

Leading charities with conviction

Guidance for charities on changes to the rules on recruiting trustees & senior managers with criminal records

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Introduction

This guidance is for charities in England & Wales. It summarises the changes to the automatic disqualification rules ('the rules') that relate to charity trustees and senior managers that happened in 2018 and how they relate to criminal records. The rules do not apply to those working or volunteering for social enterprises and other forms of voluntary organisations.

The guidance is designed to help charities understand these changes and look at what steps to take to maintain and increase the involvement of people with criminal records within charities.

It has been written by [Unlock](#), an independent charity for people with convictions, with the support of [Clinks](#), the national infrastructure charity that supports the voluntary sector working in criminal justice in England and Wales.

This guidance was first published in February 2018 and then updated in August 2018 to reflect the changes having come fully into operation. The latest version is available online at recruit.unlock.org.uk/charities. You can also [sign up](#) to receive email updates.

We have developed separate guidance for individuals who are looking to be (or currently are) a trustee or senior manager of a charity. This guidance is available at hub.unlock.org.uk/charity.

There are a number of terms used in this guidance, including "new rules", "disqualification", "prevented", "clearance", "waiver" and "relevant criminal record". [Find out](#) what we mean by these.

Separate to criminal records (which is the focus of this guidance), there are a number of other factors which can prevent an individual from becoming a trustee or senior manager without first obtaining a waiver. More details about these other factors are covered in the [Charity Commission guidance](#).

Why this guidance is important

Almost anyone can run a charity, but there are rules which prevent some people from being able to unless they have clearance from the Charity Commission. These rules changed in 2018, and will have an impact because:

1. **There are many peer led charities** - Increasingly service user involvement is recognised as an important feature of all types of charities. Of charities working with people in the criminal justice system and their families surveyed by Clinks (State of the Sector, 2017), 58% had recruited service users as staff and/or volunteers and 20% of organisations had recruited service users as a member of their board.
2. **There are many charities that involve (or will want to involve) people with convictions** – With over 11 million people in the UK with a criminal record, people with convictions play an important part in actively contributing to charities.
3. **The new rules apply to existing trustees AND certain senior manager positions** – The new rules can complicate the recruitment process for charities. They include people already involved in charities - some people affected might have been involved in a charity for many years and then find they could be disqualified from their role under the new rules.
4. **More criminal records are covered** – The new rules extend to include unspent convictions for terrorism and money laundering, as well as to registered sex offenders.

5. **Legislation often has unintended consequences** – There is a risk that charities respond by going much further than the rules require, and this would mean that charities could be failing to follow rehabilitation and data protection legislation.
6. **It could put people off applying and taking part in charities** – With over 11 million people in the UK with a criminal record, it is important that this doesn't discourage people from coming forward to become trustees, nor discourage them from working in charities or setting up new ones. The vast majority of people with a criminal record will not be affected by these rules, so it is important to be confident about how the rules work.

Rules for trustees until August 2018

Until the new rules came into force in August 2018, the rules that applied were that:

- Someone who has unspent convictions for offences involving dishonesty or deception is prevented from being a trustee in any charity unless or until they have a waiver from the Charity Commission.
- Charities must not appoint a trustee who is disqualified under the current rules, unless or until they have their disqualification waived by the Charity Commission.
- To get clearance, the individual applies to the Charity Commission for a waiver. It will help their chances if the charity they wish to be a trustee for supports their application for a waiver.
- Historically, very few people have applied for a waiver, but most that have were successful.

Changes to the rules from August 2018

As a result of the implementation of section 9 of the Charities (Social Investment and Protection) Act 2016, the rules changed on the 1st August 2018 in two key ways:

1. **More roles are covered** – People disqualified from being a trustee are also disqualified from [certain senior manager positions](#) - including the roles of Chief Executive and Chief Finance Officer (and their equivalents).
2. **More offences are covered** – In addition to the current offences of dishonesty and deception, [more offences disqualify](#) someone from acting as a trustee or senior manager – including those with certain unspent convictions, including terrorism and money laundering, as well as anyone on the sex offenders register (even when the conviction is spent)

People who became disqualified by these changes could apply for a waiver of their disqualification before the rules change. They could do this from **1st February 2018**. In essence, this was an **advance waiver** ready for when the changes come into force in August.

Since 1st August 2018, if someone is disqualified either under the old rules or the new rules, they need a waiver in place before they can take up the position. If someone is disqualified and doesn't get a waiver, there are [steps for a charity to take](#). They can still be involved with charities in [other paid and volunteer roles](#), or in advisory positions.

There is a flowchart in [Annex A](#) that gives individuals an indication as to whether they will be affected as a result of their criminal record.

Charity roles that the rules apply to – ‘Restricted positions’

The rules apply to two main groups in charities – **Trustees** and **certain senior manager positions**. For the purposes of this guidance, the roles the rules apply to are referred to as **restricted positions**.

Trustees

The rules apply to all charity trustees, as defined in the [Charity Commission guidance](#). The existing rules have applied to trustees for many years.

Certain senior manager positions

The new rules have applied to certain senior manager positions since **1st August 2018**. These are new roles to be covered by the automatic disqualification rules. It is designed to cover those that are responsible for the overall management and control of the charity’s finances.

Although each charity is different, [guidance from the Charity Commission](#) includes examples of roles that are covered. We have outlined some tips below, for defining restricted positions, but if you are in any doubt, you should seek advice from the Charity Commission.

Our tips for what is classed as a restricted position

1. All charity trustees are covered by default
2. Job titles are irrelevant – it is the function and responsibilities (and not the title) of the position that matters.
3. It is likely to cover a chief executive (or equivalent) if:
 - a. They have overall responsibility for day to day management and control of the charity
 - b. They are directly accountable to the board of trustees
4. It is likely to cover a chief finance officer (or equivalent) if:
 - a. They are in overall management and control of the charity’s finances.
 - b. They are directly accountable to the chief executive or the trustees
5. It is only likely to cover a couple of members of staff in a charity, at most.
6. It will usually be paid positions, but it is possible for volunteer positions to be covered too, as well as roles that are permanent, temporary, part time or interim.
7. The size of the charity and the number of its staff or volunteers are not relevant.

Other positions

The automatic disqualification rules do not apply to other paid or voluntary roles in charities.

If an individual is disqualified under these rules and does not have a waiver in place, they can still be involved with charities in other ways, such as:

1. Other management positions that do not meet the criteria above.
2. Other paid positions
3. Other volunteering roles (except the role of trustee or where it is undertaking a restricted position)
4. Advisory roles to the charity

Criminal records that the rules apply to

There are over [11 million people with a criminal record](#). The vast majority of people with a criminal record will not be affected by these rules as they do not cover their specific criminal record, so it is important to make sure that charities understand the criminal records that the rules cover, and what they can do in that situation.

An individual is disqualified if they have a certain type of criminal record. For simplicity, in this guidance we use the term **relevant criminal record**.

There are two elements that make up a relevant criminal record:

1. There is an unspent conviction (with one exception – for anyone on the sex offenders register), and
2. That unspent conviction is for a certain category of offences.

Unspent convictions only (with one exception*)

There are over [11 million people with a criminal record](#), but only about [three-quarters of a million are unspent](#). If an individual's conviction is spent under the Rehabilitation of Offenders Act 1974 (ROA), the rules don't disqualify them*. The vast majority of convictions are spent. For example, simple cautions become spent immediately, which means they don't disqualify people under the automatic disqualification rule, regardless of the offence.

If an individual's conviction is unspent under the Rehabilitation of Offenders Act 1974 (ROA), it might disqualify them if the conviction is for one of the offences listed below.

There is a table in [Annex B](#) that summarises the time it takes for specific convictions to become spent. Individuals can check if their convictions are spent by using our online tool: www.disclosurecalculator.org.uk.

** There is one situation where a spent criminal record disqualifies an individual. This is where the individual is on the sex offenders register. This automatically disqualifies them, regardless of whether the conviction is unspent or spent. The length of time an individual is on the sex offenders register depends on the sentence they received. We have a table on our information site for individuals on [how long the notification requirements are](#).*

Categories of offences covered

The following offence types that resulted in a criminal conviction are covered by the new rules. **For trustee roles, those marked with an asterisk were new in August 2018 and in addition to those that already exist.** For senior manager positions, all these offences applied for the first time in August 2018. Remember – numbers 1-7 only apply if the offence is unspent (see above).

1. A dishonesty or deception offence – Examples of what this includes can be found below
2. Particular terrorism related offences * - Offences:
 - to which Part 4 of the Counter-Terrorism Act 2008 applies; or
 - under sections 13 or 19 of the Terrorism Act 2000 under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to the offence
3. Particular money laundering offences * - An offence within the meaning of section 415 of the Proceeds of Crime Act 2002
4. Particular bribery offences * - An offence under sections 1,2,6 or 7 of the Bribery Act 2010
5. Particular offences under the Charities Act for disobeying a Charity Commission order or direction * - An offence under section 77 of the Charities Act 2011 – contravening a Commission Order or Direction
6. Offences for misconduct in public office, perjury and perverting the course of justice *

7. Attempting, aiding or abetting these offences – In relation to offences at 1-6 above, an offence of:
 - attempt, conspiracy, or incitement to commit the offence
 - aiding or abetting, counselling or procuring the commission of the offence
 - under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to the offence
8. Being on the sex offenders register * – This is where an individual is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (often referred to as being “on the sex offenders register”). Someone can still be on the sex offenders register even if their conviction is spent, and this is the only situation where a spent conviction is covered by these rules.

Examples of dishonesty or deception offences

The majority of people covered by these rules will be covered because they have an unspent conviction for a dishonesty or deception offence. This means that dishonesty or deception form an element of the offence that has to be proved for someone to be convicted of the offence. A dishonesty or deception offence includes theft, fraud by false representation, and fraud by failing to disclose information. Many offences can be committed by using dishonesty or deception, but that is not the same. Offences **not covered** by this definition (and so are not covered by the rules) include TV licence evasion, most motoring offences, benefit fraud, assault, violent offences and possession of classified drugs.

There is no definitive list for charities to check against. If an individual tells you about something, you can look at the official legal reference to see if dishonesty or deception forms an element of the offence that has to be proved for someone to be convicted of the offence.

*For example, in the Theft Act 1968, the basic definition of theft is stated in section 1: “A person is guilty of theft if he **dishonestly** appropriates property belonging to another with the intention of permanently depriving the other of it; and “thief” and “steal” shall be construed accordingly”. This means “Theft” is an offence involving dishonesty.*

If you are in doubt about whether a particular conviction that an individual has told you about is categorised as a dishonesty or deception offence, we would suggest that you contact the Charity Commission as they should be able to advise on individual cases. Otherwise, the individual may end up submitting an application for a waiver from the Charity Commission unnecessarily.

Four steps for charities to take

You will need to review and update your policies and practices to make sure that you are complying with the new rules as a charity. It is particularly important because the new rules:

1. Could have an impact on existing trustees or senior managers and their ability to be involved in the charity
2. Mean that people affected could apply for a waiver
3. Will affect all new trustees and certain senior managers

Follow our 4 steps to take:

1. [Work out who the new rules cover in your charity and check your governing documents](#)
2. [Ask those people in roles covered by the new rules if they are disqualified](#)
3. [Support any individuals disqualified](#)
4. [Update your policies and practices for recruiting new trustees and certain senior manager positions](#)

Step 1 - Work out who it covers in your charity and check your governing documents

It is important to make sure you know which further roles (if any) the new rules apply to. As soon as possible, understand which roles the new rules apply to – in particular, does your charity have senior manager positions that are covered by the new rules? You should clearly identify those positions that are covered by the new rules. Find out more information about [restricted positions](#).

You will also need to [check your governing documents](#) to see whether they allow for disqualified individuals with a waiver to be involved in the charity.

Step 2 - Ask people currently in restricted positions if they are disqualified

You will need to identify whether people already in a restricted position are disqualified by the new rules.

You will need to update any forms or declarations you use to make sure they reflect the new rules. You can ask those in restricted positions to sign an updated declaration that covers the rules. Consider appointing a trustee that leads on this and receives these declarations. See the section on [asking for information from individuals](#).

Step 3 - Support any individuals disqualified

Some charities will have a trustee or a person in a senior manager position who will be disqualified. Where this is the case, the individual will not be able to act in this position while disqualified unless or until they have a waiver in place.

If an individual is disqualified, they can apply for **waiver**. There is more detail on this process in our [separate guidance for individuals](#).

Charities should establish a process for supporting a waiver application. Get buy-in from your board to support a waiver application.

Charities can help individuals who are disqualified by:

1. Explaining the waiver process. More information is provided [below](#).
2. Helping them to put together a waiver application.
3. Supporting their application for a waiver – The charity may look to establish sub-committee of the board to consider the reasons that an individual is disqualified and the next steps in supporting the individual's application for a waiver.

Step 4 - Update your policies and practices for recruiting trustees and certain senior manager positions

You should already have systems in place so that, before you appoint a new trustee, you ask them whether they were disqualified under the old automatic disqualification rules.

Recruitment to restricted roles from 1st August needs to reflect the changes. One way to do this is to ask those being recruited to restricted positions to sign a declaration to confirm that they are not disqualified under the new rules. More information about this is in [asking for information from individuals](#).

You will also need to make sure that you ask for similar information from any senior manager positions that are regarded as restricted positions. You should also review contract of employment terms and decide whether it is protected if a person in a relevant post becomes disqualified and is refused a waiver from the Charity Commission.

To ensure that you take a coordinated approach, you may want to set aside time at your next board meeting to brief your trustees about the changes to the rules and the impact they may have on your charity's work.

Asking for information from individuals

As part of the pre-employment process for **certain senior manager positions** covered by these rules, as well as part of the pre-appointment process for **trustees**, you need to identify whether the individual is disqualified as a result of their criminal record and, if so, the next steps in relation to applying for a waiver.

It is important to make sure that applicants to these positions are aware of the rules, and that you take steps to ask them whether they are disqualified. However, it is important to get the questions right, as otherwise you could fail to follow data protection and rehabilitation legislation. It is also important not to use blanket declarations about whether an individual is disqualified – as otherwise it makes it difficult to identify the reason the individual is disqualified and, if so, whether they are willing to apply for a waiver.

It is up to you to decide when in the recruitment process to ask for this type of declaration. However, the Charity Commission guidance is as follows:

“It is up to your charity to decide when, in its recruitment process, to ask for a declaration from an appointee or candidate about disqualification. It can be done after a preferred candidate has been identified, at the final stage of the recruitment process, and alongside other appropriate pre-appointment checks.

The important point is to get the declaration before a relevant appointment is made, so that the charity does not appoint a disqualified person.”

Given that individuals can apply for a waiver from disqualification in relation to their criminal record, we recommend that you **wait until the preferred candidate has been identified** before asking them whether they are disqualified because of their criminal record. This is also consistent with the [ban the box approach](#) to recruitment, which involves not asking about criminal records at the initial application stage, and instead waiting until later in the recruitment process.

Recruitment information

We recommend charities include the following information in application packs for trustee roles (and amended accordingly for relevant senior manager roles).

Eligibility to become a trustee

[Name of charity] actively seeks to recruit people from a range of diverse backgrounds, and this includes people with criminal records. However, the Charity Commission has rules on who can and cannot be a trustee or be employed in certain senior managerial roles in charities. These rules are known as the 'automatic disqualification' rules. Where the automatic disqualification rules apply they have the effect of 'disqualifying' that individual from being a trustee or working in certain senior managerial roles in charities. However, it is possible to apply for clearance from the Charity Commission. This is known as applying for a waiver.

There are over 11 million people with a criminal record and the vast majority will not be affected. For example, unless a person is on the sex offenders register, if their conviction is spent under the Rehabilitation of Offenders Act 1974 then it doesn't prevent them under these rules. There is guidance on these rules from the [charity Unlock](#) and the [Charity Commission](#).

To ensure a fair and open recruitment process, we will only ask you about your eligibility to become a trustee after we have decided that we would like you to join the board.

Pre-employment and pre-appointment declaration

We recommend using a declaration at the pre-employment stage (for certain senior manager positions) or pre-appointment stage (for prospective trustees).

We have produced sample declaration forms – one for trustees and one for senior managers covered by these rules. Our sample declarations have been designed so that they can be used by charities to satisfy themselves individuals who hold (or who are applying to hold) a trustee position or certain senior manager positions are not disqualified from that position, or so that individuals can indicate they are disqualified and so help charities to identify individuals that may need to apply for a waiver.

The sample declarations have been published in [Word format](#) so that they can be amended by individual charities, however it is not envisaged that there should need to be significant amendments needed.

You should have systems in place so that you make sure that people in restricted positions have not become disqualified since they were appointed. This can be done by asking them to sign a further declaration, for example annually, to confirm that they are not disqualified.

Check your governing documents

If you have someone that believes they are disqualified from being a trustee, you need to check your governing documents to see whether they could be involved in the charity as a trustee if they had a waiver.

An application to the Charity Commission for a waiver to become a trustee will only be considered if the Charity Commission believe that, if granted, the waiver would be consistent with the charity’s governing documents.

It is quite common for charities to have provisions in their articles that prevent people that are disqualified from serving as a trustee. Different charities have different provisions in their governing documents. We sought the advice of the Charity Commission. Their advice is reflected in the table below and applies to all charities, regardless of the type of governing document they have.

Although in practice this scenario is most likely to arise where there is a specific individual involved, it is good practice to review the governing document and make any amendments ahead of any specific individuals, hence why it is included within the [first step](#) that charities should take.

Type	Governing document provision	Example provision	Position regarding waiver
Type 1	Governing document refers to disqualification under s.178 of the Charities Act or just the Charities Act (or previous legislative versions, e.g. s.72 of the Charities Act 1993)	<i>An individual is disqualified from acting as a charity trustee by virtue of section 178 of the Charities Act 2011 and such other statute as shall be in force from time to time</i>	The Charity Commission can consider a waiver under s.181 of the Charities Act 2011.
Type 2	Governing document makes no reference to disqualification		The Charity Commission can consider a waiver under s.181 of the Charities Act 2011.
Type 3	Governing document sets out disqualification reasons without reference to s.178 of the Charities Act	<i>“Persons who have an unspent conviction involving dishonesty or deception or who are otherwise disqualified by law from serving as charity trustees”</i>	S.181 of the Charities Act 2011 does not apply, even if some or all of the disqualification reasons repeat those listed in s.178. The Commission cannot consider a waiver unless the governing document specifically allows for it. See below.
Type 4	Governing document contains a combined provision which makes some reference to s.178 but also lists reasons		In the absence of any relevant cases being decided by the Tribunal or courts, the Charity Commission’s view is that there is no single answer that can be applied generally to cases in this category – it will always depend on the precise wording of a charity’s governing document. See below.

Responding to example 3

To enable the charity to appoint a trustee that would be disqualified but has a waiver in place, the charity's governing document will need to be amended. This would be an administrative change which nearly all charities have the power to make and would not require the consent of the Charity Commission. See suggested wording below.

Responding to example 4

To enable the charity to appoint a trustee that would be disqualified but has a waiver in place, the charity's governing document may need to be amended. Where there is room for interpretation and therefore doubt which would affect the validity of an appointment, trustees may prefer to make a change which makes the position clear. This would be an administrative change which nearly all charities have the power to make and would not require the consent of the Charity Commission.

Suggested wording

If a charity (which is a charitable company) finds itself with either types 3 or 4 in its governing documents, and it decides it wants to amend the provisions to enable the charity to appoint an individual as a trustee if they have a waiver in place, the suggested wording for the governing document is:

None of the following may serve as trustees:

- 1. persons who are disqualified by law from serving as company directors unless there is an appropriate exception in place; or*
- 2. persons who are disqualified by law from serving as charity trustees unless a valid waiver has been granted by the Charity Commission.*

The first point above would only be required if the charity is a charitable company as opposed to, for example, a charitable incorporated organisation (CIO), trust, or an unincorporated association.

Getting clearance - The waiver process

This section briefly explains how, if an individual is **prevented** from a restricted position (technically known as **disqualified**), individuals can apply for **clearance** (technically known as a **waiver**). It also explains how you can support this process as a charity.

A waiver brings a person's disqualification to an end, and can be given either for:

- **A named charity** (or named charities)
- **A class of charities** – This is a group of charities that share a characteristic. This could, for example, be charities working towards the “rehabilitation of people with criminal records” (as it is referred to in the Charity Commission guidance)
- **All charities**

If a person is in, or applies to, a restricted position at your charity, you will be able to identify them as being disqualified when they have completed a declaration form. Your trustees can then decide how to support a waiver application for that person.

If given, a waiver means that the person can either be a trustee or senior manager at the charity or charities covered by the waiver. The only exception is where a person applies for a waiver to only cover senior manager positions.

When and how individuals apply for a waiver

People that are disqualified can apply for a waiver at any point. Since the changes to the rules came into force on 1st August 2018, all individuals who are disqualified under the new rules must have a waiver already granted in order to act as a trustee or in a senior manager position, or have submitted an advance waiver before 1st August and be awaiting a decision. **Individuals apply to the Charity Commission for a waiver.**

The Charity Commission decides whether to grant a waiver. Historically, very few people have applied for a waiver, but most that have were successful. There are more details on applying for a waiver in our [guidance for individuals](#).

How to support a waiver application

The application process for a waiver asks the applicant to provide details of the views of the charity trustees. An electronic letter on header paper from the charity will enable the individual to attach it to their application that they submit to the commission online. In some cases, the commission may contact the charity to ask for more information.

The person who is, or will become, disqualified must apply for the waiver. Someone acting for them can apply on their behalf, however the waiver application cannot come from the charity itself. If the waiver application is particularly urgent (for example, if it is to provide interim cover for a role) the charity can let the Charity Commission know that they would like a quick decision.

If the charity decides to support a waiver application, the Charity Commission has [covered in their guidance](#) what they need to know from trustees. These are copied into the table below, with advice from us as to how we think the charity can best support a waiver application in this way:

Charity commission guidance	Our advice
Whether a majority of the trustees supports the application	<i>You may decide to appoint a lead trustee that receives declarations from trustees and certain senior manager positions, who can then convene a sub-committee that considers supporting the application before getting approval from the rest of the board as to their proposal.</i>
Details of the recruitment process that led to the applicant's appointment or proposed appointment – if none, then reasons should be given	<i>If an open recruitment process was carried out, it is important to emphasise this and that the applicant was the best appointment as a result of that.</i>
Details of the duties and responsibilities of the trustee or senior manager position that the applicant holds or wants to take up	<i>Explain any relevance (or otherwise) of the reason the applicant is disqualified to the roles and responsibilities of the position. For example, if the unspent conviction is unrelated to the position, explain this.</i>
Why the trustees consider that the applicant is the best appointment-for example what special skills does the applicant have which are not otherwise available	<i>If the charity's purpose includes the rehabilitation of people with criminal records, this should be made clear. If the applicant brings a user perspective that the charity needs in that role, this can be highlighted.</i>
Why the applicant cannot act in an advisory capacity rather than act as a trustee or senior manager	<i>If you are specifically seeking a trustee or senior manager and the applicant was recruited for this post, that should be emphasised. You can be bold in your belief that the role you have in mind is one that you as a charity should have the ability to appoint an individual to. If you do not have advisory roles, you can say that the qualities, skills or experience of the applicant will be lost and it would mean the charity will be less effective.</i>
Whether the trustees have assessed, and can manage any risk to the charity and its assets in making or maintaining the appointment. For example, where the disqualification reason is financial difficulty or mismanagement the trustees may wish to support a waiver application, subject to them deciding that the applicant will not be in a Treasurer /Chair/Finance Director position at the charity, and that he or she will not have access to the charity's bank accounts	<i>If you allocate a lead trustee and a sub-committee, on receiving a declaration that informs you that an individual is disqualified because of a criminal record, you should carry out a full assessment of their criminal record. We have guidance for employers on assessing criminal records.</i>
The trustees' views on the position and reputation of the charity if the applicant's appointment is made or maintained	<i>You might outline the position and reputation of the charity if the applicant's waiver is refused.</i>

How likely is it that a waiver will be granted?

Unlock has worked with the Charity Commission on improving their waiver process, and we expect the Charity Commission to grant a waiver where an individual can demonstrate the factors that the Charity Commission say will make a disqualification more likely to be waived. These are detailed in our [guidance for individuals](#).

Getting a decision

The Charity Commission informs the individual of the outcome. The charity should ask the individual to notify them once they have received a decision from the Charity Commission, and if relevant provide a copy of any waiver that is granted. If an individual is refused a waiver, they can appeal the decision. There are more details on appealing in our [guidance for individuals](#).

Steps for a charity to take if an individual is disqualified

If a charity discovers that an individual is disqualified from being a trustee or senior manager role covered by these rules, the charity's focus should be in supporting them in applying for a waiver from the Charity Commission. However, the next steps will depend on the individual's situation

Trustees

An individual currently in a trustee role

- An individual must stop acting as a trustee immediately. They will need to formally resign from any trustee positions they hold.
- The individual may choose to apply for a waiver, and the charity can support their application. If granted, they could formally take up their trustee position again.

An individual seeking a future trustee role

- The charity cannot appoint the individual as a trustee until they have a waiver in place.
- If the individual chooses not to apply for a waiver (or is refused a waiver), the charity can offer them other roles that are not covered by these rules, such as an advisory role to the board.

Relevant senior manager positions

An individual currently in a relevant senior manager position

- The charity is not allowed in law to employ an individual in the relevant senior management position that they are disqualified from.
- Where it appears that an individual is (or might be) disqualified from a relevant senior management role, the charity must conduct a fair investigation into the circumstances, providing the individual with an opportunity to make representations, and a right of appeal. As an interim/temporary measure, the charity can ask the individual to undertake alternative duties or place the individual on paid special leave.
- The individual may choose to apply for a waiver, and the charity can support their application. If granted a waiver, the individual can resume their post.
- If the individual chooses not to apply for a waiver, or is refused a waiver, the individual will remain disqualified from the relevant senior management role. The charity will then need to consider possible redeployment to another role within the charity that the individual is not disqualified from. If there are no suitable roles available, the charity will have a potentially fair reason for dismissal. The charity will need to follow a fair process in reaching that conclusion, including consulting with the individual, giving them the opportunity to make representations and a right of appeal.

An individual offered a relevant senior position

- The charity cannot appoint the individual to that position until they have a waiver in place.
- If the individual chooses not to apply for a waiver (or is refused a waiver), the charity could offer them a different role that is not covered by these rules if there were a relevant vacancy that the person was qualified to do and wished to be considered for instead.

The role of DBS checks

This guidance is focused on the automatic disqualification rules that apply to charities. However, there are other ways that people can be prevented or barred from working in charities.

Depending on the work of the charity and the role of trustees in your organisation, you may be able to carry out certain levels of criminal record checks as part of your recruitment process. However, these are to be used as part of your own internal recruitment process and are separate to the Charity Commission rules. For example, a DBS check may show a conviction that doesn't disqualify the individual under these rules.

Many roles involving work with children and vulnerable adults involve enhanced Disclosure and Barring Service (DBS) checks, usually because the role is classed as **regulated activity**. Note: This is a different type of role to regulated positions covered in this guidance. Trustee positions, nor senior managers of charities, are not specified as being regulated activity, which means that charities should not do enhanced checks by default – it will depend on the role, responsibilities and activities performed in that role and the work of the charity.

It is **not** a legal requirement to obtain enhanced DBS checks for a trustee of a charity that works with children or vulnerable adults, and in many cases doing such a check could be illegal unless it meets certain conditions. A trustee of a charity that engages in regulated activity (but where the trustee themselves is not engaged in certain specified activity) can obtain an enhanced DBS check without a barred list check.

The Charity Commission do not expect charities to do DBS checks on restricted positions as a direct result of these rules. They recommend using declaration forms, and an example of one is provided earlier in this guidance.

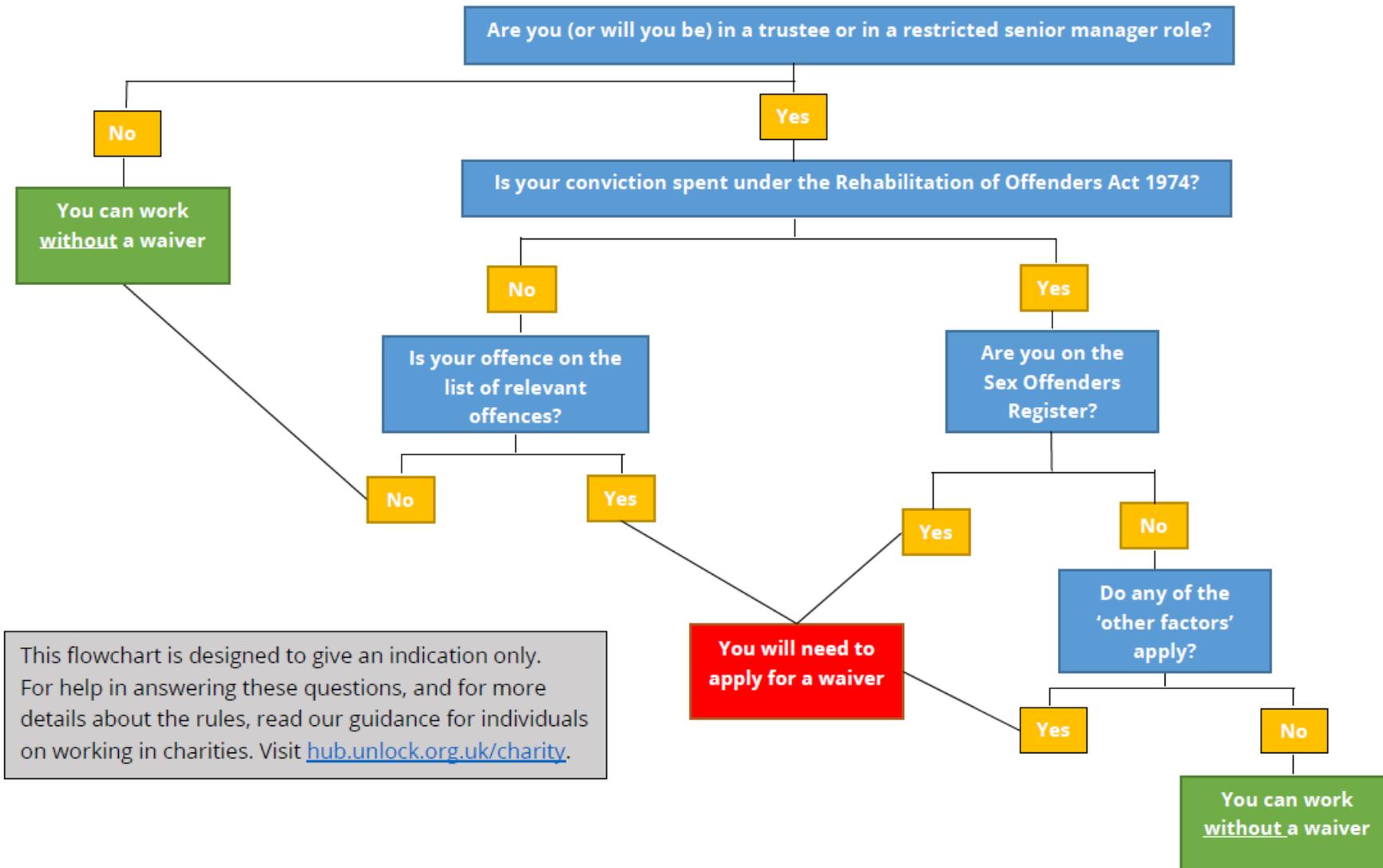
Important points for charities to remember

1. **Don't let this put you off involving people with convictions** – The vast majority of people with convictions will not be affected by these rules and those who are can still make a valuable contribution.
2. **You should recruit on skills and abilities first** – You can then ask for declarations from those you wish to appoint.
3. **Be careful not to discount people who might be disqualified** – Remember that people can obtain a waiver.
4. **Focus on understanding who the rules affect** - Although the rules are complex, there are simple steps that charities can take. For those that are affected, help them to apply for waivers.
5. **This is separate to DBS checks** – DBS checks can form part your internal recruitment process, however you should not do DBS checks as a direct result of these rules. You can use declaration forms.

Annex A - Flowchart

Can I work in a charity with my criminal record?

Flowchart on the automatic disqualification rules



Annex B – Time it takes for convictions to become spent

Below is a copy of Unlock's **Is it spent** poster, available online at hub.unlock.org.uk/spentposter.

Is it spent?

The Rehabilitation of Offenders Act 1974 gives people with spent convictions and cautions the legal right not to disclose them when applying for most jobs and for other purposes, like when buying insurance.

Apart from those individuals who are given prison sentences of more than 4 years, most people with convictions will benefit from it at some point in their lives. The table below sets out the time it takes for the main sentences to become spent following the changes that were introduced in 2014. This is known as the 'rehabilitation period' for the conviction. A conviction may have a number of rehabilitation periods depending on the sentence – in this situation, the longest one applies.

If you have access to the internet, you can also use our online tool www.disclosurecalculator.org.uk

Prison sentences & Community orders (with a buffer period)

Sentence		Time it takes to become spent	
		Adult (18+) at conviction/disposal	Young person (U18) at conviction/disposal
Prison (including suspended prison sentences)	Over 4 years or a public protection sentence	Never spent	Never spent
	More than 30 months and less than (or equal to) 4 years	Full sentence + 7 years*	Full sentence + 3 ½ years*
	More than 6 months and less than (or equal to) 30 months	Full sentence + 4 years*	Full sentence + 2 years*
	Less than (or equal to) 6 months	Full sentence + 2 years*	Full sentence + 18 months*
Community order / Youth rehabilitation order		Full length of the order + 1 year	Full length of the order + 6 months

*Sentence length includes time spent on licence

Other community sentences (with no buffer period)

Sentence/Disposal	Time it takes to become spent (from date of conviction)	
	Adult (18+) at conviction/disposal	Young person (U18) at conviction/disposal
Fine	1 year	6 months
Conditional discharge	Length of the order	Length of the order
Absolute discharge	Spent immediately	
Conditional caution / youth conditional caution	3 months (or when it ends, if earlier)	3 months
Simple caution / youth caution	Spent immediately	
Compensation order	Once it is paid in full	
Bind over	Length of the order	
Hospital order (with or without restrictions)		
Referral order		
Reparation order	Spent immediately	
Endorsement (imposed by a court)	5 years	2 ½ years
Motoring disqualification (imposed by a court)	Length of the disqualification	
Relevant order	Length of the order	

For information about other sentences, military convictions, the impact of multiple convictions and jobs that require spent convictions to be disclosed, visit hub.unlock.org.uk and select "Rehabilitation of Offenders Act".

Annex C - Terms used

- **Automatic disqualification rules** - Changes brought in by the Charities (Social Investment and Protection) Act 2016 are to the automatic disqualification rules. They are often referred to in this guidance as the “new rules” (see term below). They came into force on 1st August 2018 and build on existing rules that come from earlier charity-related legislation. There is a separate discretionary disqualification system and the Charity Commission is developing guidance on that.
- **Clearance** – Clearance is used in this guidance to describe the need for a **waiver** (see term below)
- **Disqualified** – Disqualified is the term used in the legislation, but is often referred to in this guidance as **prevented** (see term below). If someone is disqualified, it means that they are unable to be a trustee or senior manager under the new rules unless or until they have a waiver. Someone can be disqualified for a number of reasons, including for having an unspent conviction for certain offences. However, someone that is disqualified can have this disqualification lifted by being granted a waiver.
- **New rules** – This is a term used in this guidance to refer to the automatic disqualification rules (see term above).
- **Prevented** – This is a term used in this guidance to describe someone that is **disqualified** (see term above) under the automatic disqualification rules.
- **Relevant criminal record** – This refers to a criminal record that is covered by the automatic disqualification rules and that disqualifies an individual from restricted positions.
- **Restricted positions** – This refers to the roles in charities that are covered by the automatic disqualification rules – it covers both trustees and certain senior manager positions.
- **Senior manager position** – This is one of two types of role that is covered by the automatic disqualification rules. It is explained more in the guidance.
- **Sex offenders register** – This is a term used to refer to someone that is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.
- **Trustee** - This is one of two types of role that is covered by the automatic disqualification rules. It is explained more in the guidance.
- **Waiver** - This is something that an individual who is disqualified can apply for. It is also referred to in the guidance as **clearance**. If granted a waiver, it means the individual is no longer disqualified from the charities that the waiver applies to.

More information and useful resources

This guidance was first published in February 2018 and then updated in August 2018 to reflect the changes having come fully into operation. The latest version is available online at recruit.unlock.org.uk/charities.

The sample declarations referred to in this guidance can be [downloaded from our website](#).

There is more information for charities and dealing with criminal records in the [dedicated section for charities](#), which forms part of the practical guidance section of Recruit!. [Recruit!](#) is a website that supports UK employers to recruit people with convictions and helps them to deal with criminal records fairly.

For further advice about this guidance as a charity, please [contact us](#). You can email recruit@unlock.org.uk.

If you are looking for further advice about these rules and your criminal record, please see our [guidance for individuals](#).

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