



Forensic Science Regulator Newsletter

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Contact Details

If you have any comments or feedback on this newsletter, please contact the Regulator via the following routes:

Forensic Science Regulator

c/o Home Office Science

Long Corridor

14th Floor

Lunar House

40 Wellesley Road

Croydon

CR9 2BY

United Kingdom Email: FSREnquiries@homeoffice.gov.uk

Web site: www.gov.uk/government/organisations/forensic-science-regulator

Note however that, following the recent relocation, the Regulator will not be able to receive communication via the postal system until early 2022.

Introduction

This notice sets out the approach to the production of the statutory Code required by the Forensic Science Regulator Act 2021 (The Act).

The production of the statutory Code that will replace the current Codes of Practice and Conduct will be a singular statutory Code that will have three main elements:

- The core Code that will be based on the current Codes of Practice and Conduct;
- The definitions of Forensic Science Activities; and
- The guidance documents and appendices to the current Codes of Practice and Conduct

A draft of the core Code and a note setting out the main changes from Current Codes of Practice and Conduct will be disseminated for informal comment in early Forensic Science Regulator – Newsletter No. 37 December 2021

January 2022 through the Home Office Forensic Science Regulator website. This will be followed with the Forensic Science Activity definitions and the section of the Code that incorporates the appendices to the current Codes of Practice and Conduct.

There will be a formal consultation on the statutory Code prior to it putting it forward to the Secretary of State and Parliament for approval. The formal consultation is required by the Act which specifies that it must include persons appearing to the Regulator to be representative of persons who are, or are likely to be, carrying on activities to which the proposed Code will apply.

Forensic Science Regulator Publications

New and Updated Publications

The Analysis and Reporting of Whole Blood Specimens in Relation to s5A Road Traffic Act 1988 (Drug Driving): Codes of practice and conduct: FSR-C-133: [Analysis and reporting of whole blood specimens in relation to s5A Road Traffic Act 1988 - GOV.UK \(www.gov.uk\)](#)

The Background and Main Provisions of The Forensic Science Regulator Act 2021

The post of Forensic Science Regulator (the 'Regulator') was established in 2007 to set and ensure compliance with quality standards in forensic science. Within four years the House of Commons Science and Technology Select Committee called for the Regulator to be given statutory powers. Over the following ten years there were two further calls by the Committee and others for statutory powers. In April 2021 the Forensic Science Regulator Act 2021 received Royal Assent.

The Forensic Science Regulation Model

Forensic science is a critical and important part of the investigation of crime and the administration of justice, not only to identify offenders and provide expert evidence to the courts, but it is one of the strongest safeguards against false allegation and wrongful conviction. Forensic science examinations carry substantial risks and the consequences of a quality failure can be profound particularly where there is a system rather than an individual failure. The former can lead to the review of hundreds or even thousands of results generated by a flawed technique or method. The purpose of forensic science regulation is to minimise the risk of a quality failure and ensure that accurate and reliable scientific evidence is used in the investigation of crime and criminal trials.

The established organisational model for regulation of forensic science in England and Wales is based on forensic units operating an effective quality management system that ensures the quality, competence and technical validity of its operations, and meets the requirements set out in the Forensic Science Regulator's Codes of Practice and Conduct (The Codes). The first edition of the Codes was published in

2011 and they have undergone several revisions with the latest version (issue 7) issued in March 2021. The Codes with the Appendices on different subject areas provide the overarching requirements for the quality management system of a forensic unit and the conduct of forensic practitioners. The Regulator has also published a range of guidance documents to aid compliance, including information on the legal obligations of those involved in forensic science.

The establishment of an effective quality management system provides the basis for senior leaders to understand and manage the risk of a quality failure. Organisational competence in the operation of quality management systems in forensic units in the UK is assessed by the United Kingdom Accreditation Service (UKAS) against international standards and guidance, primarily BS EN ISO/IEC 17025, BS EN ISO/IEC 17020 and ILAC G19. Accreditation provides an independent impartial confirmation of technical competence to perform a defined set of activities but it is not an end in itself, or a commercial approval process. It is the active management of risk using the quality management system that will ensure the risk of quality failure is minimised and public confidence in forensic science and the criminal justice system is maintained.

Provisions of the Forensic Science Regulator Act 2021

The Forensic Science Regulator Act 2021 (The Act) and the consequent introduction of statutory powers for the Regulator is one, if not the most, significant changes in the governance of forensic science in England and Wales.

The Act requires the Regulator to prepare and publish a code of practice about the carrying on of forensic science activities in England and Wales. The statutory code will incorporate and build on the existing non-statutory Codes. The current scope of forensic science work that is covered by the Codes, including the deadlines to achieve accreditation will be subsumed into definitions of forensic science activities in the statutory code.

The regulatory model for forensic science in England and Wales will not change on the introduction of statutory powers in that it requires each forensic unit to operate an effective quality management system that on commencement of the Act will be required to comply with the statutory code. There will be additions in the statutory code to cover investigations carried out by the Regulator, issuing of Compliance

Notices, issuing of Completion Certificates, Appeals and other functions of the Regulator.

The statutory code will be admissible in evidence in criminal proceedings in England and Wales and a court may take into account a failure by a person to act in accordance with the code in determining a question in any such proceedings

The Act makes provisions for the Regulator to intervene where they have reason to believe that a person may be carrying on a forensic science activity to which the statutory code applies in a way that creates a substantial risk of:

- adversely affecting any investigation; or
- impeding or prejudicing the course of justice in any proceedings.

The Act makes further provision for the Regulator to require persons to provide copies of documents and other information in the person's possession or control as part of an investigation. The Regulator may issue a compliance notice requiring the person on whom the notice is served to take one or more steps specified in the notice within the period or by the date specified in the notice. The compliance notice could be issued to a practitioner or to a Chief Officer or Director who is accountable for the forensic science delivery and the associated quality management system within an organisation. A compliance notice may prohibit the person, or forensic unit, on whom the notice is served from carrying on any forensic science activity specified in the notice until the Regulator is satisfied that a step specified in the notice has been taken or does not need to be taken.

The Act contains other wider provisions including the preparation and publishing of guidance or reports on any matter relating to forensic science activities carried on in England and Wales, and the Regulator may provide advice or assistance relating to forensic science activities carried on in England and Wales to any person. The Regulator is also required to prepare and publish an annual report about the exercise of the Regulator's functions and provide a copy of the report to the Secretary of State.

Implementation of the Forensic Science Regulator Act 2021

For the Act to take effect, the relevant provisions will need to be commenced by the Secretary of State. To get to this position there is a considerable amount of work to

do including writing the statutory code, defining forensic science activities, devising the enforcement process and putting in place the necessary resources and structures to support the effective operation of the provisions in the Act.

It is estimated that it will take around eighteen months to commence all of the provisions in the Act with a staged approach to commencing provisions.

Sexual Assault Referral Centre Accreditation (SARC)

Update

It's almost 18 months since the publication of the Regulator's standards and guidance for the forensic science elements of sexual assault examination, which set a requirement for accreditation to ISO 15189, the Regulator's Codes and the standards set out in FSR-C-116, Sexual Assault Examination: Requirements for the Assessment, Collection and Recording of Forensic Science Related Evidence www.gov.uk/government/publications/sexual-assault-examination-requirements-for-forensic-science-related-evidence by 01 October 2023.

The United Kingdom Accreditation Service (UKAS) has developed an assisted application scheme, to commence with the pilot program. This has been available for some time and UKAS are awaiting applications. For the registration fee of £1500, which also covers the application fee for accreditation (itself normally £1500), the organisation will receive:

- Access to the on-line learning materials produced in support of the Pilot Programme
- Access to a review of compliance at each stage via UKAS Assessors
- Access to UKAS guidance documentation produced during the pilot

More detail is available from www.ukas.com/resources/latest-news/sarcs/

Much work has been done by organisations in identifying legal entity and in developing and implementing processes and procedures. The Forensic Capability Network (FCN) are providing support to all SARCs in England and Wales working towards accreditation.

A National SARC Network Group is in place, led by Policing, to resolve the complex challenges of achieving the ISO 15189 standard and FSR regulations by Forensic Science Regulator – Newsletter No. 37 December 2021

coordinating national SARC subgroups to work through these complexities and to act as a single voice to challenge and influence these requirements.

There are currently 4 National SARC Subgroups in place involving specialists and experts in SARCs, Forensic Medicine, DNA and Quality, working on different aspects of the accreditation requirements including:

- Development of a National SARC Quality Management System which can be adopted by all SARCs in England and Wales, involving the implementation of a National Quality Manual, comprising about 21 standard operating procedures and associated template Forms once completed.
 - Providing validation plans and coordinating national validation exercises, including the SARC National Consumable Validation project with participation from 49 SARCs so far, this national approach to validation will provide an initial cost saving in excess of £500K.
 - Generating data through R&D studies that will evaluate the effectiveness of both current environmental monitoring processes and a proposed alternative approach to anti-contamination measures. This in turn will inform and facilitate updates to the FSR Codes of Practice and Conduct.
 - Supporting Forensic Science Providers, Forces and SARCs to work through challenges identified to ensure effective feedback mechanisms are in place.

In addition, a working group for Forces planning to hold Legal Entity of their SARCs is in place, to work collaboratively towards the same goals and steering the FCN National SARC Accreditation project.

More information is available on the FCN | Sexual Assault Referral Centre (SARC) Accreditation Support platform on Knowledge Hub <https://khub.net/welcome>.

For any queries, please contact Michelle Gaskell (Quality Specialist) National SARC Accreditation Lead: michelle.gaskell@dorset.pnn.police.uk

Although there is less than two years left to meet the deadline, it is possible to achieve accreditation within the timescale. Organisations are strongly advised to engage with UKAS as early as possible so UKAS can plan, schedule resources and facilitate organisations through the process in advance of the 01 October 2023 deadline.