



Disclosure & Barring Service

Charity Trustees

Jurisdiction: England & Wales

Background

Following the introduction of the Protection of Freedoms Act (PoFA) in September 2012, certain specified positions that were in regulated activity were removed from the Safeguarding Vulnerable Groups Act 2006. This included children's and vulnerable adults' charity trustees. This means individuals who hold the position of a children's or adults' charity trustee are no longer in regulated activity.

Current position

The Charity Commission is the regulator of the charitable sector in England and Wales and one of its functions is to offer safeguarding advice for its registered charities. A key part of this is the guidance it publishes on the recruitment and vetting of charity trustees. It should be noted that the Charity Commission doesn't make it a requirement for children's and adults' charities to carry out criminal record checks through DBS on their trustees, but they will expect checks are taken up where a charity is legally able to do so.

The Charity Commission have published guidance on [Safeguarding and protecting people for charities and trustees](#) which details their expectations, with more specific guidance on [Finding New Trustees](#).

It should be noted that charity trustees are only eligible for a DBS certificate if:

- the charity is set up specifically for children or adults; or
- the individual is carrying out a specific activity which makes them eligible regardless of the fact that they are a charity trustee.

Work with children – charity trustees of children's charities

The position of a charity trustee is not named in the definition of work with children in regulation 5C(1) of the Police Act 1997 (Criminal Records) Regulations 2002. However, within this regulation it does state:

- a) considering the applicant's suitability to engage in any activity which is a regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 **as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012**

This means that trustees of children's charities would be in work with children if they meet the criteria set out in the definition of regulated activity with children before the changes were made in September 2012. If so, they would be eligible to be asked to apply for an enhanced DBS certificate but there is no eligibility for a children's barred list check.

Additional criteria for a charity trustee of a children's charity in the original definition of regulated activity with children is set out as:

- A charity is a children's charity if the individuals who are workers for the charity normally include individuals engaging in regulated activity relating to children.
- "charity" and "charity trustee" have the same meanings as in the Charities Act 1993.

Applications for charity trustees of children's charities should be submitted as working in the [child workforce](#).

Work with adults – charity trustees of adults' charities

The position of a charity trustee is specifically named in the definition of work with adults in regulation 5B(1) of the Police Act 1997 (Criminal Records) Regulations 2002.

Within this regulation it states:

- g) (ix) a charity trustee of a charity whose workers normally engage in any activity which is work with adults.

This means that a trustee of a charity that normally engages in work with adults (as set out in the [adult workforce](#) guidance) is eligible to be asked to apply for an enhanced DBS certificate, but there is no eligibility for an adults' barred list check.

Additional criteria for charity trustees in the definition of work with adults in regulation 5B(5) is set out as:

- In paragraph (1)(g)(ix) an individual is a worker for a charity if he does work under arrangements made by the charity; but the arrangements referred to in this paragraph do not include any arrangements made for purposes which are merely incidental to the purposes for which the charity is established.

Applications for charity trustees of adults' charities should be submitted as working in the [adult workforce](#).

This guidance is correct at the time of printing. If you require further information, please contact DBS Customer Services or seek legal advice.