



Forensic Science Regulator

Report on the consultation on the statutory Code of Practice required under Section 3 of the Forensic Science Regulator Act 2021

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1. Background

- 1.1.1. The Forensic Science Regulator Act 2021 (the “Act”) requires the Regulator to prepare and publish a Code of Practice (hereinafter referred to as ‘the Code’ or ‘Code’) about the carrying on of Forensic Science Activities (FSAs) in England and Wales. Sections 3.1 and 3.2 of the Act set out the procedure that must be followed in respect of consulting on the Code:
- 1.1.2. 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. 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.
- 1.1.3. The consultation required by the Act could be fulfilled by consulting a representative group. However, the Regulator decided that as this was the first consultation on the statutory Code of Practice there would be a wider open consultation. Future consultations on changes will comply with the requirements of the Act but may not necessarily take the same form as this first consultation, particularly if only minor changes are made.
- 1.1.4. This draft of the Code was based on issue 7 of the current non-statutory Codes of Practice and Conduct. In preparing the draft Code the Regulator engaged with organisations and persons who undertake FSAs as described in the Code. Drafts of sections of the Code as it was developed were published through the Regulator’s website for comment and feedback.
- 1.1.5. This document sets out the Regulator’s response to the statutory consultation under Section 3 of the Act.

2. Process of Consultation

2.1.1. The consultation on the draft of the Code (identified as “Consultation Draft 08.08.2022”) was launched on the 8th of August 2022 and closed on the 31st of October 2022. The consultation 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 FSAs and the consultation was drawn to the attention of stakeholders and agencies across the Criminal Justice System. Alongside this, the Regulator prepared detailed information and response guidance for consultees. This set out the background to the development of the Code highlighting that the Code was based on the non-statutory Codes of Practice and Conduct and proposed that the underlying regulatory model for forensic science would not change with the introduction of a statutory Code.

3. Consultation Questions

3.1.1. The Regulator welcomed comments on any aspect of the Code and set out some questions to understand the positions and concerns of a range of providers and stakeholders. The structure of the questionnaire was:

- a. Questions 1-6: Questions about the respondent
- b. Questions 7-13: General questions about the Code and Regulation
- c. Questions 14-87: Questions about specific parts of the Code

3.1.2. Respondents were not required to answer every question (name and email address were required). This response to the consultation provides a summary of the comments received, the main themes raised by respondents in the consultation and areas where the Regulator has made substantial amendments to the Code.

3.1.3. The full consultation questions are included in Annex A.

4. Responses to Consultation

- 4.1.1. A total of 110 responses were received from a range of organisations and sectors: Law Enforcement, Academia, Commercial Providers, Judiciary, member of the public and emergency and response services.
- 4.1.2. Almost 3,000 comments were received from 110 external respondents by questionnaire and emails. A range of comments was received, from identifying minor grammatical errors, to raising concerns regarding the operation of the Code and offering suggestions for changes.
- 4.1.3. Almost half (43%) of the comments focused on the FSAs; this was expected as this was the first time such definitions had been produced by the Regulator. Of the FSA comments, digital FSAs received the most comments with 515 comments.
- 4.1.4. Some respondents were replying on behalf of an organisation and submitted a combined view on behalf of multiple stakeholders (e.g. several police forces). Others have responded as individuals. The majority of the responses were from organisations or on behalf of a group. Each response has been treated equally in preparing the statistical and graphical data presented in this response. The Regulator recognises that the statistical and graphical data provides a “snap shot” and indication of the views across the forensic community and stakeholders and is not intended to be a detailed statistical survey.
- 4.1.5. Responses to the consultation were largely from forensic units. This was welcomed and expected as the Code outlines a regulatory model for forensic science which puts the onus on organisations to operate an effective quality management system.
- 4.1.6. Respondents were generally positive about the introduction of a statutory basis for the regulation of forensic science in England and Wales with a general consensus that forensic units are likely to

comply with the Code. There were a number of concerns raised however, about the implementation, practicality and impact of the Code.

4.1.7. These concerns can be grouped under seven broad themes. These are considered in more detail later in this consultation response. The Regulator has addressed these either by making updates to the Code where possible or has provided comment. The themes are:

- a. Clarity of the Code and its structure;
- b. Timelines;
- c. Cost and resource implications;
- d. Culture and leadership;
- e. Accreditation and compliance;
- f. Impact on Criminal Justice System; and
- g. Longer-term impacts on forensic science units and the forensic science community.

4.1.8. Technical comments were received about the specific FSAs, which are addressed in a separate section of this document and any changes made to the FSAs are outlined.

5. Responses to Questions 1-6: Questions about the respondent

5.1.1. Respondents were asked to provide some information about their role and organisation/group. This information was used to group responses into categories.

5.1.2. The most responses came from law enforcement (55 responses) and commercial providers (23 responses). It should be noted that some responses were combined responses from multiple organisations

5.1.3. The breakdown of responses by organisation type was as follows:

Organisation Type	Number of Responses	Percentage of Responses (%)
Law Enforcement	55	50
Commercial Provider	23	21
Academia	10	9
Fire and Rescue	5	5
Member of the public	4	4
Judiciary	3	3
Sexual Assault Referral Centre (SARC)	1	<1
Charity	1	<1
Other	8	7
Grand Total	110	100

Figure 1: Breakdown of responses by organisation type.

6. Questions 7-9: General questions about the Code and regulation

6.1.1. Respondents were asked some general questions about the Code, the regulation of forensic science and the extent to which they agreed with statements pertaining to the Code and the effectiveness and impact of the statutory regulation of forensic science. Not all respondents responded to every question. Only those who responded to a question are shown on the statistical and graphical data presented. The questions either required a 'Yes/ No' answer or to express a view as to the extent of 'agreement/disagreement' with a statement about forensic science regulation. To ensure individual responses cannot be identified, responses have been grouped if there were fewer than five responses from a category.

6.2. Question 7: Do you support the regulatory model for forensic science described in the statutory Code?

Response	Number of Respondents	Percentage of Respondents (%)
Yes	50	83
No	10	17
Total	60	100

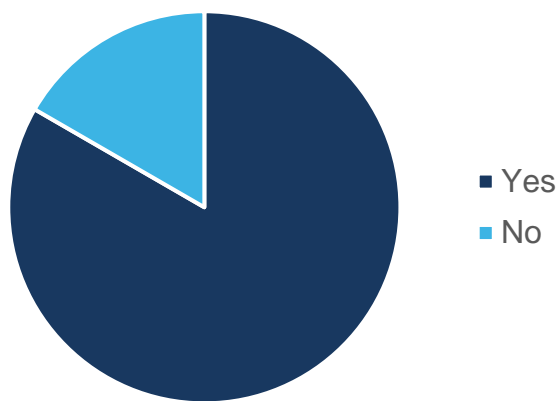


Figure 2: Responses to Question 7: Do you support the regulatory model for forensic science described in the statutory Code?

6.2.1. Sixty (60) out of 110 respondents answered this question. Of these respondents 83% (50) supported the regulatory model for forensic science

6.2.2. The responses were also analysed by organisation type.

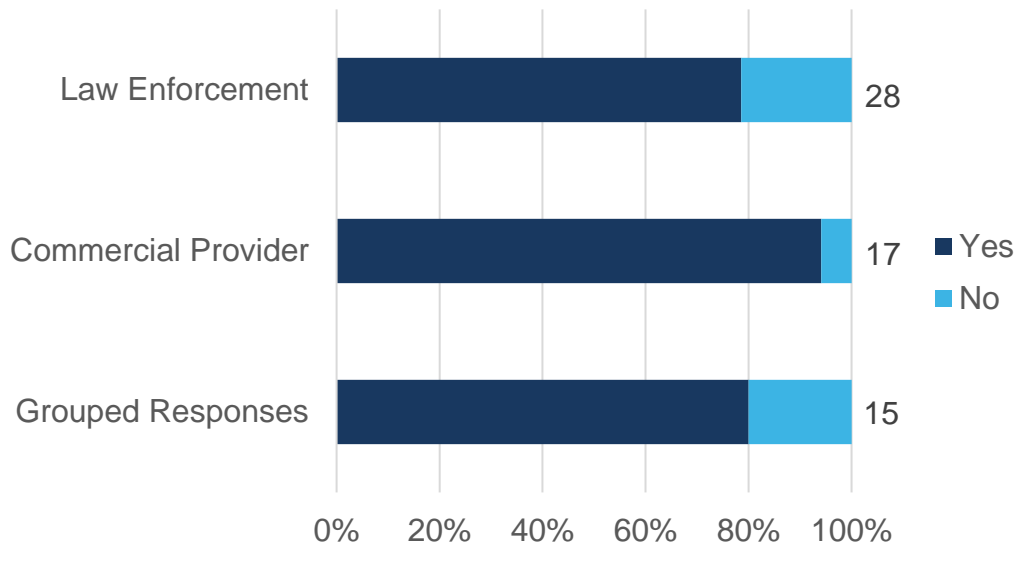


Figure 3: Responses to Question 7: Do you support the regulatory model for forensic science described in the statutory Code, categorised by organisation type.

6.2.3. More than 75% of respondents to this question in law enforcement and commercial provider categories supported the regulatory model described.

7. Questions 8.1 – 8.4: Respondents were asked to what extent they agreed or disagreed with a statement.

7.1. Statement 8.1: Forensic units will comply with the statutory Code of Practice.

Response	Number of Respondents	Percentage of Respondents (%)
Strongly agree	30	34
Agree	34	39
Neither agree nor disagree	14	16
Disagree	8	9
Strongly disagree	2	2
Total	88	100

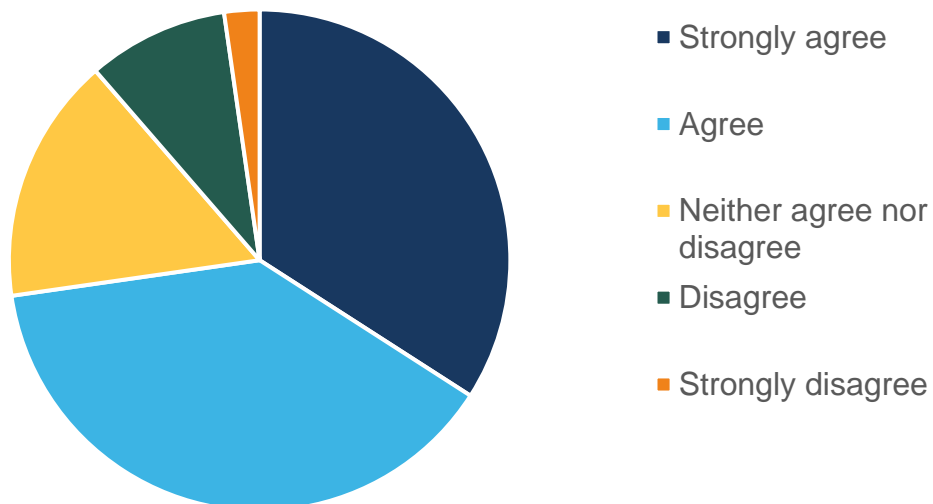


Figure 4: Responses to Statement 8.1: Forensic units will comply with the statutory Code of Practice

7.1.1. Eighty-eight (88) out of 110 responded to this statement. Sixty-four (64) considered forensic units will comply (agree and strongly agree); fourteen (14) neither agreed nor disagreed and ten (10) fed back that forensic units would not comply in their view.

7.1.2. The responses were also analysed by organisation type.

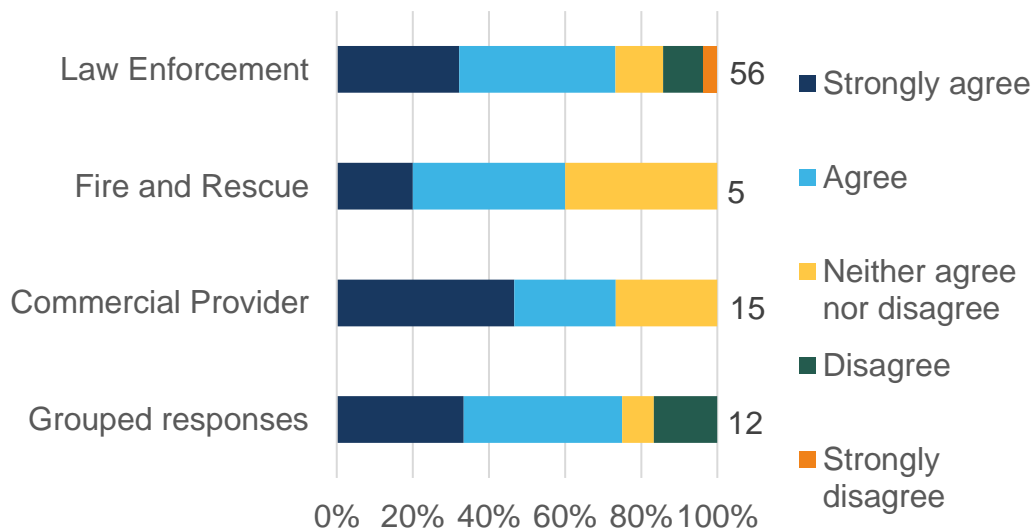


Figure 5: Responses to Statement 8.1: Forensic units will comply with the statutory Code of Practice, categorised by organisation type.

7.1.3. The majority of respondents agreed that forensic units will comply with the statutory Code of Practice. Over 70% of respondents in law enforcement and commercial providers categories agreed or strongly agreed that forensic units will comply.

7.2. Statement 8.2: The statutory Code of Practice sets out suitable requirements to provide the necessary control of processes and minimise the risk of quality failure.

Response	Number of Respondents	Percentage of Respondents (%)
Strongly agree	23	26
Agree	43	50
Neither agree nor disagree	14	16
Disagree	6	7
Strongly disagree	1	1
Total	87	100

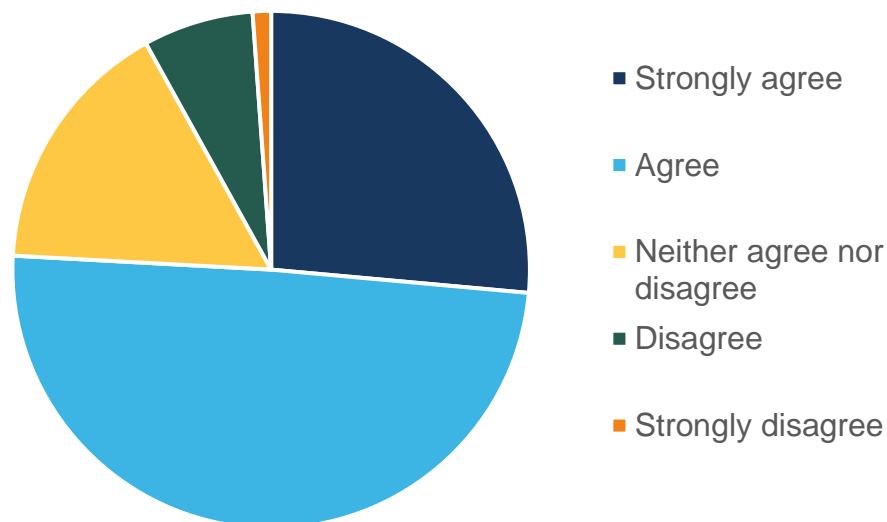


Figure 6: Responses to Statement 8.2: The statutory Code of Practice sets out suitable requirements to provide the necessary control of processes and minimise the risk of quality failure.

7.2.1. Eighty-seven (87) out of 110 responded to this statement. Sixty-six (66) considered the Code of Practice sets out suitable requirements

(strongly agree and agree) and 7 did not. Fourteen (14) respondents neither agreed nor disagreed with the statement.

7.2.2. The responses were also analysed by organisation type.

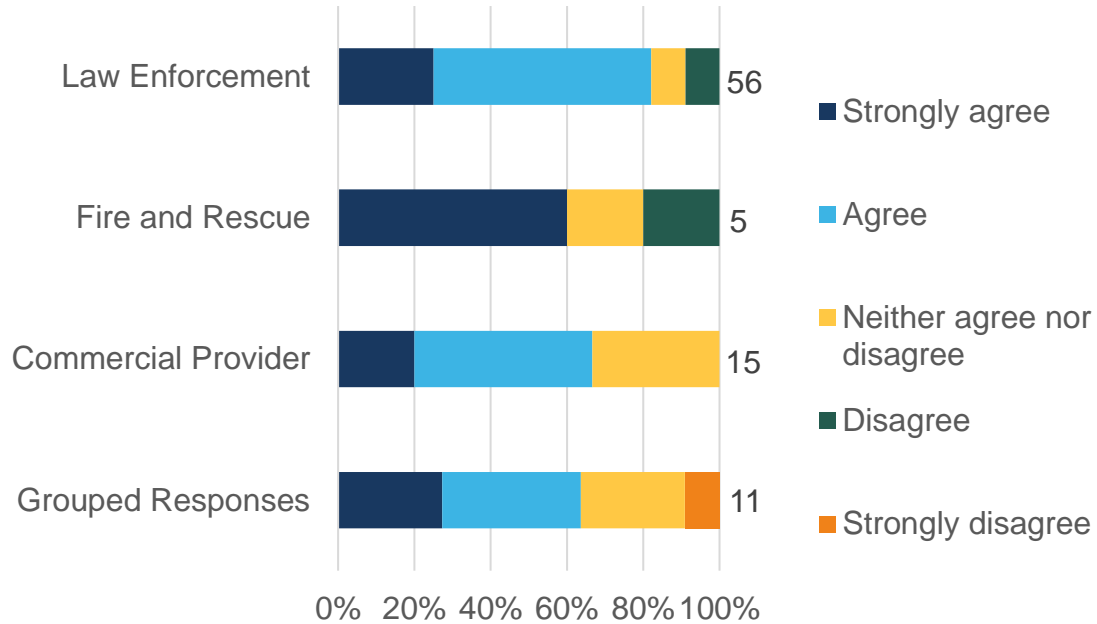


Figure 7: Responses to Statement 8.2: The statutory Code of practice sets out suitable requirements to provide the necessary control of processes and minimise the risk of quality failure, categorised by organisation type.

7.2.3. A greater proportion of respondents from law enforcement agreed that the statutory Code of Practice sets out suitable requirements to provide the necessary control of processes and minimise the risk of quality failure, when compared with the commercial provider category.

7.3. Statement 8.3: The statutory powers of the Forensic Science Regulator will improve the quality of forensic science used in the investigation of crime and the Criminal Justice System.

Response	Number of Respondents	Percentage of Respondents (%)
Strongly agree	27	31
Agree	35	40
Neither agree nor disagree	16	18
Disagree	8	9
Strongly disagree	1	1
Total	87	100

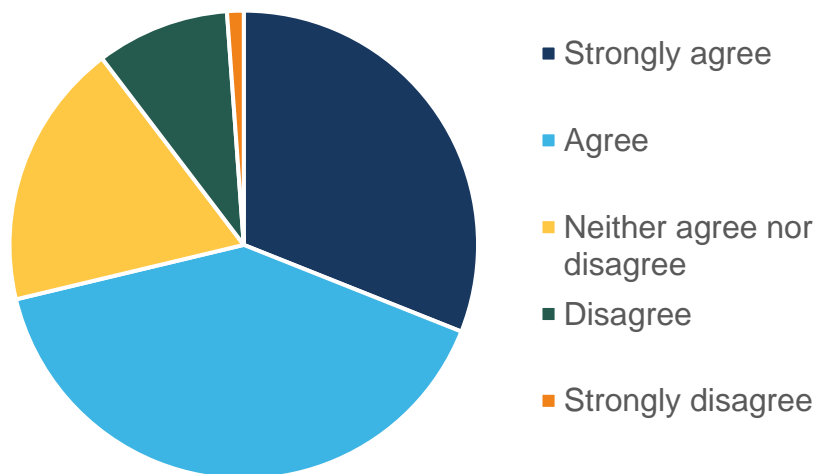


Figure 8: Responses to Statement 8.3: The statutory powers of the Forensic Science Regulator will improve the quality of forensic science used in the investigation of crime and the Criminal Justice System.

7.3.1. Eighty-seven (87) out of 110 responded to this statement. Sixty-two (62) considered the statutory powers of the Forensic Science Regulator will improve the quality of forensic science used in the investigation of crime and the Criminal Justice System (strongly

agree and agree) and nine did not. Sixteen (16) respondents neither agreed nor disagreed with the statement.

7.3.2. The responses were also analysed by organisation type.

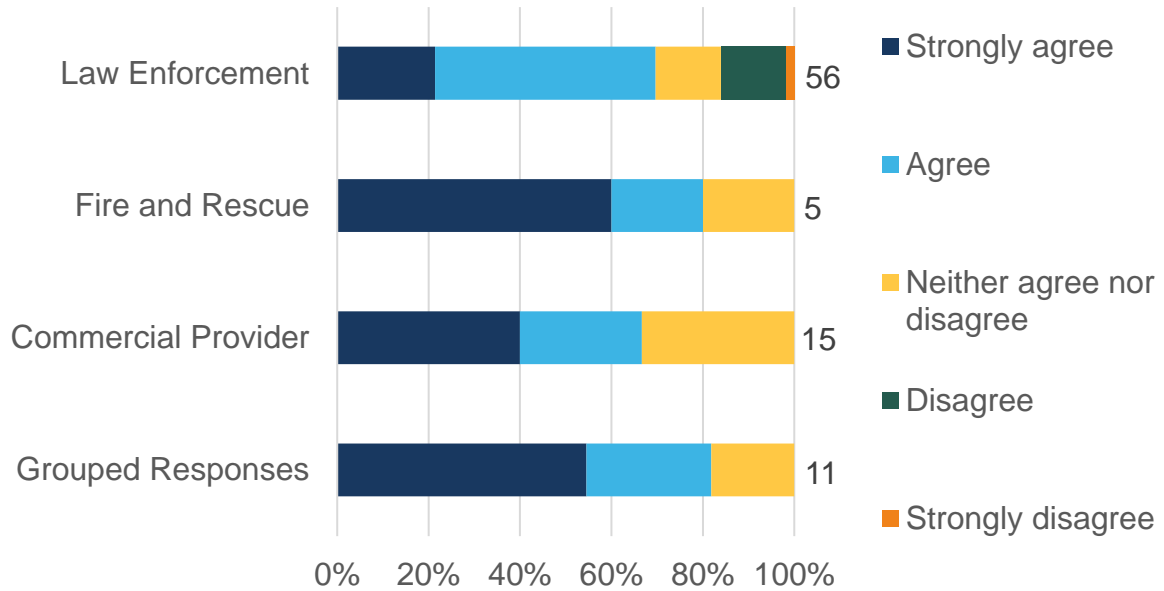


Figure 9: Responses to Statement 8.3: The statutory powers of the Forensic Science Regulator will improve the quality of forensic science used in the investigation of crime and the criminal justice system, categorised by organisation type.

7.4. Statement 8.4: Forensic science regulation supports the provision of reliable evidence to the criminal justice system.

Response	Number of Respondents	Percentage of Respondents (%)
Strongly agree	35	40
Agree	44	51
Neither agree nor disagree	6	7
Disagree	2	2
Strongly disagree	0	0
Total	87	100

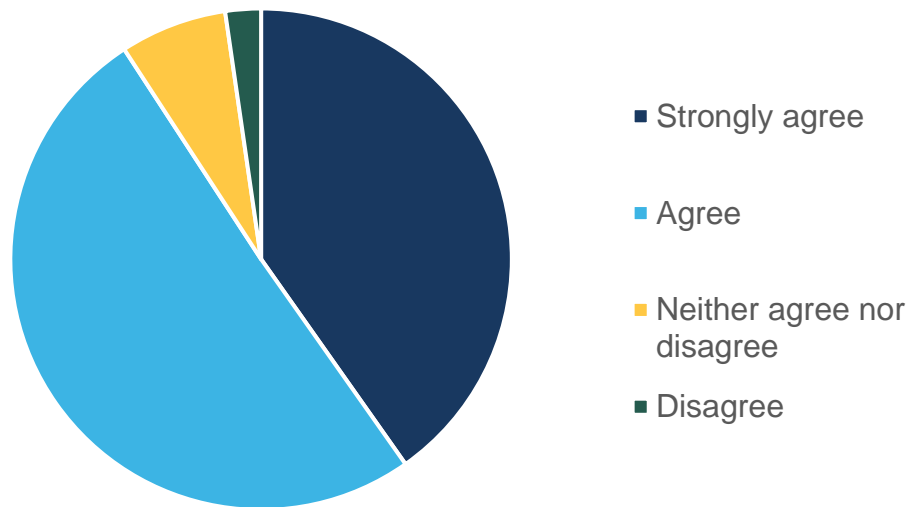


Figure 10: Responses to Statement 8.4: Forensic science regulation supports the provision of reliable evidence to the criminal justice system.

7.4.1. Eighty-seven (87) out of 110 responded to this statement. Seventy-nine (79) considered Forensic science regulation supports the provision of reliable evidence to the criminal justice system (strongly agree and agree) and two did not. Six respondents neither agreed nor disagreed with the statement.

7.4.2. The responses were also analysed by organisation type.

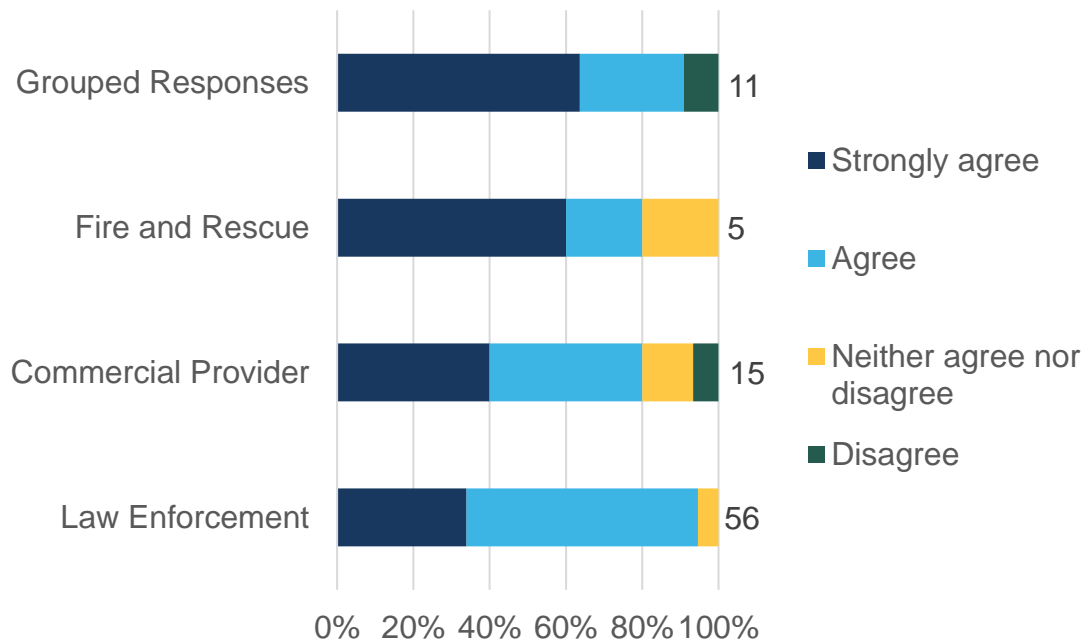


Figure 11: Responses to Statement 8.4: Forensic science regulation supports the provision of reliable evidence to the CJS, categorised by organisation type.

7.4.3. A greater proportion of respondents from law enforcement agreed that forensic science regulation supports the provision of reliable evidence to the criminal justice system, when compared with the commercial provider categories.

7.5. Question 9: If you are a practitioner, do you think the Code is sufficiently clear to allow you to develop the actions necessary to comply?

Response	Number of Respondents	Percentage of Respondents (%)
Yes	24	53
No	21	47
Total	45	100

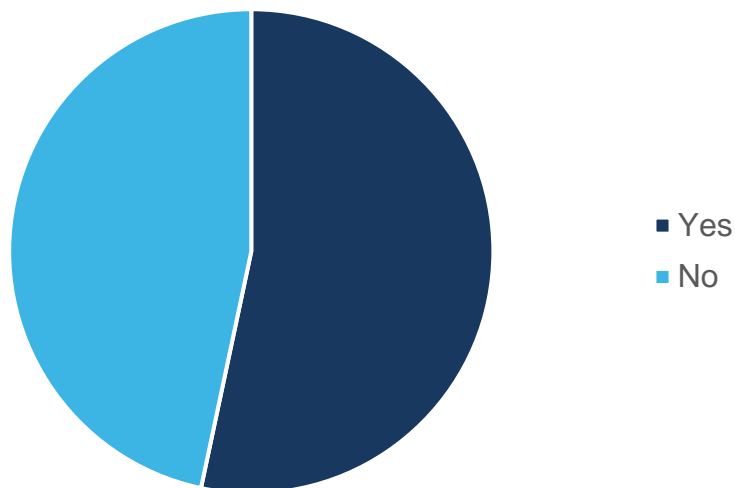


Figure 12: Responses to Question 9: If you are a practitioner, do you think the Code is sufficiently clear to allow you to develop the actions necessary to comply?

7.5.1. Forty-five (45) of 110 responded to this question. This question was directed at forensic practitioners and as there were a small number of forensic practitioners who responded to the consultation this data cannot be used to infer the views of all forensic practitioners. Twenty-four (24) respondents thought the Code to be sufficiently clear to allow them to develop the actions necessary to comply while twenty-one (21) did not. Amongst the 'no' responses to this question, there

was little detail of where clarity was insufficient. Where detail was given, the Regulator has endeavoured to provide clarification.

7.5.2. The responses were not analysed by organisation type, due to the small number of responses and the fact that responses were generally corporate organisational submissions, not practitioner responses.

8. Questions 10-13: Posed open questions to respondents covering clarity of the Code, risks and challenges with the Code as well as admissibility provisions.

8.1.1. Sixty-eight (68) out of 110 respondents answered these questions. The comments submitted have been collated according to themes and discussed below. The Regulator has responded to each of these in turn and outlined where this has been addressed where possible.

8.2. Clarity of the Code and its structure

Consultation comments

8.2.1. Respondents commented on the general structure, length and clarity of the Code. Some comments were received on the length of the document and the risks of missing something important as a consequence.

“The document is very large and unwieldy to review and digest comprehensively and therefore means many practitioners will likely just read the requirements of the relevant FSAs for their discipline, this could lead to missing important data from other FSAs or the codes.”

8.2.2. It was commented that it could be clearer in the Code which forensic science activities required accreditation and by when. It was also noted that there was variation in the level of detail included for each FSA. Clarification was also sought on which FSAs would apply

when an activity was covered by multiple FSAs, particularly at scenes of incidents.

“Some clarification may be useful where a discipline... potentially uses multiple FSAs, especially where some have a compliance requirement and some do not.”

- 8.2.3. Some respondents commented that it was difficult to have a “one size fits all” Code, particularly one that fully reflects the differences between, for example, laboratory-based activities and scene-based activities. Some respondents commented that the Code did not reflect the fact that often work could be carried out remotely. It was also raised that different types of disciplines have different regulatory needs and that this should be reflected in the Code.

“Language seems to be geared more to wet forensic activities and less to digital type activities.”

- 8.2.4. There were mixed responses on the level of prescriptiveness that the Code should contain. Some respondents commented that the Code was too prescriptive and did not consider the reality of how forensic science is carried out, particularly at crime scenes. This meant the Code did not leave room for the professional judgement and expertise of forensic scientists. However, other respondents considered that there were areas where multiple interpretations of requirements were possible and that the Code would benefit from being more prescriptive.

FSR response

- 8.2.5. It is a requirement in the Act that FSAs had to be specified in the Code. In addition, the appendices to version seven of the Codes of Practice and Conduct were included in the statutory Code and can be found in the FSA specific requirements section. Thus, the Code is much longer than the non-statutory Codes of Practice and Conduct. The statutory Code incorporates several significant additions such as a section on legal position of the Code, the addition

of a section on definitions of FSAs and consolidation of FSA specific requirements from a number of guidance documents into the Code.

8.2.6. A table has been added to the final version of the Code listing all FSAs and with an indication of whether compliance with this version of the Code is required. This should make it clearer what FSAs require accreditation.

8.2.7. There is a balance to be struck in the level of prescriptiveness in the Code with some areas needing detailed specification of requirements and others, such as incident scene examination, where there is an emphasis on interpretation and professional judgement.

8.3. Timelines

Consultation comments

8.3.1. Meeting the timelines was raised as a major challenge in the responses. It was commented that a number of organisations would not achieve compliance in the given timescales, particularly for FSAs which were infrequently carried out. Some comments suggested that a staged approach to achieving compliance with the Code and meeting the accreditation requirements could be considered. Clarification was also sought on how the transitional arrangements would operate.

FSR response

8.3.2. The Regulator has given careful consideration to the maturity of the regulatory framework for each FSA and in some instances, such as fire scene examination and collision investigation, has decided to not make a requirement for compliance with the first issue of the Code. This will allow for further work to develop a meaningful and robust regulatory framework so that such FSAs can be made subject to the next version of the Code.

8.3.3. The Regulator has engaged with key stakeholders including the United Kingdom Accreditation Service (UKAS) and has changed the

arrangements for a transition for organisations who are compliant with the non-statutory Codes of Practice and Conduct (Issue 7) to the statutory Code. Instead of the statutory Code coming into force shortly after it is approved by parliament there will be a period of around six months between the Code being approved and it coming into force to allow organisations to transition to the Code. This will allow their staff to make a declaration of compliance as required by the Code from the point the Code comes into force. This will make for a simpler transition process to the statutory Code.

8.4. Costs and resource implications

Consultation comments

- 8.4.1. Respondents raised concerns about the additional cost and resourcing required to be compliant with the Code, particularly regarding the cost of accreditation. There were concerns that increased regulatory requirements would have a negative impact on the work they are able to carry out and the consequent effect on the Criminal Justice System (CJS).

“The fact that the Code is applicable to all undertaking forensic activities, including public and private sector is good. Though it may reduce the availability for some forensic activities carried out by businesses in the private sector due to costs associated with accreditation.”

- 8.4.2. Respondents raised that there would be a reduction in the number of scenes or exhibits that could be examined and that this could lead to less forensic science input to “lower level” crimes. The additional costs would lead to a reduced number of providers offering services or that some providers would reduce the scope of their FSA provision as a result.

“Another challenge is it being viable for Forensic Companies to invest in an area that is required to be compliant where

there is no commercial demand - for example drugs scenes (we may see 1 a year).”

8.4.3. There were concerns that this could lead to smaller forensic units or sole practitioners ceasing to operate completely.

8.4.4. Concerns were raised that the impact of allocating money and resource to accreditation would have a negative impact on productivity and hinder research and development.

8.4.5. Respondents noted that it will be difficult to secure an increase in resource to meet requirements, and that it was difficult to recruit suitably skilled staff.

“We fully accept that there are costs involved in delivering accreditation and achieving full compliance with the requirements of the Codes. We also fully accept that the cost of a quality failure to the criminal justice system cannot be underestimated. However, it is inevitably the case that this will require a significant increase in resources which is notoriously difficult to achieve.”

8.4.6. Small and micro providers were particularly concerned about this, as they considered there was competition for these staff and larger organisations could provide more competitive salaries.

“Recruitment and retention of SMEs is proving more and more challenging due to the finite pool of suitable resource, constantly growing demand and competitive/higher salaries offered by the private market.”

8.4.7. Some respondents queried if additional funding would be made available towards accreditation.

FSR response

8.4.8. There is a cost to meeting the standards set by the Regulator and this was acknowledged when the legislation to put forensic science regulation on a statutory footing was considered by Parliament. Equally there are human and reputational costs to the CJS where

there are quality failures in forensic science. The Regulator is fully aware and appreciates the impact of establishing an effective quality management system and will be working closely with law enforcement, commercial and criminal justice organisations to ensure that forensic science regulation is meaningful and efficient in minimising the risks to criminal investigations and proceedings.

- 8.4.9. The call for the introduction of statutory regulation of forensic science was in large part based on a lack of compliance with the non-statutory Codes of Practice and Conduct and the failure to meet deadlines set by the non-statutory Regulator(s). For example, the deadline for achieving accreditation for digital forensic examinations was set at October 2017 and five years later barely half of organisations providing digital forensic services had achieved the appropriate accreditation required by the Codes of Practice and Conduct.

8.5. Culture and leadership

Consultation comments

- 8.5.1. It was noted by respondents that changing culture within teams would be a significant challenge to achieving compliance with the Code, particularly in some areas such as digital forensics and incident scene examination. Compliance with the Code will require the support of the leadership within organisations. Some considered that this support would be dependent on the experience and level of engagement from senior leaders which would vary between organisations.

FSR response

- 8.5.2. The Regulator acknowledges that the introduction of a statutory basis for forensic science regulation may require significant change and will need leadership commitment and oversight. The Regulator has introduced the role of Senior Accountable Individual (SAI) in the Code. The SAI shall be accountable for the strategic leadership of

the forensic unit's compliance with this Code and be accountable for risks related to any FSA undertaken by, or under the control of, the forensic unit from the date the Code comes into force. There should be particular focus on monitoring and mitigation of the risk of quality failures which could adversely affect an investigation or impede or prejudice the course of justice in any proceedings.

8.6. Accreditation and compliance

Consultation comments

8.6.1. Comments were received on the accreditation process. Concerns were raised that there was only one accreditation body and the resulting impacts on UKAS and the CJS.

8.6.2. Respondents were concerned that UKAS would not have the capacity or availability to deal with an increased number of organisations seeking accreditation within the timescales involved. There could also be a lack of consistency between assessors.

“Capacity, availability and suitability of UKAS resources.”

8.6.3. Concerns were raised that organisations could not become accredited within the given timescales and so would withdraw from certain areas which could impact the CJS.

FSR response

8.6.4. UKAS is the UK national accreditation body and the Regulator recognises that the Department for Business, Energy and Industrial Strategy take a position on behalf of Government that there will be a single National Accreditation Body for the UK. The Regulator is working closely with UKAS to understand the challenges of increasing capacity to deal with the increased demand for assessments and encouraging a coordinated approach between the law enforcement and commercial sectors such that Technical Assessor capacity can be increased and that UKAS can

plan with confidence that the Technical Assessor resource will be used efficiently and effectively.

8.7. Unintended impact on the administration of justice

Consultation comments

- 8.7.1. The role and position of the CPS was seen as critical in ensuring that any challenges to admissibility were dealt with fairly and effectively. Some respondents stated that it was likely that there would be inconsistencies in how non-compliance was dealt with across the CJS.
- 8.7.2. Some respondents expressed concerns on the level of understanding of the Code by those working in the CJS. There were concerns that reasons for non-compliance would not be understood or that the actions taken to mitigate risk (such as a robust quality management system) would not be considered. There were several calls for increasing the knowledge and understanding of all those in the CJS as to the basis for forensic science regulation and how a declaration of non-compliance with the supporting information required by the Code would be dealt with. Some respondents expressed the view that there was a risk of evidence being inadmissible due to non-compliance and cases being dismissed on that basis.

“There is a risk of evidence being deemed inadmissible (by both the CPS and the defence) before being presented to the court based on technicalities alone due to a widespread lack of awareness and misunderstanding of the Codes and how they are applied to the CJS. This could be mitigated by specific training and input to prosecutors and the CJS on the exceptional circumstances where applying professional judgement is justified and documented and positively supports investigations rather than undermining them.”

- 8.7.3. There were concerns raised that the defence would be disproportionately affected by the introduction of the Code, as legal teams commissioned by the defendant would more often rely on commissioning work from smaller organisations, who may find it more difficult to be fully compliant with the Code.
- 8.7.4. Respondents commented that the admissibility provisions would lead to forensic science evidence being challenged. There was a general theme that the application of the admissibility provisions would be unpredictable but the admissibility of the Code and the statutory basis for forensic science regulation would bring greater scrutiny and challenge to forensic science evidence.
- 8.7.5. Some respondents were concerned that there was the potential for more court time to be spent on regulatory challenges.
- 8.7.6. Concerns were raised regarding the impact the introduction of the statutory Code may have on conviction rates, if organisations did not achieve accreditation by the effective date, possibly leading to the dismissal of cases. Respondents commented that the CPS, the judiciary and defence counsels would need to have a good understanding of the Code and its operation to ensure evidence was being treated correctly and the impact of non-compliance with the Code was understood.

FSR response

- 8.7.7. The Regulator is working closely with the Ministry of Justice to understand the risks of non-compliance and the impact this could have where there are challenges to the admissibility of forensic science evidence based on non-compliance with the Code.
- 8.7.8. The overriding purpose of forensic science regulation is to ensure that accurate and reliable forensic science evidence is used in criminal investigation and presented to the courts. Support for forensic science regulation in achieving this purpose was generally strong in the consultation responses. Moreover, when respondents were asked if they agreed with the statement, “The statutory powers

of the Forensic Science Regulator will improve the quality of forensic science used in the investigation of crime and the Criminal Justice System.” 71% of those who answered the question agreed with the statement (either “Agree” or “Strongly Agree”). A further breakdown of this data can be seen in section 3.

8.7.9. The Regulator recognises that the risks associated with an admissibility challenge under the provisions of the Act are most likely where a declaration of non-compliance with the Code is made. The Regulator has made provision in the Code to ensure that the courts will be able to understand the risks and the basis on which the forensic science evidence is put forward.

8.7.10. Where a declaration of non-compliance with the Code is made in criminal cases the Code requires the steps taken to mitigate the risks associated with non-compliance, this will address the following issues.

- a. The competence of the practitioners involved in the work.
- b. The validity of the method employed.
- c. The documentation of the method employed.
- d. The suitability of the equipment employed (including the approach to maintenance and calibration).
- e. The suitability of the environment in which the work is undertaken.

8.7.11. The Regulator has separately initiated work to understand the levels of non-compliance across all FSAs that are subject to the Code. The Regulator will work with CJS partners to ensure that information about compliance is available.

8.7.12. In terms of the impact on defence work, the FSA of case work review is not subject to this version of the Code.

8.8. Longer term impacts on forensic units and the forensic science community

Consultation comments

- 8.8.1. Some respondents noted that if non-compliance notices or sanctions were issued against an organisation, this could lead to reputational damage. Respondents from police forces were also concerned that this may have a negative impact on public trust.

“Reputational damage and dissolution of public trust in the event of a non-compliance/sanctions being made against a force. Senior leaders need to support the forensic units to achieve compliance to the Code and minimise this risk.”

- 8.8.2. Concerns were raised that the increased requirements to comply with the Code could lead to a reduced capacity to undertake research and development activities risking delaying development of new techniques that could solve emerging or future issues.

“In turn it is imperative the regulatory model provides sustainability to the delivery of forensic science and does not stifle productivity, research and development or the ability to introduce / use forensic evidence in criminal investigations.”

FSR response

- 8.8.3. The Regulator will work with organisations at all stages of an investigation into a quality issue. The Regulator has set out that process for investigation and enforcement will be proportionate and based on an escalation process with the full enforcement powers under the Act being used in general as a last resort

- 8.8.4. Decisions on allocation of resource, such as for research and development activities, are operational issues beyond the Regulator’s remit and for organisations to manage.

9. Questions 14-24 and 25-84 asked for comments on specific parts of the Code and FSAs respectively, as outlined in Annex A.

9.1.1. Comments on the general provisions were either about clarity or applicability and have been captured in the previous themes. Other amendments were grammatical.

9.1.2. Comments on specific FSAs have been grouped under similar FSA categories. The Regulator's response to the comments and an outline of the changes made to the Code are described below. In respect of changes to the wording of the Code, the draft Code laid before Parliament should be taken as the definitive position of the Regulator.

9.2. Scene Examination

Consultation comment

9.2.1. Respondents queried which FSA would apply when an activity was being carried out at a scene.

FSR response

9.2.2. The Incident Scene Examination FSA has been amended to clarify the requirements around forensic science activities being performed at scenes. The Incident Scene Examination FSA does not include detail on all activities that could be performed at scenes, so it is expected that where a specific activity, such as human body fluid distribution, is performed at a scene the practitioner will also refer to the specific FSA for that activity.

Consultation comment

9.2.3. Some respondents commented that photography has generally been overlooked from the scene examination activities section of the Code.

FSR response

9.2.4. In response to the observation that photography appeared to have been overlooked in a scene activity, the Regulator highlights that photography forms an integral part of a number of FSAs and is captured in those FSAs, for example FSA - MTP 100 - Friction ridge detail: visualisation and enhancement, which could be performed in a laboratory, or at a scene.

Consultation comments

9.2.5. The following were areas where respondents commented that further clarity was required, particularly around whether these were included in the scope of the Code:

- Rail investigation (noting that this may feed into a criminal investigation at a later date),
- Vehicles as weapons,
- Explosions as a result of a fire,
- Fingerprinting of cadavers, and
- Disaster victim identification.

FSR response

9.2.6. These sections have been reworded to clarify and Examination of Incidents Involving Vehicles has been merged with Examination and Analysis of Vehicle Components to create Collision Investigation.

9.3. Biology

Consultation comments

9.3.1. A number of respondents commented that the requirement for DNA elimination samples to be taken to check for contamination by staff was not always possible due to current contracts of employment.

FSR response

- 9.3.2. This is not a new requirement and will remain as a requirement due to the importance of managing contamination risks. Minor changes to clarify language where necessary have been made. There have not been significant changes to the biology FSAs.

9.4. Drugs, Toxicology and Noxious Substances

Consultation comments

- 9.4.1. There were comments on a broad range of issues related to the quality standards and requirements for the FSA “The Analysis and Reporting of Forensic Specimens for s5A of the Road Traffic Act 1988”.

FSR response

- 9.4.2. The Regulator had previously received detailed comments from the Association of Forensic Science Providers and is currently dealing with a significant quality issue in drugs driving analysis. Rather than make changes to the Code at this point the Regulator wishes to undertake a fundamental review of the application of quality standards in drugs driving analysis and will issue guidance with a view to making changes in the regulatory approach to address the concerns raised with the Regulator.

9.5. Marks, Traces and Patterns

Consultation comments

- 9.5.1. There were a number of comments where respondents considered that “low level” activities should not require accreditation and that in some cases work would stop if accreditation was required.

FSR response

- 9.5.2. It is important that this work is carried out correctly and a pragmatic approach has been taken in some instances to allow such activities

to be carried out without accreditation, but with adherence to frameworks currently under consideration.

9.5.3. The Regulator has considered the comments and has made the following changes:

- Footwear coding activities will be allowed under a framework to be developed by the NPCC lead for footwear as an alternative to accreditation to ISO/IEC 17025.
- The wording around screening has been updated to clarify that screening does not include cursory or preliminary selection of footwear for examination including premises searches.

Consultation comments

9.5.4. There were concerns regarding the FSA – Examination, Analysis and Classification of Firearms, Ammunition, and Associated Materials. Some respondents commented that the need for accreditation would create a risk by increasing timelines for examinations to support an application to remand a detainee in custody.

FSR response

9.5.5. To address this, the Code has been amended to allow for urgent legal classification of firearms to be undertaken outside of accreditation in agreement with the Regulator. This will include a requirement that any legal classification of firearm is submitted to an accredited provider within 72 hours.

Consultation comments

9.5.6. The level of note taking in complex or contested fingerprint examinations was raised with reference to the Court of Appeal judgement in R v Smith [2011] EWCA Crim 1296. The judgement stated that, “The presentation to the jury must be done in such a way that enables the jury to determine the disputed issues.” The Court of Appeal made a direction to the Forensic Science Regulator to address this.

FSR response

- 9.5.7. The Regulator acknowledges that the requirements in the consultation draft of the Code were not detailed enough to deal with the situation where limited or no notes were made at the time the examination was carried out. The Regulator has expanded the requirements for detailed notes to be made to deal with the situation where limited or no notes were made at the time of the examination and where a re-examination is required.

9.6. Digital

Consultation comments

- 9.6.1. There were comments on how provisions for certain frontline tools, often called kiosk type capture devices, required accreditation for all locations would be challenging.

FSR response

- 9.6.2. The Regulator reviewed this and as a result the model of accreditation for such devices has been amended, allowing for organisations to “accredit once and deploy many” with a number of FSA specific requirements. By requiring accreditation of at least one deployment, it ensures there is third party scrutiny of how the method is to be used including its validity, which is intended to be a pragmatic approach which still manages risk.

Consultation comments

- 9.6.3. The FSA for Digital Data Analysis was drafted to cover sub-activities which can and are accredited currently. However, it was suggested that the requirements were not specific enough and a number of respondents registered a concern that activities traditionally performed in the intelligence analyst community could be subject to the Code.

FSR response

- 9.6.4. The basis for forensic science regulation and the specification of FSAs is agnostic regarding who performs the activity. Any person who undertakes a FSA would be expected to comply with the Code and make a declaration of compliance or not as required by the Code. The Regulator has reviewed the types of activity and the Digital Data Analysis FSA and moved the analysis sub-activities related to data recovered from a seized device to the FSA on Data Capture and Processing and this FSA has been retitled Data Capture, Processing and Analysis from Digital Storage Devices. The FSA in the consultation covering Digital Data Analysis with some sub-activities removed now has a tighter remit and is retitled Analysis of Communications Network Data to reflect that; this repurposed FSA is not subject to the Code. This FSA also draws in some sub-activities from the FSA on the cell site analysis for geolocation that respondents commented spanned both intelligence analysis and forensic science but are conducted for different purposes. One clear overlap was the processing of call data. It is the basis for cell site analysis but also used for relational intelligence analysis on who called who and when in the investigation and is not a forensic science activity. This repurposed FSA of Analysis of Communications Network Data sets out the key overlaps so they can be excluded.
- 9.6.5. Although the concerns regarding the scope of Cellsite analysis for the geolocation FSA were addressed as set out above, the Regulator is equally concerned that the use of Cellsite analysis and inferring the geolocation of a digital device has expanded outside of the digital forensic units. If maps based on call data or radio frequency surveys are being used to infer a geolocation, regardless of who is performing part or all of the FSA, they are considered to be practitioners for the purposes of the Code.
- 9.6.6. The Analysis of Communications Network Data covers areas which might appear to overlap but are for different purposes and are

outside of the Code. The use of Cellsite analysis for geolocation remains an FSA requiring compliance with the Code including accreditation.

Consultation comments

- 9.6.7. The video FSAs received a large amount of feedback, many were requesting technical changes which were largely accommodated but there was a key issue on the dispensation for using the NPCC Framework for Video Based Evidence; it appeared to trigger more frontline activities to come under accreditation than was intended.

FSR response

- 9.6.8. This was revised to clarify that a non-accreditation route for relatively simple frontline activity was permitted. The requirements under NPCC Framework for Video Based Evidence should control and manage the risk of a quality failure. The Regulator will review the effectiveness of the NPCC Framework once the Code has come into force and it has been operating for a reasonable period.

Consultation comments

- 9.6.9. The audio forensics FSAs in the consultation set out an accreditation requirement for basic processing of audio; respondents challenged why a similar alternative to accreditation that was permitted for video practitioners was not available for audio.

FSR response

- 9.6.10. The NPCC framework for video-based evidence covers forensic audio work, therefore the Regulator agreed to add a similar pathway to the audio FSA. Furthermore, an explicit exclusion was included for the recovery and day-to-day processing of force generated video and audio material (e.g. 999 calls, video interviews, technical surveillance). The higher end audio comparison activity remains outside of the Code for issue one.
- 9.6.11. The tightening of the scope in a number of FSAs and reviewing various concerns meant that it was opportune to explicitly exclude

topics to add clarity. When there was a wider data analysis definition, topics such as internet intelligence and investigations (III) appeared to be in scope. The Regulator has determined III and allied disciplines are not in scope for issue one of the Code.

Consultation comments

- 9.6.12. The Code has been mostly written with data recovery being conducted under the Police and Criminal Evidence Act 1984 (PACE), the Regulator received a number of representations to ask that recovery activities performed under different powers are excluded, including Schedule 7 Terrorism Act 2000, and covert activities.

FSR response

- 9.6.13. After reviewing the practicalities of accreditation for activities performed under different powers, with different purposes, the Regulator included a number of wider exclusions. Such exclusions include screening devices under Schedule 7 Terrorism Act 2000, Schedule 3 Counter Terrorism and Border Security Act 2019 using an off-the-shelf tool and acquisition of data utilising the Crime (Overseas Production Order) Act 2019, and the analysis and processing of that data.
- 9.6.14. There were several responses seeking clarity on covert forensic activities. The Regulator considered this and, decided that covert recovery would be excluded from this first issue of the Code. The exclusion is for recovery only, subsequent processing in any of the FSAs is subject to the requirements set for those individual FSAs. A general exclusion for recovery under the Investigatory Powers Act was also introduced. The Regulator will review the scientific standards and structures that are in place for covert forensic recovery with a view to setting standards where this recovery is used in the investigation of crime or could be used in criminal proceedings in line with the provisions of the FSR Act.

10. Questions 86-87 asked for any other comments on the Code

Consultation comments

- 10.1.1. There was a query relating to the relation between the Code and the Accreditation of Forensic Science Providers 2018.

FSR response

- 10.1.2. The Regulator has reviewed and clarified the standing of the Code in relation to the Accreditation of Forensic Service Providers Regulations 2018. Laboratories specified in regulation 4(2A) of the Accreditation of Forensic Service Providers Regulations 2018, who meet the conditions of those Regulations, are deemed for the purposes of those Regulations accredited for the laboratory activities specified in those Regulations. Subject to section 12(2) of the FSR Act, the investigatory and regulatory functions of the Regulator continue to apply in relation to any forensic science activities carried on by a person accredited under regulation 4 or deemed accredited under regulation 4(2A) of those Regulations.

Consultation comments

- 10.1.3. Some comments queried if particular fields were covered by the Code, including Forensic Archaeology.

FSR response

- 10.1.4. The fields of Forensic Archaeology and Forensic Anthropology are not subject to the requirements of the Code and are not designated forensic science activities in the Code. These areas have developed alternative approaches to setting standards. The non-statutory Regulator(s) have supported this work and these arrangements will need be reviewed now that the role of the Regulator has been put on a statutory basis.

Consultation comments

10.1.5. Comments were received on why the following FSAs did not require accreditation;

- FSA – DTN 104 – Toxicology: alcohol technical calculations;
- FSA – DTN 105 – Examination and analysis relating to the preparation and production of controlled drugs and/or psychoactive substances;
- FSA – DIG 401 – Speech and audio analysis;
- FSA – CDM 100 – Case review; and
- FSA – CDM 200 – Control and management of a forensic database service.

FSR Response

10.1.6. Further work is required on these FSAs to establish the requirements and basis for regulation and they will be subject to future versions of the Code.

10.1.7. The Code also clarifies exclusions for each FSA. The exclusions for FSAs that require accreditation are outlined in **Annex B**.

10.1.8. Other comments have been captured in the applicable sections throughout the document.

11. Conclusions and Next Steps

11.1.1. The Regulator is very grateful to all of the respondents for commenting and taking the time to feed back on the proposed Code.

11.1.2. Comments and responses to the consultation were received from a range of stakeholders, including law enforcement, commercial providers and academia reflecting a broad range of views and perspectives which provided valuable feedback for considering and amending the Code.

- 11.1.3. The Regulator has given due consideration to the comments received in response to the consultation. As a result of the comments significant changes have been made to some FSAs accommodating the concerns that have been raised in consultation responses. Also, some minor changes to grammar and terminology have been made for clarity
- 11.1.4. Overall, the Regulator has focused on making the core areas of forensic science subject to the first version of the Code with the requirement to declare compliance or not. For other areas the Regulator has defined FSA's that are not subject to the first version of the Code to send a clear signal that these are FSAs that will be subject to statutory regulation and future versions of the Code. The Regulator is keen to work with practitioners and stakeholders in these areas to develop a meaningful and robust regulatory framework and to move to a position where any requirements including accreditation will be in place and complied with in advance of a subsequent version of the Code being approved.
- 11.1.5. The finalised draft Code was presented by the Regulator to the Secretary of State as required by the FSR Act on 18th January 2023.

12. Annex A: Full list of consultation questions

About the respondent. Please use this section to tell us about yourself

Q1. Full name

Q2. Job title or capacity in which you are responding to this consultation (for example, member of the public)

Q3. Company name/Organisation (if applicable)

Q4. If you are a representative of a group, please give the name of the group and a summary of the people/organisations that you represent.

Q5. Email address

Q6. Postal address

General questions about the Code and Regulation

Q7. Do you support the regulatory model for forensic science described in the statutory Code? Yes No Please explain your answer.

Q8. To what extent do you agree or disagree with the following statements (Strongly agree; Agree; Neither agree nor disagree; Disagree; Strongly disagree):

- Forensic units will comply with the statutory Code of Practice.
- The statutory Code of Practice sets out suitable requirements to provide the necessary control of processes and minimise the risk of quality failure.
- The statutory powers of the Forensic Science Regulator will improve the quality of forensic science used in the investigation of crime and the Criminal Justice System. Forensic Science Regulation supports the provision of reliable evidence to the CJS

Q9. If you are a practitioner, do you think the Code is sufficiently clear to allow you to develop the actions necessary to comply with the Code?

Q10. Do you have any suggestions on how the Code could be made clearer?

Q11. What do you see as the main challenges in achieving compliance with the Code?

Q12. What risks do you identify in the implementation of the Code and how should these be mitigated or eliminated? The Act sets out at Section 4 that the Code is admissible in proceedings in England and Wales, and a court may take into account a failure by a person to act in accordance with the Code in determining a question in any such proceedings.

Q13. How do you see the admissibility provisions being applied in criminal proceedings?

Specific questions about the content of the Code sections

Do you have any specific comments to make about the text and content of:

Q14. the Introduction?

Q15. Part A – Legal Position?

Q16. Part B – Summary of Requirements?

Q17. Part C – The Code?

Q18. Part D – Standards of Conduct?

Q19. Part E – Standards of Practice, sections 15-20?

Q20. Part E – Standards of Practice, sections 21-26?

Q21. Part E – Standards of Practice, sections 27-33?

Q22. Part E – Standards of Practice, sections 34-39?

Q23. Part F – Infrequently Commissioned Experts?

Q24. Part F– FSA Definitions - General Provisions?

Q25. Section 46: FSA Definition – Incident Scene Examination?

Q26. Section 47: FSA Definition – Forensic Examination of Sexual Offence Complainants?

Q27. Section 48: FSA Definition – Human Biological Material Examination?

Q28. Section 49: FSA Definition – Human Body Fluid Distribution Analysis?

Q29. Section 50: FSA Definition – Human DNA Analysis?

Q30. Section 51: FSA Definition – Human Kinship Analysis?

Q31. Section 52: FSA Definition – Non-Human Biological Examination: Vertebrates?

Q32. Section 53: FSA Definition – Toxicology: Analysis for Drug(s), Alcohol, and/or Noxious Substances?

Q33. Section 54: FSA Definition – Toxicology: Analysis for Drugs and Alcohol under the Road Traffic Act 1988, Transport and Works Act 1992, and Railways and Transport Safety Act 2003?

Q34. Section 55: FSA Definition – Toxicology: Analysis for Drugs in Relation to s5A of the Road Traffic Act 1988?

Q35. Section 56: FSA Definition – Analysis to Identify and Quantify Drugs and/or Associated Materials?

Q36. Section 57: FSA Definition – Friction Ridge Detail: Visualisation and Enhancement?

Q37. Section 58: FSA Definition – Friction Ridge Detail: Comparison?

Q38. Section 59: FSA Definition – Footwear: Coding and Scene Linking?

Q39. Section 60: FSA Definition – Footwear: Screening?

Q40. Section 61: FSA Definition – Footwear Mark Comparisons?

Q41. Section 62: FSA Definition – Marks Visualisation and Enhancement?

Q42. Section 63: FSA Definition – Marks Comparison?

Q43. Section 64: FSA Definition – Damage and Physical Fit?

Q44. Section 65: FSA Definition – Taggant Analysis?

Q45. Section 66: FSA Definition – Analysis of Corrosives and/or Noxious Substances?

Q46. Section 67: FSA Definition – Analysis of Residues of Lubricants used in Sexual Offences, Including Oils, Greases, and Lubricants?

Q47. Section 68: FSA Definition – Analysis of Ignitable Liquids and their Residues?

Q48. Section 69: FSA Definition – Examination and Analysis of Particulate Trace Materials?

Q49. Section 70: FSA Definition – Examination and Analysis of Gunshot Residue (GSR)?

Q50. Section 71: FSA Definition – Examination and Classification of Firearms, Ammunition, and Associated Materials?

Q51. Section 72: FSA Definition – Firearms: Ballistics?

Q52. Section 73: FSA Definition – Examination and Analysis of Vehicle Components?

Q53. Section 74: FSA Definition – Examination and Analysis of Hazardous Chemical and Biological Agents and Associated Materials?

Q54. Section 75: FSA Definition – Examination and Analysis of Explosives, Explosives Precursors, and Explosive Residues?

Q55. Section 76: FSA Definition – Data Capture and Processing from Digital Storage Devices?

Q56. Section 77: FSA Definition – Digital Data Analysis?

Q57. Section 78: FSA Definition – Geolocation Analysis?

Q58. Section 79: FSA Definition – Recovery and Processing of Footage from CCTV/VSS?

Q59. Section 80: FSA Definition – Specialist Video Multimedia, Recovery, Processing, and Analysis?

Q60. Section 81: FSA Definition – Technical Audio Operations?

Q61. Section 82: FSA Definition – Document Handwriting?

Q62. Section 83: FSA Definition – Document Authenticity and Origin?

Q63. Section 84: FSA Definition – Examination of Incidents Involving Vehicles?

Q64. Section 85: FSA Definition – Examination of Fire Scenes?

Q65. Section 86: FSA Definition – Examination to Establish the Origin and Cause of an Explosion?

- Q66. Section 87: FSA Definition – Forensic Examination of Detainees?
- Q67. Section 88: FSA Definition – Forensic Examination of Deceased Individuals?
- Q68. Section 89: FSA Definition – Non-Human Biological Examination: Plants, Microbes, and Invertebrates?
- Q69. Section 90: FSA Definition – Toxicology: Alcohol Technical Calculations?
- Q70. Section 91: FSA Definition – Examination and Analysis relating to the Preparation and Production of Drugs and/or Psychoactive Substances?
- Q71. Section 92: FSA Definition – Examination and Analysis of Radioactive Material?
- Q72. Section 93: FSA Definition – Examination and Analysis of Suspected Explosive Devices and Associated Material?
- Q73. Section 94: FSA Definition – Network Capture and Analysis?
- Q74. Section 95: FSA Definition – Speech and Audio Analysis?
- Q75. Section 96: FSA Definition – Case Review?
- Q76. Section 97: FSA Definition – Control and Management of a Forensic Database Service?
- Q77. Section 98: Sexual Assault Examination: Requirements for the Assessment, Collection and Recording of Forensic Science Related Evidence?
- Q78. Section 99: DNA Analysis?
- Q79. Section 100: Blood Pattern Analysis?
- Q80. Section 101: Friction Ridge Detail: Visualisation?
- Q81. Section 102: Friction Ridge Detail: Comparison?
- Q82. Section 103: The Analysis and Reporting of Forensic Specimens for s5A of the Road Traffic Act 1988?
- Q83. Section 104: Digital Forensics?
- Q84. Section 105: Video Analysis?
- Q85. Section 106: Geolocation - Cell Site Analysis?

Q86. Part F – General Information?

Q87. Do you have any further comments to make?

13. **Annex B: List of Exclusions from this version of the Code.**

The Code excludes certain activity, often as there are other regulatory controls or they are not scientific in nature, not mature scientific disciplines or require further consideration of the compliance mechanism. Below is a list of exclusions grouped by a general category, and then by the FSA categories.

Exclusion category	Exclusions from FSAs to which the Code applies
General	<ul style="list-style-type: none"> • Any method which is based on the use of non-human animals (e.g. dogs) shall not be considered to form any part of an FSA. • Where any statute provides the Secretary of State the power to approve any equipment, or method, for use in circumstances which might fall within the scope of s11 of the Act, the following shall not be part of any FSA: <ul style="list-style-type: none"> a) The process by which the Secretary of State determines whether to grant approval. b) The process by which the Secretary of State determines whether to continue, suspend, or withdraw an existing approval. c) Any work undertaken by, on behalf of, or commissioned by the Secretary of State to assist in the process of granting, suspending, continuing or withdrawing an approval. • HOC 15/2012 contains provisions about the testing of items/exhibits suspected of being drugs controlled under the Misuse of Drugs Act 1971. These provisions incorporate the use of kits approved by, or on behalf of, the Secretary of State. The following shall not be part of any FSA: <ul style="list-style-type: none"> a) The process by which the Secretary of State, or persons acting on behalf of the Secretary of State, determines whether to grant approval. b) The process by which the Secretary of State, or persons acting on behalf of the Secretary of State, determines whether to continue, suspend or withdraw an existing approval. c) Any work undertaken by, on behalf of, or commissioned by the Secretary of State (or persons acting on behalf of the Secretary of State) to assist in the process of granting, suspending, continuing or withdrawing an approval.

Exclusion category	Exclusions from FSAs to which the Code applies
General	<ul style="list-style-type: none"> • All covert policing recovery activities are excluded from this version of the Code. Where the recovered item/material is subject to a subsequent forensic examination as part of an FSA subject to the Code, the requirements of the Code apply. However, the Regulator will review the scientific standards and structures that are in place for covert forensic recovery with a view to setting standards where this recovery is used in the investigation of crime or could be used in criminal proceedings in line with the provisions of the FSR Act.
Incident examination	<ul style="list-style-type: none"> • Evidence collection that does not include a wider assessment or interpretation of the scene, e.g. the recovery of identification documents from a location by a police officer or large-scale searching activities by specialist search teams. • Activity undertaken to protect/preserve items/exhibits from imminent alteration or destruction by persons not specifically commissioned to carry out an FSA as specified in the Code, e.g. first responders.
Biology	<ul style="list-style-type: none"> • An examination to determine whether someone is fit to be interviewed and/or examined. • The activities of an individual other than the practitioner, who is taking steps to protect/preserve or collect evidence. • Clinical assessment, medical diagnosis, prescribing treatments/medicines and the provision of medical care, including treatment of injuries (general and specific, such as injuries sustained by female genital mutilation). • Examination of a deceased person. • Analysis to determine geographical provenance of non-human vertebrate material. • Bone and teeth examination and analysis to determine whether material is human or non-human. • Disaster victim identification (natural disasters). • Civil paternity. • Manufacture and performance of taggants. • Locating and recovery of taggants.

Exclusion category	Exclusions from FSAs to which the Code applies
Drugs, toxicology and noxious materials	<ul style="list-style-type: none"> • Analysis of breath for alcohol for road traffic law purposes by any of the following: <ul style="list-style-type: none"> • A type-approved roadside screening device. • A type-approved instrument for evidential purposes. • Analysis of any bodily material for any drugs (other than alcohol) for road traffic law and transportation safety purposes, as long as the results shall not be used as the primary evidence of the concentration of any drug found in the CJS, by any of the following: <ul style="list-style-type: none"> • A type-approved roadside screening device. • Presumptive drug tests at roadside. • Provision of any evidence in relation to whether a particular compound (or group or class of compounds) is a psychoactive substance in relation to the provisions of the Psychoactive Substances Act 2016. • Testing of a suspect by a police officer using type-approved roadside equipment. • Testing of a suspect by a police officer using type-approved evidential breath alcohol equipment. • Testing of any item, or part thereof, to determine whether it is comprised of or contains a relevant substance: <ul style="list-style-type: none"> • With a Home Office-approved kit under the processes permitted by a HOC. • With a Home Office approved kit under the processes set out in the Evidential Drug Identification Testing (EDIT) programme. • Identification of cannabis under any process permitted by a HOC or the EDIT Programme. • Provision of any evidence in relation to the psychoactivity of a particular compound (or group or class of compounds) in relation to the provisions of the Psychoactive Substances Act 2016. • Non-contact screening of items for drugs through packaging or at a port. • Presumptive drug test for which (FSA-DTN 103) is subsequently carried out by a forensic unit that holds relevant accreditation. • Drugs value estimation. • Provision of opinions relating to absorption or interpretation of what may be remaining after application to human skin. • Determination or measure of how flammable, combustible or ignitable a liquid or residue is.

Exclusion category	Exclusions from FSAs to which the Code applies
Drugs, toxicology and noxious materials	<ul style="list-style-type: none"> • Interpretation of use of the ignitable liquid/residue in relation to fire investigation, including (but not limited to) assessment of potential harm. • Clinical or diagnostic testing. • Consideration of the potential method of production and/or the geographical origin (i.e. national geographical location or production facility) of any relevant material, under (FSA-DTN 500). • Screening of items/persons for explosives residue at a port.
Marks, traces and pattern	<ul style="list-style-type: none"> • Examination of penetrating wounds. • Examination of bite marks and odontology. • Consideration of the authorship of handwriting or signatures based on personal knowledge rather than scientific evaluation. • Consideration of personality traits of an individual by reference to features of their handwriting. • Consideration of the authorship of handwriting or signatures based on an assessment of personality traits. • Consideration of the authorship of any electronically generated handwriting or signature which is not the result of human movement. • Any consideration of whether any of the following is true based on personal knowledge rather than scientific evaluation: <ul style="list-style-type: none"> a) Whether a document is genuine. b) Whether a document has been modified after its creation or any relevant significant event.
Digital	<ul style="list-style-type: none"> • Screening of media for the purpose of offender management, i.e. post sentencing monitoring under a supervision order. • Screening devices prior to seizure of a device to form part of a criminal investigation at ports and other locations under Schedule 7 Terrorism Act 2000, Schedule 3 Counter Terrorism and Border Security Act 2019 using an off-the-shelf tool, provided continuity information is available (e.g. which tools were used prior to seizure). • Tachograph analysis. • Recording and transfer of emergency calls (e.g. 112, 999) using a controlled system.

Exclusion category	Exclusions from FSAs to which the Code applies
Digital	<ul style="list-style-type: none"> • Routine extraction of force-generated audio-video material from force-controlled systems, and the editing and redaction of this material. Examples of this material include, but are not limited to, drones, body worn video, emergency calls (e.g. 112, 999) and video recorded interviews. • Upload and download of audio-visual media from digital asset management systems. • Data recovery via Internet Intelligence & Investigations (III), Open Source Intelligence (OSINT), Signals Intelligence (SIGINT), Communications Intelligence (COMMINT) and Geospatial Intelligence (GEOINT). • Activity relating to the INTERPOL database(s). • Acquisition of communications data performed in accordance with the Investigatory Powers Act 2016 and related codes of practice. • Acquisition of data utilising the Crime (Overseas Production Order) Act 2019, and the analysis and processing of that data. • Acquisition of data from cloud storage as a result of login/connection data taken from a device under examination, but not via the seized or surrendered device itself. • Acquisition of data from cloud storage using just the seized or surrendered SIM card, but not via the seized or surrendered device itself. • Receiving CCTV/VSS files from a third party (e.g. owner of CCTV system). • Receiving a DVR from the owner as an item/exhibit. • Activity to assist the controlled or uncontrolled viewing of films, photographs and images by an individual who is not an eye-witness for the purposes of obtaining suspect recognition, identification, potential links and other lines of enquiry, e.g. circulation of an unidentified subject image on a police system or in accordance with police processes (i.e. an activity governed by the Code of Practice for the identification of persons by Police Officers: Police and Criminal Evidence Act (1984) (PACE), Code D). • Searching of a captured image against a database of reference images or defined candidate list including, but not limited to, the use of a live or retrospective facial recognition system. • CCTV replay for viewing as part of investigation.

Exclusion category	Exclusions from FSAs to which the Code applies
Digital	<ul style="list-style-type: none"> • Acquisition of data utilising the Crime (Overseas Production Order) Act 2019, and the analysis and processing of that data. • Operation of automatic number plate recognition systems for the purpose of capture of registration numbers. • Creation of eFit images. • Upload and download of audio-visual media from digital asset/management systems.

Exclusions from FSAs to which the Code does not apply

Incident examination	<ul style="list-style-type: none"> • Activity undertaken to protect/preserve items/exhibits from imminent alteration or destruction by persons not specifically commissioned to carry out an FSA as specified in the Code, e.g. first responders. • Any investigation related to determining the cause of an air or rail crash, or the sinking of a vessel (capable of travelling on or under the water) at sea or on inland waters. • Taking of custody images. • Activities of a pathologist to assist with determining the cause and/or time of death.
Biology	<ul style="list-style-type: none"> • Analysis to determine geographical provenance of plant, microbe, and/or invertebrate material.
Drugs, toxicology and noxious materials	<ul style="list-style-type: none"> • Testing of any item/exhibit, or part thereof, to determine whether it is comprised of or contains a relevant substance in the circumstances set out below: <ul style="list-style-type: none"> a) with a Home Office approved kit under the processes permitted by a HOC. b) with a Home Office approved kit under the processes set out in the EDIT programme. • Controlled drugs value estimation. • Provision of any evidence in relation to whether a particular compound (or group or class of compounds) is psychoactive in relation to the provisions of the Psychoactive Substances Act 2016. • Screening of items for drugs at an airport or other transport hub. • Screening of items/persons/locations for explosives residue, including the screening of people at a port.

Digital	<ul style="list-style-type: none"> • Data recovery via Internet Intelligence & Investigations (III), Open Source Intelligence (OSINT), Signals Intelligence (SIGINT), Communications Intelligence (COMMINT) and Geospatial intelligence (GEOINT). • Acquisition of communications data performed in accordance with the Investigatory Powers Act 2016 and related codes of practice. • Acquisition of data utilising the Crime (Overseas Production Order) Act 2019, and the analysis and processing of that data. • Acquisition of data from cloud storage as a result of login/connection data taken from a device under examination, but not via the seized or surrendered device itself. • Acquisition of data from cloud storage using just the seized or surrendered SIM card, but not via the seized or surrendered device itself. • Routine extraction of force-generated audio-video material from force-controlled systems, and the editing and redaction of this material. Examples of this material include, but are not limited to, drones, body worn video, emergency calls (e.g. 112, 999) and video-recorded interviews. • Audio replay as part of an investigation of routine transcription services (i.e. not as covered in 99.3.1c on questioned content analysis). • Upload and download of audio-visual media from digital asset management systems.
Case and data management	<ul style="list-style-type: none"> • Review of work related to provision of medical care. • Review of forensic post-mortem examinations. • Activity relating to the INTERPOL database(s).

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