

EXPLANATORY MEMORANDUM TO

THE FORENSIC SCIENCE REGULATOR DRAFT CODE OF PRACTICE 2023

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The Forensic Science Regulator Act 2021 (“the 2021 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 code builds on the non-statutory Codes of Practice and Conduct, incorporating much of their content. These Codes were issued by the previous Regulator whose role was established under the Royal Prerogative.¹
- 2.2 The 2021 Act also introduced powers for the Regulator to intervene where they have reason to believe that a person may be undertaking a forensic science activity to which the code applies in a way that creates a substantial risk of: a. adversely affecting any investigation; or b. Impeding or prejudicing the course of justice in any proceedings. The Regulator also has a power to serve a notice requiring compliance where the Regulator believes that a person is carrying on a forensic science activity 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.

3. Matters of special interest to Parliament

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. European Convention on Human Rights

- 5.1 The Minister for Policing has made the following statement regarding Human Rights: “In my view the provisions of the Forensic Science Regulator Code of Practice are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The code is required by Section 2 (*Regulator’s duty to publish a code of practice*) of the 2021 Act.

¹ <https://hansard.parliament.uk/Lords/2007-07-12/debates/07071279000006/ForensicScienceRegulator>

7. Policy background

What is being done and why?

- 7.1 The 2021 Act gives the Regulator statutory powers to take enforcement action against any forensic science provider from the public or commercial sector, that is carrying on a forensic science activity in a way that risks prejudicing the proper conduct of proceedings. The code is required to underpin any such decisions – when deciding whether to take enforcement action, the Regulator will be able to consider any failure by a person to comply with the code. The code sets out the required standards of conduct and practice, including what quality management systems are required. It also provides definitions of forensic science activities, and states which activities the code does and does not apply to.

Explanations

What effect will the code have?

- 7.2 The code will encourage providers to provide a high quality of forensic evidence to the courts, protecting the integrity of the criminal justice system. A court may take into account a failure by a person to act in accordance with the code in determining a question in court proceedings.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not amend a previous instrument so consolidation with other statutory instruments or other legislation is not appropriate.

10. Consultation outcome

- 10.1 The Office of the Forensic Science Regulator engaged in statutory consultation as required in Section 3(1) and Section 3(2) of the 2021 Act.
- 10.2 The consultation was launched on 8 August 2022 and closed on 31 October 2022². It was undertaken through a questionnaire posted on the Regulator's website with the facility for an online response, response by e-mail and by post. Direct approaches were made to organisations who undertake forensic science activities and the consultation drawn to the attention of stakeholders and agencies across the criminal justice system.
- 10.3 Approximately 3,000 comments were received, ranging from minor grammatical errors to concerns regarding the operation of the code and offering suggestions for changes. Almost half of the comments focused on the definitions of forensic science activities.
- 10.4 The Regulator has given due consideration to the comments received in response to the consultation. As a result, some minor changes to grammar and terminology have been made for clarity. Some changes have been made to some forensic science activities (such as firearms and digital) while most remain largely unchanged. There is

² <https://www.gov.uk/government/consultations/forensic-science-draft-statutory-code-of-practice>

a strong level of support for the model of regulation as set out in the code. A consultation response will be published on the Forensic Science Regulator website.

11. Guidance

- 11.1 Guidance on the code and the 2021 Act can be found at the Regulator's website: <https://www.gov.uk/government/organisations/forensic-science-regulator>

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is limited to some commercial forensics providers who will have to declare compliance with the code and may need to attain accreditation and establish quality management systems for the activities they undertake.
- 12.2 The impact on the public sector is limited to policing who will have to declare compliance with the code and may need to attain accreditation and establish quality management systems for the activities they undertake.
- 12.3 A full Impact Assessment was conducted by the Home Office and published in 2013 to support consultation on the proposals³. An updated internal impact assessment was conducted by Home Office analysts in 2021 to support the Darren Jones private members bill that became the Forensic Science Regulator Act.
- 12.4 The updated impact assessment estimated total costs to providers of £2.1 million, within a range of £0.5 to £4.7 million. Private sector providers would bear £1.7 million of these costs, within a range of £0.5 to £3.5 million. Public sector providers would bear £0.4 million of these costs, within a range of £0 to £1.2 million.

13. Regulating small business

- 13.1 The code applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to allow for a six-month transitional period to allow providers to achieve compliance with the code, and for ongoing oversight and monitoring of the effects of the code.

14. Monitoring & review

- 14.1 The approach to monitoring of this code is that it will be subject to review at regular intervals.
- 14.2 A statutory review clause is included in the code.

15. Contact

- 15.1 Mark Lipczynski at the Home Office can be contacted with any queries regarding the instrument [Mark.Lipczynski@homeoffice.gov.uk].
- 15.2 Alex Macdonald, Deputy Director in the Data and Identity Directorate, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Chris Philp MP, minister at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/255867/1311_06_IA_on_Forensic_Regulator.pdf