

For Discussion

Agenda Item: 11.3
Date of Meeting: 27/08/25

To: The Management Committee

From: The Director

Subject: Charity Law Changes – Extension of Disqualification Criteria and who this applies to

1. Introduction

- 1.1 As Committee is aware there are various Charity Law changes coming in over the Summer. The first of which came into effect from 30th June and required that all Charity Trustee details are submitted to OSCR. Committee approved the information to be submitted at its June meeting.
- 1.2 The purpose of this report is to advise the Committee of the next change coming in this month. The change relates to the expansion of the disqualification criteria and who this applies to.

2. Extension of Disqualification Criteria

- 2.1 Under the Charities and Trustee Investment (Scotland) Act 2005 (2005 Act), criteria for disqualification for charity trustees already exists. However, the introduction of the Charities (Regulation and Administration) (Scotland) Act 2023 (the 2023 Act) has amended the 2005 Act and as part of this has amended the disqualification criteria to include criteria such as convictions for terrorism, money laundering, bribery and perverting the course of justice.
- 2.2 For ease I have attached the disqualification criteria as set out in the 2005 Act (Appendix 1) and the full disqualification criteria as amended by the 2023 Act (Appendix 2).
- 2.3 As Committee is aware we have an Eligibility Declaration which potential new Committee Members must read and sign to confirm that they are eligible to join the Committee. This is also signed by all Committee Members at the first meeting after the AGM as part of the annual governance signing process which includes the code of conduct and declaration of interests form.
- 2.4 Our Eligibility Declaration is taken directly from our rules. I sought clarity from our solicitors as to whether our Declaration would need to be

updated in light of the widening of the disqualification criteria. The advice from our solicitor is

“Your Rules (and your eligibility declaration) confirm the circumstances in which an individual will be ineligible to be a committee member, which includes that they have ‘been removed, disqualified or suspended from a position of management or control of a charity under the provisions of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 or the Charities and Trustee Investment (Scotland) Act 2005.’

In our view, as the 2023 Act simply modifies the 2005 Act by broadening the scope of the disqualification criteria, then the reference to the 2005 Act which is already contained within your Rules sufficiently covers this. As such, your eligibility declaration does not require to be amended, as this is essentially already covered.”

2.5 Our solicitor did suggest that in terms of existing committee members that we may wish to issue a fresh copy of the Declaration and arrange to have this signed. As covered in para 2.3, the Declaration is normally signed annually at the first meeting of the Management Committee after the AGM. However, as the extension of the disqualification comes into effect from 31st August, I will have paper copies of the Eligibility Declaration available at the meeting for Committee to review and sign.

2.6 There is another change in relation to the disqualification criteria; it now relates to those people undertaking a senior management function for a charity. In addition, it will also include volunteers who undertake a senior management function.

2.7 Attached at Appendix 3 is information relating to determining who has a senior management function. It was clear from the outset that I would be classed as undertaking a senior management function as the senior staff member of Rosehill and reporting directly to the Trustees/Committee. Having considered the information on OSCR’s website we have identified the following staff as having a senior management function for the purpose of determining if the disqualification criteria applies:

Director, Finance & IT Manager and Technical Services Manager

2.8 I am developing a declaration for the relevant Managers (and me) to sign to confirm that none of the disqualification criteria applies to us.

3. Risk

3.1 We have considered risk in relation to the changes to the disqualification criteria and to who it applies to and have identified the main risks under the following risk categories and any mitigating measures.

Risk Category	Mitigating Measure
<p>Legal and Regulatory:</p> <ul style="list-style-type: none"> • Fail to check trustee's eligibility to join the Management Committee; • An ineligible person joins the Committee; • Fail to check existing/new employee (with senior management function) eligibility 	<p>Trustees/relevant staff required to review and sign Eligibility Declarations</p> <p>Check Record of Removed Persons held on OSCR's website</p>

4. Delivery of our Strategic Objectives

Area	Related Strategic Objective(s)
Ensure we are compliant with changes to disqualification criteria	7) Achieve the highest standards in all that we do

5. Application of our Core Values

Area	Related Core Value(s)
Ensure we are compliant with changes to disqualification criteria	<ul style="list-style-type: none"> • Accountable and Compliant; • Excellent and Committed

6. Compliance and Assurance

- 6.1 Ensuring we are up-to-date with changes in Charity Law, with the most recent being the extension of the disqualification criteria and who this applies to, means we are compliant with legal requirements and Regulatory Standards. In particular:

Compliance Source	Details
Charities and Trustee Investment (Scotland) Act 2005, as amended by Charities (Regulation and Administration) (Scotland) Act 2023	Widening of automatic disqualification criteria and who it applies to (now covers those undertaking a senior management function – volunteers and staff)

The Standards of Governance and Financial Management for RSLs

Standard 1 - The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.

Guidance 1.3 – The governing body ensures the RSL complies with its constitution and its legal obligations. Its constitution adheres to these Standards and the constitutional requirements set out below.

Standard 2 - The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities.

Guidance 2.5 - The RSL is open, co-operative, and engages effectively with all its regulators and funders, notifying them of anything that may affect its ability to fulfil its obligations. It informs the Scottish Housing Regulator about any significant events such as a major issue, event or change as set out and required in the notifiable events guidance.

Standard 5 - The RSL conducts its affairs with honesty and integrity.

Guidance 5.1 - The RSL conducts its affairs with honesty and integrity and, through the actions of the governing body and staff, upholds the good reputation of the RSL and the sector.

6.2 Evidence Bank

Evidence	Assurance Exercise Location
<ul style="list-style-type: none">• Report and attachments for 27/08/25 meeting;	<ul style="list-style-type: none">• Regulatory Standard 1 – Guidance 1.3• Regulatory Standard 2 – Guidance 2.5• Regulatory Standard 5 – Guidance 5.1

6.2.1 Committee is reminded that our Assurance Exercises are available in the Committee Log-in Area of our website, which Committee can access at any time.

7. Summary and Decision Required

7.1 The changes to Charity Law continue to be rolled out over the Summer. The latest change is in relation to the extension of the disqualification criteria and who it applies to. This comes into effect from 31st August 2025.

7.2 Section 2 and the Appendices covers what is involved in this change to the disqualification criteria.

7.3 Risk is considered at Section 3.

7.4 Section 4 shows how ensuring we keep up-to-date with changes in charity law and undertake any measures to ensure we remain compliant with charity law, links to the delivery of our strategic objectives.

7.5 Section 5 shows how ensuring we keep up-to-date with changes in charity law and undertake any measures to ensure we remain compliant with charity law, links to the application of our Core Values.

7.6 Section 6 sets out how we comply with Legal and Regulatory requirements.

7.7 Committee is asked to consider this report and the attached appendices. Committee Members are asked to sign the Eligibility Declaration.

What this guidance is about

The 2005 Act provides [\(S.69\(1\)\)](#) for the disqualification of individuals from being or becoming charity trustees who meet specific criteria.

All charity trustees have legal duties and responsibilities under the [2005 Act](#). A duty is something that you must do, and all the duties must be met. These duties are separated out into general duties, that set out a broad framework that all charity trustees must work within, and specific duties detailed in the 2005 Act. The general and specific duties apply equally to all charity trustees and to all charities registered in Scotland. All of the charity's trustees should work together to make sure that these duties are met.

Every charity trustee must ensure that they comply with the law whilst undertaking their role in a charity. It is the responsibility of individuals to make sure that they do not meet the criteria set out in law, that would automatically disqualify them from being a charity trustee.

Anyone who acts as a charity trustee whilst disqualified is guilty of an offence punishable by a fine, imprisonment, or both.

This guidance explains what the existing law says about disqualification.

All charities should review this guidance and refer to the latest version when recruiting new trustees

Criteria that automatically disqualify an individual from acting as a charity trustee

- Unspent conviction for an offence involving dishonesty or an offence under the 2005 Act
- Undischarged bankruptcy (sequestration)
- Granting a Protected Trust Deed
- Entering into an Individual Voluntary Arrangement (England and Wales) to pay off debts with creditors
- Being removed by a court from being a charity trustee
- Being disqualified from being a company director

Disqualification is automatic in these circumstances, and it is a criminal offence to become or continue to act as a charity trustee whilst the circumstances apply.

Annex 1: Criteria for disqualification

Criteria specified in [Section 69 of the 2005 Act](#) as amended by the 2023 Act that automatically disqualify an individual from acting as a charity trustee or carrying out a senior management function for a charity:

These are the automatic disqualification criteria set out in Scottish charity law: [Charities and Trustee Investment \(Scotland\) Act 2005](#). An individual cannot become or continue as a charity trustee or hold an office or employment with senior management functions in a charity if that individual:

- is an undischarged bankrupt
- has an undischarged Protected Trust Deed (PTD)
- has an existing individual voluntary arrangement (IVA) to pay off debts with creditors. (This only applies to trustees living in England, Wales or Northern Ireland)
- is subject to a bankruptcy related measure, that is:-
 - i. the subject of a bankruptcy restrictions order, interim order or undertaking under the Bankruptcy (Scotland) Act 2016, the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989
 - ii. in the moratorium period under a debt relief order under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989. (This only applies to trustees living in England, Wales or Northern Ireland)
 - iii. the subject of a debt relief restrictions order, interim order or undertaking under either of these enactments. (This only applies to trustees living in England, Wales or Northern Ireland)
- is disqualified from being a company director
- has been removed by the Court of Session under the 2005 Act (or earlier legislation) from being a charity trustee or being concerned in the management or control of any charity or body
- has been removed as a trustee, charity trustee, officer, agent or employee of a charity by the Charity Commission for England and Wales (“CCEW”) or the High Court in England due to misconduct or mismanagement
- has been subject to a disqualification order or disqualification undertaking made by the CCEW under section 181 of the Charities Act 2011 disqualifying me as a charity trustee

- has been found guilty of contempt by a Court in England and Wales in civil proceedings for making a false disclosure statement
- has been removed as a charity trustee or trustee of a charity by the Charity Commission for Northern Ireland (“CCNI”) or the High Court in Northern Ireland due to misconduct or mismanagement.
- has been found guilty of disobedience to an order or direction of CCEW or CCNI on an application to the High Court in England or Northern Ireland
- Has an unspent conviction for any of the following:
 - a. an offence under the 2005 Act
 - b. an offence under section 77 of the Charities Act 2011
 - c. an offence under section 13 or 19 of the Terrorism Act 2000
 - d. an offence specified under section 41 or 42 of the Counter-Terrorism Act 2008 as an offence to which Part 4 of that Act applies
 - e. a money laundering offence within the meaning of section 415 of the Proceeds of Crime Act 2002
 - f. an offence under any of the following sections 1, 2, 6 or 7 of the Bribery Act 2010
 - g. an offence of perverting the course of justice including in particular-
 - i. false accusation of a crime
 - ii. perjury
 - iii. prevarication on oath
 - iv. prison breaking
 - v. subornation of perjury
 - h. an offence of wilful neglect of duty by a public official
 - i. an offence, under the law of England and Wales, of misconduct in public office
 - j. any other offence involving dishonesty
 - k. an offence committed by aiding, abetting, counselling, procuring or inciting the commission of any of the offences detailed above
 - l. an offence committed by attempting or conspiring to commit any of the offences detailed above
- is a designated person under the following anti- terrorist legislation:

- i. regulations 8 to 12 of the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019,
 - ii. regulations 11 to 15 of the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019,
 - iii. regulations 11 to 15 of the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019
- is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (on the sex offenders register).

Guidance on disqualification criteria for charity trustees and those undertaking a senior management function from summer 2025

Published: 06/05/2025

Updated: 06/05/2025

PLEASE NOTE:

This guidance reflects changes to charity law that will come into effect from 31 August 2025. You can view guidance on the [current rules relating to automatic disqualification here](#).

What this guidance is about

The [Charities and Trustee Investment \(Scotland\) Act 2005](#) is the law which applies to charities that are registered in Scotland and regulated by the Office of the Scottish Charity Regulator (OSCR). The 2005 Act was amended by the [Charities \(Regulation and Administration\) \(Scotland\) Act 2023](#).

The changes made to the 2005 Act by the 2023 Act set out specific criteria under which certain people are automatically disqualified from being a charity trustee or undertaking a senior management function within a charity.

The disqualification criteria include having unspent convictions for various offences, being subject to notification requirements of the Sexual Offences Act 2003, being an undischarged bankrupt and having an undischarged Protected Trust Deed.

The full list of the disqualification criteria is set out in [Annex 1](#).

Anyone who acts as a charity trustee or in a senior management function for a charity while disqualified is guilty of an offence punishable by a fine, imprisonment, or both.

This guidance explains what the law will say about automatic disqualification from 31 August 2025. The current rules relating to automatic disqualification are available [here](#).

All charities should review this guidance and refer to the latest version on the OSCR website when recruiting new charity trustees and those that will carry out a senior management function in a charity. It is important for charity trustees to think about the changes in the law and how those changes will affect the charity.

Every charity trustee and anyone undertaking a senior management function for a charity must ensure that they comply with the law.

[What is a charity trustee?](#)

[What is a senior management function?](#)

What you must not do if you are disqualified and actions you may need to take

Are there any exceptions?

Annex 1: Criteria for disqualification

Annex 2: Questionnaire and flowchart - Do the automatic disqualification criteria apply to you?

Annex 3: Information included in a waiver application

What is a senior management function?

Published: 06/05/2025

Updated: 07/05/2025

Charity law provides two ways that a function carried out by an individual holding an office or employment is considered to be a senior management function:

1. The function relates to the management of the charity for which the person is only directly accountable to the charity trustees
2. The function involves control over the charity's money and the person is only responsible for that function either:
 - a. directly to the charity trustees, or
 - b. to a person carrying out a senior management function that does not involve control over money.

Management of the charity in this context means having responsibility for the day-to-day control and operation of the charity including decisions on key operational matters.

Control over money means having responsibility for the charity's financial performance and spending, financial policies and controls.

It is important to understand that a job/role title that a person has is not the deciding factor here. It is about the function that a role or job involves. The function may also be undertaken by a volunteer.

Many charities will use the terms 'senior manager', 'senior management team' and 'senior leadership team'. The individuals that those terms apply to in an individual charity cannot be assumed to be carrying out a senior management function for the purposes of the rules about automatic disqualification.

As the governance structures vary between charities, the charity trustees should understand who in their charity the criteria will apply to. It may be helpful to consider the governance structure of the charity from the top downwards to identify the people who the automatic disqualification rules will apply to. If no one apart from the charity trustees is involved in the management of the charity, it is unlikely that the criteria will apply to anyone else in the charity apart from the charity trustees. It may also be helpful to refer to job or role descriptions where available and to any scheme of delegation that exists within the charity to help identify where senior management functions are being carried out in the charity.

1. Where the function relates to the management of the charity and the person is only responsible to the charity trustees

Where a charity has a chief executive, the person occupying this role will generally report directly to the charity trustees. As their role relates to the senior management of the charity, the automatic disqualification rules will apply to them.

A charity may have a member of staff who has a different job title but the function they are carrying out in the charity relates to the senior management of the charity and they only report directly to the charity trustees. The rules would also apply to them.

These questions may help to determine if the automatic disqualification rules apply:

- Who is involved in the management of the charity apart from the charity trustees?
- Are they accountable to the charity trustees directly and no one else? If they are an employee, who is their line manager? Who do they report to? Do they make decisions about how the charity is being run on a day to day basis without having to have these decisions approved in advance by anyone else who is not a charity trustee?
- If so, the rules will apply to them.

It might also be helpful to consider situations that may commonly arise in a charity:

- A person is employed as a manager of a facility run by a charity and reports to the Chief Executive in carrying out that role. They have no responsibility in relation to controlling charity finances. Even though they are referred to as a manager, they are reporting to the Chief Executive who in turn is accountable only to the charity trustees. The manager is not undertaking a senior management function in terms of the rules. The Chief Executive is the person that is carrying out the senior management function.
- A person undertaking a senior management function goes on an extended period of leave. The charity trustees will need to consider who will cover that role in the

interim and ensure the person is not disqualified as they will be carrying out a senior management function for the period of time they are undertaking the role.

- Two people job-share the role of Chief Executive in a charity. Both individuals are carrying out a senior management function and are directly accountable to the charity trustees. As a result, the disqualification criteria apply to both individuals.
- A charity's employee or volunteer attends a meeting of the charity trustees to present a paper they have written for the charity trustees to discuss and make a decision on. Interacting with charity trustees in this way does not mean the person is undertaking a senior management function.

2. Where the function involves control over money and the person is responsible to the charity trustees or another person undertaking a senior management function that does not relate to control over money

It is helpful to consider who the most senior person in the charity is that has control over the charity's money. Where a charity has a Finance Director or a Chief Financial Officer, they will often report directly to the charity's Chief Executive or directly to the charity trustees and where this is the case, the automatic disqualification rules would apply to them.

Another example is where a person is employed as a manager of a facility run by a charity and reports to the Chief Executive in carrying out that role. The person also has responsibility in relation to controlling the charity's finances. In this situation, the Chief Executive and manager are both undertaking senior management functions.

The function described here does not cover everyone in the charity that has some involvement with the charity's money. The function is one that includes day to day responsibility for the charity's financial performance and strategy, policies, controls and compliance with accounting and reporting requirements. It does not include a person who is tasked with solely carrying out administrative tasks of taking payments on behalf of a charity and is responsible for depositing those payments with the bank. A person in that situation would be unlikely to report directly to the charity trustees or to another person undertaking a senior management function.

A questionnaire and flow chart to help individuals and charities understand whether the disqualification criteria apply to them is in [Annex 2](#).