

Status:  Amendment(s) Pending

## Charities Act 1993 c. 10

### Part IX MISCELLANEOUS

#### Charity trustees

This version in force from: **February 27, 2007** to **present**

(version 16 of 16)

#### **72.— Persons disqualified for being trustees of a charity.**

(1) Subject to the following provisions of this section, a person shall be disqualified for being a charity trustee or trustee for a charity if—

(a) he has been convicted of any offence involving dishonesty or deception;

(b) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged [ or he is the subject of a bankruptcy restrictions order or an interim order]<sup>1</sup> ;

(c) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

(d) he has been removed from the office of charity trustee or trustee for a charity by an order made—

(i) by the [Commission or ]<sup>2</sup> Commissioners under [section 18\(2\)\(i\)](#) above, or

(ii) by the Commissioners under [section 20\(1A\)\(i\)](#) of the [Charities Act 1960](#) (power to act for protection of charities) or under [section 20\(1\)\(i\)](#) of that Act (as in force before the commencement of [section 8](#) of the [Charities Act 1992](#)), or

(iii) by the High Court,

on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated;

(e) he has been removed, under [section 7](#) of the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990](#) (powers of Court of Session to deal with management of charities) [ or [section 34\(5\)\(e\)](#) of the [Charities and Trustee Investment \(Scotland\) Act 2005](#) (powers of the Court of Session)]<sup>3</sup> , from being concerned in the management or control of any body;

(f) he is subject to a disqualification order [or disqualification undertaking ]<sup>4</sup> under the [Company Directors Disqualification Act 1986](#) [ to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989]<sup>4</sup> or to an order made under [section 429\(2\)\(b\)](#) of the [Insolvency Act 1986](#) (failure to pay under county court administration order).

(2) In subsection (1) above—

(a) paragraph (a) applies whether the conviction occurred before or after the commencement of that subsection, but does not apply in relation to any conviction which is a spent conviction for the purposes of the [Rehabilitation of Offenders Act 1974](#);

(b) paragraph (b) applies whether the adjudication of bankruptcy or the sequestration [or the making of a bankruptcy restrictions order or an interim

order ]<sup>5</sup> occurred before or after the commencement of that subsection;

(c) paragraph (c) applies whether the composition or arrangement was made, or the trust deed was granted, before or after the commencement of that subsection; and

(d) paragraphs (d) to (f) apply in relation to orders made and removals effected before or after the commencement of that subsection.

(3) Where (apart from this subsection) a person is disqualified under subsection (1)(b) above for being a charity trustee or trustee for any charity which is a company, he shall not be so disqualified if leave has been granted under [section 11](#) of the [Company Directors Disqualification Act 1986](#) (undischarged bankrupts) for him to act as director of the charity; and similarly a person shall not be disqualified under subsection (1)(f) above for being a charity trustee or trustee for such a charity if—

[

(a) in the case of a person subject to a disqualification order or disqualification undertaking under the [Company Directors Disqualification Act 1986](#), leave for the purposes of [section 1\(1\)\(a\)](#) or [1A\(1\)\(a\)](#) of that Act has been granted for him to act as director of the charity,

(aa) in the case of a person subject to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989, leave has been granted by the High Court in Northern Ireland for him to act as director of the charity,

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(b) in the case of a person subject to an order under [section 429\(2\)\(b\)](#) of the [Insolvency Act 1986](#), leave has been granted by the court which made the order for him to so act.

(4) [The Commission]<sup>7</sup> may, on the application of any person disqualified under subsection (1) above, waive his disqualification either generally or in relation to a particular charity or a particular class of charities; but no such waiver may be granted in relation to any charity which is a company if—

(a) the person concerned is for the time being prohibited, by virtue of—

(i) a disqualification order [or disqualification undertaking ]<sup>8</sup> under the [Company Directors Disqualification Act 1986](#), or

(ii) [[section 11\(1\)](#), [12\(2\)](#) or [12A](#)]<sup>9</sup> of that Act (undischarged bankrupts; failure to pay under county court administration order [ Northern Irish disqualification orders]<sup>9</sup>),

from acting as director of the charity; and

(b) leave has not been granted for him to act as director of any other company.

[ (4A) If— (a) a person disqualified under subsection (1)(d) or (e) makes an application under subsection (4) above five years or more after the date on which his disqualification took effect, and

(b) the Commission is not prevented from granting the application by virtue of paragraphs (a) and (b) of subsection (4),

the Commission must grant the application unless satisfied that, by reason of any special circumstances, it should be refused.

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(5) Any waiver under subsection (4) above shall be notified in writing to the person concerned.

(6) For the purposes of this section [the Commission]<sup>11</sup> shall keep, in such

manner as [it thinks fit]<sup>12</sup> , a register of all persons who have been removed from office as mentioned in subsection (1)(d) above either—

(a) by an order of [the Commission or ]<sup>13</sup> the Commissioners made before or after the commencement of subsection (1) above, or

(b) by an order of the High Court made after the commencement of [section 45\(1\)](#) of the [Charities Act 1992](#);

and, where any person is so removed from office by an order of the High Court, the court shall notify [the Commission]<sup>14</sup> of his removal.

(7) The entries in the register kept under subsection (6) above shall be available for public inspection in legible form at all reasonable times.

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(8) In this section “ the Commissioners” means the Charity Commissioners for England and Wales.

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1. Words inserted by Enterprise Act 2002 (Disqualification from Office: General) Order 2006/1722 [Sch.2\(1\) para.4\(a\)](#) (June 29, 2006)
  2. Words inserted by Charities Act 2006 c. 50 [Sch.8 para.156\(2\)](#) (February 27, 2007)
  3. Words inserted by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006/242 [Sch.1\(1\) para.6\(2\)](#) (April 1, 2006)
  4. Words inserted by Insolvency Act 2000 c. 39 [Sch.4\(II\) para.18\(a\)](#) (April 2, 2001)
  5. Words inserted by Enterprise Act 2002 (Disqualification from Office: General) Order 2006/1722 [Sch.2\(1\) para.4\(b\)](#) (June 29, 2006)
  6. S.72(3)(a) and (aa) substituted for s.72(3)(a) by Insolvency Act 2000 c. 39 [Sch.4\(II\) para.18\(b\)](#) (April 2, 2001)
  7. Words substituted by Charities Act 2006 c. 50 [Sch.8 para.156\(3\)](#) (February 27, 2007)
  8. Words inserted by Insolvency Act 2000 c. 39 [Sch.4\(II\) para.18\(c\)\(i\)](#) (April 2, 2001)
  9. Words inserted by Insolvency Act 2000 c. 39 [Sch.4\(II\) para.18\(c\)\(ii\)](#) (April 2, 2001)
  10. Inserted subject to savings and transitional provisions specified in 2006 c.50 Sch.10 para.11 by Charities Act 2006 c. 50 [Pt 2 c.9 s.35](#) (February 27, 2007: insertion has effect subject to savings and transitional provisions specified in 2006 c.50 Sch.10 para.11)
  11. Words substituted by Charities Act 2006 c. 50 [Sch.8 para.156\(4\)\(a\)](#) (February 27, 2007)
  12. Words substituted by Charities Act 2006 c. 50 [Sch.8 para.156\(4\)\(b\)](#) (February 27, 2007)
  13. Words inserted by Charities Act 2006 c. 50 [Sch.8 para.156\(4\)\(c\)](#) (February 27, 2007)
  14. Words substituted by Charities Act 2006 c. 50 [Sch.8 para.156\(4\)\(d\)](#) (February 27, 2007)
  15. Added by Charities Act 2006 c. 50 [Sch.8 para.156\(5\)](#) (February 27, 2007)

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**Subject:** Charities

**Keywords:** Charity Commission for England and Wales; Charity trustees; Disqualification; Powers rights and duties