

November 2016



Charities (Protection and Social Investment) Act 2016

Disqualification from acting as a trustee or in key senior management positions

There has been sustained scrutiny of the Charities bill and the implementation of the act from voluntary organisations working in the criminal justice sector; this includes Clinks, Unlock and Prison Reform Trust. This briefing intends to inform key stakeholders about the main issues and the possible impact of this act.

The Charities Act 2016

The Charities Act 2011 provides existing laws to 'automatically disqualify' someone from being a charity trustee. The [Charities \(Protection and Social Investment\) Act 2016](#) extends the conditions under which individuals are disqualified from acting as trustees. It also extends this disqualification to key senior management positions. The new act:

- is expected to come into force in no sooner than September 2017¹,
- applies to a range of existing 'disqualifying' offences (i.e. 'dishonesty or deception'): it already includes a wide range of unspent convictions² such as theft, fraud, benefit fraud, burglary, robbery, obtaining property by deception and handling stolen goods,
- impacts on more people with unspent convictions: it extends the range of 'disqualifying' offences to include unspent convictions for terrorism or money laundering
- impacts on some people with spent convictions; it extends the existing trustee disqualification framework to cover people on the sex offenders register (even when the conviction is spent),
- extends the framework to cover senior management staff of charities, including chief executives and finance directors,
- makes changes to the waiver process which allows people to apply to have their previous convictions disregarded in relation to being a trustee or senior manager of a charity,
- means it will (normally) be a criminal offence to act as a trustee or as a senior manager while disqualified,
- allows the Charity Commission to order someone who has been disqualified to repay any expenses, benefits, remuneration or the value of benefits in kind if they have been found to be acting while disqualified,

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- means that disqualified individuals may need to resign from their posts as this does not automatically happen unless specified in the charity's governing document. The Charity Commission can make an Order to bring about the resignation if necessary. Clarity still needs to be provided on whether this process differs between trustees and senior managers,
- means that if a trustee or senior manager has been acting whilst disqualified, the charity should immediately require the individual stop acting and report the matter to the police and to the Charity Commission as a serious incident.

The issues

- People with convictions play an important role in many charities, particularly those working in the Criminal Justice System. Becoming a trustee or leading a charity as part of the senior management team are important roles that people with convictions should be encouraged to take on, and we know it can provide people with a positive pro-social identity.
- Unfortunately, people with convictions experience multiple barriers when they are looking to make a change and move on with their lives. We believe that the Charities Act places yet another obstacle in their way. Although this may only be a perception, rather than a reality, this points to an important issue of discrimination which the Charity Commission needs to be aware of.
- There is confusion (and a lack of clear guidance) as to what the Charity Commission regard as involving 'dishonesty or deception'. The proposed extension will potentially include a significant number of further offences which may not be specifically relevant to a persons' ability to perform the role of trustee.
- We are awaiting guidance from the Charity Commission on how the disqualification criteria will apply to trustees and senior management roles, especially a clear definition of what qualifies as a senior management role.
- We are awaiting guidance from the Charity Commission as to how people with convictions can apply for waivers, or appeal waiver decisions, to make them eligible to serve as a trustee or work in a senior management position, especially in advance of the changes coming into effect.
- Since 1993, the Charity Commission estimated it has granted approximately 10 waivers relating to unspent convictions, which is incredibly low given the numbers of people with unspent convictions. From the numbers of those seeking waivers (which again is very low), it could be inferred that the requirement to seek a waiver is creating a chilling effect, leading to fewer expressions of interest in such positions from those who have relevant convictions.
- The timescales are tight and charities need to update their recruitment practices for finding new charity trustees and senior employees in anticipation of the changes and check whether the changes will affect any of their existing charity trustees or senior employees and, if they do, knowing what the options are.
- The consequences of the Charities Act are far reaching and we are concerned that many charities are neither aware nor prepared for its implementation.
- Charities that are unaware of the new disqualification powers of the act could find themselves facing serious consequences from both the police and the Charity Commission



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What has been done

- Unlock [responded to the Government's consultation](#) in February 2014 setting out our proposals.
- Unlock gave evidence to the Joint Committee in December 2014.
- Unlock led the production a briefing on the Bill in November 2015 which had widespread support from other charities, including Clinks, Prison Reform Trust, User Voice, Restorative Justice Council, Nacro, the Howard League for Penal Reform, Transform Justice, Centre for Crime and Justice Studies and the Criminal Justice Alliance. After further measures were introduced these charities lobbied for amendments to the Bill, which received Royal Assent in March 2016.
- Unlock, Prison Reform Trust and Clinks [submitted written evidence to the Public Bill Committee](#) in December 2015.
- Unlock, Prison Reform Trust and Clinks worked with Edward Garnier³ on a debate that took place in January 2016, where a number of concessions were sought.
- Unlock, [Clinks](#) and [Prison Reform Trust](#) responded to the consultation in 2016 on the power to disqualify from acting as a trustee.
- Clinks worked alongside the Charity Commission and advised that they delay the implementation of the disqualification framework. It was due to commence in April 2017 and will now not commence until September 2017 at the earliest.

What we are doing

- We are working with the Charity Commission on their review of the waiver process.
- We are working to ensure that the processes of the Charity Commission operate in a way which allows charities the freedom to recruit people as trustees and senior managers who have convictions that would otherwise disqualify them, where the charity believes that the individual can fulfil their obligations as a trustee/senior manager and the charity can show it has taken reasonable steps to protect the interests of the charity.
- Clinks and Unlock are in the process of producing guidance for the voluntary sector and people with convictions on how to recruit people with experience of the Criminal Justice System into senior management and trustee roles. This includes guidance on the disqualification powers in the Charities Act. The guidance will be published in 2017.
- For further information and updates please visit www.unlock.org.uk/trustee



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End notes

1. A Charity Commission statement on 23 November 2016 changed the commencement date from April 2017 to no sooner than September 2017
2. As determined by the Rehabilitation of Offenders Act 1974
3. Edward Garnier is a Conservative MP for Harborough, Oadby and Wigston, www.edwardgarnier.co.uk/

CLINKS

Clinks supports, represents and campaigns for the voluntary sector working with offenders. Clinks aims to ensure the sector and all those with whom they work, are informed and engaged in order to transform the lives of offenders.

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Unlock is an independent, award-winning charity for people with convictions. They assist people to move on positively with their lives by empowering them with information, advice and support, and seek to promote a fairer and more inclusive society by challenging discriminatory practices.

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