

Automatic Disqualification Policy Board Members

Category	Governance
Lead	Trainee Governance Officer
Committee / Approver	Board of Management
Action	Consider & Approve
Review Date	December 2025
Review Due	December 2026
Purpose	Statutory Duty
Internal/External	Both

Introduction

As Angus Housing Association is a registered Scottish Charity, the organisation is required to comply with Charities legislation. The Charities and Trustee Investment (Scotland) Act 2005 outlines Automatic Disqualification criteria which apply to Board members. The Charities (Regulation and Administration) (Scotland) Act 2023 amends this Act. The amendments include updated criteria and extend this to staff and volunteers who have a 'senior management function' within the organisation. As this policy references charity law, the following terms mean:

Board Member / Charity Trustee / Trustee – all members of the Board of Management of Angus Housing Association

This policy directly evidences 5.1 and 5.2 of the Standards of Governance and Financial Management for Registered Social Landlords.

Aims of the Policy

This policy sets out:

- The duties for Angus Housing Association under this legislation
- Outlines what are the Automatic Disqualification Criteria
- Outlines what happens if the Automatic Disqualification Criteria are met by an affected person

Duties

The Charities and Trustee Investment (Scotland) Act 2005 as amended by the Charities (Regulation and Administration) (Scotland) Act 2023 brings the following changes:

- Register of Mergers to be published by the Office of the Scottish Charity Regulator (OSCR)
- Charities to provide trustee details to OSCR
- Automatic Disqualification Criteria expanded and now include people undertaking a senior management function for a charity
- Publication of trustee names
- Publication of charity accounts

Whilst the main changes are around administering charities (including maintaining information about trustees), the expanded list of Automatic Disqualification Criteria covers a broader range of offences which not only preclude people from being trustees of charities but also extend to staff and volunteers undertaking a 'senior management function'.

This means that there is a duty for Angus Housing Association to ensure that people who are on the Board of Management, or, have a 'senior management function', do not have certain offences. This has a direct impact on some members of staff and Board members. For the impacts on staff, please refer to the Staff version of this policy.

Automatic Disqualification Criteria

The Automatic Disqualification Criteria are a list of named offences. The Charities and Trustee Investment (Scotland) Act 2005 outlines the main list as:

- Conviction of an offence involving dishonesty
- Disqualification as a company director
- Undischarged bankruptcy or protected trust deed
- Removed as a trustee by the Court

The Charities (Regulation and Administration) (Scotland) Act 2023 adds the following:

- Conviction of offences under bribery legislation
- Conviction under proceeds of crime legislation
- Conviction for perverting the course of justice
- A conviction of terrorism or association with proscribed terrorist group
- Misconduct or negligence as a public official
- Disobedience with an order of court
- Sexual offences subject to notification

The full list is available on the OSCR website:

<https://www.oscr.org.uk/managing-a-charity/managing-charity-trustees/guidance-on-disqualification-criteria-for-charity-trustees-and-those-undertaking-a-senior-management-function/annex-1-criteria-for-disqualification/>

Board members are required to sign off that they do not meet the Automatic Disqualification Criteria annually.

What happens if the Automatic Disqualification Criteria are met

If a Board Member meets any of the criteria, disqualification is automatic under charity law, and the person cannot become, or continue, as a charity trustee or hold an office for a charity. Anyone who acts as a charity trustee for a charity whilst disqualified is guilty of an offence punishable by a fine, imprisonment, or both. In addition, a Board member meeting the Automatic Disqualification Criteria is a Notifiable Event to the Scottish Housing Regulator which must be made in accordance with the Notifiable Events Policy.

If you are, or become, disqualified as a Board member

The processes for Board members and the Chair are detailed under AHA's Rules.

If a Board member meets the criteria, they must resign by submitting their resignation in writing to the Chief Executive Officer (i.e. the Secretary).

In addition, under Rule 44, Board membership will cease if the Board Member resigns in writing, or, if the Board member does not meet the criteria under Rule 43.

Rule 43 outlines the eligibility criteria for Board members, and states that if a member does not meet the criteria, then they cease to be a Board member and cannot be appointed or elected.

The above is not exhaustive, and reference will be made to AHA's Rules to apply a course of action that is within the powers of AHA's Rules. In addition, the Scottish Housing Regulator has the statutory power to remove Board members under section 61 of the Housing (Scotland) Act 2010.

Time Periods

However, disqualification is not necessarily permanent and may be for a specific period of time. For example, convictions may become spent after a set period, and bankruptcy is usually for up to 12 months.

When these periods have ended, the person may become a charity trustee or employed in a post/role with a senior management function again. Individuals should seek appropriate advice about their own circumstances. There is a waiver application process which can be accessed on the OSCR website:

<https://www.oscr.org.uk/managing-a-charity/managing-charity-trustees/guidance-on-disqualification-criteria-for-charity-trustees-and-those-undertaking-a-senior-management-function/are-there-any-exceptions/>



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