

Guidance

# Automatic disqualification rule changes: guidance for charities

This guidance for charities explains the changes to the automatic disqualifications rules and how to prepare for them.

Published 17 January 2018

Last updated 1 February 2018 — [see all updates](#)

From:

[The Charity Commission](#)

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## Introduction

From 1 August 2018 changes to the automatic disqualification rules mean that there will be more restrictions on who can run a charity.

For most charities, taking some simple steps to update recruitment and appointment systems is all that will be needed to prepare for the rule changes.

Charities can use this guidance to find out:

- what the current disqualification rules are, and what they mean in practice
- what the changes are
- what steps they should take to prepare for the changes
- about waivers

This guidance will be updated when the new disqualification rules become law.

We've also produced separate [guidance for individuals](#) about automatic disqualification and how to apply for a waiver.

## The current automatic disqualification rules

Under current rules, a person is disqualified from acting as a charity trustee, if certain legal disqualification reasons apply to them.

These reasons are mainly bankruptcy related, and also include unspent convictions for crimes involving dishonesty or deception.

The reasons which lead to disqualification under the current rules are shown as “in force now” in the [disqualifying reasons table](#) (PDF, 477KB, 4 pages)

It is usually an offence for a person to act as a charity trustee whilst they are disqualified.

Your charity:

- must not appoint a trustee who is disqualified under the current rules, including on an interim basis, unless their disqualification has been waived
- should have systems in place for identifying trustees who become disqualified after they have been appointed

## Waivers

A disqualified person can, in most circumstances, [apply to the Charity Commission to waive their disqualification](#). They can do this at any time after they become disqualified.

The right to apply for a waiver is an important acknowledgement that there are circumstances in which waiving a person’s disqualification will be in the best interests of a charity or charities, by allowing them to recruit and retain a well-qualified person who may otherwise be unavailable to them.

If a person applies to the Commission for a waiver so that they can take up or continue a relevant position with your charity, the trustees of your charity will need to say whether or not they support the application – addressing specific matters, described in this guidance.

## The new automatic disqualification rules

From 1 August 2018 there will be 2 key changes to the automatic disqualification rules:

- an increase in the number of legal reasons that disqualify someone from acting as a trustee. The new reasons include being on the sex offenders register, and certain unspent convictions - such as for terrorism or money laundering
- people who are disqualified from acting as a trustee are also disqualified from holding certain senior manager positions at a charity

Relevant senior manager positions are both Chief Executive (or equivalent) positions and Chief Finance Officer (or equivalent) positions.

It is important to understand how the rules define the senior manager positions that are affected because it is the function (and not the title) of the position that matters.

Your charity will need to check which, if any, posts qualify as senior manager positions under the new rules.

The [senior manager section](#) of the automatic disqualification guidance explains what a senior manager is, for the purposes of the new rules.

Under the new rules, there will be no change to the following:

- acting whilst disqualified will still normally be a criminal offence
- the right of disqualified people to apply for a waiver

People who will become disqualified by the automatic disqualification rule changes, which will take effect on 1 August 2018, can choose to [apply for a waiver of their disqualification](#) before the rules change. They can do this from 1 February 2018.

The automatic disqualification rules do not disqualify people from all involvement with charities. There are other ways in which a disqualified person can be involved with charities, such as through appropriate employment in positions that do not count as ‘senior manager positions’, volunteering, or in advisory roles.

## Preparing for the rule changes

It is up to your charity when to make these updates, but early action on this will help:

- your charity to prepare, if someone who is already a trustee or senior manager will become disqualified by the rule changes
- your charity to know, before appointing a trustee or relevant senior manager in the period leading up to 1 August 2018, if the appointee will become disqualified from the position on that date
- any people at your charity, who will be disqualified by the new rules, who wish to apply for a waiver before the new rules take effect

## Recruitment

### Check your current pre-appointment procedures

Your charity should already have systems in place so that, before it appoints a new trustee, it can make sure that the person is not disqualified under the current automatic disqualification rules.

You should check that you are doing this. It can be done by asking a prospective trustee to sign a declaration to confirm that they are not disqualified. In February 2018 we will publish a model declaration that charities can use if needed.

### Update your pre-appointment procedures

Your charity will need to update its pre-appointment systems so that the signed declaration:

- is received from both prospective trustees and relevant senior managers. Your charity will need to check which, if any, posts qualify as senior manager positions under the new rules
- asks them to confirm that they are not disqualified under the current and new automatic disqualification rules

It is up to your charity to decide when, in its recruitment process, to ask for a declaration from an appointee or candidate about disqualification. It can be done after a preferred candidate has been identified, at the final stage of the recruitment process, and alongside other appropriate pre-appointment checks.

The important point is to get the declaration before a relevant appointment is made, so that the charity does not appoint a disqualified person.

The latest date your charity should start using its updated pre-appointment systems is for any appointments made on or after 1 August 2018.

## **People currently in post**

### **Check your current procedures for people in post**

Your charity should already have systems in place so that it can make sure that that people who are already in a trustee position have not become disqualified, under the current automatic disqualification rules, in the period since they were appointed.

This can be done by asking them to sign a fresh declaration, at reasonable intervals, to confirm that they are not disqualified.

### **Update your procedures for people in post**

Your charity will need to update its procedures for people in post, so that the signed declarations you periodically ask for:

- are received from both trustees and relevant senior managers
- request confirmation that they are not disqualified under the current or new automatic disqualification rules It is up to your charity to decide
- when to first ask for a declaration from people, who are already in a trustee or relevant senior manager position, that they are not disqualified under the new rules. We recommend that the latest date your charity asks for this declaration is on 1 August 2018
- at which intervals to ask for declarations from relevant senior managers and trustees

In addition to obtaining signed declarations, your charity should also check any relevant official registers which record the names of people who are disqualified from acting as charity trustees. These are listed at the end of this guide.

## **Contracts**

Your charity should review employment or consultancy contract terms for any relevant senior manager positions, and decide whether it is protected if a person in a relevant post becomes

disqualified and has to leave their position. You may need to take specialist legal advice about this.

For most charities updating their systems for obtaining declarations, and reviewing contractual terms, is all that will be needed to prepare for the rule changes. Other than this, charities are not required, by the introduction of the new automatic disqualification rules, to vary their normal recruitment process and practice.

Although this guide is about the automatic disqualification rules for charities, trustees and charity staff can be disqualified under other legislation. It is important that your charity has systems for regularly checking that their trustees and staff are eligible to act.

For example, carrying out appropriate Disclosure and Barring Service checks relevant to working or volunteering with children or other vulnerable groups - if [the role is eligible](#).

## **Prepare for the disqualification of a serving trustee or relevant senior manager**

A small number of charities will have a trustee or relevant senior manager in post who will become disqualified by the new rules.

Taking the steps outlined above should help your charity to know about this, ahead of the new rule changes. People in this position will not be able to continue to act in their position when their disqualification takes effect, unless they have a waiver. It will usually be a criminal offence for them to do so.

### **Trustees**

Serving charity trustees who become disqualified when the rules change, must not continue to act in their position. They should also resign formally from their trustee position so that it is clear that they are no longer part of the trustee body.

The charity will need to check whether any resignation in these circumstances affects the minimum number of trustees that must attend meetings so that decisions can be made properly. (This is called the quorum).

### **Relevant senior managers**

Serving staff in a relevant senior manager position, who become disqualified when the rules change, must not continue to act in that position.

The charity may need to take legal advice if a senior manager becomes disqualified- particularly concerning the employment and other rights of the senior manager.

You can refer serving trustees and relevant senior managers at your charity, who are or will become disqualified under the new rules to our [detailed guidance for individuals](#), which includes advice on applying for a waiver before the rule changes take effect.

Charities can use this [guidance from the charity Unlock](#) provides details for organisations that have trustees and senior managers on how to deal with criminal records.

## **What charities need to know about waivers**

You can read this summary about waivers or look at our more detailed waiver information in the [guidance for individuals](#).

If a disqualified person is in, or applies, to a relevant role at your charity, your trustees can decide to support a waiver application for that person. It is up to charities to decide their approach to waivers, and whether or not to support applications in individual cases.

### **What a waiver is**

A waiver brings a person's disqualification to an end, either for:

- a named charity or named charities
- a class of charities a class of charities - this is a group of charities which share a characteristic. For example, a class of charities can be charities with the same charitable purpose, or charities operating in the same area.
- all charities

If given, a waiver means that the person can take up trustee and senior manager positions at the charity or charities covered by the waiver.

The only exception to this is where a person applies for a waiver to cover only senior manager positions. If this type of waiver is given, the person cannot act as a trustee of the charity or charities covered by the waiver. To do this they would need to apply for a further waiver.

A person cannot apply for a waiver which only covers trusteeship and not senior management positions.

### **When a person can apply for a waiver**

At any time after a person is disqualified, they can apply to the Charity Commission to waive their disqualification. People who will become disqualified when the automatic disqualification rules change on 1 August 2018, can choose to apply for a waiver of their disqualification before then.

They can apply between 1 February 2018 and 1 August 2018. If they apply for a waiver during this period, their disqualification under the new rules will not take effect until they have received a decision, and any appeal has been decided.

The earlier applications are made in this period, the earlier they will receive a decision - giving them, and charities, more certainty about how they will be affected by the rules changes.

### **Will the Commission give a waiver?**

It is up to the Commission to decide whether or not to give a waiver, considering each case on its own merits. We only give waivers where:

- it is in the best interests of the charity or charities for which the disqualified person asks for a waiver; and
- and is not likely to damage public trust and confidence in a charity or charities

Waiver applications will be decided using the same approach, whether the application is:

- for a waiver of a current disqualification
- made before 1 August 2018 for a waiver of a disqualification under the new automatic disqualification rules
- made after 1 August 2018

Separate guidance is available explaining how the [Charity Commission will make its decision about a waiver](#).

### **What the Commission needs to know from trustees**

If a person applies for a waiver specifically so that they can work in a trustee or senior manager position at your charity, the application process will ask the waiver applicant to supply details of the views of your trustees on the following matters:

- whether a majority of the trustees supports the application
- details of the recruitment process that led to the applicant's appointment or proposed appointment – if none, then reasons should be given
- details of the duties and responsibilities of the trustee or senior manager position that the applicant holds or wants to take up
- why the trustees consider that the applicant is the best appointment-for example what special skills does the applicant have which are not otherwise available
- why the applicant cannot act in an advisory capacity rather than act as a trustee or senior manager
- whether the trustees have assessed, and can manage any risk to the charity and its assets in making or maintaining the appointment. For example, where the disqualification reason is financial difficulty or mismanagement the trustees may wish to support a waiver application, subject to them deciding that the applicant will not be in a Treasurer /Chair/Finance Director position at the charity, and that he or she will not have access to the charity's bank accounts
- the trustees' views on the position and reputation of the charity if the applicant's appointment is made or maintained
- if the applicant is an undischarged bankrupt, the trustees' views on whether the legal limitations on his or her activities could damage the charity. For example, for an unincorporated charity, the statutory limitations on obtaining credit could cause difficulties in the relationship between the charity and its bankers

The applicant will ask the trustees to supply this information so that they can include it with their application when they contact the Commission.

The person who is, or will become disqualified, must apply for the waiver, or an advisor can do so on their behalf. We cannot accept applications from charities on the person's behalf.

In some cases, the Commission may contact your charity to ask for more information.

## Checking official registers

Charities can make use of official registers which record the names of people who are disqualified from acting as charity trustees. These include:

The Individual Insolvency Register maintained by the Insolvency Service, which contains details of:

- bankruptcies that are either current or have ended in the last 3 months
- current individual voluntary arrangements and fast track voluntary arrangements
- current bankruptcy restriction orders and undertakings

Searches of the Register can be made on the [Insolvency Service website](#), by visiting your local Official Receiver's office, or by post or fax.

The register of disqualified directors maintained by Companies House. Searches of the register can be made on the [Companies House website](#).

The [register of all persons who have been removed as a charity trustee](#) either by the commission or by an Order of the High Court since 1 February 1993.