



Charities Act 1992

1992 CHAPTER 41

PART I

CHARITIES

Disqualification for acting as charity trustee

45 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;
 - (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 Commissioners under section 20(1A)(i) of the 1960 Act (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 this Act), or
 - (ii) 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), from being concerned in the management or control of any body;
 - (f) he is subject to a disqualification order under the Company Directors Disqualification Act 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).

Status: This is the original version (as it was originally enacted).

- (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 Act 1974;
 - (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 (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) 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) for being a charity trustee or trustee for such a charity if—
- (a) in the case of a person subject to a disqualification order, leave under the order has been granted for him to act as director of the charity, or
 - (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 Commissioners may, on the application of any person disqualified under subsection (1), 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 under the Company Directors Disqualification Act 1986, or
 - (ii) section 11(1) or 12(2) of that Act (undischarged bankrupts; failure to pay under county court administration order),from acting as director of the charity; and
 - (b) leave has not been granted for him to act as director of any other company.
- (5) Without prejudice to the generality of section 13 of the Interpretation Act 1978 (anticipatory exercise of powers), the Commissioners may—
- (a) at any time before the commencement of subsection (1) above, and
 - (b) on the application of a person who would be disqualified under that subsection as from that commencement,
- grant that person a waiver under subsection (4) taking effect as from that commencement.
- (6) Any waiver under subsection (4) shall be notified in writing to the person concerned.
- (7) For the purposes of this section the Commissioners shall keep, in such manner as they think 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 Commissioners made before or after the commencement of subsection (1), or
- (b) by an order of the High Court made after the commencement of that subsection;

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

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

46 Person acting as charity trustee while disqualified

- (1) Subject to subsection (2), any person who acts as a charity trustee or trustee for a charity while he is disqualified for being such a trustee by virtue of section 45 shall be guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.

- (2) Subsection (1) shall not apply where—

- (a) the charity concerned is a company; and
- (b) the disqualified person is disqualified by virtue only of paragraph (b) or (f) of section 45(1).

- (3) Any acts done as charity trustee or trustee for a charity by a person disqualified for being such a trustee by virtue of section 45 shall not be invalid by reason only of that disqualification.

- (4) Where the Commissioners are satisfied—

- (a) that any person has acted as charity trustee or trustee for a charity (other than an exempt charity) while disqualified for being such a trustee by virtue of section 45, and
- (b) that, while so acting, he has received from the charity any sums by way of remuneration or expenses, or any benefit in kind, in connection with his acting as charity trustee or trustee for the charity,

they may by order direct him to repay to the charity the whole or part of any such sums, or (as the case may be) to pay to the charity the whole or part of the monetary value (as determined by them) of any such benefit.

- (5) Subsection (4) 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 for being a charity trustee or trustee for the charity.