



**Argyll and Bute Third Sector Interface
Trustee Recruitment – Checking the legalities**

It is vital to check your governing document before you proceed with the recruitment of trustees as it may contain restrictions that would prevent you from proceeding.

Use the checklist below to identify the clauses in your governing document that could affect your options. If you identify any barriers, mark in the box opposite what changes you need to make and see what steps you need to take in order to make these changes.

If you would like support to review or amend your governing document, please contact Argyll and Bute Third Sector Interface by email: support@argylltsi.org.uk

Clauses that may affect your recruitment options	What needs to be done?
A maximum number of Trustees	
Procedures for nomination, election or re-election	
Representation of different interest of the board	
Powers to appoint or co-opt	
Maximum term of office	
Age limits	
Other eligibility criteria e.g. concerning users of your service	
Places reserved for people holding a particular position e.g. the chief executive of a local health trust	
Places reserved for nomination by another organisation such as a local authority	
Places reserved for people from the service users of local community	

Once you have reviewed your governing document and used the checklist above, it is important to understand, legally who is eligible to join a board.

Argyll and Bute Third Sector Interface | 01369 700100 | support@argylltsi.org.uk

Argyll and Bute Third Sector Interface is a Company Limited by Guarantee in Scotland No. SC277345
Scottish Charity No. SC029947

Registered office: c/o Edward Street Community Centre, Edward Street, Dunoon PA23 7PJ



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Who can't be a Trustee? – Charities

If your organisation is a registered charity, then there are restrictions on who can and can't be a charity trustee. The Charities and Trustee Investment (Scotland) Act 2005 section 69 and 70 provides details of those persons who are disqualified from being a charity trustee.

Disqualification from being a Charity Trustee

Under section 69 of the Charities and Trustee Investment (Scotland) Act 2005 the following are disqualified from acting as charity trustees:

- Someone with an unspent conviction for dishonesty or an offence under the Act
- An undischarged bankrupt
- Someone who has been removed under either Scottish or English Law or the courts from being a charity trustee
- A person disqualified from being a company director

It is the responsibility of individual charity trustees to ensure they personally are not disqualified from being a charity trustee.

It is also in the interests of the charity for the charity trustees collectively to ensure that no charity trustees are disqualified from being a charity trustee. Anyone who acts as a charity trustee whilst disqualified is guilty of an offence punishable by a fine or imprisonment, or both. The disqualified person may apply to OSCR for a waiver to lift the disqualification generally, or in relation to a specific charity or type of charity. However, a waiver lifting a disqualification will not be given lightly by OSCR.

Examples of good practice

- Prospective charity trustees sign a form before their election or appointment to confirm they are not disqualified from acting as a charity trustee
- Consider whether any other checks need to be carried out. This may be particularly relevant for charity trustees working with vulnerable groups where there are likely to be requirements under other legislation

Statement example: Form of declaration of commitment and qualification for trusteeship

I [insert name] am committed to achieving the objectives of [insert name of organisation]. I understand the responsibilities and liabilities I am taking on in becoming a trustee of [insert name of organisation] and agree to devote the necessary time and effort to my trusteeship. I am not disqualified from acting as a trustee under section 69, 70 The Charities and Trustee Investment (Scotland) Act 2005.

Signed:

Date:

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Disqualification from being a Charity Trustee under Companies Law

The Companies Act provides details of who cannot be a company director.

Company law applies to all companies, including charities that are formed as a company limited by guarantee. A court may disqualify people from being a company director if they have a:

- Conviction for criminal offences relation to the promotion, formation, management or liquidation of a company
- Conviction for fraudulent trading or fraud
- Record of persistent default on company legislation for filing accounts and other documents
- Record of conduct as a director that makes them unfit to be involved in Company management (Company Directors Disqualification Act 1986)

Statement example: Form of declaration of commitment and qualification for Directorship

I [\[insert trustee's name\]](#) am committed to achieving the objectives of [\[insert name of organisation\]](#). I understand the responsibilities and liabilities I am taking on in becoming a Director of [\[insert name of organisation\]](#) and agree to devote the necessary time and effort to my directorship.

I am not disqualified from acting as a Company Director under the Company Directors Disqualification Act (1986).

Signed:

Date

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