

GENERAL SYNOD
DRAFT DIOCESAN BOARDS OF EDUCATION MEASURE
REPORT OF THE STEERING COMMITTEE OF MEMBERS IN CHARGE

Acting¹ Chair: Prof Muriel Robinson (Lincoln)
Members: Canon Linda Ali (York)
The Ven Douglas Dettmer (Exeter)
Canon Elizabeth Renshaw (Chester)
Mr Clive Scowen (London) (Chair of the Revision Committee)

Previous stages

1. The draft Diocesan Boards of Education Measure (GS 2131) received first consideration at the July 2019 group of sessions.
2. At the February 2020 group of sessions the Synod took note of the report of the Revision Committee (GS 2131Y). The Synod completed the Revision Stage for the Measure which then stood committed to the Steering Committee in respect of its final drafting.

The Steering Committee's consideration of the draft Measure in respect of its Final Drafting

3. The Steering Committee has met once since the February 2020 group of sessions.
4. The Committee now returns the draft Measure (GS 2131B) for Final Drafting and Final Approval.
5. Under Standing Order 61, on the Final Drafting Stage the Steering Committee may propose 'drafting amendments' or 'special amendments' or both. These two categories of amendments are defined in SO 61(6) as follows:
"drafting amendment" means an amendment to clarify any remaining uncertainties of meaning or to improve the drafting, and
"special amendment" means an amendment, other than a drafting amendment, considered necessary or desirable by the Steering Committee and which does not reopen an issue which has been decided by the Synod or any Revision Committee in relation to the Measure.
6. The Steering Committee proposes the Special Amendments to the Measure that are set out in Part A of this report, together with an explanation for them.
7. The Steering Committee has also agreed the drafting amendments to the Measure shown in bold type (GS 2131B). The drafting amendments are explained in Part B of this report.

¹ Professor Robinson kindly agreed to continue to act as Chair following the resignation of the Rt Revd Stephen Conway (Bishop of Ely) from the role of Chair, due to ill health.

8. The Department for Education and the Charity Commission have been consulted on the proposed special amendments and drafting amendments and any points raised have been addressed.
9. The Steering Committee noted that the proposed amendment put forward by a member of Synod at the Revision stage debate, to remove the option for DBEs to be unincorporated, was not debated, as 40 members did not stand. This was despite the Steering Committee supporting the opportunity for the Synod to debate and decide this important issue for itself. The Steering Committee would like to take this opportunity to ask the Education Office to consider how guidance can highlight to dioceses the risks involved in choosing an unincorporated structure for its DBE, so these risks can be carefully considered and appropriate steps taken to mitigate them.

Part A: Special Amendments

Special Amendments 1 - 4: Longstop date

10. The first four Special Amendments relate to changing the longstop date for the making of a new scheme under the draft Measure from 1 January 2022 to 1 January 2023. This change was considered necessary by the Committee to provide dioceses with sufficient time to make a scheme as required under the draft Measure now that Final Approval and the Parliamentary stages have been delayed due to COVID-19. Special Amendments 1 and 2 change the dates and Special Amendment 4 is consequential on Special Amendment 3.
11. Special Amendment 3 is a transitional provision to enable the current DBE members to continue in office until 1 January 2023 (or such date after their term ends from 1 January 2022 and before 1 January 2023 when the new DBE scheme is made for that diocese). This will mean that diocesan synods do not need to elect new DBE members for a term starting on 1 January 2022 (which is when the new triennium for elected DBE members starts) to be in post for no more than 1 year. The diocesan synod would then only have to elect new DBE members to take office when the new scheme comes into force (which must be by 1 January 2023).
12. Special Amendments 1 – 4:
 1. Clause **23**, page **14**, line **30**, leave out “2022” and insert “2023”
 2. Clause **23**, page **14**, line **36**, leave out “2021” and insert “2022”
 3. Clause **23**, page **15**, line **9**, at end insert—
 - “(6A) 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 of the diocese after the end of 2021.”
 4. Clause **23**, page **15**, line **14**, leave out “subsection (6)” and insert “subsections (6) and (6A)”.

Special Amendment 5: company law/CIO members

13. The Diocesan Boards of Education Measure 1991 (the **1991 Measure**) makes no provision for who the company law members² of an incorporated DBE should be (at present all incorporated DBEs are companies limited by guarantee (**CLGs**)) and the draft Measure also makes no such provision at present. Therefore, the Committee considered

² The members are the subscribers to the company’s memorandum of association or those who have agreed to become members and are listed on the company’s statutory register of members.

it appropriate to make the fifth special amendment to clarify who the company law members of a DBE which is a CLG are as well as who the members of a DBE which is a Charitable Incorporated Organisation (“**CIO**”) are under its constitution.

14. The Committee considered it important to include this clarification because all the references to “members of the DBE” in the draft Measure are to members of the DBE Board i.e. the trustees of the DBE, which reflects the way in which DBE trustees/board members are described in the 1991 Measure. However, it could be unclear, in an incorporated DBE, whether the provisions for the removal of a person as a member of the DBE refer to the removal of the person as a board member only (i.e. a trustee) or also as a company law/CIO member. Therefore, the Special Amendment clarifies this.
15. The Committee noted that the Education Office will provide guidance to DBEs on the various forms of legal structure which a DBE may adopt. The Committee considers it important that such guidance includes a reminder to members of DBEs which are CLGs, that they are charity law trustees and company law directors, as well as the company law members of the DBE.
16. The Committee understands that the usual practice in DBEs which are CLGs is for the trustees to be the only company law members of the DBE and so this structure has been reflected in Special Amendment 5.
17. Special Amendment 5:
 5. Schedule 2, page 22, line 16, at end insert—

“(3A) 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.”

Part B: Explanation of the Drafting Amendments

18. In clause 3(5) the words “*authorising the bishop to make the proposal*” have been left out and the words “*giving an authorisation under subsection (4)*” inserted to clarify what authorisation is being referred to here. An equivalent amendment has also been made to clause 4(6).
19. Clause 6(6) has been added to clarify that the Diocesan Directors of Education (**DDEs**) may speak but not vote at a DBE meeting, which is consistent with the provisions in paragraph 3(4) of Schedule 2. As the DDE is not a member of the DBE and is the secretary of the DBE, it should be evident that the DDE can speak and cannot vote, but to avoid any misunderstanding on this the position has been set out expressly.
20. In clause 8, the word “written” has been left out before the word “consent” and in clause 20(1) the definition of “consent” has been added with the meaning “written consent”. This is because the other references to consent in the draft Measure do not expressly require the consent to be in writing. These amendments will ensure that every requirement for consent under the Measure is a requirement for written consent.
21. In clause 9(1) the words “*the area of*” have been added to clarify the drafting.
22. In clause 11(2) the word “exclusively” has been left out from the expression “*other exclusively charitable work of the Church of England*”. One of the comments from the Charity Commission in relation to an earlier draft of the Cathedrals Measure was that, by referring to the “exclusively” charitable work of the Church of England, it could be understood to imply that there is work of the Church of England that is not exclusively charitable. Therefore, the word “exclusively” has been removed here, too.
23. In clause 20(1) the wording in parentheses at the end of the definition of “proprietor” has been removed as it is not relevant as part of the definition.

24. In clause 23(7) the amendment provides for section 10 of the 1991 Measure to be included in the carve out of the repeal. This is a technical amendment which, for the sake of completeness, provides for section 10 of the 1991 Measure to be included in the saving for the current constitutional provisions as they refer to “*church schools*”, a term defined by section 10 of the 1991 Measure.
25. Clause 24(8) has been updated to reflect the requirements of the new Channel Islands Measure 2020.
26. In paragraph 1(9) of Schedule 1 clarificatory wording has been added to remove any doubt that the scheme is to be treated as an “*enactment*” for these purposes.
27. In paragraph 3(2) of Schedule 1 the requirement for the DBF’s company number to be included in the Scheme has been included, to align it with the requirements for DBEs which are companies.
28. In paragraph 7(2) of Schedule 1 the words “*or other document*” have been included to track the wording on paragraph 7(1)(c) above and avoid any doubt that not tracking the wording might cause.
29. A number of drafting amendments have been made to paragraphs 9 and 10 of Schedule 1 because, during the preparation of draft template schemes, it became apparent that the process for withdrawing from a scheme for a joint DBE could be simplified. It is therefore proposed to amend the relevant provisions of Schedule 1 to enable that simpler process.
30. In paragraph 1(11) of Schedule 2, clarificatory wording has been added to improve the accuracy of the definition.

On behalf of the Steering Committee

Prof. Muriel Robinson

Acting Chair

October 2020