



Forensic Science Regulator

Newsletter

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Contents

Contact details	2
Message from the Forensic Science Regulator	2
Rebranding the Forensic Science Regulator	4
The Code and Compliance	4
Summary Table	7
Application of ISO Standards	22
Development of Evaluative Opinions	22
Regulator's Comment on Informal Feedback Themes	23
Statutory Consultation and Communications	26
Enforcement and Compliance Process	26

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Message from the Forensic Science Regulator

This is my first newsletter as the statutory Forensic Science Regulator. In my last Newsletter as the non-statutory Regulator, I set out the approach to the production of the statutory Code (the Code) required by the Forensic Science Regulator Act 2021 (the Act). I am very pleased to say that a draft of the Code is very near completion in preparation for statutory consultation. The full Code approaches 400 pages in length as it has gathered all the requirements from the existing non-statutory codes and appendices and combined them into one document; I hope this will make life easier, but appreciate it is a lengthy document. I would like to thank all those across the forensic science community who have made comments and contributed to the development of the draft Code.

In this Newsletter I outline the next steps for commencing the Act and discuss a transition period and compliance. I have been working closely with UKAS to consider how we deal with the transition of organisations from accreditation schedules including the non-statutory codes to accreditation schedules which include the statutory Code. I have also been working with UKAS on aligning the definitions of the forensic science activities set out in the draft Code with the UKAS Master Schedule; a version of the Master Schedule will be published by UKAS in the week commencing 1st August. This is no small task, and I am extremely grateful to Katherine Monnery for all the hard work she has put into this.

I also set out my early thinking on the compliance and enforcement process. I will adopt a proportionate approach, with the full enforcement powers under the Act being used in general as a last resort. I wish to support and encourage the self-referral culture and openness about quality incidents within the forensic science community.

This newsletter also covers the rebranding of the Regulator, the statutory consultation, and how I intend to deal with development of evaluative opinions.

I have set out the indicative timescales for the full commencement of the Act, but I must stress that it is not for the Regulator to commence the provisions of the Act - this is for the Secretary of State for the Home Department.

The provisions of the Act will be commenced (introduced) in stages. A first set of Commencement Regulations was signed by the Minister for Policing on the 21st of July 2022 and took effect on the 25th of July 2022. This established my role as a statutory one, allowing me to consult on the draft of the Code, and brought in all of the provisions of the Act except for the provisions on issuing compliance notices and completion certificates, the provision on appeals, and the provision about the meaning of 'forensic science activity'. A further Statutory Instrument following the statutory consultation will bring in the remaining provisions.

The major steps in the commencement of the Act and the introduction of statutory regulation of forensic science in England and Wales are as follows.

- a. Creation of the statutory Regulator.
- b. Statutory consultation on the draft Code.
- c. Publication of the Regulator's response to the consultation on the Code.
- d. Approval of the draft Code by the Secretary of State for the Home Department.
- e. Draft of the Code laid before both Houses of Parliament.
- f. Approval of the Code by a resolution of each House of Parliament.
- g. Publication of the Code.

It is anticipated that the Code will be approved by Parliament in the first quarter of 2023, and the Code will become effective on a date specified within the Code.

Finally, and most importantly, I would like to thank all the staff in the Forensic Science Regulation Unit for all their hard work and commitment in the preparation of the draft Code, with no increase in resources since I took up this post.

Gary Pugh

July 2022

Forensic Science Regulator

Rebranding the Forensic Science Regulator

To assist with the introduction of the Act and the statutory basis for forensic science regulation, a new logo and branding for the Regulator is introduced in this Newsletter and in future will be used to identify documents that are issued by the statutory Regulator. Over time guidance documents and other publications produced by the Regulator will be re-issued with the new branding to signify that they have been issued by the statutory Regulator.

The Code and Compliance

Forensic Science Activity Accreditation Requirements

The Act requires the Regulator to prepare a Code about the carrying on of forensic science activities (FSAs) in England and Wales. The Code:

- a) must specify the forensic science activities to which it applies;
- b) need not make provision about every forensic science activity; and
- c) may make different provision for different purposes or descriptions of person.

This gives flexibility in how FSAs are dealt with in the Code regarding the requirements for compliance with the Code and accreditation. The established way that compliance is demonstrated is for the Codes of Practice and Conduct to be included in a schedule of accreditation achieved to a suitable ISO/IEC standard. The Regulator will continue with this approach in respect of the statutory Code but does not rule out other ways of demonstrating compliance with the Code in the future.

The requirements for compliance with the Code and accreditation are varied across FSAs, as the FSAs are at different stages of maturity. There are FSAs:

- a. With established requirements for accreditation, comprehensive guidance, and established quality management systems.
- b. With established requirements for accreditation but limited compliance in the organisations which undertake this work. This is the case notably in digital forensic examinations, where the deadline for achieving accreditation was 2017.
- c. Where requirements for accreditation have been set and the deadlines will pre-date the approval of the Code by Parliament, for example Incident Scene Examination (October 2022).
- d. Where requirements for accreditation have been set and the deadlines will post-date the approval of the Code by Parliament, for example Examination of Fire Scenes (October 2023).

- e. That have been defined during Code development, but the standards and/or approach to demonstrating compliance has yet to be established. These FSAs have been defined to demonstrate the scope of forensic science regulation, and the intent to make them subject to the Code in the future

I will not be extending any existing global deadlines for achieving accreditation as I do not think that is in the spirit of the Act or an effective way to regulate forensic science. A table on page 7 of this Newsletter sets out the expected accreditation requirements for the FSAs.

I will seek to minimise the frequency with which the Code is revised, not least because any revisions will need statutory consultation and to be approved by the Secretary of State for the Home Department and both Houses of Parliament. However, a staged approach to setting requirements in the Code for the achievement of accreditation for FSAs where the standards are not yet established will be needed, with future revisions of the Code formally bringing in new requirements. Introducing into future versions of the Code a new requirement for accreditation or any other means of demonstrating compliance with the Code will be a significant and serious change. To give forensic units time to prepare and achieve accreditation where there will be new requirements, I will announce the dates for future revisions of the Code and the FSAs that will be required to be compliant with the Code and meet new accreditation requirements, subject to a statutory consultation and approval of Parliament.

Acknowledging the different states of development of FSAs, in the first version of the Code FSAs will be separated into;

- a. FSAs that are subject to the Code and have a requirement to comply with the Code at the date the Code becomes effective;
- b. FSAs that are not subject to the Code and will not have requirements set in respect of compliance with the Code or accreditation in this version of the Code.

Admissibility and Declarations of Compliance

Section 4 of the Act states that a court may take into account a failure by a person to act in accordance with the Code in determining a question in any proceedings. This opens up the opportunity for a challenge to the admissibility of evidence produced under any FSA that is subject to the Code. While the matter of admissibility is for the courts to decide, the statutory basis of the Code will draw attention to the quality standards and accreditation requirements that apply to FSAs subject to the Code. In the draft Code I have set out how declarations of compliance or non-compliance with the Code should be made. Where a declaration of non-compliance is made, I have set a requirement to describe the steps taken to mitigate non-compliance so the courts can be provided with a basis for considering the impact of the non-compliance.

Transition

On the day the Code becomes effective (as specified within the Code), no forensic unit will be able to demonstrate compliance with the Code through accreditation, as they will not have been able to include the Code within the schedule of accreditation. For forensic units which already have the non-statutory codes included within their accreditation schedule, the transition to include the Code will be relatively straightforward, as the requirements are very similar. However, some forensic units will also need to achieve an extension to their accreditation's scope, to cover all the FSA sub-activities that they undertake for which there is a requirement to have the sub-activity on the accreditation scope. There are also forensic units which are in the process of achieving accreditation to existing deadlines that pre-date the Code becoming effective. Taking all of this into consideration I think it is appropriate to allow for a transition period of 24 months from when the Code becomes effective for forensic units to achieve accreditation which includes the Code to be able to demonstrate compliance with the Code through the accreditation mechanism.

The transition period is to allow time for forensic units to include the Code on their accreditation schedule, but when the Code becomes effective forensic units undertaking FSAs with an accreditation requirement will need to have this accreditation (noting that it won't include the Code in the schedule). Lack of accreditation for a forensic science activity where this is required in the Code is likely to, in my view, represent a substantial risk and may initiate the enforcement processes.

Declarations of compliance during the transition

Forensic units must be aware that the requirement to declare compliance or non-compliance with the Code will come into effect once the Code becomes effective. Forensic units will therefore have to make declarations of compliance or non-compliance in the absence of the accreditation mechanism during the 24 month transition period and should begin planning for this by giving consideration (e.g. through self-audit against the Code), as to whether or not they meet the Code requirements. I will provide guidance on how declarations should be made prior to the transition period, recognising the position of allowing time to demonstrate compliance through accreditation schedules including the Code. Declarations should be mindful of the potential challenge to the admissibility of evidence under Section 4 of the Act.

Summary Table

Forensic Science Activity	Accreditation to Standards
Incident Scene Examination	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17020 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
Examination of Incidents involving Vehicles	<p>This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.</p> <p>The Regulator intends to issue guidance documents for this FSA to support accreditation to ISO 17020 and intends to incorporate these guidance documents into the next version of this Code as an appendix. This intended addition will be subject to consultation as set out in s3 of the Act.</p>
Examination of Fire Scenes	<p>This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.</p> <p>The Regulator intends to issue guidance documents for this FSA to support accreditation to ISO 17020 and intends to incorporate these guidance documents into the next version of this Code as an appendix. This intended addition will be subject to consultation as set out in s3 of the Act.</p>

Examination to Establish the Origin and Cause of an Explosion	This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.
Forensic Examination of Sexual Offence Complainants	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 15189 by 24 months of the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
Forensic Examination of Detainees	This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.
Forensic Examination of Deceased Individuals	This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.
Human Biological Material Examination	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>

<p>Human Body Fluid Distribution Analysis</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Human DNA Analysis</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Human Kinship Analysis</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that</p>

	<p>includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Non-Human Biological Examination: Vertebrates</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Non-Human Biological Examination – Plants, Microbes, and Invertebrates.</p>	<p>This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.</p>
<p>Toxicology: Analysis for Drug(s), Alcohol, and/or Noxious Substances</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 or ISO 15189 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Toxicology: Analysis for Drugs and Alcohol under the Road Traffic Act 1988, Transport and Works Act 1992, and</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 or ISO 15189 from the effective date of the Code (for the sub-activities the</p>

<p>Railways and Transport Safety Act 2003</p>	<p>organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Toxicology: Analysis for Drugs in Relation to s5A of the Road Traffic Act 1988</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 or ISO 15189 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Toxicology: Alcohol Technical Calculations</p>	<p>This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.</p>
<p>Analysis to Identify and Quantify Drugs and/or Associated Materials</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>

<p>Examination and Analysis relating to the Preparation and Production of Drugs and/or Psychoactive Substances</p>	<p>This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.</p>
<p>Friction Ridge Detail: Visualisation and Enhancement</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Friction Ridge Detail: Comparison</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Footwear: Coding and Scene Linking</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p>

	<p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
Footwear: Screening	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
Footwear Mark Comparisons	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
Marks Visualisation and Enhancement	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation</p>

	<p>undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
Marks Comparison	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
Damage and Physical fit	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
Taggant Analysis	<p>Compliance with the Code from the effective date of the Code.</p>

	<p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Analysis of Corrosives and/or Noxious substances</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Analysis of Residues of Lubricants used in Sexual Offences, Including Oils, Greases, and Lubricants.</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>

<p>Analysis of Ignitable Liquids and their Residues</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Examination and Analysis of Particulate Trace Materials</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Examination and Analysis of Gunshot Residue</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>

<p>Examination and Classification of Firearms, Ammunition, and Associated Materials</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Firearms: Ballistics</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Examination and Analysis of Vehicle Components</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>

<p>Examination and Analysis of Hazardous Chemical and Biological Agents and Associated Materials</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Examination and Analysis of Radioactive Material</p>	<p>This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.</p>
<p>Examination and Analysis of Explosives, Explosives Precursors, and Explosive Residues</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Examination and Analysis of Suspected Explosive Devices and Associated Material</p>	<p>This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.</p>
<p>Data Capture and Processing from Digital Storage Devices</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation</p>

	<p>undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
Digital Data Analysis	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
Network Capture and Analysis	<p>This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.</p>
Geolocation analysis	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 by 24 months of the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>

<p>Recovery and Processing of Footage from CCTV/VSS</p>	<p>Compliance with the Code and accreditation to ISO 17025 is only required if the activity is preparatory work for the FSA 'Specialist Video Multimedia, Recovery, Processing and Analysis', or the organisation is not acting in accordance with the NPCC Framework for Video Based Evidence.</p>
<p>Specialist Video Multimedia, Recovery, Processing and Analysis</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Technical Audio Operations</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Speech and Audio Analysis</p>	<p>This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.</p>

<p>Document Handwriting</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Document Authenticity and Origin</p>	<p>Compliance with the Code from the effective date of the Code.</p> <p>Accreditation to ISO 17025 from the effective date of the Code (for the sub-activities the organisation undertakes which are required to be on the accreditation scope).</p> <p>Within 24 months of the effective date of the Code the organisation must demonstrate compliance with the Code by having a schedule of accreditation that includes the Code and reflects all FSAs (or parts thereof) that the organisation undertakes.</p>
<p>Case Review</p>	<p>This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.</p>
<p>Control and Management of a Forensic Database Service</p>	<p>This FSA is not subject to this version of this Code therefore this FSA has no requirements set including any for accreditation.</p>

Application of ISO Standards

As more forensic units have been looking to achieve accreditation of their forensic activities at scenes it has become clear that often the scope is limited to conducting a test(s) at scene. ISO/IEC 17020 remains the correct standard for inspection activity of incidents which take a holistic view of the incident, but for specific testing activities ISO/IEC 17025 is the better fit. This was anticipated in issue 7 of the Codes of Practice and Conduct, noting that if the activity is limited to testing at scene, the accreditation body may deem ISO/IEC 17025 to be more applicable.

The position I take in the draft Code is, for digital as an example:

- a. The digital FSAs will have a requirement for accreditation to ISO/IEC 17025 because this is the standard that is more appropriate.
- b. If activity done as part of the digital FSAs is done at an incident scene as a specific test, forensic units will require an extension to the scope of their ISO/IEC 17025 accreditation to include testing at scenes.
- c. If a forensic unit has accreditation for ISO/IEC 17020 for incident scene examination (where a holistic view is taken), digital FSA sub-activities done at the incident scene by that forensic unit can be covered by the ISO/IEC 17020 accreditation.

The accreditation body will advise the Regulator on which standard is appropriate for the forensic unit, considering the context in which the work is undertaken. Even when ISO/IEC 17020 is deemed to be the better fit, any testing permitted under that standard would still require relevant clauses of ISO/IEC 17025 to be considered. The achievement of accreditation to both the ISO/IEC 17020 and ISO/IEC 17025 standards are conditioned by ILAC G19 and the requirements set out in the appendices in the existing Codes of Practice and Conduct and, in due course, the forthcoming statutory Code.

Development of Evaluative Opinions

In February 2021 the Regulator published the Development of Evaluative Opinions Appendix to the codes. The Appendix anticipated a staged approach to requiring compliance, with the aim that all work within the scope of the Appendix should be compliant by October 2026. This Appendix is an important document providing guidance and a sound framework for developing evaluative opinion across a wide range of FSAs.

I have received many comments on the applicability and preparedness of different areas of forensic science to meet the requirements by the target date. I have also seen the approach outlined in the Appendix of a verbal scale being used where there is very limited

underpinning, not just in terms of data but a clear link from the findings in the case to the level of support in the opinion expressed. There is clearly a considerable amount of work to do to develop and apply the approach outlined in the Appendix to all of the FSAs where this is appropriate.

In view of this I intend to issue the Development of Evaluative Opinions Appendix as a guidance document under Section 9 of the Act. Once the Code is approved by Parliament, I will instigate work to develop detailed requirements for each FSA where evaluative opinion is appropriate. I will seek to add these requirements to a future version of the Code and at that point compliance will be required.

This approach should not preclude or inhibit existing development of evaluative opinion in FSAs that are subject to the Code. For example, I would like to see the development of evaluative opinion applied to activity reporting and inconclusive reporting outcomes in fingerprint examination.

While I would like to get some foundational work underway soon, I do not anticipate having resources to do so until the end of 2022, but I will be looking to establish a Specialist Group to oversee the development of evaluative opinion across all FSAs where this is appropriate.

Regulator's Comment on Informal Feedback Themes

Two drafts of the Code have been made available for informal comment; 'Version 1' was made available in January 2022, and 'Version 2' in April 2022. Version 1 was a draft of the core Code, and Version 2 was an updated core Code and the first drafts of the FSA definitions. In both instances, the opportunity to comment on the drafts was publicised through the Regulator's mailing list, and news stories hosted by the Forensic Capability Network and the Chartered Society of Forensic Sciences.

The purpose of the informal feedback exercises was to give the forensic science community sight of the development of the draft Code, to allow the forensic science community to contribute their insights to refine the draft, and to facilitate preparation for the introduction of a statutory Code.

In the informal consultation for Version 1, responses were received from 19 individuals, and for Version 2, responses were received from 50 individuals, with some individuals representing larger groups and interests in both cases. For the Version 2 draft, 645 comments were received on the FSA definitions, and 304 comments on the core Code.

The feedback contained a mix of generally positive and negative feedback. The move to a statutory Code was widely viewed as a positive, and some respondents commented that

the document is well-structured and easy to navigate. However, some respondents raised that the document is too long and would benefit from being more succinct.

Throughout the feedback, some concerns were raised multiple times from different individuals; these common themes have been identified and are outlined below.

Who the Code applies to:

Some respondents commented that the Code should apply to a broader range of people; these respondents note there are many functions carried out within law enforcement that cross over into FSAs by staff who are not employed within a forensic unit. However, other respondents proposed that the Code should not apply to wider policing units.

The 'Examination of Deceased Individuals' FSA received comments from representatives of the pathology community, who suggested the Code should not cover their work.

Comment from the Regulator: The Act requires that a code is prepared and published about the carrying on of FSAs in England and Wales. The provisions of the Act make clear that the remit of the Act is to cover the investigation of crime and criminal proceedings. If an individual is undertaking an FSA subject to the Code, then the provisions of the Act apply regardless of who that individual is or their role title.

On forensic pathology, in the light of the statutory basis for forensic science regulation, I have relinquished the Regulator's previous responsibilities and will not regulate forensic pathology. However, I will seek to set standards for collection and recording of forensic samples from deceased individuals, whoever undertakes this activity. I am looking to work with the forensic pathology community to ensure that consistent and robust standards are applied to the collection and recording of forensic samples from deceased individuals. No standards have been set for this FSA, but it is the intention to set standards in a future Code version.

What the Code applies to:

Some respondents were unclear about which forensic disciplines are in or out of scope of the Code. There was also confusion about the scope of the FSAs; the digital FSAs received the most comments.

Comment from the Regulator: Version 2 of the draft Code was the first time that the FSA definitions had been published. I expected that there would be a great deal of feedback and comment which proved to be the case. This was all extremely helpful in the subsequent work that has been undertaken to clarify and refine the FSA definitions, particularly to delineate the activities within each FSA definition and any exclusions.

Interpretation activities:

Some respondents commented that the Code should contain a section stating comprehensive requirements for interpretation, including evaluative opinions. However, other respondents expressed their concerns about the move to a probabilistic approach.

Comment from the Regulator: In another section of this Newsletter, I have set out how I will deal with the Appendix to the codes on the development of evaluative opinions. This is an extremely important area and clearly further work is required to provide a comprehensive and meaningful approach to the interpretation of forensic science evidence across all relevant FSAs. I hope the work I have outlined to develop and set detailed requirements for the development of evaluative opinion and adding this to a future version of the statutory Code will address the concerns outlined.

Accreditation:

Comments about how accreditation will work for the Code included concerns that some sub-activities cannot be accredited, questions about how declarations will work if a forensic unit does not have accreditation for all the sub-activities within an FSA, suggestions that accreditation should be to the Code and not to ISO standards, and concerns about UKAS, relating to their cost, accountability, and potential lack of technical assessor capacity.

Comment from the Regulator: On the general issue of achieving accreditation, this is the primary means by which organisations can demonstrate that they are meeting the standards set out in the Code, and in many FSAs the accreditation requirements are well established and provide the foundation for regulation. The work we are doing with UKAS to align the FSA definitions set out in the Code with the UKAS Master Schedule will, I hope, bring clarity as to the detail of the accreditation requirements for each FSA where accreditation requirements are identified.

There are undoubtedly costs to organisations in achieving compliance with the Code and I am very mindful of this in setting standards. Equally there are costs and impacts of a quality failure, not just in monetary terms but in confidence in the Criminal Justice System and direct impacts on victims who do not achieve justice and persons who are falsely convicted. Delivering reliable evidence in the investigation of crime and the administration of justice is a fundamental requirement, and the cost of quality should be seen within the overall costs of delivery, not as an additional cost or overhead.

Impact of accreditation on micro-businesses:

The impact of accreditation on micro-businesses has been raised. These respondents do not resist the concept of accreditation but are concerned about the practicalities, costs, and consequences on smaller forensic units.

Comment from the Regulator: I acknowledged in my first Newsletter that more discussion and support is needed regarding smaller forensic units which will need to meet the Code standards. I further acknowledge that the work on drafting the Code has taken precedence and I have yet to address the concerns of smaller forensic units. From the discussion I have had with forensic units providing independent review of forensic work it is clear there will need to be an imaginative approach to setting requirements that can be incorporated in the Code. I felt it was important to define an FSA that covers case review in the Code, but I am yet to set any requirements in this area. I look to work closely with the Chartered Society of Forensic Sciences and practitioners in this area on developing requirements and I am grateful for the positive approach and suggestions made.

Statutory Consultation and Communications

The Act sets out in Section 3 that:

- (1) Before publishing a code of practice under section 2 or any alterations to the code, the Regulator must consult such persons as the Regulator considers appropriate.
- (2) The persons consulted 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 or the code as proposed to be altered will apply.

To satisfy this requirement, the draft Code will be published on the Regulator's website for statutory consultation, which will remain open for 12 weeks. It is anticipated that the consultation will be launched during the week commencing 8th August 2022. I encourage individuals and organisations who will be carrying out FSAs to contribute to the statutory consultation.

I am compiling a list of forensic units to facilitate communications relating to the new statutory powers and the statutory consultation. To receive such future communications, forensic units are invited to provide a name and contact details of an appropriate individual(s) through the following sign up form:

<https://gov.smartwebportal.co.uk/homeoffice/public/webform.asp?id=260&id2=A75ACE>

If you are unable to sign up to the communications list, please email FSREnquiries@homeoffice.gov.uk to be added.

Enforcement and Compliance Process

This section sets out, at a high-level, the Regulator's initial thinking on the enforcement and compliance processes relevant to the Act. Detailed policy and processes will be published as drafts and finalised in advance of the Code becoming effective.

Compliance and the Enforcement Powers:

Compliance means operating in a manner that does not pose an unacceptable risk to the Criminal Justice System (CJS). Enforcement means use of the powers in the Act based on risk.

Section 5 of the Act allows the Regulator to investigate persons carrying on an FSA to which the Code applies if the Regulator has reason to believe they may be carrying the activity out in a way that creates a substantial risk of adversely affecting any investigation or impeding or prejudicing the course of justice in any proceedings.

Section 6 of the Act also allows the Regulator to issue compliance notices if the Regulator believes a person is carrying on an FSA to which the 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.

Compliance with the Regulator's Documents:

Being compliant with the Code means meeting the requirements set out in the Code; for some FSAs, the draft Code includes a requirement to have accreditation to ISO Standards. Compliance with the Code is an absolute concept; the forensic unit either complies with the requirements set out in the Code or does not. However, it is recognised that the impact of different non-compliances might not be equal. The impact of non-compliance with the Code is a spectrum from minor to severe, with increasing risk posed to the CJS. Therefore, the enforcement and compliance process will involve the Regulator making an assessment of risk to the CJS.

Forensic units undertaking FSAs subject to the Code should also have due regard to relevant guidance documents produced by the Regulator. The guidance documents do not set requirements, but they outline ways to meet the requirements set out in the Code and reduce risk to the CJS. If forensic units do not adhere to the advice in the guidance documents, they must be able to demonstrate to the accreditation body and the Regulator that they have an alternate way of understanding and accounting for risk to mitigate any risk posed to the CJS.

Achieving compliance:

The enforcement powers in the Act are not triggered by a lack of compliance with the Code. However, as the Code provides a framework for forensic practitioners to assure the Regulator that they are not posing an unacceptable risk to the CJS, compliance with the Code reduces the likelihood that the Regulator would investigate or issue compliance notices. A lack of compliance with the Code or accreditation for FSAs that require it would, in the view of the Regulator, likely constitute a risk to the CJS, and possibly trigger the use of the enforcement powers. Forensic units should therefore achieve compliance with the Code to demonstrate that risks are understood and accounted for, to reduce the likelihood

of the Regulator having reason to believe that there is a substantial risk to any investigation or the course of justice in any proceedings, and consequently investigating and issuing compliance notices. Section 4 of the Act also creates an incentive to achieve compliance with the Code to avoid an admissibility challenge to forensic science evidence.

High-level principles of the Enforcement and Compliance Process:

The exact details of the enforcement and compliance policy and process are still being determined, but the underlying high-level principles of enforcement can be summarised as.

- a. Proactive and reactive – Through information provided by a Senior Accountable Individual, there can be a proactive approach to identifying risk, alongside the reactive approach of referrals brought to the attention of the Regulator.
- b. Proportionate - The use of the enforcement powers must be proportionate to the risk posed and based on escalation (see figure 1), with the full enforcement powers under the Act being used in general as a last resort.
- c. Fair, transparent, and consistent - The enforcement and compliance process must be fair and transparent, with consistency across forensic units and FSAs (which could be achieved by a published decision making framework).
- d. Supportive - The enforcement and compliance process must assist forensic units in producing reliable evidence, maintaining and encouraging the culture of self-referrals and near-miss reporting that exists in forensic science.

An Example Graduated Enforcement and Compliance Process

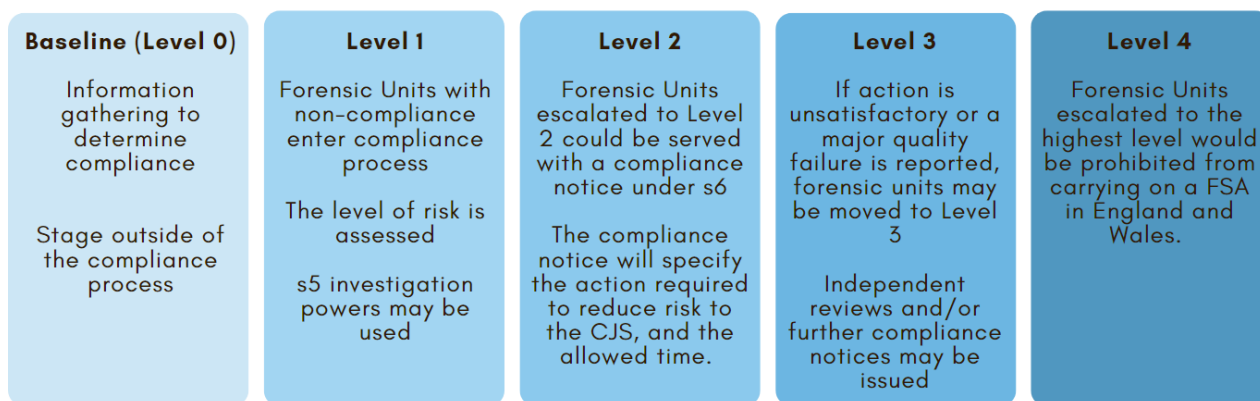


Figure 1: An Example of a Graduated Enforcement and Compliance Process. Please note this figure illustrates the high-level principle that the Enforcement and Compliance Process should be graduated and does not indicate final detail about level contents.