



2008 CHAPTER 12

PART 9

CHARITY TRUSTEES

CHAPTER 2

OTHER PROVISIONS RELATING TO CHARITY TRUSTEES

**Persons disqualified for being trustees of a charity**

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

- (a) D has been convicted of any offence involving dishonesty or deception;
- (b) D has been adjudged bankrupt or sequestration of D's estate has been awarded and (in either case) D has not been discharged;
- (c) D has made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it;
- (d) D has been removed from the office of charity trustee or trustee for a charity by an order made—

(i) by the Commission under section 33(2)(i), or

(ii) by the Court,

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

- (e) D has been removed from the office of charity trustee or trustee of a charity by an order made—

- (i) by the Charity Commission for England and Wales under section 18(2)(i) of the Charities Act 1993 (c. 10), or
  - (ii) by the Charity Commissioners for England and Wales under that provision (as in force before the commencement of section 6 of the Charities Act 2006 (c. 50)), under section 20(1A)(i) of the Charities Act 1960 (c. 58) or under section 20(1)(i) of that Act (as in force before the commencement of section 8 of the Charities Act 1992 (c. 41), or
  - (iii) by Her Majesty's High Court of Justice in England;  
on the grounds of any misconduct or mismanagement in the administration of the charity for which D was responsible or to which D was privy, or which D by conduct contributed to or facilitated;
  - (f) D has been removed, under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) or under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) (powers of Court of Session to deal with management of charities), from being concerned in the management or control of any body;
  - (g) D is subject to a disqualification order or a disqualification undertaking under the [Company Directors Disqualification \(Northern Ireland\) Order 2002 \(NI 4\)](#) or the [Company Directors Disqualification Act 1986 \(c. 46\)](#).
- (2) In subsection (1)—
- (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 \(Northern Ireland\) Order 1978 \(NI 27\)](#);
  - (b) paragraph (b) applies whether the adjudication of bankruptcy or the sequestration 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 (g) apply in relation to orders made and removals effected before or after the commencement of that subsection.
- (3) Where (apart from this subsection) D is disqualified under subsection (1) (b) for being a charity trustee or trustee for any charity which is a company, D shall not be so disqualified if leave has been granted under Article 15 of the [Company Directors Disqualification \(Northern Ireland\) Order 2002 \(NI 4\)](#) or section 11 of the [Company Directors Disqualification Act 1986 \(c. 46\)](#) (undischarged bankrupts) for D to act as director of the charity; and similarly

D shall not be disqualified under subsection (1)(g) for being a charity trustee or trustee for such a charity if—

- (a) in the case where D is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002, leave for the purpose of Article 3(1)(a) or 4(1)(a) of that Order has been granted for D to act as director of the charity,
- (b) in the case where D is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986, leave for the purpose of section 1(1)(a) or 1A(1)(a) of that Act has been granted for D to act as a director of the charity.

(4) The Commission may, on the application by D, waive D's 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) D is for the time being prohibited, by virtue of—
  - (i) a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002, or
  - (ii) Article 15(1), 16(2) or 17 of that Order (undischarged bankrupts; failure to pay under administration order, etc.),
 from acting as director of the charity; and
- (b) leave has not been granted for D to act as director of any other company.

(5) If—

- (a) D is disqualified under subsection (1)(d), (e) or (f) and makes an application under subsection (4) five years or more after the date on which D's 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.

(6) Any waiver under subsection (4) shall be notified in writing to D.

(7) For the purposes of this section the Commission shall keep, in such manner as it thinks fit, a register of all persons who have been removed from office as mentioned in subsection (1)(d) either—

- (a) by an order of the Commission, or
- (b) by an order of the Court;

and, where any person is so removed from office by an order of the Court, the Court shall notify the Commission of the removal.

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