

GENERAL SYNOD
DRAFT DIOCESAN BOARDS OF EDUCATION MEASURE
REPORT OF THE REVISION COMMITTEE

Chair: Mr Clive Scowen (London)

Ex officio members

(Steering Committee): The Rt Revd Stephen Conway (Bishop of Ely) (Chair)

Canon Linda Ali (York)

The Ven Douglas Dettmer (Exeter)

Canon Elizabeth Renshaw (Chester)

Professor Muriel Robinson (Lincoln)

Appointed members: The Ven Dr Jane Steen (Southwark)

Mrs Deborah Mclsaac (Salisbury)

The Revd Canon Robert Cotton (Guildford)

Canon Elizabeth Paver (Sheffield)

The Ven Peter Leonard (Portsmouth)

Consultant: Mr Colin Powell (Diocesan Director of Education, Southwark)

References in this report to “the Committee” are references to the Revision Committee.

Unless otherwise indicated, references to clauses of the draft Measure are references to those clauses as numbered in the draft Measure as originally introduced. Where clause numbers have changed this is indicated.

1. The draft Diocesan Boards of Education Measure (the **draft Measure**) received first consideration at the July 2019 group of sessions. The draft Measure seeks to replace the Diocesan Boards of Education Measure 1991 (the **1991 Measure**), which provides the legal framework within which the Church of England’s dioceses engage and work with church schools.
2. Explanations of each provision in the draft Measure were contained in the Explanatory Notes (GS 2131X).
3. The Committee met on two occasions and completed its remaining business by correspondence under Standing Order 56.
4. The Committee received submissions from seven members, one of whom exercised his right under Standing Order 55 to attend the meetings of the Committee and speak to his submissions. One submission was received from the Church of England Education Office.
5. The Appendix contains a summary of the amendments considered by the Committee as well as the Committee’s decision on each.

Clause 1 (First Consideration version)

6. There were no submissions on clause 1 and no amendments were made.

Clause 2(1) (First Consideration version)

7. This clause sets out the objects and the functions of the Diocesan Boards of Education (DBEs).
8. **Mr Adrian Greenwood (Southwark)** proposed that clause 2(1)(a) be amended to insert the word “doctrine” after “faith”.
9. The Committee was advised that references to the “faith and practice” of the Church of England appear elsewhere in church legislation, but not “faith and doctrine”. It also noted the Steering Committee’s concerns that the word “doctrine” could be confused by those outside the church with “indoctrinate”.
10. The Committee rejected the proposed amendment.
11. The Committee carefully considered the language used in this clause and noted that the draft wording is similar to the equivalent provision in the 1991 Measure.

Clause 2(2) (First Consideration version)

12. **Canon Elizabeth Renshaw (Chester)** noted that it was not clear what is being referred to when the draft Measure refers to the “functions” of the DBE.
13. The Legal Office suggested that this could be clarified by amending clauses 2 and 19, so that the definition of “function”, as meaning power or duty, is moved from clause 19 (Interpretation) to clause 2(2), with a cross reference to the definition in clause 2(2) in clause 19.
14. The Committee accepted the proposed amendments to clauses 2(2) and 19(1).

Clause 3(1) (First Consideration version)

15. **Mr Tim Fleming (St Albans)** noted the potential benefits for DBEs being able to register as a “linked charity” to their DBF, should they wish to do so and asked the Committee to consider whether there were any provisions in the draft Measure which may, inadvertently, prohibit the possibility of a DBE registering as a linked charity to its Diocesan Board of Finance (DBF).
16. The Committee was advised that the Charity Commission may agree to “link” legally separate charities for registration and accounting purposes where either:
 - a. they share the same trustee body; or
 - b. they are considered by the Charity Commission to be ‘connected’ i.e. they provide different aspects of the same service.
17. The Committee was informed that, at present, there is at least one DBE which is registered as a linked charity to its DBF and it was not considered that the draft Measure included any provision that would preclude such linking from taking place, where DBEs and DBFs so wish. However, it will be for the Charity Commission to decide which charities may be “linked” for these purposes on a case by case basis and the Charity Commission may change its guidance for linking charities in the future.
18. The Committee noted this advice.

19. **The Rt Worshipful Charles George QC (Dean of the Arches and Auditor)** proposed the omission of clauses 3(1)(b) and (c), and also of clauses 3(3)-(5) (which are consequential on clause 3(c)). Omitting those provisions would mean that all DBEs had to be incorporated charities (CIOs or companies). The reasons given for **the Dean's** proposal are:
- a. He does not consider that the structure of an unincorporated charity is fit for purpose in today's world and so it should not continue to be an option for DBEs going forward, even if it was favoured by some Diocesan Directors of Education (**DDEs**) in their responses to the consultation.
 - b. He considers it to be wrong in principle for the DBE be a committee of the DBF, which he is concerned will create a situation fraught with conflicts of interest. Whilst he appreciates that a significant number of DBEs would wish to operate in this way, he considers that this should not override the proper legal separation of powers and the need to avoid the risk of the DBF's financial interests preventing the DBE from exercising its own powers and duties properly.
20. The Committee noted that the choice of structures to be provided to DBEs in the draft Measure facilitates those DBEs which wish to incorporate to do so. However, the draft Measure also:
- a. enables those DBEs which are currently unincorporated and do not wish to incorporate to remain unincorporated; and
 - b. provides those DBEs which are operating, de facto, as a committee of their DBF with a legal structure which enables them to continue to do so.
21. The Committee considered the submission from **the Dean** and noted the weight to which a submission from the Dean of the Arches must be given. The Committee noted that they shared his concerns about whether an unincorporated structure was the most suitable for a DBE. The Committee also noted that conflicts of interest would need to be managed carefully where a DBE was a committee of the DBF.
22. The Committee was advised that the consultation carried out in summer/autumn 2018, set out the pros and cons of each of these three structures. The options proposed in the consultation were either for DBEs to be required to be:
- a. separate charities, with a choice between either an incorporated or an unincorporated charity structure; or
 - b. either an incorporated charity or a committee of the DBF.
- However, the responses to the consultation made it clear that a significant number of DBEs and DBFs felt that the most appropriate structure in their diocese was for the DBE to be either an unincorporated charity or a committee of the DBF and so all three options were included in the draft Measure. Strong feelings were expressed that, in the many dioceses where unincorporated / committee DBEs were working well with other diocesan bodies to further mission, incorporation and re-structure should not be imposed on them.
23. The chair of the Steering Committee, who is also the chair of the National Society Council, informed the Committee that the proposal to require all DBEs to incorporate was considered at the outset. However, following a review of the current structures of DBEs, the consultation was carried out in summer/autumn 2018 to understand what DBEs, DBFs, DDEs, Diocesan Secretaries and bishops felt about the various structures under consideration. Following careful consideration of the responses to the consultation, the Measure was drafted so as not to be prescriptive where it does not need to be, with supporting guidance to be produced to encourage best practice, including making clear the benefits of incorporation. The chair of the Steering Committee

noted that, if the proposed amendments were accepted by the Revision Committee, there was a significant risk that draft Measure could fail at Synod.

24. The Committee noted these concerns and suggested that, if **the Dean** felt that the issues he had raised around incorporation and conflicts of interest should be brought to the attention of the General Synod members specifically, he may wish to put forward his amendment when it is considered for Revision by the General Synod in February 2020.
25. The Committee rejected the proposed amendments.
26. The Committee noted the comments of **Miss Annika Matthews (CofE Youth Council)** on the benefits of the DBF and DBE having separate finances. The Committee noted the advice provided that funds which are held on trust for the activities of the DBE (i.e. education) only would continue to be held on those trusts, and so would still only be applied for the activities of the DBE, whichever legal structure was adopted.

Clause 3(1)(c) (First Consideration version)

27. **Mr Clive Scowen (London)**, (the **Chair of the Committee**) proposed widening this clause to include bodies corporate which discharge functions of the DBF, like the London Diocesan Fund. However, the Committee did not consider it necessary or appropriate to do so.
28. The Committee rejected the proposed amendment.

Clause 3(2) and new clause 3(3) (Revision version)

29. The Committee considered the requirement for the DBE's consent to be obtained before the bishop can propose a scheme to the diocesan synod to designate a body as the DBE for the diocese. The Committee noted the importance of the draft Measure's provisions encouraging all parties to work together. The Committee was advised that, where the DBE is an independent charity (i.e. not a DBF committee), the DBE's trustees would need to consent to changes being made to the charity's constitution and structure.
30. Following these discussions, the **Ven Dr Jane Steen** proposed that, although the consent of all DBEs should be required for the first scheme to be made under the draft Measure, for subsequent schemes the consent of the DBE should only be required where the DBE is an incorporated or unincorporated charity. Where the DBE is a committee of the DBF, the requirement should be for the bishop to consult the DBE and to obtain the consent of the DBF.
31. The Committee considered this proposal and agreed that clause 3(2) should be amended to refer to the first scheme only and that a new subsection (3) should be added to reflect the revised position for subsequent schemes.
32. The Committee accepted the proposed amendment.

New clauses 3(4) and (5) (Revision version)

33. The Committee considered what would happen if the DBE refuses to consent to a proposed diocesan scheme without good reason.
34. The Committee was advised that Paragraph 4 of Schedule 1¹ contains a safeguard to ensure that every diocese will have a DBE which is compliant with the draft Measure.

¹ In the First Consideration version of the draft Measure.

Paragraph 4 of Schedule 1² would have conferred power on the Secretary of State to make a scheme where the consent of the DBE cannot be obtained, but this power is limited to the first scheme only. The expectation was that the Secretary of State would not be called on to make any first schemes and that the existence of this power would help to focus those involved on the need to work together to agree the terms of the first scheme. The reason why this power was to have been conferred on the Secretary of State is because he or she has a role in making DBE schemes under the current regime. After the first scheme has been made, if the DBE does not consent to a future scheme, the bishop would not be able to propose a new scheme to the diocesan synod.

35. The Committee considered whether it would be preferable for the Church to resolve the situation itself, for example by conferring the power to the Archbishop of the Province to make the first scheme, in circumstances where there was deadlock between the bishop and the DBE. Whether in the case of a first scheme or a subsequent scheme the Committee was advised that, in order to protect DBEs from a scheme that did not comply with charity law, the Archbishop should first be required to consult the Charity Commission on the terms of any such proposed scheme.
36. The Committee considered proposed amendments to clause 3 and to Paragraph 4 of Schedule 1³ (see para 136 d below) which provide that:
 - a. the power to make a first scheme in a case of deadlock would be conferred on the Archbishop of the relevant Province instead of the Secretary of State⁴;
 - b. the Archbishop of the Province would have the power to authorise the diocesan bishop to propose a scheme to the diocesan synod in the future, if the DBE unreasonably withholds its consent; and
 - c. the Archbishop would be required to consult the Charity Commission on the proposed terms of any such scheme, so that the Archbishop can ascertain that the scheme's proposals comply with charity law.
37. The Committee approved these proposed amendments.

Clause 3(6) (Revision version)

38. Clause 3(6) is an enabling power, so that where the existing DBE is to be designated as the DBE for the diocese, it can make pre-emptive changes to its governing document so that it will comply with the scheme's requirements once it comes into force.
39. The Committee considered whether it would be helpful to clarify clause 3(6) to make it clear that clause 3(6) only applied to the first scheme.
40. The Committee approved the proposed amendment.

Clause 4(4) (First Consideration version)

41. Clause 4 enables diocesan synods to designate an entity as a joint DBE for two or more dioceses.
42. Clause 4(4) provides that a scheme appointing an entity as a joint DBE must implement a proposal made by all the diocesan bishops concerned and also have the consent of all the DBEs concerned.

² In the First Consideration version of the draft Measure.

³ In the First Consideration version of the draft Measure.

⁴ See new clause 23 (revision version of the draft Measure)

43. The Committee considered amendments to clause 4(4) to mirror the consent requirements agreed in relation to a scheme being made under clause 3 and to clarify that a joint DBE must provide its consent before another diocesan synod can appoint it as its DBE too (i.e. a scheme under clause 4(3)).
44. The Committee accepted the proposed amendments.

Clauses 4(5) and (6) (Revision version)

45. New clauses 4(5) and (6) address the Committee's concern that a DBE could act unreasonably and refuse to consent to the bishop proposing a scheme for a joint DBE to be appointed by the diocesan synod.
46. The revised wording requires the DBE's consent to a scheme being proposed, which can only be put aside where the Archbishop considers the DBE is acting unreasonably in withholding its consent. In such a situation the Archbishop of the relevant Province has the power to authorise the relevant diocesan bishops to propose a scheme to their diocesan synods, without the DBE's consent, provided that the Archbishop has first consulted the Charity Commission on the terms of the proposed scheme.
47. The Committee accepted the proposed amendments.

Clause 5

48. There were no submissions on clause 5 and no amendments were made.

Clause 6 (First Consideration version)

49. **Mr David Lamming (St Edmundsbury & Ipswich)** proposed that the draft Measure should not require the DDE to be secretary to the DBE. He considered that the functions of the secretary to the DBE were not necessarily best carried out by the DDE and so proposed that the draft Measure be amended to require the DBE to appoint a secretary who is not a DBE trustee, but may be the DDE.
50. The Committee noted that the DDE's role as secretary to the DBE was akin to that of the Diocesan Secretary being the secretary to the DBF, which is not the same as the role of a minutes secretary. It was considered important that the DDE was the secretary of the DBE and it was noted that the administrative secretarial functions, such as minute taking, could be delegated to another member of staff.
51. The Committee rejected the proposed amendments.

Clauses 7(8), 8(6) and 10(6) (First Consideration version)

52. **Mr David Lamming** noted that the restrictions on the attendance and right to speak by governors/trustees etc at the relevant part of a DBE meeting considering the matter on which a school had sought advice or consent from the DBE, or where the DBE is considering providing directions to the school, were not included in the 1991 Measure.
53. **Mr David Lamming** questioned the justification for these restrictions, particularly as the DBE may wish to hear from the governors (or directors, trustees or the proprietor) or ask them questions by way of elucidation of what is proposed. Furthermore, he questioned the purpose of their attendance (and of imposing the limit of up to four governors etc) if they are merely to be observers. He considered that the removal of these restrictions was most important in relation to clause 10(6), where the DBE is considering giving directions to the school.

54. The Committee was informed that these restrictions were added into the draft Measure following a review of the responses received to the consultation on an earlier version of the draft Measure. The changes proposed sought to address what was felt to be an unhelpful degree of latitude on these issues in the 1991 Measure which can, at worst, make it difficult for the DBE's business to be conducted in an orderly and proportionate manner.
55. The Committee considered the following in relation to clauses 7(8), 8(6) and 10(6):
- a. Should each of these clauses be amended to leave out the restriction on the number of attendee representatives from each school?
 - b. Should each of these clauses be amended to permit the attendee representatives to attend the entire DBE meeting, rather than only the part of the meeting dealing with the consideration of the relevant matter?
 - c. Should each of these clauses be amended to permit the attendee representatives to speak at the DBE meeting? If so, should this enable the attendee representatives:
 - i. to respond to questions put to them at the meeting by the DBE only; or
 - ii. to present/make a submission to the meeting and to respond to questions put to them by the DBE.
56. Following much discussion, the Committee decided that:
- a. they rejected proposal (a) but agreed that the draft Measure should be revised to permit the following people to attend the DBE meeting:
 - i. the head teacher⁵;
 - ii. the chair of the governing body or board of directors or trustees (as the case may be); and
 - iii. one or two other people (or more if the DBE so permits) who have been nominated by the governing body or board of directors, or trustees.
 - b. a head teacher or chair of governors/board of directors/trustees may nominate a person to attend the DBE meeting in their place where they are unable to do so;
 - c. they rejected proposal (b), which would allow the attending representatives to be present for the entire DBE meeting, rather than only that part of the meeting dealing with matters relevant to the representatives; and
 - d. they supported proposal (c)(ii), to permit the attending representatives to present or make a submission to the meeting and also to respond to questions put to them by the DBE.
57. The Committee agreed that these clauses should confer an entitlement to attend a DBE meeting, rather than requiring the nominated attendees to attend the meeting, to avoid a situation where a decision made at a DBE meeting could be challenged if, for example, a head teacher or chair of governors/board of trustees refused to attend the meeting.
58. The Committee accepted the proposals for amendment as set out in paragraph 56 above.

Clause 8(5) (First Consideration version)

59. **Mr David Lamming** questioned whether it was wise for the draft Measure to confer unlimited discretion on the DBE to determine the estimated cost of alteration or repair to

⁵ See the new definition in clause 20(4) of the Revision version of the Measure – Paras 123 - 126 below.

school property below which written consent of the DBE is not required, (repeating the provision in s.3(3) of the 1991 Measure). He asked whether the views of DBEs had been sought during the consultation in 2018 and whether there is any evidence of how the current provision is operating in practice.

60. The Committee was advised that this clause was included in an earlier version of the draft Measure consulted on in March 2019 and that none of the responses to that consultation commented on this clause or raised any concerns about it.
61. The Committee considered the concerns raised and concluded that, as there are other appropriate checks and balances in place, it was not necessary to introduce new constraints.
62. The Committee rejected the proposed amendment.

Clause 9

63. There were no submissions on clause 9 and no amendments were made.

Clause 10(2) (First Consideration version)

64. The Committee considered a drafting amendment to clause 10(2)(b), proposed by the Legal Office, so that it reads consistently with clause 10(1)(a), so that after the words "*have failed to exercise*" there would be inserted "*, or to exercise properly,*".
65. The Committee accepted the proposed amendment.

Clause 10(3) (First Consideration version)

66. The **Ven Douglas Dettmer (Exeter)** queried the appropriateness of using the word "*denominational*" in this clause and whether it qualifies the form of education to which it is referring and so should be left out.
67. The Committee was advised that the word "*denominational*" is required as it enables s.48 SIAMS inspections⁶ under secular legislation.
68. The Committee rejected the proposed amendment.

Clause 10(7) (First Consideration version)

69. If a DBE gives a direction to a school, clause 10(7) requires the DBE to lay a report before the diocesan synod.
70. **Mr David Lamming** noted that this clause is silent as to how and when a report should be laid before the diocesan synod and as to what the diocesan synod may do with the report. He notes that the equivalent section of the 1991 Measure (s.8(2)) states that a report must be laid before the diocesan synod "*as soon as practicable,*". **Mr David Lamming** proposed that the draft Measure be amended to require the DBE to lay the report before the diocesan synod within, (for example) 3 weeks of the direction being given.
71. **Mr David Lamming** also noted that most diocesan synods only meet three times (and, in some cases, twice) a year and so questioned whether simply laying the report before the diocesan synod would even bring it to their attention when the matter was current, and they may wish to see it debated. Therefore, he proposed that the draft Measure was

⁶ Statutory Inspection of Anglican and Methodist Schools (**SIAMS**) under S.48 of the Education Act 2005.

amended to require a copy of the report to be placed on the diocesan website at the same time as it is formally laid before the diocesan synod.

72. The Committee considered these proposals and the advice provided to the Committee that the “laying” of a report in this context would need to be in accordance with the Standing Orders of each diocesan synod and so this was not a matter for inclusion in the draft Measure.
73. The Committee rejected the proposed amendments.

Clause 11

74. There were no submissions on clause 11 and no amendments were made.

Clause 12(1) (First Consideration version)

75. **Mr David Lamming** questioned how a request from a DBE to a school to provide specific information will be enforced and suggested that the draft Measure be amended to include sanctions if a school does not provide the requested information.
76. The Committee was advised that this new power has been included in the draft Measure in response to requests from DBEs to enable them to request information from schools which is routinely sent to local authorities etc and for which DBEs often have to wait some months, until it becomes publicly available.
77. The Committee considered whether any sanctions could be included and decided that there were no useful or practical sanctions that could be imposed in relation to non-compliance with this clause. The Committee was advised that, whilst non-compliance could always be challenged using the judicial review process, this was unlikely to be practical or proportionate in the circumstances.
78. The Committee rejected the proposed amendment.
79. **Canon Elizabeth Renshaw** raised a concern that this clause confers broad powers on the DBE and suggested that the clause should be amended provide a mechanism for resolving a dispute as to whether specific information sought by a DBE under this power must be provided by the school, such as an appeal mechanism against a specific information request.
80. The Committee considered how such disputes could be appealed (or otherwise resolved) and agreed that an independent third party should be appointed to adjudicate on such matters. The Committee was advised that the Consistory Court of the diocese would be able to determine whether a request for information was lawful, rather than hearing an appeal against such a request. The Committee was advised that it should be the Consistory Court, rather than the Chancellor of the diocese, so that court fees were covered by the relevant Fees Order.
81. The Committee considered that conferring the power on the Consistory Court to determine whether a request for information was lawful would be appropriate in these circumstances. However, any decision taken by the Consistory Court should be on the basis of written representations only, rather than at an oral hearing.
82. The Committee accepted the proposed amendment.

Clause 12(2) (First Consideration version)

83. The **Legal Office** raised concerns raised about how this clause might impact on the ability of schools to rely on the statutory exceptions under data protection law when providing information to a DBE. The Committee was advised that, now that they had agreed to amend clause 12 to provide a mechanism for determining whether any request for information was lawful, clause 12(2) was no longer necessary and so it could be left out.
84. The Committee accepted the proposed amendment.

Clause 13 (First Consideration version)

85. The **Legal Office** proposed that this clause, which is concerned with the duty to have due regard to the House of Bishops' safeguarding guidance, is amended so that:
- a. where a DBE is incorporated (and so may have a duty imposed on it), the DBE itself must have due regard; and
 - b. where a DBE is unincorporated, or is a committee of the DBF, (and so there is no legal entity on which a duty can be imposed) a member of the DBE must have due regard.
86. The Committee accepted the proposed amendment.

New clause 14 (Revision version)

87. **The Education Office** proposed a new clause to enable DBEs to address a situation that has recently arisen relating to government contributions towards capital works in church schools.
88. The government has now agreed that, instead of paying their annual contribution towards capital works in Voluntary Aided (**VA**) schools to Local Authorities, who then agree a distribution with the different faith groups running VA schools in their authority area, the money will be paid directly to dioceses for their VA schools across the diocese from 2020/21. However, the government will only do this on the same basis that they make annual capital contributions to academies – the government will not make a direct payment to a unit with fewer than 5 eligible schools or fewer than 3000 children.
89. As a number of dioceses already fall below this threshold, they are entering into arrangements with neighbouring dioceses. It is anticipated that, as more VA schools become academies, the need for DBEs to enter into such arrangements will increase. Therefore, it is proposed that a power is included in the draft Measure, in the form set out below, to enable DBEs to enter into arrangements with one or more other DBEs for this purpose.

“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.”

90. The Committee accepted the proposed new clause 14.

Clause 14

91. There were no submissions on clause 14 and no amendments were made.

Clause 15 (First Consideration version)

92. This clause confers power on the Archbishops' Council to make updating amendments to the draft Measure by Order to reflect changes to the law made by future Acts of Parliament etc.
93. **Mrs Deborah Mclsaac (Salisbury)** raised a concern that this power is too widely drafted and requested that the Committee revised this clause to circumscribe this power more clearly. The **Department for Education (DfE)** also raised a concern about the extent of this power and how it may be exercised by the Archbishops' Council.
94. The Committee was advised that any amendments made under this power must be "*in consequence of provision about education made by or under an Act of Parliament*", which would include, for example, any changes the DfE makes to the regulations on the religious designation of schools. In addition, "*in consequence of*" is a strict legal test which confers a narrow power to make only such amendments as are consistent with the provision made by or under the Act. Therefore, this power was not in fact widely drafted.
95. In order to address the concerns raised, the Legal Office proposed that a new clause be included in clause 15 to require the Secretary of State to be consulted on any Statutory Instrument made in exercise of this power, with the proviso that if the Secretary of State does not respond to the consultation request within 3 months of being consulted, the Secretary of State will be considered to have no comments on the Statutory Instrument and it can proceed to approval by the General Synod under clause 15(3).
96. The **DfE** supported the following amendments proposed by the Legal Office to the Committee:
Clause 15, page 8, line 10, at end insert:
"(3A) 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."
Clause 15, page 8, line 11: after "*draft*" insert "*under subsection (3)(b)*".
97. The Committee was also advised that the same procedure will apply to orders made under clause 18 to amend the definition of "church school", as the reference in clause 18(8) to clause 15(7) will be amended as a printing update to a reference to clause 15(8).
98. The Committee noted that the proposed amendments will act as an additional check on the Archbishop's Council's use of this power.
99. The Committee accepted the proposed amendments.

Clause 16(2) (First Consideration version)

100. **Mr Adrian Greenwood** proposed that clause 16 should be amended so that:
- a. the report to the diocesan synod is required to be 'in writing' or 'written'; and
 - b. the DBE should be required to send its annual report and accounts to the DBF and the diocesan synod (and, if the DBE is a Joint DBE, to all DBFs and diocesan synods for the relevant dioceses) at the same time as the DBE submits them to the Charity Commission.
101. **Mr David Lamming** proposed that clause 16 should be amended:
- a. to set out the minimum content of the annual report; and

- b. to require DBE to place its annual report and accounts on the DBF’s website and to send a copy to the National Society.
102. The Committee was advised that clause 16 only refers to the ecclesiastical law requirement for the DBE to report to the diocesan synod annually on the exercise of its functions. It does not refer to the annual reports and accounts which DBEs may be legally required, under company law and/or charity law, to produce and file with Companies House and/or the Charity Commission and which are not the subject of the draft Measure.
103. The Committee was advised that Para 6(b) of Schedule 1 provides for the scheme to include provisions relating to the DBE’s report to the diocesan synod under clause 16(2). Therefore, if the Committee accepted the proposed amendments at paragraphs 100 and 101 above, it would restrict what a diocesan synod can decide in relation to such reports.
104. The Committee considered why the draft Measure should impose statutory obligations on the DBE to:
- a. send copies of its statutory accounts and annual report to the DBF, diocesan synod and/or the National Society; and/or
 - b. place copies of its accounts and annual report on the DBF website.
- This is because, as registered charities, the annual report and accounts of DBEs will be publicly available on the Charity Commission website within a couple of months of them being filed with the Charity Commission⁷. Therefore the DBF, the diocesan synod, the National Society and any members of the public will have access to these documents.
105. The Committee was advised that, where the DBE is a Committee of the DBF, or is a linked charity to the DBF (and so the DBE’s accounts will be included in the DBF’s accounts), the DBF will already have this information.
106. The Committee was also advised that imposing a statutory obligation on DBEs to report directly to the National Society was likely to be perceived as a controversial move by DBEs and it could alter the relationship between the DBEs and the National Society.
107. The Committee considered these proposals and the advice provided and concluded that:
- a. imposing a requirement for a report to be “in writing”, or setting the minimum content of the annual report, was too prescriptive and that these matters should be left to individual diocesan synods;
 - b. imposing a statutory obligation on DBEs to report directly to the National Society risked altering the relationship between the DBEs and the National Society; and
 - c. it was unclear what the benefit would be of imposing statutory requirements on a DBE to send its accounts and annual reports to the DBF and the diocesan synod and/or to place them on the DBF’s website, when such documents would be publicly available.
108. The Committee rejected the proposed amendments.

Clause 17 (First Consideration version)

109. **Mr David Lamming** asked why the Archbishops’ Council is the appropriate body to issue guidance for the purposes of this draft Measure and proposed that this clause be amended to require any such guidance to be laid before the General Synod for approval

⁷ Within the DBF accounts if the DBE is a Committee of the DBF or if the DBE is a linked charity to the DBF.

(which could be deemed unless a debate is requested by a Synod member in a similar way to the requirement in clause 15(6)).

110. The Committee was advised that the Archbishops' Council is the entity which will formally publish such guidance because the guidance produced is to be binding on DBEs, DBFs, diocesan synods and bishops – not just DBEs. However, any guidance issued by the Archbishops' Council would be produced by the Education Office and the National Society (as the National Church Institution which oversees the work of the Education Office).
111. The Committee noted that requiring any such guidance to be laid before the General Synod would mean tying the issuing (and updating) of such guidance to reflect changes in education law and practice to the General Synod's timetable.
112. The Committee rejected the proposed amendment.
113. **Mr Tim Fleming** noted that conferring a power on the Archbishop's Council to produce guidance for the purposes of the draft Measure would enable wide ranging guidance to be produced under this clause, as the draft Measure covers the objects and functions of a DBE in their entirety. Therefore, he proposed that this clause is amended either:
 - a. to provide 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; OR
 - b. to include a requirement to consult with DBEs on any such guidance.
114. The Committee considered that the amendment proposed in (a) would be unduly restrictive. Therefore, the Committee considered which entities/who the Archbishops' Council could be expected to consult, depending on the subject matter covered by the guidance, and agreed that the Archbishops' Council should be required to consult before publishing any guidance under this clause.
115. The Committee rejected proposed amendment (a) and accepted proposed amendment (b).

Clause 18

116. There were no submissions on clause 18 and no amendments were made.

Clause 19(1) (First Consideration version)

117. **Mr David Lamming** proposed that clause 19(1) be amended to include a definition of "Secretary of State", so that it is clear that the Secretary of State referred to is the Secretary of State for Education.
118. The Committee was advised that what was proposed by this amendment was contrary to established legislative practice, as references to the Secretary of State are defined by Schedule 1 to the Interpretation Act 1978 as a reference to any of Her Majesty's Principal Secretaries of State. This ensures that the reference will, at any given time, be interpreted as a reference to whichever Secretary of State holds the functions in question at that time. As a result, when the names and functions of government departments change (as has often happened with what is currently the Department for Education), there is no risk of the reference being out-of-date and therefore confusing.
119. **Mr David Lamming** withdrew his amendment having considered the Legal Office's advice.

120. **Mr David Lamming** also proposed that an explanation as to what having “due regard” means was included in this clause.
121. The Committee was advised that the term “due regard” is defined in case law and so it is not appropriate for it to be defined in the draft Measure, particularly as its meaning may be further defined or refined in future cases. The “cogent reasons” test for having “due regard” was set out in the decision of the House of Lords in *R (on application of Munjaz) -v- Mersey Care NHS Trust* [2006] 2 AC 148, which discussed extensively the meaning of having due regard to statutory guidance.
122. Mr David Lamming withdrew his amendment having considered the Legal Office’s advice.

New clause 20(4) (Revision version)

123. The Committee considered the need to include a definition of “head teacher” to include the CEO of a Multi Academy Trust (**MAT**) where the CEO was not also the head teacher. The **DfE** was consulted on this issue and advised that the CEO of a MAT would not be included in the definition of “head teacher” in the Education Acts (on which the definition in clause 20(4) is based). Although the DfE has not yet needed to make the distinction between a head teacher and a CEO of a MAT, the DfE was content for the draft Measure to do so in this case. In addition, the DfE was content that making this distinction in the definition used in the draft Measure would not cast doubt on the breadth of the definition of head teacher in the Education Acts.
124. The **Chair of the Committee** proposed that the definition also clarified that “head teacher” referred to the executive head of a federation of schools where the executive head is not also the head teacher of the individual school.
125. The Committee considered a definition of head teacher in new clause 20(4) which provides that:
 - (a) where the principal of a school is not also the chief executive officer of the MAT, it is the chief executive of the MAT (and not the principal of the school itself) who should be invited to the DBE meeting; and
 - (b) where the head teacher of a federated school is not also the executive head of the federation, it is the executive head (and not the head teacher of the school itself) who should be invited to the DBE meeting.
126. The Committee accepted the proposed definition of head teacher.

New clauses 20(6) and (7) (Revision version)

127. The Committee approved new provision in clauses 3 and 4 and 21A, which confer specific powers on the Archbishop of the relevant Province in relation to the making of schemes. Therefore, the **Legal Office** proposed that a new definition of “archbishop” is provided so that, where there is a vacancy, or the relevant Archbishop is not able to act, the Archbishop of the other Province acts in their place. However, the wording in brackets in (6) means that this does not apply to the dioceses of York and Canterbury which, pursuant to (7), already have the other Province’s Archbishop acting in relation to their diocese. As vacancies in an archbishopric are likely to be of short duration, this should not cause too long a delay for a situation arising in the dioceses of York or Canterbury.
128. The Committee accepted the proposed amendment.

Clause 20(1) (First Consideration version)

129. **Mr David Lamming** asked whether the whole of the 1991 Measure could be repealed, with the provision in section 11(1)(a) re-enacted, so that everything is contained in the new Measure.
130. The Committee was advised that the approach taken in clause 20(1) reflects good practice and the usual approach taken where the legislation is a consolidation, as it keeps alive the legislative history of a provision which is still in force.
131. The Committee rejected the proposed amendment.

Clause 21

132. There were no submissions on clause 21 and no amendments were made.

New clause 23 (Revision version)

133. The Committee noted that there may be some dioceses which would like to be able to make a scheme under the draft Measure which can come into effect earlier than 1 Jan 2022. Therefore, the Committee agreed new commencement provisions in new clause 23, which provide that the Archbishops' Council will certify when a diocesan synod has made a scheme under the new Measure and the certificate will certify the date on which the scheme and Schedule 2 to the Measure will come into force in relation to that diocese.
134. In addition, following the Committee's decision in paragraphs 36 and 37 above, the first scheme will no longer be made by the Secretary of State where the DBE does not consent to the scheme. Instead, new clause 23 confers this power on the Archbishop of the relevant Province, which the Committee considered to be more appropriate. However, the Committee agreed that the Archbishop should be required to consult the Charity Commission on the terms of the proposed first scheme, as a safeguard that the proposed scheme complies with charity law.
135. The Committee accepted the proposed new clause 23.

Consequential amendments resulting from new clause 23

136. Following the Committee's approval of new clause 23, the **Legal Office** proposed the following consequential amendments to the First Consideration version of the draft Measure, for the Committee's consideration:
 - a. *Clause 20(4)*: leave out "paragraph 13(3) of Schedule 1" and insert "section 23 (7)".
 - b. *Clause 22(4)*: leave out from "on such day" to end of line 9 and insert "in relation to each diocese on the day certified in relation to that diocese under section 23(1)."
 - c. *Paragraph 4 of Schedule 1*: leave out the entire Paragraph 4.
 - d. *Paragraph 13 of Schedule 1*: leave out the entire Paragraph 13.
137. The Committee accepted these proposed amendments.

Clause 22(5) (First Consideration version)

138. New clause 23 provides that the Archbishops' Council will certify the date on which the Measure will come into force for each diocese. Therefore, **the Legal Office** proposed

that the Archbishops' Council, rather than the Archbishops acting jointly, should have the power to make orders relating to transitional provisions in connection with the draft Measure's commencement.

139. The Committee accepted the proposed amendment.

Schedule 1

140. Schedule 1 is concerned with the schemes to be made by the diocesan synods to designate an entity as the DBE for the diocese.

Schedule 1, new Paragraph 8 (Revision version)

141. The **Legal Office** proposed that a new paragraph be included in Schedule 1 to provide that a letter signed by the DDE consenting to a proposed scheme under clauses 3 or 4 is conclusive evidence that the DBE consents to the proposed scheme. This will be helpful to confirm consent for the first scheme, as well as subsequently where a DBE is unincorporated.

142. The Committee considered that this should be included in the draft Measure with the additional requirement for the diocesan bishop to also sign the certificate of consent.

143. The Committee accepted the proposed amendment.

Schedule 1, Paragraph 9 (First Consideration version)

144. The Committee agreed to amend clauses 3 and 4 to clarify when the consent of the DBE is required for the making of schemes. In light of these amendments, the **Legal Office** proposed amendments to Paras 9(2) and 9(3) of Schedule 1, to require the DBE's consent for an amendment to a diocesan scheme too.

145. The draft Measure does not make provision for an Archbishop to authorise a bishop to propose an amendment to a scheme to the diocesan synod where the DBE does not consent to it. This is because conferring authority on a diocesan bishop to propose a scheme to the diocesan synod without a DBE's consent is expected to be a rare occurrence and so opportunities to do so have been kept to the minimum. Should an amendment be of such importance that a bishop considers it must be made, he or she can always seek to make the amendment in a new scheme, for which the bishop can request the Archbishop's authority.

146. The Committee accepted the proposed amendments.

Schedule 1: new Paragraph 13 (Revision version)

147. The **Chair of the Committee** proposed that a new definition is added to clarify what is being referred to by the term "right of reverter". The Committee was advised that the term "right of reverter" is used in the draft Measure because, even though the right of reverter has technically been abolished and replaced by a trust, the trust arises where there would previously have been a right of reverter. As a result, the term "right of reverter" remains the term commonly used to describe the nature of a trust arising under s.1 Reverter of Sites Act 1987.

148. The Committee accepted the proposed amendment.

Schedule 2

149. Schedule 2 provides for the composition and proceedings of DBEs, including the minimum size of a DBE, how members of the DBE are to be appointed, the Chair of the DBE, committees and delegation as well as enabling DBEs to regulate their own proceedings.

Schedule 2, Para 1 (First Consideration version)

150. **Mr David Lamming** proposed that Paragraph 1 of Schedule 2 be amended to include:
- a. a requirement for a minimum number of elected members (to be elected by the members of the diocesan synod); and
 - b. a limit on the number of members who may be co-opted.
151. The Committee was advised that the requirements as to the composition of the DBE were removed from an earlier version of the draft Measure following consultation with DDEs. It was felt that prescription should be kept to an absolute minimum to enable each DBE to structure its membership in the most appropriate way that reflects local needs and stakeholders. It was considered more appropriate for guidance to be provided to support DBEs in deciding how to best balance their boards.
152. The Committee noted that it was important to provide the maximum flexibility to DBEs, so that the composition of DBE boards can reflect local needs and circumstances.
153. The Committee rejected the proposed amendments.

Schedule 2, Para 1(2) (First Consideration version)

154. The **Chair of the Committee** proposed an amendment to rectify the reference to a “*DBE for a joint diocese*” to “*the joint DBE for two or more dioceses*”.
155. The Committee accepted the proposed amendment.

Schedule 2, new Paragraph 6 (Revision version)

156. The **Chair of the Committee** queried whether Para 1(3) of Schedule 2 could be construed to enable a person who is disqualified under charity law to be a charity trustee of a DBE. The Committee was advised that this was not considered to be the case but, for the avoidance of doubt, the Committee asked for this important matter to be placed beyond doubt.
157. The **Legal Office** proposed a new Paragraph 6 of Schedule 2, which confirms that no provision of the draft Measure, so far as it relates to the membership of the DBE for a diocese, affects the application of any law providing for the disqualification of a person from being a charity trustee.
158. The Committee accepted the proposed amendment.

Schedule 2, new Para 1(9) (Revision version)

159. The **Chair of the Committee** proposed that the draft Measure should be amended to require the diocesan scheme to set out:
- a. how a person appointed, elected or co-opted under this provision could be removed from office prior to the end of their term by the body which appointed or elected them, for good cause; and

- b. term limits for elected, appointed and co-opted DBE members.

160. The Committee accepted the proposed amendments.

Schedule 2, Para 3 (First Consideration version)

161. **Mr David Lamming** proposed an amendment to limit the number of members on a DBE committee who are not also members of the DBE. In particular, he proposed that a majority of the members of any committee should also be members of the DBE.
162. The Committee was advised that, whilst it is good governance to require at least one member of each committee to be a member of the DBE, requiring a majority of committee members to be DBE members may prove impractical, as the time commitment being asked of DBE members will be significant. As some DBEs find it a challenge to find people to serve who have both the necessary skills and experience and sufficient time available, there is a concern that imposing such a requirement will aggravate an already difficult situation in some dioceses.
163. The Committee considered the proposals and felt that they were too inflexible.
164. The Committee rejected both the proposed amendments.

Schedule 2, new Para 3(6) (Revision version)

165. The Committee considered whether the draft Measure should require the chair of each committee or sub-committee to be a DBE member. The Committee was advised that this would be good governance, but, where this was not practical, appropriate reporting arrangements would need to be put in place.
166. Therefore, the Committee did not make an amendment.
167. The Committee agreed that the diocesan scheme should be required to include a requirement for appropriate reporting arrangements to the DBE board to be put in place for all committees and sub-committees of the DBE.
168. The Committee accepted the proposed amendment (see new Para 3(6)).

Schedule 2, new Paragraph 3(4) (Revision version)

169. The **Steering Committee** proposed an amendment to the draft Measure to provide that DDEs:
- a. are able to attend and speak at all committee and sub-committee meetings of their DBE; and
 - b. are not permitted to be voting members of any committee or sub-committee of their DBE.
170. The Committee accepted the proposed amendment.

Clive Scowen

Chair of the Revision Committee

January 2020

APPENDIX

SUMMARY OF PROPOSED AMENDMENTS AND THE COMMITTEE'S DECISIONS⁸

proposed by a member of the Committee during the revision process.

Clause draft Measure ⁹ (GS 2136)	in Name	Summary of proposal	Committee's decision
2(1)	Mr Adrian Greenwood	Add " <i>doctrine</i> " after " <i>faith</i> " (a).	Reject
2(2)	Canon Elizabeth Renshaw	Make the definition of DBE "functions" more prominent.	Accept
3(1)	The Rt Worshipful Charles George	Remove the options for DBEs to be unincorporated or a committee of the DBF and require all DBEs to be incorporated (companies or CIOs).	Reject
3(1)(c)	# Chair of the Committee	Proposal to widen the clause to include other diocesan bodies	Reject
3(2) and (3), (revision version)	# Ven Dr Jane Steen	Consent of all DBEs to be required for the first scheme and, for subsequent schemes, consent required from all DBEs unless they are committees of the DBF in which case the DBE is consulted and the DBF's consent is required.	Accept
3(4) and (5) (revision version)	# Committee	If the DBE unreasonably withholds consent the Archbishop of the Province can authorise the diocesan bishop to propose the scheme to the diocesan synod, following consultation on the proposed scheme's terms with the Charity Commission.	Accept
3(6) (revision version)	# Committee	Clarify that this clause only refers to the first scheme.	Accept
4(4)	Legal Office	Reflect the revised consent requirements in 3(3) and provide	Accept

⁸ Excludes those amendments which are purely presentational and so have been made as printing corrections.

⁹ Unless indicated otherwise, references are to clauses in the First Consideration version of the draft Measure.

		that a joint DBE must agree to being appointed by another diocesan synod.	
4(5) and (6) (revision version)	# Committee	If the joint DBE unreasonably withholds consent the Archbishop of the relevant Province can authorise the respective diocesan bishops to propose schemes to their diocesan synods, following consultation on the proposed scheme's terms with the Charity Commission.	Accept
6	Mr David Lamming	Proposal that the DDE should not be required to be the secretary to the DBE.	Reject
7(8), 8(6), 10(6)	Mr David Lamming	Changes to provisions as to who may attend the DBE meeting as representatives of the school and lifting of restrictions on the ability to speak.	Partially accepted and further changes agreed by the Committee
8(5)	Mr David Lamming	Limit the discretion DBEs have to determine the estimated cost of alteration or repair below which DBE consent is not needed.	Reject
10(2)	Legal Office	Drafting amendment to ensure consistency with the previous clause.	Accept
10(3)	# Ven Douglas Dettmer	Leave out "denominational".	Reject
10(7)	Mr David Lamming	Prescribe how and when a report must be laid before a diocesan synod.	Reject
12(1)	Mr David Lamming	Sanctions should be provided for us where a school does not comply with the request to provide information.	Reject
12(1)	Canon Elizabeth Renshaw	Include a mechanism for resolving disputes as to whether a request for information should be complied with.	Accept
12(2)	Legal Office	Leave out in order to enable schools to rely on statutory	Accept

		exceptions under data protection law.	
13	Legal Office	The duty to have due regard should be conferred on the DBE as a legal entity where it is incorporated and on the individual DBE members where it is unincorporated or a committee of the DBF.	Accept
New clause 14 (revision version)	Education Office	Confer power on DBEs to make joint arrangements in relation to receiving government funding for capital works in VA schools.	Accept
15	Mrs Deborah McIssac the DfE	Require consultation with the Secretary of State on any Statutory Instrument made using this power.	Accept
16(2)	Mr Adrian Greenwood	Require the report to the diocesan to be in writing.	Reject
16(2)	Mr Adrian Greenwood	Require the DBE's annual report and accounts to be sent to the DBF and diocesan synod when they are sent to the Charity Commission.	Reject
16(2)	Mr David Lamming	Set out the minimum content for a report in the Measure.	Reject
16(2)	Mr David Lamming	Require the annual report to be placed on the diocesan website and to be sent to the National Society.	Reject
17	Mr David Lamming	Require any Archbishops' Council guidance to be laid before the General Synod.	Reject
17	Mr Tim Fleming	Either to restrict what the guidance could cover (rejected) or to require consultation (accepted).	Accept (part)
19(1)	Mr David Lamming	Include a definition of "Secretary of State".	Withdrawn
19(1)	Mr David Lamming	Include a definition of "due regard".	Withdrawn

20(4) (revision version)	# Committee	Definition of head teacher (see clauses 7(8), 8(6) and 10(6) First Consideration version).	Accept
20(6) & (7) (revision version)	Legal Office	Definition of Archbishop.	Accept
20(1)	Mr David Lamming	Repeal the entire 1991 Measure and re-enact specific provisions, instead of the mechanism proposed.	Reject
New clause 23 (revision version)	# Committee	New commencement provisions to enable schemes to come into force before 1 Jan 2022.	Accept
Consequential amendments resulting from new clause 23	Legal Office	<ul style="list-style-type: none"> - Update reference in clause 20(4) - Clause 22(4) - Schedule 1 – leave out Para 4 - Schedule 1 – leave out Para 13 	Accept
22(5)	Legal Office	Confer power to make transitional provisions on the Archbishops' Council, rather than on the Archbishops.	Accept
Schedule 1, new Para 8 (revision version)	Legal Office	Consent of DBE under clauses 3 and 4 to be provided by a certificate signed by the DDE and diocesan bishop.	Accept
Schedule 1, new Para 9	Legal Office	Require DBE to consent to an amendment to the diocesan scheme (to reflect changes to clauses 3 and 4)	Accept
Schedule 1, new Para 13 (revision version)	#Chair of the Committee	New definition of "right of reverter".	Accept
Schedule 2, Para 1	Mr David Lamming	Require a minimum number of DBE members to be elected by the diocesan synod and place a limit on the number of co-opted members permitted.	Reject

Schedule 2, Para 1(2)	#Chair of the Committee	Amendment to clarify the drafting.	Accept
Schedule 2, New Para 6 (revision version)	#Chair of the Committee	Concern that Schedule 2 Para 1(3) could be construed to permit a disqualified trustee to be a DBE member, so new Para 6 added for avoidance of doubt.	Accept
Schedule 2, New Para 1(9) (revision version)	#Chair of the Committee	Diocesan scheme should provide for how a DBE member can be removed from office and set term limits on DBE members.	Accept
Schedule 2, Para 3	Mr David Lamming	Impose a limit on the number of non-DBE members on DBE committees and require a majority of committee members to be DBE members.	Reject
Schedule 2, new Para 3(6) (revision version)	# Committee	Diocesan scheme should require appropriate reporting arrangements to be put in place.	Accept
Schedule 2, new Para 3(4) (revision version)	#Steering Committee	Provide that DDEs may attend and speak at all DBE committee and sub-committee meetings but may not be a member of any such committees or vote.	Accept