



Forensic Science Regulator

O v e r s e e i n g Q u a l i t y

Forensic Science Regulator Newsletter

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Contact Details

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Message From The Forensic Science Regulator

It's great to be back as part of the forensic profession and community. I was tempted back by the unique challenge that the Forensic Science Regulator role now presents, the sound platform built by my predecessors and the capable and committed team in the Forensic Science Regulation Unit (FSRU).

I have been very fortunate over the last forty years to have had a career with three phases; forensic scientist in the Home Office Forensic Science Service, manager and ultimately Director in the Forensic Science Service (FSS) and Director and national leader in the MPS. I have also been fortunate to be involved or close to all the major strategic and organisational change in forensic science, and dare I say perhaps not so fortunate to lead the response to the occasional crisis and serious quality failure.

I approach this new challenge with due humility knowing the significant expectations that Parliament has put on my role through the Forensic Science Regulator Act 2021. I know that I must focus on bringing this Act to life by providing the structure and change that will allow us to move smoothly to commencement. This doesn't mean that we can relax and wait for commencement and the powers coming into legal force; better that we all focus, take our direction from parliament, and move to

full compliance with the Codes and relevant international standards in advance of commencement.

Dr Tully highlighted in her annual reports the importance of cultural change and an understanding of quality management systems to underpin forensic science regulation. I recall the development and establishment of quality management systems in the FSS in the early nineties and around the same time in the Greater Manchester Police fingerprint bureau. We are now some twenty years on so accepting there are some newer areas such as digital forensics this change should be embedded by now. By this I mean not having quality management systems (QMS) overlaying existing structures, but an operating model where the QMS is the means of operational delivery, managing risk, ensuring technical competence, implementing change and improving services. This is not what can sometimes be an arcane debate about the definition of ISO standards, ILAC G19 or even the finer points of the Codes, it is about;

- validation of techniques with a focus on understanding and managing the risk of error;
- defining, demonstrating and testing the competence of practitioners; and
- having documented, controlled and audited procedures, complemented by processes that encourage and support improvement.

In short, an effective quality management system that underpins the competence of a forensic science service. The most significant change required to achieve this is visible leadership and accountability from front line supervisors to Directors and Chief Officers. Forensic practitioners carry significant and important individual responsibilities within our Criminal Justice System. The introduction of regulation puts an equally significant and important responsibility on leaders at all levels and especially the senior accountable person in each organisation. I pay tribute to all the hard work that has been done to establish effective quality management systems across forensic science, particularly in recent years in the police service, and thank the police leaders who have secured the funding, provided the stability and visibly led this effort. I equally acknowledge that smaller organisations and individuals who will need to meet the standards set out in the Codes is an area for more discussion and support as to how they will meet the requirements set out above.

In this, my first communication as Forensic Science Regulator, I must mention the important and critical role that UKAS and the Specialist Groups continue to play in the regulation of forensic science. UKAS as the UK's national accreditation body performs the absolutely critical role of assessing the competence of organisations against international standards and the Codes. I look to build and develop the strategic partnership between us and extend this into ensuring compliance and monitoring the overall quality of forensic science examinations undertaken in England and Wales. The Specialist Groups set up by my predecessors are very much the engine room for the implementation and interpretation of forensic quality standards. I know from my own experience as Chair of the Fingerprint Quality Standards Specialist Group the expertise, enthusiasm, and commitment that senior professional leaders in forensic services bring to the development of standards on top of the day job. I am very grateful to all the members of the Specialist Groups particularly the Chairs for the leadership and follow through to delivery they have achieved. To continue this good work I will be establishing two further Specialist Groups, one for Incident Examination and another for Firearms Examination, they will be chaired by Alan Tribe and Martin Parker respectively.

I am still only a few short weeks into my tenure as Regulator, so forgive me if I cannot set out the detail of implementation of the Act or the wider priorities I will pursue. However, it is clear to that there are some key elements of the Act that need prioritisation, detailed discussion and consultation. One of these is the definition of forensic science activities within the Act. I think a clear description and definition of these provides a route to common understanding of the scope of forensic regulation and the basis for accreditation. I hope to be consulting on this through first the Specialist Groups in the next few weeks and then the wider forensic community and stakeholders.

I set out early in this article my background and experience in forensic science, but I do not want to rely on this to understand the challenges and opportunities to make forensic science regulation work effectively today. I will be making a series of familiarisation visits to meet forensic practitioners, managers and leaders to listen to the views of the forensic community. I will start with a visit to Calder Park and I thank Neil Dennison for facilitating this visit; I will be arranging further visits to other organisations and groups across all sectors. I am, of course, keen to get the views of

all the forensic community on regulation and invite you to please use the email address provided should you wish to express your thoughts.

I look forward to working with practitioners, leaders and stakeholders, and thank you in anticipation of your continued commitment and support.

Gary Pugh OBE

Forensic Science Regulator

Forensic Science Regulator Act 2021

The Forensic Science Regulator Act 2021 achieved Royal Assent in April. The Act is available at www.legislation.gov.uk/ukpga/2021/14/contents/enacted.

Powers

The Act places the Regulator on a statutory basis. It provides a number of new powers to the Regulator including powers of investigation and enforcement.

The powers related to investigations include a right to require the provision of information. This right may be enforced by an injunction and, if required, application of the court's contempt jurisdiction, meaning that organisations and individuals may be held in contempt of court if they fail to supply information, in their possession or control, requested during an investigation by the Regulator.

The powers related to enforcement allow the Regulator to issue a 'compliance notice' which sets out what improvements are required and the date by which these must be achieved. Importantly, the compliance notice may prohibit the person, or persons (including organisations), subject of the notice from performing any forensic science activities in England and Wales until the compliance notice is discharged. Again, a compliance notice may be enforced by an injunction and, if required, application of the court's contempt jurisdiction.

Since the creation of the role, successive regulators have worked with forensic science providers in a collaborative way. This is true even when dealing with significant quality issues. The existence of the powers described above will not change that approach and with that in mind, their use is likely to be rare. However, they provide an important safeguard to the Criminal Justice System which can be utilised if appropriate.

Commencement

On Royal Assent sections 8 and 13 (which contain administrative provisions) became effective. The other provisions will be brought into effect by commencement orders made by the Secretary of State. These commencement orders will form part of a significant programme of work to implement the Act.

The existing Codes of Practice and Conduct will be replaced by a new statutory code. There will have to be work to convert the Codes into a draft statutory code, consult on the draft, produce a proposed statutory code and submit that for approval by the Secretary of State and both Houses of Parliament.

There will also be a programme to review and re-issue or withdraw all non-Codes documents issued by the Regulator.

The Act provides the Regulator with new powers. Policies and processes related to the use of these new powers will have to be developed.

The full provisions of the Act will therefore be brought into effect when the necessary preparatory work has been completed.

This programme of work is going to take some time. The period involved can only be determined by a planning exercise which is just beginning but it is likely to be around 18 months.

Criminal Procedure Rules

In October 2021, the Criminal Procedure Rules (CrimPR) will change. Some of these changes relate to the use of expert evidence.

The provisions of Part 19 apply to expert evidence of opinion. The CrimPR will be amended to allow the court to apply the key provisions to expert evidence of fact. The impact of this change may be limited. Many of the requirements of Part 19 reflect obligations created by case law in circumstances which drew no distinction between evidence of fact and evidence of opinion. Further, experience shows it is relatively rare for an expert to offer no opinion in a report.

The provisions of Part 19 will be amended to require a party seeking to adduce expert evidence to explain how the facts stated in the report are admissible if that is not clearly stated in the report. While this is an obligation placed on the instructing

party, expert witnesses may wish to review their processes to assist instructing parties to comply. Potential considerations include the following.

- Is it normal practice to state, in the reports, the fact relied on and the basis of reliance on those facts? If not, this may be useful.
- The form associated with this provision may require the party to identify facts stated in the report by the paragraph in which they appear. The numbering of paragraphs in reports may be useful.

Publications Update

New and Updated Publications

Since the publication of the previous newsletter, a number of new documents have been published and others have been updated. Issue 7 of The Codes includes a Cyber Security related update and both the Royal Statistical Society and the Chartered Society of Forensic Sciences have co-badged the Development of Evaluative Opinions document that was published on the last day of the previous Regulator's tenure.

Updated or newly published documents are:

Forensic Science Providers: Codes of Practice and Conduct; FSR-C-100:

[Forensic science providers: codes of practice and conduct, 2021, issue 7 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/forensic-science-providers-codes-of-practice-and-conduct-2021)

Development of Evaluative Opinions; FSR-C-118:

www.gov.uk/government/publications/development-of-evaluative-opinions

Y- STR Profiling; FSR-G-227:

www.gov.uk/government/publications/y-str-profiling

DNA Relationship Testing using Autosomal Short Tandem Repeats; FSR-G-228:

www.gov.uk/government/publications/dna-relationship-testing-using-autosomal-short-tandem-repeats

Methods Employing Rapid DNA Devices; FSR-G-229:

www.gov.uk/government/publications/methods-employing-rapid-dna-devices

Joint Statements Under Part 19.6 of the Criminal Procedure Rules; FSR-G-233:

www.gov.uk/government/publications/joint-statement-guidance

Forensic Pathology Audit FSR-P-304

www.gov.uk/government/publications/forensic-pathology-audit-protocol

Other News

The Forensic Science Regulation Unit will soon be moving from the current offices at 5 St Philip's Place to the new Government Hub at 23 Stephenson Street. The move is scheduled for the end of July and, whilst disruption will be kept to a minimum, we would ask for your forbearance as the unit becomes established in the new office space. Fuller details will be published when the move takes place, but for those of you likely to visit the office, the new premises will be an even shorter walk from New Street Station than to St Philip's Place.

Forensic Science Regulator