



# Charities (Protection and Social Investment) Act 2016

## 2016 CHAPTER 4

### 10 Power to disqualify from being a trustee

- (1) The Charities Act 2011 is amended as follows.
- (2) After section 181 insert—

#### **“181A Disqualification orders**

- (1) The Commission may by order disqualify a person from being a charity trustee or trustee for a charity.
- (2) The order may disqualify a person—
  - (a) in relation to all charities, or
  - (b) in relation to such charities or classes of charity as may be specified or described in the order.
- (3) While a person is disqualified by virtue of an order under this section in relation to a charity, the person is also disqualified, subject to subsection (5), from holding an office or employment in the charity with senior management functions.
- (4) A function of an office or employment held by a person (“A”) is a senior management function if—
  - (a) it relates to the management of the charity, and A is not responsible for it to another officer or employee (other than a charity trustee or trustee for the charity), or
  - (b) it involves control over money and the only officer or employee (other than a charity trustee or trustee for the charity) to whom A is responsible for it is a person with senior management functions other than ones involving control over money.
- (5) An order under this section may provide for subsection (3) not to apply—

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- (a) generally, or
  - (b) in relation to a particular office or employment or to any office or employment of a particular description.
- (6) The Commission may make an order disqualifying a person under this section only if it is satisfied that—
- (a) one or more of the conditions listed in subsection (7) are met in relation to the person,
  - (b) the person is unfit to be a charity trustee or trustee for a charity (either generally or in relation to the charities or classes of charity specified or described in the order), and
  - (c) making the order is desirable in the public interest in order to protect public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order.
- (7) These are the conditions—

A	that the person has been cautioned for a disqualifying offence against a charity or involving the administration of a charity.
B	that— <ul style="list-style-type: none"> <li>(a) under the law of a country or territory outside the United Kingdom the person has been convicted in respect of an offence against a charity or involving the administration of a charity, and</li> <li>(b) the act which constituted the offence would have constituted a disqualifying offence if it had been done in any part of the United Kingdom.</li> </ul>
C	that the person has been found by Her Majesty’s Revenue and Customs not to be a fit and proper person to be a manager of a body or trust, for the purposes of paragraph 4 of Schedule 6 to the Finance Act 2010 (definition of charity for tax purposes), and the finding has not been overturned.
D	that the person was a trustee, charity trustee, officer, agent or employee of a charity at a time when there was misconduct or mismanagement in the administration of the charity, and— <ul style="list-style-type: none"> <li>(a) the person was responsible for the misconduct or mismanagement,</li> <li>(b) the person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or</li> <li>(c) the person’s conduct contributed to or facilitated the misconduct or mismanagement.</li> </ul>
E	that the person was an officer or employee of a body corporate at a time when the body was a trustee or charity trustee for a charity and when there was misconduct or mismanagement by it in the administration of the charity, and— <ul style="list-style-type: none"> <li>(a) the person was responsible for the misconduct or mismanagement,</li> <li>(b) the person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or</li> <li>(c) the person’s conduct contributed to or facilitated the misconduct or mismanagement.</li> </ul>
F	that any other past or continuing conduct by the person, whether or not in relation to a charity, is damaging or likely to be damaging to public

trust and confidence in charities generally or in the charities or classes of charity specified or described in the order.

- (8) The Minister may amend this section by regulations to add or remove a condition.
- (9) In this section “disqualifying offence” means an offence within Case A in section 178(1).
- (10) Conditions A and B apply whether the caution or conviction occurred before or after the commencement of this section.
- (11) Condition B does not apply in relation to a conviction which is spent under the law of the country or territory concerned.
- (12) For the purposes of condition B—
  - (a) an act punishable under the law of a country or territory outside the United Kingdom constitutes an offence under that law, however it is described in that law, and
  - (b) “charity” means an institution that is a charity under the law of any part of the United Kingdom or that is established under the law of another country or territory principally for charitable, benevolent or philanthropic purposes.

#### **181B Duration of disqualification, and suspension pending disqualification**

- (1) An order under section 181A must specify the period for which the person is disqualified.
- (2) The period—
  - (a) must be not more than 15 years beginning with the day on which the order takes effect, and
  - (b) must be proportionate, having regard in particular to the time when a conviction becomes spent or, where condition B applies, would become spent if it were a conviction for the relevant disqualifying offence, and to circumstances in which the Commission may or must grant a waiver under section 181 where a person is disqualified under section 178.
- (3) An order takes effect—
  - (a) at the end of the time specified by Tribunal Procedure Rules for starting proceedings for an appeal against the order, if no proceedings are started within that time, or
  - (b) (subject to the decision on the appeal) when any proceedings started within that time are withdrawn or finally determined.
- (4) The Commission may by order suspend a person from being a charity trustee or trustee for a charity if it has given notice under section 181C(1)(a) of its proposal to make an order under section 181A in respect of the person.
- (5) The Commission may not make an order under subsection (4) so as to suspend a person for a period of more than 12 months, but at any time before the expiry

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of an order the Commission may extend or further extend the suspension by a further order under that subsection, provided that—

- (a) the order does not extend the suspension for a period of more than 12 months, and
- (b) the total period of suspension is not more than 2 years.

(6) An order under subsection (4) ceases to have effect—

- (a) if the Commission notifies the person that it will not proceed with its proposal, on the notification being given;
- (b) if the Commission makes the order under section 181A, on the order taking effect;

or, if earlier, at the end of the period specified in accordance with subsection (5).

(7) The Commission must review any order under subsection (4), at such intervals as it thinks fit.

(8) If on a review it appears to the Commission that it would be appropriate to discharge an order under subsection (4) in whole or in part, the Commission must do so (whether subject to any savings or other transitional provisions or not).

(9) An order under subsection (4) made in the case of any person (“P”) may make provision, as respects the period of P’s suspension, for matters arising out of it, and in particular—

- (a) for enabling any person to execute any instrument in P’s name or otherwise act for P, and
- (b) in the case of a charity trustee, for adjusting any rules governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting.

This does not affect the generality of section 337(1) and (2).

(10) While an order under subsection (4) is in force suspending a person from being a charity trustee or trustee for a charity, the person must not take up any appointment as a charity trustee or trustee for any other charity without the written approval of the Commission.

### **181C Disqualification orders: procedure**

(1) Before making an order in respect of a person under section 181A without the person’s consent the Commission must—

- (a) give the person not less than one month’s notice of its proposals, and
- (b) invite representations to be made to it within a period specified in the notice.

(2) Before making an order under section 181A in respect of a person who the Commission knows or believes to be a charity trustee or trustee for a charity, the Commission must also—

- (a) give notice of its proposals to each of the charity trustees of the charity in question;

- (b) comply with the publicity requirement, unless the Commission is satisfied that for any reason compliance with the requirement is unnecessary.
- (3) The publicity requirement is that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice.
- (4) The time when any such notice is given is to be decided by the Commission.
- (5) Any notice of any proposals which is to be given under this section is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate.
- (6) Where the Commission gives notice of any proposals under this section—
  - (a) it must take into account any representations made to it within the period specified in the notice, and
  - (b) it may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable;but a notice under subsection (2)(a) need not specify a period for the purposes of paragraph (a) if the charity came to the Commission's knowledge or belief after the expiry of the period specified for the purposes of subsection (1)(b).
- (7) A notice under subsection (1) or (2)(a)—
  - (a) may be given by post, and
  - (b) if given by post, may be addressed to the recipient's last known address in the United Kingdom.
- (8) A notice under subsection (2)(b) is to be given in such manner as the Commission thinks sufficient and appropriate.
- (9) Where the Commission makes an order under section 181A in respect of a person it knows or believes to be a charity trustee or trustee for a charity it must (as well as serving it on that person) send a copy of the order and a statement of the Commission's reasons for making it—
  - (a) to the charity in question (if a body corporate), or
  - (b) (if not) to each of the charity trustees of the charity in question.
- (10) Nothing in this section requires the Commission to give notice, or send a document, to a person who cannot be found or has no known address in the United Kingdom.
- (11) Any documents required to be sent to a person under this section may be sent to, or otherwise served on, the person in the same way as an order made by the Commission under this Act could be served on the person in accordance with section 339.

### **181D Disqualification orders: variation and revocation**

A person in respect of whom an order under section 181A is in force may at any time apply to the Commission for an order varying or discharging that order.”

- (3) In section 183 (criminal consequences of acting while disqualified)—

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- (a) in subsection (1), after “section 178” insert “or an order under section 181A”;
  - (b) in subsection (2)(b), after “G” insert “in section 178”.
- (4) In section 184 (civil consequences of acting while disqualified)—
- (a) in subsection (1), after “section 178” insert “or an order under section 181A”;
  - (b) in subsection (2)(a), after “section 178” insert “or an order under section 181A.”
- (5) Section 348 (regulations subject to affirmative procedure etc) is amended as follows.
- (6) In subsection (1), before paragraph (c) insert—
- “(bb) regulations under section 181A(8) (conditions for disqualification by order);”.
- (7) In subsection (2) before “or (c)” insert “, (bb)”.
- (8) In subsection (4) before paragraph (a) insert—
- “(zb) section 181A(8), if the regulations add a condition.”.
- (9) In Schedule 6 (appeals and applications to tribunal), after the entry relating to a decision of the Commission under section 181(2) to waive, or not waive, a person’s disqualification insert—

“Order made by the Commission under section 181A.	The persons are the person who is the subject of the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission; (b) substitute for all or part of the order any other order which could have been made by the Commission; (c) add to the order anything which could have been contained in an order made by the Commission.
Order made by the Commission under section 181B(4).	The persons are the person who is the subject of the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission; (b) substitute for all or part of the order any other order which could have been made by the Commission; (c) add to the order anything which could have been contained in an order made by the Commission.
Decision of the Commission— (a) to discharge an order following a review under	The persons are— (a) the person who is the subject of the order, (b) the charity trustees of the	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission;

<p>section 181B(7), or (b) not to discharge an order following such a review.</p>	<p>charity to which the order relates, (c) (if a body corporate) the charity itself, and (d) any other person who is or may be affected by the order.</p>	<p>(b) make the discharge of the order subject to savings or other transitional provisions; (c) remove any savings or other transitional provisions to which the discharge of the order was subject; (d) discharge the order in whole or in part (whether subject to any savings or other transitional provisions or not).</p>
<p>Decision of the Commission under section 181D not to revoke or vary an order under section 181A.</p>	<p>The persons are the person who is the subject of the order.</p>	<p>Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission; (b) substitute for the decision any other decision of a kind which could have been made by the Commission.”</p>