Regulated activity with adults - commentary

The Home Office has expressed concern that some schools are undertaking adult barred list checks for staff that do not fall in scope; conversely, I have visited a number of NASS settings recently where staff have been engaged in regulated activity with over 18s without the necessary (and legally required) check being completed.

When deciding which staff are affected by the guidance, you need to ask yourselves a few questions:

1. Do we have learners / service users beyond their 18th birthday?
2. Do any of our staff provide these learners with medical / health care, personal care, transport due to their disability, age or illness
3. Do any of our staff manage these learners’ finances or hold power of attorney?
4. Do any of our staff teach these learners to manage their own meds, personal hygiene / toileting, finances or do their shopping for them?
5. Are any of our staff appointed as mental health advocates or mental capacity advocates for someone aged 18 or above?
6. Are any of our staff employed as drivers or escorts to transport learners / service users to / from places where they receive health or social care services

If the answer to all questions is no, you should not be undertaking adult barred list checks on any staff, students or volunteers.

If the answer to any of these questions is 'yes' then the regulations will apply to some of your staff in which case you need to do the following:

1. Identify which staff, students and volunteers the legislation applies to (the attached DoH briefing will help you)
2. If there are staff in RA then senior managers such as the HT / Principal and some managers will probably also be in RA with adults and must be checked against the adult barred list
3. These staff **must not** engage in regulated activity with adults until the correct checks have been undertaken
4. If you have not recorded whether the adult barred list was checked as part of their last DBS disclosure, you could ask them to bring in their original paper certificate; if the adult barred list was checked, the relevant box will say ‘none recorded’
5. If someone in regulated activity with adults has not been checked, the only way to secure a new adult barred list check is to apply for a new enhanced DBS certificate; you may need to create a priority list to identify which staff must have a check asap and which staff could be deployed elsewhere or asked not to engage in regulated activity until they have been cleared
6. You could set up a list of all the staff that you believe are in regulated activity in order to record the date that you saw evidence of their adult barred list check; this would also be a useful reference guide when you need to deploy a member of staff to cover sickness, etc and the post to be covered would normally be providing RA to adults. Alternatively, you could if you prefer add a column to the SCR but will need to record n/a in the column for all staff that are not in RA with adults.

Important points:

* It is unlawful to check the adult barred list for individuals that are not in regulated activity with adults; likewise, it is not appropriate to check someone just in case they will be in RA in the future
* Teaching over 18s is **not** regulated activity, unless the teacher is teaching an individual how to manage their own personal care, health care, finances, etc.
* There is no frequency rule, as there is in RA with children … the first time someone does it, it is regulated and the adult barred list must have been checked beforehand
* It applies to volunteers and students as well as paid & unpaid staff

Other jobs to do after the initial response:

1. If you answered 'yes' to any of the first set of questions, you will need to think about your recruitment process. How are you going to ensure that new applicants for roles which fall into the scope of regulated activity with adults are advised of this? And how are you going to ensure that applicants for roles that do not fall into scope are NOT checked against the adult barred list unlawfully?
2. When re-deploying existing staff from one part of the organisation - where the legislation did not apply - to another, where they will (for example, moving a health care assistant from KS4 to KS5) you will need to ensure that a new enhanced disclosure with adult barred list check is undertaken in time to be received before they undertake any activity that is regulated
3. If recruiting an agency or supply person to a role that will be engaging in regulated activity with adults, you must ask the agency to confirm that an adult barred list check has been undertaken. If the agency cannot confirm this, the individual must not engage in any regulated activity so you may need to rearrange your staffing for the duration of the cover arrangement
4. If you are providing regulated activity to learners or service users after their 18th birthday, your Safer Recruitment policy should include a section on how you approach the issue of regulated activity with adults.

You can find detailed guidance from the Department of Health on Regulated activity with adults here - <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216900/Regulated-Activity-Adults-Dec-2012.pdf>

Who it doesn’t apply to:

* Family members
* Non commercial arrangements
* A person who assists someone else to provide regulated activity to adults
* People just because they work on a site where there are learners aged 18 or over
* People driving or escorting someone aged 18 or over for social or pleasure reasons

The 6 categories of regulated activity with adults

1. Health care - provision of health care by any health care professional to an adult, or the provision of health care to an adult under the direction or supervision of a health care professional
2. Personal care - Anyone who provides an adult with physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of the adult’s age, illness or disability; or who prompts and supervises, trains, instructs or provides guidance on the above
3. Regulated social workers in adult services
4. Household matters - Anyone who provides day to day assistance to an adult because of their age, illness or disability, where that assistance includes at least one of the following, is in regulated activity:
   1. managing the person’s cash,
   2. paying the person’s bills, or
   3. shopping on their behalf
5. Conduct of personal affairs – such as lasting power of attorney, mental capacity advocate, etc
6. Any drivers and any assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, on behalf of an organisation and for the purpose of enabling the adult to receive services.

NB Anyone who manages or supervises someone who is in regulated activity with adults is also in RA with adults

What schools must not do:

* Apply it to all staff just in case
* Do nothing
* Allow someone to undertake RA with adults (even once) without an adult barred list check being completed
* Apply it to staff simply because they might engage in RA with adults at some point in the future
* Accept portability (DfE Update service) from someone who has only been checked against the children's barred list if the post is going to engage in RA with adults