

The DBE Measure 2021

Diocesan Board of Education (DBE) Measure 2021 - What does it mean for School and Academy Leaders?

What is the DBE Measure?

It is the primary legislation that formalises the delivery partnership between the Church of England (through 41 diocese) and the State in the delivery of non-selective primary and secondary school provision for the common good of those of all faiths and none. It reflects over 200 years of formal collaboration between the state and the church. To enact the Measure, every diocese has a statutory requirement to have a *Diocesan Board of Education (DBE)* who also appoint a *Diocesan Director of Education (DDE)*. Constitutionally, the operational function of this body is also set out in the *DBE Measure* (last updated in 2021). The appointment of a DDE is a statutory requirement for all diocese, and most DDE's have an education team.

Why do we need a DBE Measure?

To protect the commitments and promises made by those who founded our schools and therefore who governs and runs them. Most Church schools were founded in the early 19th century at a time when schooling was only available to those wealthy enough to pay. This Christian-spirited drive to provide universally available education for the poor, meant that by the time of the national census of 1851, the Church had established 17,000 schools. The initial establishment of formal state provision for public education through the 1870 Education Act could not have happened without the pre-existence of this funded and expanding church-school system.

In the absence of any formal apparatus for state schooling, most were created using the best time-protected legal instruments of the time; Trust Deeds with endowments funded by private benefactors and public subscription.

The DBE Measure seeks to protect the vision, commitment and inter-generational promise of these generous predecessors, and that includes the requirements set out in the deeds, trusts and educational foundations they set up and are still used to this day.

Why is important to school leaders?

The DBE Measure provides the legal basis upon which the Founding principles of the school or academy (most often also contained in the schools *Foundation Documents* where still retained) are protected and promoted by your local Diocesan Board of Education. While the board is there to support and protect schools in relation to the promotion of its religious character (which includes being academically high achieving), it also describes the authority that the DDE and DBE has to request certain things of schools/trusts, and schools/trusts of them (see later sections).

What is the role of the diocese?

In 1944 Balfour's Education Act recognised the essential contribution of Church schools and each diocese by making clearer, more secure and more flexible the roles each play in this state-church partnership. This created 'Voluntary Controlled (VC) schools' and 'Voluntary Aided (VA) schools', and further Education Acts have consolidated this as a further class of academies were added, and opportunities for diocesan-led multi-academy (school) trusts were introduced. Today, approximately 1 million children attend Church of England schools and about 15 million people alive today went to one. A quarter of primary schools and over 200 secondary schools and academies are Church of England, with diocese collectively the largest single provider of multi-academy trusts.

As primary legislation 'The DBE Measure' cements the role of each diocese into the national education system by ensuring (for example) that diocese retain protective oversight-governance of church schools, including the property and estate made available in which most schools and academies operate, and a role in the support and challenge of those running church schools and academies to uphold the original founding principles as articulated in the persisting historical Deeds.

It is this DBE statutory body, DDE and associated executive officers who, along with other duties, have the task of protecting the extraordinary promises and commitment for the common good made in previous centuries.

The aims of this document

The *DBE Measure* is written in legal vocabulary.

This document presents that document in plain-English in the context of what it means for those running DBE schools, academies or trusts to which it serves to protect. In many places real-life examples are used to illustrate principles.

Please note that this document does not cover how the *Diocesan Board of Education (DBE)* is constituted and run (as stated, also stipulated in the DBE Measure), but focusses on the DBE powers and duties (sometimes called 'functions') in relation to church schools that are voluntary aided (VA), voluntary controlled (VC), foundation schools, and academies (whether in multi academy or single trusts). It does not replace the need to read the detail of the Measure or to seek professional legal advice on matters relating to it.

An updated Measure in 2021

The latest version of the Measure came into force in April 2021. Its functions and responsibilities reflect and update that of the DBE Measure 1991, and now includes for example, specific provision in respect of Academies together with some new powers or functions covered below.

Most of the implications of the DBE Measure are transacted through engagement with the *Responsible Body* as well as the individual institutions. The responsible body would be an *Academy Trust* and its CEO and local governors (single and multi-academy) in the case of academies, or the Local Authority, head and local governors in the case of a VA, VC or foundation school.

What does the Measure ask diocese to do?

The responsibilities of the DBE are set out in section 2 of the Measure. Fundamentally they are to promote, nurture and protect church school and academy based education in the diocese. This means ensuring that institutions remain consistent with the faith and practice of the Church of England, including therefore the delivery of good quality academy outcomes, meaningful and intentional religious education and religious worship, and operate inclusively in the context of providing well for those of all faiths or none and from whatever background.

Practically, this means that all schools are delivering an inclusive education that mirrors that described in the *Church of England's Vision for Education*. In most diocese the success criteria applied, is that exemplified in the evaluation schedules used by the *Statutory Inspection Anglican and Methodist Schools (SIAMs)*, as required under Section 48 of the Education Act, and that of the *Office for Standards in Education (Ofsted)*, as required under Sections 5 or 8 of the Education Act. Such criteria are also periodically used in formal inspections where schools or academies are

judged to fall short of being 'good' in these aspects, the diocese has an entitlement and obligation under the DBE measure to step-in and require improvement.

Beyond church schools, the DBE Measure also requires broader co-operation between the diocese and other persons concerned with education in the locality whether faith based or not and including young people and adults.

What can the diocese do?

In relation to the operational delivery of the above, the specific powers or duties (often termed 'functions') of the DBE are set out in sections 7-15 of the Measure. They fall into the following ten categories, each of which is covered in detail below:

- **'Advice'**
- **'Consent'**
- **'Consultation'**
- **'Directions'**
- **'Engagement'**
- **'Information'**
- **'Safeguarding'**
- **'Government contributions to capital works in church schools'**
- **'Other responsibilities'**

'Advice': This covers when DBE should provide advice to its governing bodies, academy trusts or trustees of educational endowments and when the same should approach the DBE for advice.

1. The DBE has the power to provide advice on matters affecting church schools in the diocese to governors, Academy Trusts, trustees of church educational endowments and other bodies the DBE considers appropriate.
2. A governing body of a voluntary school or foundation school, must obtain the advice of the DBE before:
 - a) they publish proposals for discontinuance of a school;
 - b) they publish proposals for an alteration to a school (enlargement of premises, increase in pupils etc);
 - c) serving notice of an intention to discontinue a school;
 - d) beginning a consultation about admission arrangements for a school.
3. An academy trust of a church school must obtain the advice of the DBE before:
 - a) it seeks consent of the Secretary of State to discontinue a school;
 - b) it seeks consent of the Secretary of State for an alteration to a school;
 - c) it begins a consultation about the admission arrangements proposed for a school.
4. The governing body, academy trust or trustees of a church educational endowment must obtain the advice of the DBE before:
 - a) disposing of the whole or part of the school site; (i.e. sale of land)

- b) entering into an agreement to dispose of whole or part of the school site (i.e. lease/licence)

Certain individuals (e.g. Headteacher, Chair) may attend a DBE meeting to make representations in respect of the above. See sections 7(1)(8) – (10) DBE Measure 2021 for more detail on the process. The DBE must provide advice sought under sections 2-4 above. Those to whom the DBE gives advice must have “due regard” to that advice. They must have clear reasons for not following it.

‘Consent’: This covers when the written consent of the DBE should be obtained.

Written consent of the DBE must be obtained before:

1. the governing body of a voluntary school wishes to publish proposals to change the category to a foundation school;
2. the governing body of a foundation school publishes its proposals to change its Instrument of Government resulting in the majority of governors being foundation governors;
3. the governing body of a voluntary or foundation school applies for an Academy Order;
4. the governing body (VA and VC) or Academy Trust enters into an agreement or arrangement relating to an alteration to or repair of the premises of the school. This consent requirement now includes VC schools. The DBE could set a threshold on when it should be notified. Different thresholds could be set for different VA, VC and Academies.

Certain individuals may attend a DBE meeting to make representations to support their request for consent. See sections 8(6) – 8(8) DBE Measure 2021 for more detail on the process.

‘Consultation’: The DBE must be consulted by the local authority before it appoints a person to represent the CofE as a member of a Standing Advisory Council for religious education.

‘Directions’: This section covers when the DBE should give directions to governing bodies, academy trusts and trustees of church educational endowments.

1. The DBE may give directions:
 - a) to a governing body or Academy Trust if it is failing to exercise its functions relating to the alterations of a school or discontinuance of the school and is acting in a manner that is not in the interests of the school or of church schools generally.

Directions given by the DBE must be complied with within 6 months of being given the directions.

- b) to trustees of a church educational endowment which is held for a church school when they are not exercising their functions in relation to the endowment and it is not being applied in the best interests of the school or they have failed to exercise their functions properly in relation to the endowment.

Directions given by the DBE must be complied with within the period the direction specifies.

- c) to a governing body or Academy Trust to permit the inspection by a person appointed by the DBE where it has concerns about the quality of denominational education or the content of the collective worship of a church school.

Certain individuals can attend a DBE meeting to make representations and answer questions when the DBE is considering making directions on any of the above.

If the DBE gives a direction, it is required to “lay” a report before the Diocesan Synod.

‘Engagement’: This section is designed to support and facilitate cross-diocesan activity. DBEs are able to work with those involved in education in other dioceses on matters of common interest. DBEs are permitted to engage in cross-diocesan engagement in relation to a DBE’s work with children and young people where a DBE’s diocesan synod has conferred such functions on that DBE.

‘Information’: This is a new power given to DBEs to ensure that governing bodies or academy trusts can be required to provide information to assist the DBE in carrying out its functions. It specifically enables DBEs to request information from schools that is usually sent to a Local Authority but for which the DBE would have to wait until that information becomes publicly available.

If there is a dispute with regards to whether this information can be provided by law or whether this information would assist the DBEs in carrying out their functions, this can be referred to the consistory court of the diocese who will determine the issue following receipt of written representations.

‘Safeguarding’: It is a requirement within the Safeguarding and Clergy Discipline Measure 2016, that the DBE must comply with the requirements issued by the House of Bishops on matters relating to the safeguarding of children and vulnerable adults.

‘Government Contributions to capital works in church schools’: This is a new section in the Measure. A DBE can enter into an arrangement with another Diocese(s) to ensure that collectively they are regarded as a single entity for the purposes of the annual contribution from the Secretary of State towards capital works.

The government pays their annual contributions towards capital works in Voluntary Aided schools directly to dioceses. The Government will not do this where there is fewer than 5 eligible schools or fewer than 3000 children. It is anticipated that as more VA schools become academies, the need for DBEs to enter into such arrangements will increase and DBEs have the power to facilitate this arrangement.

‘Other responsibilities’:

The measure also enables a good degree of flexibility for the DBE to adapt itself to the future through the approval of linked diocesan governance structures. Such as:

1. Diocesan Synods can confer additional functions on DBEs.
2. Where legislation refers to “the appropriate diocesan authority” or “the appropriate religious body” that may confer additional responsibilities on DBEs.
3. The DBE has a general power to do anything not specifically set out in the Measure in order to exercise their functions properly.