



Charities Act 2011

2011 CHAPTER 25

PART 9

CHARITY TRUSTEES, TRUSTEES AND AUDITORS ETC.

Disqualification of charity trustees and trustees

178 Persons disqualified from being charity trustees or trustees of a charity

- (1) A person (“P”) is disqualified from being a charity trustee or trustee for a charity in the following cases—

Case A

P has been convicted of any offence involving dishonesty or deception.

Case B

P has been adjudged bankrupt or sequestration of P’s estate has been awarded and (in either case)—

- (a) P has not been discharged, or
- (b) P is the subject of a bankruptcy restrictions order or an interim order.

Case C

P has made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it.

Case D

P has been removed from the office of charity trustee or trustee for a charity by an order made—

- (a) by the Commission under section 79(2)(a) or by the Commission or the Commissioners under a relevant earlier enactment (as defined by section 179(5)), or
- (b) by the High Court,

Status: This is the original version (as it was originally enacted).

on the ground of any misconduct or mismanagement in the administration of the charity for which P was responsible or to which P was privy, or which P's conduct contributed to or facilitated.

Case E

P has been removed, under section 34(5)(e) of the [Charities and Trustee Investment \(Scotland\) Act 2005 \(asp 10\)](#) (powers of the Court of Session) or the relevant earlier legislation (as defined by section 179(6)), from being concerned in the management or control of any body.

Case F

P is subject to—

- (a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 or the [Company Directors Disqualification \(Northern Ireland\) Order 2002 \(S.I. 2002/3150 \(N.I.4\)\)](#), or
- (b) an order made under section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order).

(2) Subsection (1) is subject to sections 179 to 181.

179 Disqualification: pre-commencement events etc.

(1) Case A—

- (a) applies whether the conviction occurred before or after the commencement of section 178(1), but
- (b) does not apply in relation to any conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974.

(2) Case B applies whether the adjudication of bankruptcy or the sequestration or the making of a bankruptcy restrictions order or an interim order occurred before or after the commencement of section 178(1).

(3) Case C applies whether the composition or arrangement was made, or the trust deed was granted, before or after the commencement of section 178(1).

(4) Cases D to F apply in relation to orders made and removals effected before or after the commencement of section 178(1).

(5) In Case D—

- (a) “the Commissioners” means the Charity Commissioners for England and Wales, and
- (b) “relevant earlier enactment” means—
 - (i) section 18(2)(i) of the Charities Act 1993 (power to act for protection of charities),
 - (ii) section 20(1A)(i) of the Charities Act 1960, or
 - (iii) section 20(1)(i) of the 1960 Act (as in force before the commencement of section 8 of the Charities Act 1992).

(6) In Case E, “the relevant earlier legislation” means section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (powers of Court of Session to deal with management of charities).

180 Disqualification: exceptions in relation to charitable companies

- (1) Where (apart from this subsection) a person (“P”) is disqualified under Case B from being a charity trustee or trustee for a charitable company, P is not so disqualified if leave has been granted under section 11 of the Company Directors Disqualification Act 1986 (undischarged bankrupts) for P to act as director of the company.
- (2) Similarly, a person (“P”) is not disqualified under Case F from being a charity trustee or trustee for a charitable company if, in a case set out in the first column of the table, leave has been granted as mentioned in the second column for P to act as director of the company—

P is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986.	Leave has been granted for the purposes of section 1(1)(a) or 1A(1)(a) of the 1986 Act.
P is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I.4)) .	Leave has been granted by the High Court in Northern Ireland.
P is subject to an order under section 429(2) of the Insolvency Act 1986.	Leave has been granted by the court which made the order.

181 Power to waive disqualification

- (1) This section applies where a person (“P”) is disqualified under section 178(1).
- (2) The Commission may, if P makes an application under this subsection, waive P’s disqualification—
 - (a) generally, or
 - (b) in relation to a particular charity or a particular class of charities.
- (3) If—
 - (a) P is disqualified under Case D or E and makes an application under subsection (2) 5 years or more after the date on which the disqualification took effect, and
 - (b) the Commission is not prevented from granting the application by subsection (5),the Commission must grant the application unless satisfied that, because of any special circumstances, it should be refused.
- (4) Any waiver under subsection (2) must be notified in writing to P.
- (5) No waiver may be granted under subsection (2) in relation to any charitable company if—
 - (a) P is for the time being prohibited from acting as director of the company, by virtue of—
 - (i) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, or
 - (ii) a provision of the 1986 Act mentioned in subsection (6), and
 - (b) leave has not been granted for P to act as director of any other company.
- (6) The provisions of the 1986 Act are—

Status: This is the original version (as it was originally enacted).

section 11(1) (undischarged bankrupts);
section 12(2) (failure to pay under county court administration order);
section 12A (Northern Irish disqualification orders);
section 12B (Northern Irish disqualification undertakings).

182 Records of persons removed from office

- (1) For the purposes of sections 178 to 181 the Commission must keep, in such manner as it thinks fit, a register of all persons who have been removed from office as mentioned in Case D—
 - (a) by an order of the Commission or the Commissioners made before or after the commencement of section 178(1), 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 must notify the Commission of the person's removal.
- (2) The entries in the register kept under subsection (1) must be available for public inspection in legible form at all reasonable times.
- (3) In this section “the Commissioners” means the Charity Commissioners for England and Wales.

183 Criminal consequences of acting while disqualified

- (1) Subject to subsection (2), it is an offence for any person to act as a charity trustee or trustee for a charity while disqualified from being such a trustee by virtue of section 178.
- (2) Subsection (1) does not apply if—
 - (a) the charity concerned is a company, and
 - (b) the disqualified person is disqualified by virtue only of Case B or F.
- (3) A person guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

184 Civil consequences of acting while disqualified

- (1) Any acts done as charity trustee or trustee for a charity by a person disqualified from being such a trustee by virtue of section 178 are not invalid merely because of that disqualification.
- (2) Subsection (3) applies if the Commission is satisfied that any person—
 - (a) has acted as charity trustee or trustee for a charity while disqualified from being such a trustee by virtue of section 178, and
 - (b) while so acting, has received from the charity any sums by way of remuneration or expenses, or any benefit in kind, in connection with acting as charity trustee or trustee for the charity.

- (3) The Commission may by order direct the person—
 - (a) to repay to the charity the whole or part of any such sums, or
 - (b) (as the case may be) to pay to the charity the whole or part of the monetary value (as determined by the Commission) of any such benefit.
- (4) Subsection (3) does not apply to any sums received by way of remuneration or expenses in respect of any time when the person concerned was not disqualified from being a charity trustee or trustee for the charity.