relevant provision of this Scheme, no later than 15 days after that provision came into operation.

**Other property and rights<sup>28</sup>**

20. (1) The following [property] [rights]<sup>29</sup>, which were held immediately before this Scheme came into operation by [*insert name of person or body holding property*] on trust, are transferred to the DBE for it to hold on the same trusts—

[*list property or rights*]

- (2) The following [property] [rights], which were held immediately before this Scheme came into operation by [*insert name of person or body holding the property*] are transferred to the DBE—

[*list property or rights*]

- (3) The following property<sup>30</sup>, which is held as permanent endowment and which was held immediately before this Scheme came into operation by [*insert name of person or body holding property*] on trust, is transferred to the DBE to be held by the DBE as corporate trustee on the same trusts—

[*list relevant property*]

- (4) [*Supplementary etc. provision under paragraph 7 of Schedule 1 to the Measure*]

**Vesting of property**

21. (1) The legal title to the property transferred under the preceding provisions of this Scheme is, by virtue of those provisions, transferred in accordance with those provisions.
- (2) The transfer of property under the preceding provisions of this Scheme does not operate as a breach of covenant or condition against alienation or give rise to a forfeiture.

***Amendment or revocation of Scheme*****Amendment**

22. (1) Where an amendment is proposed to this Scheme (including to this Article), the amendment may not be made unless the Diocesan Synod has resolved to approve the proposed amendment.
- (2) The Diocesan Synod may not approve an amendment proposed to this Scheme unless it has obtained the consent of the DBE.
- (3) A proposed amendment to this Scheme is in order only if it is consistent with the Measure and the Charities Act 2011.

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<sup>28</sup> Advice should be taken in relation to the transfer of staff contracts (which are subject to the Transfer of Undertakings (Protection of Employment) Regulations 2006) and certain other assets and liabilities (e.g. other contracts, hire-purchase agreements, licences, orders, data) as to whether their transfer should, instead be dealt with in a separate commercial transfer agreement between the bodies concerned.

<sup>29</sup> Consider if any such trusts may be special trusts under section 12(1) of the Charities Act 2011 and so need to be registered with the Charity Commission as a linked charity to the DBE.

<sup>30</sup> See footnote 28.



- (3) A reference in this Scheme to a provision made by or under a Measure or Act of Parliament is to be read as a reference to that provision as for the time being amended, extended or applied by or under any other such provision.
- (4) Subject to that, the Interpretation Act 1978 applies to this Scheme (with the result, among other things, that expressions used in this Scheme have the meaning which they have in the Measure).

**[Revocation of previous Scheme<sup>36</sup>**

- 25. The Scheme made by the Diocesan Synod under the Measure on [*specify date*] is revoked.

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<sup>36</sup> This provision should not be included in the first Scheme under the Measure but should be included in each subsequent one.