

SCOTTISH EPISCOPAL CHURCH

DECLARATION BY VESTRY MEMBERS

The Charities and Trustee Investment (Scotland) Act 2005 provides that certain individuals are disqualified from acting as charity trustees. Those who serve as vestry members will normally be regarded as “charity trustees” for the purposes of the Act. It is, therefore, recommended that those serving on vestries should confirm their eligibility to act by signing the declaration below. This should be drawn to attention of prospective members before they are elected or otherwise appointed. The notes overleaf explain the categories of individual who are disqualified. Anyone who acts as a charity trustee while disqualified is guilty of an offence punishable by imprisonment, or a fine, or both.

The Scottish Episcopal Church has prepared a Guidance Note regarding the provisions of the Act and it is recommended that you obtain a copy so that you are aware of the duties and responsibilities of being a charity trustee. A copy of the note should be available from your Vestry Secretary or can be obtained from the General Synod Office, 21 Grosvenor Crescent, Edinburgh EH12 5EE, tel: 0131 225 6357. The note is also available from the [SEC website](#).

I, the undersigned, declare that:

- I am willing to act as a charity trustee by serving on the Vestry of (insert name of congregation).
- I am not disqualified from acting as a charity trustee (see sections 69 and 70 of the Charities and Trustee Investment (Scotland) Act 2005).

..... (Signature)

..... (Name in block capitals)

..... (Address)

.....

..... (Date)

CATEGORIES OF DISQUALIFIED INDIVIDUAL

Sections 69 and 70 the Charities and Trustee Investment (Scotland) Act 2005 set out the circumstances that would disqualify an individual. In general terms if a person has been convicted of an offence involving dishonesty, or of an offence under the Act, or is an undischarged bankrupt, they may not serve as a charity trustee. Nor may they do so if they have been removed from serving as a charity trustee, or from acting in a management position within a charity, under previous charity law; nor if they have been disqualified from serving as a Company Director. A person is not disqualified if their conviction is spent by virtue of the Rehabilitation of Offenders Act 1974.

If you are uncertain whether or not you are disqualified, further information may be obtained from the Office of the Scottish Charity Regulator (OSCR). OSCR may, on application from the person disqualified, issue a waiver, which may either lift the disqualification generally, or specifically in relation to a particular charity or type of charity. The specific provisions of the Act are as follows:

Section 69 - Disqualification from being charity trustee

- (1) The persons specified in subsection (2) are disqualified from being charity trustees.
- (2) Those persons are any person who—
 - (a) has been convicted of—
 - (i) an offence involving dishonesty,
 - (ii) an offence under this Act,
 - (b) is an undischarged bankrupt,
 - (c) has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act [1990 \(c. 40\)](#) or section 34 of this Act, from being concerned in the management or control of any body,
 - (d) has been removed from the office of charity trustee or trustee for a charity by an order made—
 - (i) by the Charity Commissioners for England and Wales under section 18(2)(i) of the Charities Act [1993 \(c. 10\)](#), section 20(1A)(i) of the Charities Act 1960 (c. 58) or section 20(1) of that Act (as in force before the commencement of section 8 of the Charities Act [1992 \(c. 41\)](#)), or
 - (ii) by Her Majesty's High Court of Justice in England, on the grounds of any misconduct in the administration of the charity for which the person was responsible or to which the person was privy, or which the person's conduct contributed to or facilitated,
 - (e) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).
- (3) A person referred to in subsection (2)(a) is not disqualified under subsection (1) if the conviction is spent by virtue of the Rehabilitation of Offenders Act 1974 (c. 53).
- (4) OSCR may, on the application of a person disqualified under subsection (1), waive the disqualification either generally or in relation to a particular charity or type of charity.
- (5) OSCR must notify a waiver under subsection (4) to the person concerned.
- (6) OSCR must not grant a waiver under subsection (4) if to do so would prejudice the operation of the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).

Section 70 - Disqualification: supplementary

- (3) In section 69(2)(b), "undischarged bankrupt" means a person—
 - (a) whose estate has been sequestrated, who has been adjudged bankrupt or who has granted a trust deed for or entered into an arrangement with creditors, and
 - (b) who has not been discharged under or by virtue of—
 - (i) section 54 or 75(4) of the Bankruptcy (Scotland) Act 1985 (c. 66),
 - (ii) an order under paragraph 11 of Schedule 4 to that Act,
 - (iii) section 279 or 280 of the Insolvency Act 1986 (c. 45), or
 - (iv) any other enactment or rule of law subsisting at the time of the person's discharge.