

Representations to the Revision Committee for the Draft Diocesan Boards of Education Measure

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1. Canon Elizabeth Renshaw MBE (282 - Chester)

"the new section 12: Information. This would give the DBE broad powers (only subject to the rule of law, e.g. DPA) to require church schools, including academies and MATs, to provide information to the DBE "to assist the DBE in carrying out its functions". I cannot find any explanation or definition of a DBE's functions. The Measure, sections 7 to 11, sets out various responsibilities for the DBE, but does not refer to 'functions'. I suggest that this should be clarified. The risk is that disputes could arise between a DBE and a school / MAT whether information that has been sought should be provided. Who would decide whether the information should be provided? Any appeal mechanism? This is a new power for DBEs and impacts all church schools, not only academies and MATs."

2. Mr Tim Fleming (396 – St Albans)

For disclosure purposes I am the DBF Chair appointed member of the St Albans DBE.

3 (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 CIO, which is registered in the register of charities,*
- b) *an unincorporated body which is registered in the register of charities, or (c) the DBF for the diocese.*

The draft measure rightly states that an unincorporated DBE should be registered with the Charity Commission. This is a basic regulatory governance requirement for all charities of a certain size and DBEs should be no exception. The explanatory notes refer to the need for unincorporated DBEs to operate independently from DBFs, which again makes sense in terms of their operating activities. It is also important that unincorporated DBEs are not prohibited through this measure from potentially registering as a 'linked charity' to the DBF for registration and accounting purposes.

Linked charities bring many efficiency benefits to both charities, and significantly reduce the administrative burden on the linked charity's trustees and staff, particularly in respect of accounting and regulatory compliance. The Charities Act allows two or more closely related charities to be linked where they are deemed to be connected. This is defined more fully by the Charity Commission and linking may not be appropriate for all unincorporated DBEs. But by keeping the possibility of linking as permissive, this will ensure there is no unnecessary duplication of financial reporting or compliance activity across both charities, and keeps the Archbishop's Council's simplification agenda at the heart of this measure.

I therefore ask the revision committee to review whether there is anything in the measure that may inadvertently prohibit the possibility of unincorporated DBEs registering as linked charities to DBFs, where they wish to do so. I note that section 5 of schedule 1 may help confirm a DBF and DBE have connected purposes in furthering the work of the Church of England.

17 *In exercising a function under this Measure, the DBE, the DBF and the diocesan synod for a diocese, and the bishop of a diocese, must each have due regard to such guidance as the Archbishop's Council may from time to time issue for the purposes of this Measure.*

"Guidance from the Archbishop's Council for the purposes of this Measure" could be very wide-ranging, as the measure covers the objects and functions of a DBE in their entirety. I think the Chair of the Steering Committee indicated during the July 2019 debate on first consideration that such guidance would only be issued where there was a need to do so arising from a parliamentary-driven change or where it was necessary for the effective operation of DBE's legal frameworks. I wonder whether this could be clarified in suitable wording to be added to this section. In the absence of

this, or if my understanding of the assurances given during debate are incorrect, I recommend including a requirement to perform relevant consultation with DBEs before publishing any such guidance as final.

3. Mr David Lamming (399 – St Edmundsbury and Ipswich)

1. I welcome the clear statement of the general (overriding/principal) duties of a DBE as set out in clause 2(1) of the draft Measure.
2. Clause 3(1)(a) introduces the acronym 'CIO'. Unlike 'DBE' or 'DBF' this is not a well-known acronym. Although it is defined in the interpretation section, clause 19(1), as meaning "charitable incorporated organisation", I suggest that in clause 3(1)(a), where the term first appears in the Measure, it is spelled out in full, as DBE is in clause 1. Para (a) would then read: "a company limited by guarantee, or a charitable incorporated organisation (referred to in this Measure as a 'CIO'), which is registered in the register of charities."
3. To be consistent, I suggest that clause 3(1)(c) is changed to read: "the Diocesan Board of Finance ('DBF') for the diocese."
4. Clause 6(4)(a) as drafted provides that the diocesan director of education (DDE) "serves also as secretary to the DBE for the diocese." This replicates the provision in section 1(4) of the 1991 Measure, but I note that there is no justification for it in para 29 of the Explanatory Notes (GS 2131X). It seems to me that the functions of a secretary to the Board are not necessarily best carried out by the DDE. Might it not be better to provide that the Board must appoint a secretary, who is not a member of the Board and may be the director of education.
5. Clause 7(8) – attendance at the relevant part of a DBE meeting by up to four members of the governing body of a school etc. As drafted, the subclause provides that those attending may not speak at the meeting. There is no justification for this restriction in para 32(c) of the Explanatory Notes, and no such restriction is contained in section 3(6) of the 1991 Measure, which provides simply that "the governors...shall be entitled to attend that meeting." Why was this restriction (for which no reason is given) introduced? Surely there will be cases where the DBE, albeit they will be aware of the draft proposals, may wish to hear from the governors (or directors, proprietor, or trustees, as the case may be), or ask them questions by way of elucidation of what is proposed. Otherwise, what is the purpose of their attendance (and of the limit to 'up to four' governors etc – a limit not in the 1991 Measure) if they are merely to be observers?
6. Clause 7(9) – "due regard". I note what is said in para 32(c) of the Explanatory notes about the duty ("must") to have "due regard" to advice given by the DBE when carrying out a function to which the advice is relevant, namely, that "this means that [the person(s) to whom the advice is given] "would need to have cogent reasons for not following it." Would it not be sensible for that meaning to be spelled out on the face of the Measure by the addition of that meaning in the interpretation clause (clause 19(1))?
7. Clause 8(5) The current draft gives the DBE an unlimited discretion to determine the estimated cost of alteration or repair below which written consent of the DBE is not required. Is this wise? I appreciate that this repeats the provision in section 3(3) of the 1991 Measure. There is no comment on it in para 33(a) of the Explanatory Notes other than to

set it out in different words (“the DBE’s consent is not needed if the cost of that repair falls below a threshold set by the DBE from time to time.”) Were the views of DBE’s sought about this during the consultation in 2018, and is there any evidence of how the current provision is operating in practice? For example, are there wide variations in the thresholds set by different dioceses?

8. Clause 8(6) See my comments at para 5 above on clause 7(8), which are equally applicable to this provision.
9. Clause 10(6) Again, my comments on clause 7(8) are applicable, though perhaps with more force when what is under consideration is the giving of directions to the governors etc.
10. Clause 10(7) Laying of a report before the Diocesan Synod. The clause as drafted is silent as to how and when this is to be done, and as to what the synod may do with the report. The equivalent section of the 1991 Measure (section 8(2)) states that a report must be laid before the diocesan synod “as soon as practicable.”

This is better, though still rather vague. Is there any reason why the Measure should not require the DBE to lay the report before the Synod within, say, 3 weeks of the direction being given? Also, since most diocesan synods only meet three times (and, in some cases, twice) a year, simply laying the report before the synod (which means presumably, providing a copy to the secretary of the synod – though this could be spelled out) may not bring it to the attention of synod members at a time when the matter is current and when they may wish to see it debated. Should there not also be a requirement for the report to be published on the diocesan website at the same time as it is formally laid before the synod?

11. Clause 12(1) – Provision of information. As currently drafted, this provision has no ‘teeth’. Consideration needs to be given to how a requirement to provide information is to be enforced, and the sanctions to be available in the event of non-compliance.
12. Clause 13 - Safeguarding. In the second line the words in brackets should read “(persons required to have due regard to the House of Bishops guidance)”: see section 5(1) of the 2016 Measure. (This appears to be an oversight, as para 40 of the Explanatory Notes is correct.)
13. I have already suggested (para 6 above) that the meaning of “due regard” could be included in the interpretation clause. The meaning of “due regard” was the subject of some debate during the recent IICSA hearing into the Anglican Church, and it may be that this definition should be tightened. It is probably inappropriate for the revision committee for this draft Measure to do so, since it would require changes to other legislation and should await the final recommendations of the IICSA panel, not expected until summer 2020. However, the revision committee might wish to note the point in its report to the Synod.
14. Clause 16(2) – Review. I suggest that the Measure should set out (perhaps in a Schedule) the minimum content of the annual report; also that the annual report should be placed on

the diocesan website and a copy sent to the National Society. (I have noted para 6(b) of Schedule 1, but that does not specify any minimum requirements for the report.)

15. Clause 17 – Guidance. This is another provision referring to a duty to have “due regard,” in this case to guidance that may be issued by the Archbishops’ Council. My comments (above) on the meaning of the words and the desirability of that meaning being included in the interpretation clause are equally applicable here.
16. The Explanatory Notes (para 49) add that if “any of the bodies reasonably wishes to depart from such guidance they must have cogent reasons for doing so [and] minute their decision accordingly.” I suggest that the requirement to minute the decision, with the reasons, should be written into the Measure. Putting this on the face of the Measure should help to focus attention on this duty.
17. A third point on this clause. Why is it thought that the Archbishops’ Council is the appropriate body to issue guidance for the purposes of this Measure? And should there not be a requirement for any such guidance to be laid before the General Synod and subject to approval (which could be deemed unless a debate is requested by a Synod member: cf clause 15(6)).
18. Clause 19. Unless there is a definition of ‘Secretary of State’ elsewhere, I suggest that this should be included in this clause and should refer expressly to the Secretary of State for Education.
19. Clause 20(1) – Repeal of the 1991 Measure. Could not the whole of the 1991 Measure be repealed, with the provision in section 11(1)(a) re-enacted so that everything is contained in the new Measure? (I appreciate that Christopher Packer may provide the reason why this is not possible or desirable. See also para 13(3) of Schedule 1.)
20. Schedule 2 – DBE Constitution. I welcome the flexibility for the membership of a DBE set out in paras 1(1)(b) and 1(2)(b), replacing the complex provisions in para 2 of the Schedule to the 1991 Measure. However, I invite the revision committee to consider (i) whether there should be a requirement for a minimum number of elected members (to be elected by the members of the diocesan synod), (ii) a limit on the number of members who may be coopted.
21. Schedule 2, para 3(3) – subcommittees. I suggest that there be a limit on the number of members of a subcommittee who are not members of the DBE, in particular so that a majority of the members of the subcommittee are members of the DBE.

4. Mrs Debrah Mclsaac (405 – Salisbury)

I refer to Clause 15(1) and (2), Consequential Amendments conferring on the Archbishops' Council the power to to amend the Measure by Order. These sub-Clauses say that the power may be exercised in relation to 'any provision about education made by or under an Act of Parliament' and seem to be more widely drafted than is necessary. In the Explanatory Note GS2131X, para 45, it is said that the intention is to enable the Measure to be kept up to date, or in other words to track changes brought about by an Act of Parliament or an SI.

I would ask the Revision Committee to consider revising the draft to more clearly circumscribe the scope of the power to amend by Order.

5. Mr Adrian Greenwood (411 – Southwark)

INTRODUCTION

I welcome this Measure, notwithstanding that in the Diocese of Southwark, the SDBE is already established as a separate charitable company, which has established its own MAT as a subsidiary.

I have a couple of suggestions to make as Lay Chair of the Diocesan Synod and a member of the Diocesan Council of Trustees, which is made up of the Bishops Council, DBF, DM&PC and Parsonages Board (but not the DBE).

SPECIFIC

1. CLAUSE 2 (1) (a) line 2 – instead of faith and practice’ could the Measure say ‘faith, **doctrine** and practice’?
2. CLAUSE 16 (2) (a) – I welcome the requirement for the DBE to make a report to the Diocesan Synod *as soon as practicable* after the year end. 3 points
 - I would like it to be specified that this report should be ‘**in writing**’ (or ‘written’)
 - I would like an additional requirement to be inserted that the **DBE should send its Trustees Annual Report and Annual Financial Statements to the Diocesan Board of Finance and the Diocesan Synod at the same time as it submits them to the Charity Commission.** I suggest that this is made a new sub-clause (c).
 - If that point is accepted, there would need to be an additional clause making the same requirement for joint DBEs

6. The Rt Worshipful Charles George (454 – Dean of the Arches)

Please place the following proposed amendment before the Revision Committee for this Measure:

Clause 3: delete 3(b) and (c), and also clause 3(3)-(5) which are consequential on 3(c).

There may also be other consequential amendments, particularly were the option of the DBE being the DBF (by being a committee of the DBF) were omitted.

Reasoning:

1. As described in para 7 of GS 2131X there are "perceived drawbacks" in the structure of an unincorporated charity. Such a structure is not fit for purpose in today's world, even if it was favoured by some DDEs in their response to consultation. It is anomalous that a time when most unincorporated bodies are moving towards some form of incorporation some DBEs should be encouraged to remain unincorporated.
2. It appears wrong in principle that the DBE be a committee of the DBF, a situation fraught with conflicts of interest. It is appreciated that (as stated in para 6 of GS 2131X) a significant number of DBEs would wish to operate in this way, as they have done in the past. But wish should not override proper legal separation of powers and avoidance of the risk of the DBF's financial interests preventing the DBE properly pursuing its own powers and duties, as set out in clause 2.

7. Miss Annika Mathews (481 - Church of England Youth Council)

The benefit of having separate finances from the DBF is that it is unaffected by parish shares coming in/not coming into help support diocesan funds and that jobs are then separate from those in the DBF though sometimes they are based in the same building. E.g. in Manchester where very sadly there have had to be quite a number of redundancies for members of departments funded by the DBF, education will not be losing anyone as they are employed by the DBE funds and not the DBF. This split has caused some friction between the various departments though.