

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).

- (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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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.