**Briefing note: Automatic disqualification rule changes**

**What is the issue?**

The Charity Commission is changing the rules that automatically disqualify people from acting as trustees or senior managers. The criteria is being broadened and will cover more people than it does currently. Some of these people will be trustees/ senior managers already working in the sector. From 1 August, anyone who is automatically disqualified under the new rules will usually be committing an offence if they continue in their role unless they have applied for and been successful in getting a “waiver”.

**When do we need to take action?** Before 1 August 2018.

**What do we need to do?**

* **Decide which senior manager positions are affected**. It is the function (not title) of the position that matters – guidance available.
* **Carry out checks** of public online registers for all trustees and senior managers e.g.
  + [Individual Insolvency Register](https://www.insolvencydirect.bis.gov.uk/eiir/)
  + [Register of disqualified directors](https://www.gov.uk/search-the-register-of-disqualified-company-directors)
  + [Register of persons removed as a charity trustee](http://apps.charitycommission.gov.uk/trusteeregister/search.aspx?RegisteredCharityNumber=&CurrentLanguage=English&SubsidiaryNumber=&=DocType&)
* **Ask trustees and senior managers to check the guidance then complete a declaration** to confirm that they are not disqualified.
* **Decide how often checks will be made** and declarations will be requested. Just like DBS checks there is no set timescale that we have to use. Trustees need to decide what the “reasonable interval” is.
* **Review employment contracts**: “Your charity should review employment or consultancy contract terms for any relevant senior manager positions, and decide whether it is protected if a person in a relevant post becomes disqualified and has to leave their position. You may need to take specialist legal advice about this.”
* **Update recruitment procedures** for trustees and senior managers to include checks/ declarations *before* an appointment is made.

**What happens if someone is disqualified under the new rules?**

The person must step down immediately and formally resign so that it is clear that they are no longer part of the charity. The same applies to senior managers but in addition, trustees will need to have reviewed employment contracts to know whether or not they are protected in the case of a potential employment dispute.

Trustees will need to decide whether or not it is in the best interests of the charity’s beneficiaries for that person to continue as a trustee or senior manager. If they have the backing of the trustees, the individual can choose to apply for a waiver. If the waiver application is successful, they can rejoin the trustee board/ senior management team. Note: trustees can support a waiver that includes conditions that limit the person’s role (to reduce risk).

**Charity Commission guidance**

The changes to the automatic disqualifications rules and how to prepare for them: <https://www.gov.uk/guidance/automatic-disqualification-rule-changes-guidance-for-charities> This will be updated after 1 August 2018 when the new rules become law.

Guidance for individuals – read this and check the rules before completing the declaration <https://www.gov.uk/guidance/automatic-disqualification-rules-for-charity-trustees-and-charity-senior-positions>

Disqualifying reasons table <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/673799/Auto_disqualification_table_v1.1.pdf>

Senior manager positions that are affected by the new rules <https://www.gov.uk/guidance/automatic-disqualification-rules-for-charity-trustees-and-charity-senior-positions#senior-manager-positions-affected-by-the-new-rules---an-overview>

How to apply for a waiver <https://www.gov.uk/guidance/automatic-disqualification-rules-for-charity-trustees-and-charity-senior-positions#how-to-apply-for-a-waiver>

**Sample declarations that we can use**

Senior charity manager <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/706928/Senior_manager_declaration_v1.1_odt.odt>

Trustee <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/706918/Trustee_declaration_auto_disqualification_v1_odt.odt>