



Home Office

Consultation on new statutory powers for the forensic science regulator

November 2013

Topic of this consultation:	New statutory powers for the Forensic Science Regulator.
Scope of this consultation:	This paper sets out the Government's intended approach to statutory powers for the Regulator. The paper invites suggestions as to whether these powers are necessary, how they would work and any alternatives available.
Geographical scope:	These proposals extend to England and Wales. Responsibility for forensics and the criminal justice system in Scotland and Northern Ireland is devolved.
Impact assessment (IA):	An Impact Assessment has been published alongside this consultation.
To:	Police forces, Forensic Service Providers, Legal profession.
Duration:	This is an 8 week consultation, starting on 8 November 2013 and ending on 3 January 2014 .
Enquiries:	Home Office Forensic Regulator Consultation Police Transparency Unit 6th Floor Fry Building 2 Marsham Street London, SW1P 4DF
How to respond:	Email your response to the consultation to FSRconsultation@homeoffice.gsi.gov.uk You may find it helpful to copy and paste the questions into an email or a word document. You can also post your response to the above address.
Additional ways to become involved:	A PDF of this document is also available to download online. Please contact the Home Office at the address above if you require information in any other format such as Braille, large font or audio or email alternativeformats@homeoffice.gsi.gov.uk
After the consultation:	The consultation responses will be used to help inform the development of possible new powers for the Forensic Science Regulator.
Getting to this stage:	The Forensic Science Regulator was appointed in January 2008 to set and monitor standards for the provision of forensic services to the criminal justice system. This paper builds on this by proposing giving the Regulator and his functions statutory backing.
Previous engagement:	The Home Office Forensic Policy Group, containing representatives from the Home Office, Police, CPS and the Regulator, was consulted on the proposals put forward in this consultation document.
Consultation Co-ordinator	<p>If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office Consultation Co-ordinator, Barima Asante. Please DO NOT send your response to this consultation to Barima Asante. The Co-ordinator works to promote best practice standards set by the Code of Practice, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation.</p> <p>The Co-ordinator can be emailed at: Barima.Asante@homeoffice.gsi.gov.uk</p> <p>or alternatively write to him at: Barima Asante, Consultation Co-ordinator Home Office 3rd Floor Peel 2 Marsham Street London SW1P 4DF</p>

Contents

1. Ministerial foreword.....	4
2. About this Consultation.....	5
3. Background.....	6
3.1 Role of the Forensic Science Regulator.....	6
3.2. Current regulation.....	7
3.3 Why are new powers needed?.....	8
4. Government approach	9
5. Role of the Regulator	10
6. Code of Practice	13
7. Investigation and access to information	17
8. Further powers and future developments.....	20
9. Costs and benefits	21
10. Organisations consulted	23
11. List of questions.....	25

1 Ministerial foreword

The government has taken significant steps to strengthen individual freedoms and privacy. The removal of innocent people's DNA profiles from the National DNA database and their fingerprints from the criminal fingerprint database while still maintaining the databases' effectiveness as crime fighting tools, bringing criminals to justice, has been a key part of this programme in the area of forensic science and biometrics.

There is one fundamental freedom in the area of forensic science and biometrics that is so basic that it is rarely discussed – the right to carry on with your normal life without being arrested and detained because of an erroneous forensic identification or because of an incorrect entry in a biometric database.

Conversely, opportunities to solve crimes and prevent others becoming victims of an active criminal must not be missed because of failures in forensics science or errors in biometric databases.

Maintaining the quality of work in forensics and biometrics is an essential part of protecting the public, protecting their freedom and privacy, and in maintaining public confidence in the administration of justice. The Forensic Science Regulator plays a key part in this by setting the quality standards for the provision of forensic science services to the police and the wider criminal justice system and by monitoring compliance with these standards. He has published his "Codes of Practice and Conduct for Forensic Service Providers and Practitioners in the Criminal Justice System".

The Regulator does not have statutory powers or the ability to enforce compliance with his standards. It is now time to consider whether the Regulator should have these statutory powers.

While the answer to this question may be quite simple, it immediately raises many more difficult questions. What is forensic science and what areas should and should not be covered? Just how should these powers operate and what processes and sanctions should be available to the Regulator and what safeguards should be available to those regulated?

Few of these questions have simple answers and the purpose of this consultation is to gather advice, suggestions and proposals from experts in this wide field, from practitioners and all others with an interest in this area. With the results of this consultation we will seek to propose an effective and proportionate regulation system for forensic science and the Regulator.



Norman Baker MP

Minister of State for Crime Prevention

2 About this consultation

This paper sets out some of the key issues associated with the current role of the Forensic Science Regulator (the Regulator) in setting and monitoring standards in the provision of forensic services to the criminal justice system, and proposes a new set of statutory powers for the Regulator to help address these issues.

The proposals focus on putting the role of the Regulator on a statutory footing, introducing a statutory Code of Practice for any organisation working with forensic evidence, and powers to investigate any serious breach of standards.

This consultation seeks views from the police, forensic service providers, the criminal justice system and other interested parties on whether statutory powers will be effective in maintaining standards in forensic services, what form these powers should take and any alternatives that should be considered.

Devolved Administrations

This consultation is concerned with the regulation of forensic services in England and Wales. Scotland and Northern Ireland have their own legislation on forensic services and criminal justice, although this does not include any statutory provisions on quality standards. Currently Scotland and Northern Ireland follow the Regulator's standards on a voluntary basis.

Next steps

The consultation will be open for 8 weeks. Responses will then be analysed and used to inform a decision on whether to proceed with statutory powers for the Regulator, and what form those powers should take.

Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard any information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

3 Background

3.1 Current role of the Forensic Science Regulator

The Forensic Science Regulator ensures that the provision of forensic science services across the criminal justice system is subject to an appropriate regime of quality standards. Responsibilities include:

- Identifying the requirement for new and improved quality standards in the provision of forensic science services;
- Requiring, where appropriate, the accreditation of those supplying forensic science services to the police, including in-house police services;
- Determining procedures for validating and approving new technologies and applications in the field of forensic science;
- Developing standards that apply to national forensic databases, leading on the development of new standards where necessary;
- Providing advice and guidance to ministers, criminal justice system organisations and service providers on issues related to the quality of forensic services;
- Ensuring that satisfactory arrangements exist to provide assurance and monitoring of the standards, including the management of complaints or referrals about standards of forensic science;
- International developments relevant to forensic science quality standards.

Although sponsored by the Home Office, the Regulator is a public appointee and operates independently of the Home Office, on behalf of the criminal justice system as a whole. This independence allows the Regulator to make unbiased recommendations and decisions. The first Regulator, Andrew Rennison, was appointed in January 2008 and is supported by a team of 4 civil servants (which includes 3 scientists) with additional support provided by shared services from the Home Office.

The Regulator's remit is England and Wales, but he collaborates with the authorities in Scotland and Northern Ireland who have expressed their willingness to be partners in the setting of quality standards which will be adopted within their justice systems.

The Regulator is advised by the Forensic Science Advisory Council and a number of specialist sub groups. A number of these groups are ad-hoc and some, listed below are standing. All are made up of representatives from the police, forensic service providers, criminal justice system and professional and scientific experts:

- Contamination
- Fingerprint quality
- Digital forensics
- DNA analysis
- Forensic pathology
- Quality standards

3.2 Current Regulation

NDNAD Accreditation

Any forensic provider processing material for loading to the National DNA Database (NDNAD) must be accredited to ISO 17025, the internationally accepted laboratory standard.

EU Framework

The **EU Framework decision** (Council framework Decision 2009/905/JHA of 30 November 2009 on Accreditation of forensic service providers carrying out laboratory activities) requires forensic service providers to hold ISO 17025 accreditation for all DNA profiling and fingerprint enhancement laboratories. National policing leads have agreed that police facilities carrying out this work will also comply with these standards. Deadlines for gaining accreditation are staggered between 2013 and 2015. However, the UK has now opted out of EU criminal justice measures, which will remove the legal obligation to comply with these standards.

Code of Practice

The Regulator has already produced a non-statutory Code of Practice for provision of forensic services to the criminal justice system.

The Code of Practice sets out the standards required for any organisation or individual working with forensic evidence. The Code adds the UK context to the requirements of ISO 17025 and gives direction on topics such as validation, contamination control and information security.

Professional Standards

The Regulator has worked with a wide range of professional and representative bodies, including the Royal College of Pathologists, the Institute for Archaeologists, the Royal Anthropological Institute, the UK and Ireland Association of Forensic Toxicologists, the Society of Chiropodists and Podiatrists, the Forensic Science Society and the Fingerprint Society to produce professional standards for those disciplines.

Commercial Standards

The Regulator has worked with the British Standards Institute to develop a standard (PAS 377) for manufacturers producing consumables (DNA kits, swabs etc) used in the collection, preservation and processing of forensic material.

Forensics Procurement Framework

The police agree contracts for provision of forensic services on a regional basis, as part of the Home Office's forensic procurement framework. Under this framework, contracts require providers to hold ISO 17025 accreditation and meet other quality requirements including compliance with the Regulator's Code of Practice and compliance with investigations by the Regulator. There are contractual penalties for failing to meet these requirements, including the possibility of removing a provider from the framework entirely. The vast majority of laboratories are part of the procurement framework – but this may not always be the case. Not all of forensic service provision comes under laboratory work. The procurement framework only covers services procured externally by law enforcement agencies (the police, HM Revenue and Customs, National Crime Agency).

Investigation by the Regulator

The Regulator investigates any potentially serious quality breach by a forensic service provider, and makes recommendations to that provider in order to ensure the error is not repeated. The Regulator may also investigate issues referred to him by relevant authorities including Ministers and the Judiciary.

UKAS

The Regulator currently works with UKAS (the UK Accreditation Service) on an informal basis.

3.3 Why are statutory powers needed?

Currently, provision of forensic services to the criminal justice system is regulated on a voluntary non statutory basis. With the exception of accreditation for loading to the NDNAD which is compulsory, the other regulation set out above relies on the co-operation of the organisations involved.

Up until now, the voluntary regulation of forensic services has been effective, as it is in the interest of forensic service providers and the police to maintain high standards and investigate failings so that forensic evidence can be relied upon in court.

However, some of the safeguards above, such as contractual obligations, do not extend to the provision of forensic services to the defence (defendants and their legal representatives), nor to any force that might choose to operate outside of the procurement framework. There is also the possibility at some point the standards requirements could be forced out of the contracts under the framework due to pressure to reduce costs. Adoption of the Code of Practice is not a legal requirement, and without the co-ordinating and gate keeping role of national police leads and the Crown Prosecution Service, standards for forensic service providers for the defence rely on a case by case assessment by legal representatives procuring the service.

For both defence and prosecution services (and it should be noted that many companies supply both), the forensic landscape is changing as more private companies including smaller enterprises, and police forces themselves, enter the market. Organisations are entering and leaving the market more rapidly and there is also more pressure on all sides to reduce cost.

All of these factors mean there is an increased risk that in the future, a forensic service provider (or police force carrying out forensic work in house) may decide not to comply with the existing non statutory standards and Code of Practice set by the Regulator. Equally an organisation could, in the future, refuse to comply with an investigation or suggested improvements instigated by the Regulator following a serious quality breach.

The main aim of any statutory regulation would therefore be to provide an equal and fair environment in which all forensic service providers, both public and privately run, may operate, as well as to ensure that the UK Criminal Justice System continues to receive high quality services.

4 Government approach

The Government is committed to ensuring public confidence in forensic evidence, from collection at the crime scene, through analysis by police and private laboratories to the presentation of evidence in court. The number of organisations carrying out forensic analysis has increased dramatically in recent years and independently of a statutory regulatory framework. Whilst a non-statutory approach has worked up until now, there are legitimate concerns that there could in the future be an issue with organisations failing to meet the necessary standards. A statutory basis could provide further assurance that standards will be maintained.

To date the Regulator has been successful on a non statutory basis largely due to co-operation from the forensic service providers and other relevant organisations such as the police and professional bodies. In light of this, and the Government's wish to avoid imposing unreasonable or impracticable bureaucratic burdens on organisations, the Government would propose a 'light touch' approach to any statutory powers for forensic regulation. However further legislation, including the introduction of stronger sanctions, would be considered should it be deemed necessary in the future.

The Government's proposal is:

- To put the role of the Regulator on a statutory basis. The role will be defined in broad terms, and initially is likely to be interpreted in terms of traditional forensic disciplines, but with the possibility to increase the scope if required in the future.
- To put the Regulator's existing Code of Practice on forensic standards on a statutory basis, and incorporate the EU requirements for ISO 17025 accreditation. There will not be an extensive enforcement regime initially; however non compliance with the statutory Code of Practice will be admissible as evidence in court. It is likely this will be sufficient as a deterrent.
- To give the Regulator investigative powers for quality failures which carry a serious risk of a miscarriage of justice. This will include powers to access information and, therefore, exemption from the Freedoms of Information Act. A number of sanctions for non-compliance with an investigation or recommendations for improvements made by the Regulator are considered, including a public register of non compliant organisations.

The Government's approach to establishing a new regulatory framework is intended to give the Regulator the powers he needs so that the standards he sets are maintained. At the same time, we aim to achieve a regime that does not place undue burden on either the Regulator, or the organisations he is regulating. The statutory adoption of industry standards would not only provide assurance for the criminal justice system and the public on the reliability of forensic evidence; it will also provide clarity over customer requirements, ensuring a level playing field for competition. As these requirements are ones with which service providers are familiar, we expect this approach to cause minimal disruption within the industry, while providing valuable assurance of continuing standards.

This consultation document provides further details of our proposals and seeks suggestions on whether these proposals are will provide proportionate, effective regulation of forensic services.

5 Role of the regulator

The role of the Forensic Science Regulator was created without statutory basis. If the Regulator is to be given statutory powers and duties, it may be necessary to put the role itself on a statutory basis.

Currently, the Regulator's role is 'to ensure that the provision of forensic science services across the criminal justice system is subject to an appropriate regime of scientific quality standards'.

It is proposed that the role and its definition in legislation will remain broadly as above, but with powers for the Secretary of State to amend the role of the Regulator by secondary legislation, should there be a need to amend the Regulator's functions in the future.

Further clarity is needed on what areas would, in practice, be covered under the remit described above. There are a number of stages in the forensic evidence process which could be covered, from collection at the scene through to expert witness presentation of evidence in court. This effectively provides the definition of a 'forensic service provider', which is also relevant in terms of who the statutory Code of Practice and statutory powers to investigate, covered later in this document, will be applicable to. In addition to the processes, a further definition is needed for 'forensic science'. This covers a large and growing number of disciplines – currently the definition is taken to mean traditional crime scene or laboratory based forensics, but there are other areas which could be included. Again, this definition will also be relevant in determining who the Regulator's other statutory powers will be applicable to.

1. For each of the stages in the forensic evidence process listed below, please state whether you think they should, or should not be covered under the remit of the Regulator's statutory powers.

- Manufacture of forensic consumables
- Collection of evidence at the crime scene
- Collection of samples from individuals
- Preservation, transport and storage of evidence
- Screening and selection of evidence
- Examination and testing of evidence
- National forensic databases
- Assessment or review of examination and test results;
- Reporting and presentation of results with associated expert interpretations and opinions

Options for each scenario:

Yes – should be covered

No – should not be covered

Don't know

Or:

None – I/We do not agree that the Regulator should be given statutory powers

Please explain your answers, and specify any further stages you think should be under any statutory remit given to the Regulator.

2. For each of the forensic science disciplines below, please state whether you think they should, or should not be covered under the remit of the Regulator and his statutory powers (definition of forensics)

- DNA extraction and profiling
- Fingerprint enhancement, development and comparison
- Toxicology (alcohol/drug testing)
- Footwear comparisons
- Trace evidence examination such as fibres, glass and paint
- Facial identification
- Other CCTV analysis eg gait analysis (CCTV cameras themselves come under a separate regulatory regime – only scientific analysis of the images is covered here)
- Drug identification and analysis
- Firearms and ballistics
- Gun shot residue
- Explosives
- E-forensics (Computer / mobile phone analysis)
- Blood pattern analysis
- Toolmarks
- Tyre examination
- Document analysis
- Medical forensics including victim and suspect sampling in sexual assault cases.
- Forensic pathology
- Forensic dentistry/odontology
- Fire examination
- Vehicle examination
- Forensic anthropology
- Forensic archaeology
- Forensic palynology
- Accident investigation and reconstruction
- Disaster victim identification
- Forensic accountancy
- Forensic psychiatry
- Forensic psychology

Options for each scenario:

Yes – should be covered

No – should not be covered

Don't know

Or:

None – I/We do not believe that the Regulator should be given statutory powers

Please explain your answers, and specify any further areas you think should be covered.

3. If you have any other comments on the role of the Regulator that you would like us to take into consideration, please outline them below:

6 Code of practice

The Forensic Science Regulator has already published **Codes of Practice and Conduct** for forensic service providers and practitioners in the criminal justice system. It is proposed that this Code of Practice be put on a statutory basis, whereby it may include provision for setting standards in forensic service provision to the criminal justice system. The areas to be covered by the Code would be the same as those defined under the remit of the role of the Regulator as discussed in Part 5 of this document. The core document would be the statutory code, dealing with all general issues including requirements for ISO 17025 accreditation for laboratory based work and any other appropriate accreditation such as National DNA Database accreditation, and providing the UK context to any relevant international standards. This would be supplemented by separate documents providing guidance or baseline technical standards for specialist examinations in specific areas.

The Code will be laid before Parliament by the Home Secretary and amended versions may be laid in Parliament to replace the original. Legislation will set out any areas the Code may cover, and who must have regard to it, and provide the Home Secretary with the power to amend the scope of the Code, and those who must have regard to it, through secondary legislation.

The role of the Regulator will be to promote adoption of the code, monitor its impact and provide advice about it to interested parties. He will act as an independent assessor of the effectiveness of the code in achieving its objectives, reporting annually on this to Ministers.

Because of the nature of the forensic market, it is proposed that a wide range of organisations will have a statutory duty to have regard to the Code. In effect, any organisation or individual providing or commissioning forensic services for the criminal justice system must operate to the appropriate standards as defined by the Code, or include a contractual requirement for the organisation they are commissioning to do so. Which parts of the Code apply will depend on the nature of the work being carried out. For instance, some forensic service provision for the defence is not laboratory based, but the standards relating to reviewing of test results and reporting of findings will apply. The definition of forensic services will be as discussed under the role of the Regulator in Part 5 of this document, so for instance someone operating as an expert witness for facial recognition from CCTV images would be a forensic service provider.

ISO/IEC 17025:2005 is applicable to all laboratories regardless of the number of personnel or the extent of the scope of testing and/or calibration activities. When a laboratory does not undertake one or more of the activities covered by ISO/IEC 17025:2005, such as sampling and the design/development of new methods, the requirements of those clauses do not apply.

Adoption of the Code will be required for all organisations and individuals providing forensic analysis for the criminal justice system. Non analytical activities, such as reviewing of case files and providing opinions, in the absence of any analysis, will not be covered. Adopting the Code may be more difficult for small organisations and individuals. However, the basis of the Code is already in place and the Regulator's role includes encouraging its adoption. So this will not be a new concept. Requirements including 17025 are adaptable to be proportionate to the size of the organisation. We hope however, that any organisation working in forensic services will see the benefits of adopting it. The reputational damage from any breach of standards carries a greater cost than complying with quality standards.

4. For each of the groups listed below, please state whether you think they should, or should not be required to have regard to a statutory Code of Practice on forensic standards.

- Manufacturers of forensic consumables
- Suppliers of 'DNA free' components to manufacturers
- Police forces
- Other law enforcement agencies, such as the Serious Organised Crime Agency and military police.
- Police and Crime Commissioners
- Forensic Service Providers – for the police / prosecution
- Forensic Service Providers – for the defence
- Individual experts
- Legal Aid Agency
- The Crown Prosecution Service
- The Home Office (as the organisation responsible for the national DNA and fingerprint databases).

Options for each scenario:

Yes – should have regard

No – should not have regard

Don't know

Or

None – I/We do not believe that any of the Regulator's Codes of Practice should be statutory.

Please explain your answers, and specify any further groups you think should have regard to the Code.

Enforcement of a statutory Code of Practice

It is not proposed initially to introduce an inspectorate or licensing regime with sanctions for non compliance with the Code due to the burden this would place on the Regulator and associated cost for the Regulator and forensic service providers.

However non-compliance with the statutory Code will be admissible as evidence in court. Failure to meet the statutory standards, leading to possibility of the forensic evidence provided being challenged in court, and subsequent reputational damage, should be a sufficient deterrent. Compliance with the Code will also be a requirement when agreeing contracts for the supply of forensic services – with associated contractual penalties for non-compliance. The Regulator will also have powers to investigate any serious breaches of standards, as set out in Section 7 of this document. However, the effectiveness of a statutory Code would be kept under review by the Regulator. If it is not effective in maintaining standards, further regulation, including the introduction of legislative sanctions would be considered.

5. To what extent do you agree or disagree that admissibility of the Code in court, contractual penalties and a power to investigate serious breaches, is sufficient to ensure compliance with the Code? (Please select one option a to e):

- a) Strongly agree
- b) Tend to agree
- c) Tend to disagree
- d) Strongly disagree
- e) Not sure

Please explain your answer, and specify any additional measures which could be taken to maximise compliance with the Code.

The vast majority of forensic service providers already adhere to the existing Code of Practice, however if it is introduced on a statutory basis with some likely changes, organisations will need to be given time to comply with it. Commencement of the duty to have regard to the Code would allow time to comply before the law comes into effect. If the Code is then amended, forensic service providers will again need time to adapt their processes and costing and this needs to be reflected in contract requirements. It will be up to the organisation procuring the services to set conditions in the contract for updating to a new version of the Code. Allowing sufficient time before changes to the Code are commenced will prevent inconsistency in standards due to staggered contracts which could mean some organisations are complying with the new statutory Code before others. The time given would be at the discretion of the Regulator, depending on the nature of the requirements.

There will not be any requirement for statutory consultation on the original Code or subsequent amendments to it; however it is assumed the Regulator will consult a wide range of interested parties, including the police, CPS and forensic service providers, in drawing up the statutory Code and any subsequent revisions, and that a public consultation would be undertaken for any changes with significant cost implications

6. To what extent do you agree or disagree that putting the existing Code of Practice on a statutory footing will be beneficial? (Please select one option a to e):

- a) Strongly agree
- b) Tend to agree
- c) Tend to disagree
- d) Strongly disagree
- e) Not sure

7. If you have any other comments on putting the Regulator's Code of Practice on a statutory basis that you would like us to take into consideration, please outline them below:

7 Investigations and access to information

The Regulator already investigates any serious quality failure by a forensic service provider, and recommends action to be taken by the provider to address the fault if necessary. Often incidents are reported by the provider themselves, and there has not, so far, been any case of a provider refusing to co-operate or comply with any recommendations. It is in the interest of the company to investigate and rectify any incident. However there is a risk that in the future, as the number of private operators expands, that one might not comply.

To mitigate this risk it is proposed that the Regulator should have statutory powers to investigate any serious quality failure by an organisation which is required to have regard to the Code of Practice as set out in Part 6 of this document.

The Government's intention is not to impose a duty on the Regulator to investigate every complaint, nor to create an inspectorate function. The proposal is that powers to investigate would be discretionary, for use in cases where the incident poses a serious and continuing risk of a miscarriage of justice.

The Regulator needs certain powers to carry out an effective investigation.

8. For each of the powers below, please state whether you think they are necessary on a statutory basis:

- Powers of entry
- Access to information (documents and records)
- Power to impose an improvement plan
- Discretionary power to produce a report

Or:

- No powers should be given

Please explain your answers, and specify any further powers you think the Regulator needs to carry out an investigation.

Some form of sanction will be needed to back up these powers in case of an incident where the provider refuses to co-operate with the Regulator's investigation or recommendations for

improvements. It is proposed that the Regulator would have the power to recommend that UKAS review an organisation's accreditation, or the power to recommend that the organisation be suspended from the national forensic procurement framework, in such circumstances. However, there are other sanction options available.

9. For each of the sanctions below, please state whether you think they would or would not be effective for organisations that refuse to co-operate:

- Refer organisation to UKAS for review of accreditation status
- Give the Regulator the power to recommend an organisation be suspended from the procurement framework
- Financial penalty per day of non compliance
- Removal or suspension of work written into any public sector contracts
- Public report or register
- Requirement to disclose that subject to an improvement plan
- Requirement for contracts with FSPs to require compliance with any Regulator investigation.

Please explain your answers, and specify any alternative sanction powers you think the Regulator should be given.

It is also proposed that the legislation impose a duty on all relevant organisations and their employees to report to the Regulator any quality failures which might meet the requirements for an investigation as set out above. As part of this, the Regulator will need to be covered under existing whistleblower legislation to give protection to an individual reporting an incident. There is general coverage for individuals reporting an incident to an appropriate authority, however stronger protection may be provided by adding the Regulator to the list of prescribed authorities made under Section 43F of the Employment Rights Act 1996.

As part of any statutory power for the Regulator to access information, it may be necessary to access commercially, legally or otherwise sensitive information to carry out a fully informed investigation. There will therefore need to be an accompanying prohibition on disclosing any commercially, legally or otherwise sensitive information obtained as part of an investigation without consent.

The Regulator's powers to access information may need to include information supplied to UKAS as part of the accreditation process. Currently, the Regulator is able to access this information on an informal basis. However the UKAS accreditation process is based on confidentiality of information supplied.

10. To what extent do you agree or disagree that the Regulator should have a statutory power to access information supplied to UKAS and subject to its confidentiality requirements? Please explain your answer.

Currently the Regulator is not obliged to disclose information to a person making a request under the Freedom of Information Act, as he is not listed as a public authority under Schedule 1 of that Act. However this could be strengthened by explicitly stating in the legislation that information cannot be disclosed.

The Regulator cannot investigate issues with the evidence presented in live cases, because his role is not to intervene in the judicial process. Only once any legal proceedings are concluded can an investigation begin.

The Regulator would produce a report in response to any investigation, with a duty to report outcomes relevant to particular proceedings to the CPS and, if appropriate, the Court of Appeal or the Criminal Cases Review Commission. There will not be any requirement for reports to be made public, although they could be in a case with significant public interest. This will be at the discretion of the Regulator, notwithstanding any limits on disclosure of information as set out above.

11. To what extent do you agree or disagree that statutory powers to investigate will be beneficial? Please explain your answer.

12. If you have any other comments on giving the Regulator statutory powers to investigate that you would like us to take into consideration, please outline them below.

8 Further powers and future developments

The approach outlined in this document is not intended to be the last word in this area and the effectiveness of any legislative approach will be kept under review by the Forensic Science Regulator. If it is considered that insufficient progress is being made in respect of government aims in this area, further regulation, including the introduction of sanctions, could be considered.

It will also be necessary to keep abreast of new technological capabilities and developments and ensure that they can be integrated into any established framework so that any new risks to standards in forensic science are identified at an early stage and addressed. The Code itself will be a living document which can be amended and extended as necessary, to reflect new standards or good practice.

Any new regulatory framework needs to be both manageable and beneficial and it is not the Government's intention to introduce any unnecessary regulation. However there may be other issues in forensic science, either current or those which could arise in the future, which might benefit from legislative control.

13. Are there other issues relating to the regulation of standards in forensic science not mentioned in this paper for which new legislation may be required?

9 Costs and benefits

An initial impact assessment has been published alongside this consultation document. It estimates a number of factors affecting the overall cost of the proposals outlined in this consultation, including the size of the market for forensic service provision, the proportion of organisations that already have ISO17025 accreditation, the cost of obtaining accreditation and of maintaining it in subsequent years, and the benefits of having accreditation and quality standards more generally.

14. If you have any alternative cost / benefit estimates to those used in the Impact Assessment published alongside this consultation document, please explain them below.

About you

The final question asks for some information about you. The purpose of this question is to provide some context on your consultation responses and to enable us to assess the impact of the proposals on different types of organisation, in particular in relation to costs and benefits and the effect on smaller organisations.

15A. Which of the following best describes you or the organisation or sector that you represent? Please give details in the box below.

- Forensic Service Provider
- Police force;
- Police and crime commissioner;
- Legal profession;
- Regulatory body, standards body or inspectorate;
- Civil liberties charity / organisation / pressure group;
- Representative body;
- Member of the public
- Other (please specify)
- Prefer not to say

15B. If you represent a Forensic Service Provider, please state the size of your organisation, by approximate number of employees:

- 1
- 2-9
- 10-49
- 50-249
- 250+

By providing this information you are giving your consent for us to process and use this information in accordance with the Data Protection Act 1998. These details are voluntary and will be treated as personal data by the Home Office in compliance with government guidance on holding personal information.

10 Organisations consulted

UKAS (UK Accreditation Service)

Forensic Service Providers and manufacturers:

- LGC Forensics
- Cellmark Forensic Services
- Key Forensic Services
- Environmental Scientifics Group
- Forensic Access
- ROAR Forensics
- Mass Spec Analytical
- Randox Laboratories
- First Forensics
- Manlove
- Forensic Focus
- FMS Group
- Formedecon
- Bericon Forensics
- Hayward Associates
- Keith Borer Consultants
- Emmerson Associates
- Principal Forensic Services
- DiskLabs
- Cy4or Forensics
- Intaforensics
- Forensic Image Ltd
- Krollontrack
- Athena Forensics
- CCL
- Forensic Science Bureau
- Ron Cook Associates
- Faraday Forensics
- Forensic Document Services
- Prometheus Forensic Services
- WA Products
- Scottish Police Authority
- Forensic Science Northern Ireland

CPS (Crown Prosecution Service)

Crown Office and Procurator Fiscal Service

Public Prosecution Service

Legal Aid Agency

Police forces (England & Wales and BTP)

Scottish Police Service

PSNI (Police Service Northern Ireland)

PCCs (Police and Crime Commissioners and London Mayor)

Independent Police Complaints Commission

Professional bodies for forensic science

Law Society
Forensic Science Society
National Crime Agency
HM Revenue and Customs
HMIC (Her Majesty's Inspectorate of Constabulary)
Ministry of Justice
Criminal Cases Review Commission
Scottish Criminal Cases Review Commission
The Judiciary
Royal Statistical Society
Royal Society of Chemistry
Institute of Physics
Institute of Biology
Institute for Archaeology
Royal College of Pathologists
The British Association in Forensic Medicine
UK and Ireland Association of Forensic Toxicologists
The Faculty of Forensic and Legal Medicine
The Fingerprint Society
The Chief Coroner
The Coroners Society
College of Policing
ILEX
Bar Council
Criminal Bar Association
Devolved Administrations

11 List of questions

1. For each of the stages in the forensic evidence process listed below, please state whether you think they should, or should not be covered under the remit of the Regulator's statutory powers.

- Manufacture of forensic consumables
- Collection of evidence at the crime scene
- Collection of samples from individuals
- Preservation, transport and storage of evidence
- Screening and selection of evidence
- Examination and testing of evidence
- National forensic databases
- Assessment or review of examination and test results;
- Reporting and presentation of results with associated expert interpretations and opinions

Options for each scenario:

Yes – should be covered

No – should not be covered

Don't know

Or:

None – I/We do not agree that the Regulator should be given statutory powers

Please explain your answers, and specify any further stages you think should be under any statutory remit given to the Regulator.

2. For each of the forensic science disciplines below, please state whether you think they should, or should not be covered under the remit of the FSR and his statutory powers (definition of forensics)

- DNA extraction and profiling
- Fingerprint enhancement, development and comparison
- Toxicology (alcohol/drug testing)
- Footwear comparisons
- Trace evidence examination such as fibres, glass and paint

- Facial identification
- Other CCTV analysis eg gait analysis (CCTV cameras themselves come under a separate regulatory regime - only scientific analysis of the images is covered here)
- Drug identification and analysis
- Firearms and ballistics
- Gun shot residue
- Explosives
- E-forensics (Computer / mobile phone analysis)
- Blood pattern analysis
- Toolmarks
- Tyre examination
- Document analysis
- Medical forensics including victim and suspect sampling in sexual assault cases.
- Forensic pathology
- Forensic dentistry/odontology
- Fire examination
- Vehicle examination
- Forensic anthropology
- Forensic archaeology
- Forensic palynology
- Accident investigation and reconstruction
- Disaster victim identification
- Forensic accountancy
- Forensic psychiatry
- Forensic psychology

Options for each scenario:

Yes – should be covered

No – should not be covered

Don't know

Or

None – I/We do not believe that the Regulator should be given statutory powers

Please explain your answers, and specify any further areas you think should be covered.

3. If you have any other comments on the role of the Regulator that you would like us to take into consideration, please outline them below:

4. For each of the groups listed below, please state whether you think they should, or should not be required to have regard to a statutory Code of Practice on forensic standards.

- Manufacturers of forensic consumables
- Suppliers of 'DNA free' components to manufacturers
- Police forces
- Other law enforcement agencies, such as the Serious Organised Crime Agency and military police.
- Police and Crime Commissioners
- Forensic Service Providers – for the police / prosecution
- Forensic Service Providers – for the defence
- Individual experts
- Legal Aid Agency
- The Crown Prosecution Service
- The Home Office (as the organisation responsible for the national DNA and fingerprint databases).

Options for each scenario:

Yes – should have regard

No – should not have regard

Don't know

Or

None – I/We do not believe that any of the Regulator's Codes of Practice should be statutory.

Please explain your answers, and specify any further groups you think should have regard to the Code.

5. To what extent do you agree or disagree that admissibility of the Code in court, contractual penalties and a power to investigate serious breaches, is sufficient to ensure compliance with the Code?

(Please select one option a to e):

- a) Strongly agree
- b) Tend to agree
- c) Tend to disagree
- d) Strongly disagree
- e) Not sure

Please explain your answer, and specify any additional measures which could be taken to maximise compliance with the Code.

6. To what extent do you agree or disagree that putting the existing Code of Practice on a statutory footing will be beneficial?

(Please select one option a to e):

- a) Strongly agree
- b) Tend to agree
- c) Tend to disagree
- d) Strongly disagree
- e) Not sure

7. If you have any other comments on putting the Regulator's Code of Practice on a statutory basis that you would like us to take into consideration, please outline them below:

8. For each of the powers below, please state whether you think they are necessary on a statutory basis:

- Powers of entry
- Access to information (documents and records)
- Power to impose an improvement plan
- Discretionary power to produce a report

Or

- No powers should be given

Please explain your answers, and specify any further powers you think the Regulator needs to carry out an investigation.

9. For each of the sanctions below, please state whether you think they would or would not be effective for organisations that refuse to co-operate:

- Refer organisation to UKAS for review of accreditation status
- Give the Regulator the power to recommend an organisation be suspended from the procurement framework
- Financial penalty per day of non compliance
- Removal or suspension of work written into any public sector contracts
- Public report or register
- Requirement to disclose that subject to an improvement plan
- Requirement for contracts with FSPs to require compliance with any FSR investigation.

Please explain your answers, and specify any alternative sanction powers you think the Regulator should be given.

10. To what extent do you agree or disagree that the FSR should have a statutory power to access information supplied to UKAS and subject to its confidentiality requirements? Please explain your answer.

11. To what extent do you agree or disagree that statutory powers to investigate will be beneficial? Please explain your answer.

12. If you have any other comments on giving the Regulator statutory powers to investigate that you would like us to take into consideration, please outline them below.

13. Are there other issues relating to the regulation of standards in forensic science not mentioned in this paper for which new legislation may be required?

14. If you have any alternative cost / benefit estimates to those used in the Impact Assessment published alongside this consultation document, please explain them below.

15A. Which of the following best describes you or the organisation or sector that you represent? Please give details in the box below.

- Forensic Service Provider
- Police force;
- Police and crime commissioner;
- Legal profession;
- Regulatory body, standards body or inspectorate;
- Civil liberties charity / organisation / pressure group;
- Representative body;
- Member of the public
- Other (please specify)
- Prefer not to say

15B. If you represent a Forensic Service Provider, please state the size of your organisation, by approximate number of employees:

- 1
- 2-9
- 10-49
- 50-249
- 250+

ISBN: 978-1-78246-252-1
Published by Home Office
© Crown Copyright 2013

