



# Forensic Science Regulator

## Newsletter Number 4 | August 2023

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## Message from the Forensic Science Regulator

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This newsletter follows the FSR conference held in June which gave me the opportunity to set out the development of the statutory regulation of forensic science since taking up this post and to look forward at the challenges and practicalities of the statutory Code of Practice “the Code” coming into force on the 2nd October. I am really grateful to all the contributors to the conference which gave the attendees an opportunity to hear from some major stakeholders as to how they see the benefits, risks and challenges of the statutory regulation of forensic science in England and Wales. In the newsletter we have tried to give flavour of the presentations and discussion at the conference, and I am pleased that we are providing through this newsletter a consolidated response to more than ninety questions that were raised by delegates during the conference.

As I highlighted at the conference my focus is on the practicalities and implementation of the Code and this is reflected in much of the content of this newsletter where updates and information are provided on all the work that is in hand to prepare for the Code coming into force and the remaining provisions of the FSR Act 2021 being commenced.

I would like to again thank all of those who contributed to the conference and who are supporting the work to prepare for the Code coming into force, with a special thanks to the staff in the Office of the Forensic Science Regulator who organised and delivered a successful FSR conference.

**Gary Pugh**

**August 2023**

**Forensic Science Regulator**

# Forensic Science Regulator Conference 2023

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The Forensic Science Regulator was pleased to host his first conference as a statutory Regulator. The conference focussed on the implementation of the Code due to come into force on 2nd October 2023. The conference took place on 20th June 2023 and was held at the Bloomsbury Holiday Inn, London. The event was well attended, with speakers and delegates representing many areas of forensic science.

The attendees received a welcome presentation from the Regulator, as well as presentations from UKAS (United Kingdom Accreditation Service), FCN (Forensic Capability Network), MoJ (Ministry of Justice), Chair of the Forensic Science Regulator's Incident Examination Specialist Group, PDS (Police Digital Service), and Office of the Forensic Science Regulator.

A brief summary of their presentations is provided below.

## Forensic Science Regulator conference speech

The Regulator welcomed everyone to the Forensic Science Regulator conference 2023.

The conference focused on the practicalities, implementation, and impact of the statutory regulation of forensic science. The Minister of State for Crime, Policing and Fire, the Rt Hon Chris Philp opened the conference with a short video speech setting out the importance of the regulation of forensic science in maintaining public confidence in the criminal justice system. He also encouraged a pragmatic approach that did not place unnecessary burdens on forensic science providers.

The Regulator reflected on significant events during the last two years of the role, which included, the development of the Code of Practice, the consultation and the approval by Ministers and Parliament.

The Regulator spoke about the transition period between the Code being approved and it coming into force. There were 52 organisations who are eligible to make this transition covering a wide range of forensic science activities. The Regulator was very keen to do everything he can to ensure there is a successful transition.

For organisations who will not make a declaration of compliance when the Code comes into force, the Code sets out in detail how declarations of non-compliance should be made and the steps that should be taken to mitigate the risks associated with non-compliance.

The Regulator confirmed a task that would need to be completed prior to the Code coming into force is to set out the detail of the compliance and enforcement processes. The Regulator reassured the forensic science community his approach to using the powers within the Act would be proportionate, with the full enforcement powers under the Act being used in general as a last resort.

The Regulator shared the areas he will be focusing on in the future, which included the following:

- facilitating and encourage proficiency testing,
- continuing professional development requirements for forensic staff,
- development of Evaluative Opinions by developing detailed requirements for each forensic science activity where evaluative opinion is appropriate.

## **Accreditation – a tool to support regulation - Lorraine Turner**

### **Accreditation Director UKAS**

Lorraine spoke on the UKAS process for the transition from the non-statutory Forensic Science Regulator's Codes of Practice and Conduct to the statutory Code of Practice. The deadline for organisations to submit their transition template, which would detail the actions taken together with provision of evidence to demonstrate compliance was 19th June 2023. UKAS is aiming to assess these applications by end of August 2023. Lorraine confirmed grants of accreditation were expected 20-22 September 2023. It was also highlighted any forensic unit that has not successfully completed the transition at that time will continue to be progressed and their grant of transition will be completed once their compliance is demonstrated.

## **Understanding the risk of forensic evidence being challenged as inadmissible in criminal proceedings - Mario Gibezi - Senior Policy Adviser for Criminal Court Policy at the Ministry of Justice.**

Mario spoke on a piece of work he was leading to better understand the risk of forensic evidence being challenged as inadmissible in criminal proceedings after the statutory Code comes into force on 2 October 2023. This piece of work was prompted following concerns raised from forensic science providers who may not be compliant with all of the statutory requirements of the code for the forensic science activity they undertake come that date. Mario highlighted it was important to understand the risk, because if the judiciary rule that a piece of forensic evidence is inadmissible in criminal proceedings, that evidence will be excluded from being relied upon at any trial. The presentation also included a

summary of on-going work to develop a Risk Categorisation Model (RCM) to help understand and assess this risk during the case progression process.

The V2 Prototype RCM that was presented at the conference is a work in progress. The model's design and designation for operational use is still pending finalisation subject to further development and agreement by criminal justice system (CJS) stakeholders. The on-going development of the model is currently focussed on creating a tool for internal use by investigators and/or prosecutors to provide them with an initial indication of the inadmissibility risk at key stages of the case progression process. For example, when a forensic report is reviewed by the police before making a Crown Prosecution Service (CPS) referral; and/or when a report is reviewed by CPS to make a charging decision.

There is currently no intention for forensic providers, or any other practitioner, to write one of the RCM's alphanumeric categories (displayed at Step 4 of the prototype model) in a forensic report. This is because the model is intended to function as a standalone tool to help investigators/prosecutors decipher and rationalise all the information that must be included in a forensic report with regards to compliance with the Code; and then accordingly provide them with an initial indication of the inadmissibility risk for further consideration on a case-by-case basis in accordance with further bespoke internal guidance.

Work is now underway to produce a V3 Prototype RCM (including the addition of a user guide), which will be subject to testing with CJS stakeholders and operational practitioners via an upcoming developmental workshop. Please contact [mario.gibezzi@justice.gov.uk](mailto:mario.gibezzi@justice.gov.uk) at MoJ if you have any further queries about this work.

## **A collaborative approach to quality and compliance - Debbie Pendry - Director of Quality, NPCC Forensic Capability Network**

Debbie spoke about the importance of embracing a quality culture to enable an effective and efficient way of meeting FSR Statutory Code requirements and delivering a robust quality service. Debbie also spoke of how a nationally cohesive approach can reduce effort and enable a confident and consistent means of demonstrating compliance. Debbie shared some examples of how the Forensic Capability Network (FCN), a national capability providing support for police forces, can support organisations in achieving successful accreditation. The SARC (Sexual Assault Referral Centres) Accreditation Project has established a collaborative National Network for SARCs, produced a National SARC Quality Management System, carried out essential testing to understand the contamination risk about non-forensic grade PPE, and conducted a National Validation

DNA Grade Consumables exercise. This along with other pieces of work helped to improve quality, provided a better-quality service, and ensured the victim's needs were met.

## **Regulation of incident scene examination - Alan Tribe - Chair, Forensic Science Regulator's Incident Examination Specialist Group**

Alan spoke on the work of the Forensic Science Regulator's Incident Examination Specialist Group, and the regulation of incident scene examination. Alan shared five challenges in developing standards for Incident Scene Examination. These were:

- the different type of scenes,
- scene activities which include public and police activity,
- scene practitioners who are less familiar with quality management systems,
- police services where, quality systems were less mature compared to other forensic areas,
- prior experience of regulation design.

Alan highlighted it was important to consider when setting requirements, they are applicable to types of incident scene environments. The Incident Examination Specialist Group advises the FSR on matters related to incident scene examination and is currently drafting the FSA specific requirement for the next iteration of the Code. There was a number of subcategories within Incident Scene with some not yet required by the Code, these included: fire scene examination, collision investigation, scenes of explosions, and covert examinations. Sub-groups have been established for these subcategories.

## **Central validation of digital forensic tools for the RASSO Tech Uplift – Dr Reuben Moreton - Police Digital Service**

Reuben spoke on the delivery of the Rape Review Response Project (RRRP) Tech Uplift 2. This project was prompted by the end-to-end rape review report 2021. The report identified the need for improving digital forensic technology for examining victim's devices to meet the Home Office 24-hour commitment. Laptops, kiosks, tablets and training are being procured for 31 police forces to improve capability and effectiveness of downloading data from victim's devices. The equipment would enable the ability to selectively extract data from submitted mobile devices, and the ability to extract data mobile devices outside of the Digital Forensic Unit. The project will also ensure the digital forensic tools have been centrally validated and will develop a National Centralised Validation Service. All central

validation is due to be completed by August 2023. All validation materials will be available to participating forces to adopt for local method validation.

## **FSR Compliance and enforcement – Dr Chanda Lowther-Harris - Head of Office - Office of the Forensic Science Regulator**

Chanda spoke on the Forensic Science Regulator's Compliance and Enforcement process/policy. The Act gives the Regulator powers to carry out an investigation if the Regulator believes that a person<sup>1</sup> may be carrying on a forensic science activity in a way that creates a substantial risk of adversely affecting any investigation or impeding or prejudicing the course of justice in any proceedings. The Regulator may:

- investigate the carrying on of any FSA to which the Code applies
- serve a compliance notice setting out requirements to address identified risk.
- issue a completion certificate when the requirements set out in a compliance notice have been met.

Chanda highlighted enforcement will not be automatically triggered by non-compliance with the Code. Compliance with the Code provides reassurance to the Regulator, and lack of compliance with the Code suggests risks may not be controlled.

The Regulator's approach to compliance and enforcement will be to take a proactive and reactive way of understanding the risk and compliance. There is already an established mechanism of notifying the Regulator of risks by self and third-party referrals. The Regulator encourages the continuation of the strong and healthy culture of referral reporting.

The Regulator will adopt a transparent, consistent, and proportionate approach when using the enforcement process. There is also an appeals process with recourse to the First-tier tribunal.

The Regulator will also take a proactive approach to identifying and understanding risk, through for example running compliance surveys. The compliance survey is central to getting high quality data to inform metrics of risk levels and provides an indication of rising or decreasing risk levels in specific disciplines or organisations across the sector. The Regulator ran a baseline compliance survey in Autumn last year against the draft Code of

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<sup>1</sup> Any person, including a body of persons corporate or unincorporate.

Practice. The second compliance survey was issued in June 2023 against the published statutory code of practice and had a closing date of 25th July 2023.

If your organisation did not receive the June 2023 compliance survey commission, please contact [FSREnquiries@forensicsscience regulator.gov.uk](mailto:FSREnquiries@forensicsscience regulator.gov.uk)

## **Panel Session**

The Regulator chaired a panel session with representatives from United Kingdom Accreditation Service (UKAS), National Police Chiefs' Council (NPCC), Ministry of Justice (MoJ), The Crown Prosecution Service (CPS), and Association of Forensic Science Providers (AFSP).

The panel was asked what they saw as the major challenges of risks of statutory regulation of forensic science.

## **FSR conference 2023 – Questions and Answers**

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The Regulator received several questions at the conference, and it was agreed the questions and answers would be published in the newsletter. A separate document has been produced and can be found here:

[www.gov.uk/government/publications/forensic-science-regulator-2023-conference-questions-and-answers](http://www.gov.uk/government/publications/forensic-science-regulator-2023-conference-questions-and-answers)

## **Transition to Code of Practice**

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The Regulator has set up a Code Transition Management Group to oversee the progression of the organisations which are currently accredited to the non-statutory FSR Codes of Practice and Conduct to the statutory Code through the submission of their completed Transition Templates and supporting documents to UKAS. UKAS will then manage the transition process and commence reporting the outcome of desktop assessments to each organisation in the order in which templates were received.

Of the 52 organisations which are transitioning, 44 have submitted their application to transition by the deadline set by UKAS and are currently under review. The remaining organisations are being followed up by the Code Transition Management Group.



# Revisions to the Code and future consultations

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The Forensic Science Regulator Act 2021 states the Regulator:

(a) must keep the Code under review, and

(b) may from time to time prepare and publish alterations to the Code or a replacement Code.

Before publishing a Code of Practice 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. The Act does not require the consultation to be as extensive as the Regulator deemed appropriate for the first version of the Code of Practice. Future consultations are likely to be more focused. As forensic units implement the Code, issues and questions asking for clarification are being raised and the Regulator encourages all those conducting the forensic science activities covered by the Code to raise issues as they identify them. Therefore, please do not wait to be invited to comment on the Code. If you have comments, issues and/or questions seeking clarification the Regulator encourages you to submit these to [FSREnquiries@forensicsscience.gov.uk](mailto:FSREnquiries@forensicsscience.gov.uk). The Regulator may not respond directly to all issues raised, but all will be logged and considered.

## The non-statutory Codes of Practice and Conduct - issue 7

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The statutory Code comes into force on the 2nd October 2023. The current issue 7 of the Codes of Practice and Conduct will be withdrawn and, with this, UKAS will amend organisations' schedules of accreditation by removing reference to the Codes of Practice and Conduct. For those organisations who successfully transition, reference to the statutory Code will be entered on to their schedules. The UKAS Schedule of Accreditation will be updated, not only with revised wording to reflect compliance with the statutory Code, but also with respect to some of the high-level references to activity used on the

schedule. This change in wording is to better reflect the overarching Forensic Science Activity (FSA) to which the detailed entries on the schedule relate.

Any organisation currently accredited to the Codes of Practice and Conduct issue 7 that does not submit an application to transition by the 2nd October 2023 will need to start afresh in their application to have the statutory Code on their schedule of accreditation.

## **Specialist groups**

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The Regulator has a number of specialist groups that are continuing to support and advise the Regulator in carrying out his functions. The specialist group may, with the approval of the Regulator, establish such working groups as it considers necessary for the efficient and effective conduct of its business.

The Regulator intends to restart the specialist groups meetings in the autumn.

### **Drugs and Toxicology Specialist Group**

The Regulator is giving consideration to establishing a Drugs and Toxicology Specialist Group, following discussions with practitioners across this area of forensic science. This Specialist Group would advise the Regulator on the undertaking of the relevant forensic science activities described in the statutory Code and the quality standards and accreditation that should apply to these activities. It would also facilitate the establishment of two working groups, reporting into the Specialist Group, to provide advice to the Regulator on the development of 'off-site' testing for drugs covered by the Misuse of Drugs Act (and related legislation) and on the forensic science activity specific requirements for s5A drugs driving analysis.

The Regulator wishes to immediately progress work on the s5A drugs driving FSA-specific requirements, consequent on the wider review of the recent quality failure and a series of representations made in the consultation on the Code of Practice, and so has established a working group to look at this. The s5A working group has a specific remit to consider and recommend changes to the FSA-specific requirements for drugs driving analysis and comprises a small group of representatives from industry, academia and independent practice to consider how these requirements could be improved for clarity and practicality, whilst ensuring high quality standards are maintained. The group will convene this summer and is expected to take around 10- 12 months to review the requirements, before consulting with a broader range of stakeholders on the recommendations.

The Regulator is seeking views on the establishment of a Drugs and Toxicology Specialist Group. Please make your comments to [FSREnquiries@forensicscienceregulator.gov.uk](mailto:FSREnquiries@forensicscienceregulator.gov.uk) by COP 15/09/2023.

## **Fingerprint Quality Standards Specialist Group**

This is an established specialist group which, for many years, has been chaired by Gary Holcroft of SPA. Gary has recently stepped down from this position and the Regulator thanks him for his contribution to the group and to the wider aims of regulation during his tenure. Neil Dennison from Yorkshire and the Humber has agreed to take on the role of Chair, with the intention of reconvening the group over the summer, or early autumn.

## **Firearms Specialist Group**

A firearms specialist group has been established, chaired by Martin Parker of the British Association for Shooting and Conservation. The group is currently in the process of drafting a guidance document to support FSA – MTP 601 - Examination, analysis and classification of firearms, ammunition and associated materials. This guidance is to provide clarification on the dispensation allowed in the Code for urgent classification to be carried out without requiring accreditation. This guidance document will be published in advance of the Code coming into force.

## **Interpretation Specialist Group**

A new specialist group is being established to consider issues around interpretation in forensic science. The group will revisit the document FSR-C-118 - Development of Evaluative Opinion, that was issued by the previous regulator, to produce a general guidance document. The ultimate aim of the group will be to produce guidance documents that are specific to each FSA, or FSA grouping.

## **Incident Examination Specialist Group**

The incident examination specialist group (IESG) held its first meeting in March 2022 and supports the Regulator with recommendations on the preparation, implementation and monitoring of forensic quality standards for Incident Examinations. The group is assisting the Regulator's office with drafting FSA specific requirements to aid the interpretation of the statutory Code of Practice for incident examination, and via its subgroups, fire scene examination and collision investigation. The IESG will also raise quality and technical issues and recommend areas where guidance documents from the Regulator would be beneficial.

## **Digital Specialist Group**

Since the Regulator was put on a statutory basis, the members of Digital Forensic Specialist Group were consulted ex-committee on development of the forensic science activity definitions and the group convened to discuss the feedback from the consultation. Previously the group had overseen the output of sub or writing groups including what has now become the forensic science activity specific requirements in the Code on video analysis and cell site analysis, and on the development of guidance on the validation of digital forensics.

The anticipated short- and medium-term areas for technical advice the Regulator anticipates include but are not limited to the use of front-line tools such as kiosks and cell site analysis. The Regulator intends reviewing the role and makeup of the group and/or the need for separate ad hoc task-finish groups to assist with specific forensic science activities or sub activities.

## **DNA analysis specialist group**

The DNA Specialist Group has been supporting the Regulator by providing advice on matters related to the analysis, interpretation, and reporting of a range of types of DNA analysis, from Y-STR to mixture interpretation. Over the last few months, the group has been assisting the Regulator's office with reviewing guidance documents as these are updated in line with the requirements of the Forensic Science Regulator Act (see more below). To ensure the Regulator has advice and guidance on all the biology FSAs, the remit and membership of this group will be broadened to cover bloodstain pattern analysis.

## **Medical forensics specialist group**

The Medical Forensics Specialist Group covers another biology FSA – examination of sexual offence complainants. This group is supporting the Regulator with matters relating to forensic medical examination facilities. This is an important area of work as examination of sexual offence complainants requires compliance with the Code from October 2025. To support meeting the requirements of the Code there are specific guidance documents and the MFSG are reviewing these as they are updated in line with the requirements of the Act.

# Guidance documents

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Since the Code's approval by the Secretary of State and both Houses of Parliament, the Regulator has focused efforts on the drafting and reviewing of guidance documents, under section 9 of the Act, that support the Code.

In preparation of the Code coming into force, the Regulator is drafting the following guidance documents:

1. Guidance: Declarations of Compliance and Non-Compliance with the Code of Practice to assist organisations in declaring their compliance status with the Code in statements and reports. In doing so, the Regulator is liaising with stakeholders including CPS, MoJ, UKAS, policing, FCN and AFSP
2. Guidance: Firearms Urgent Classification Process (non-accreditation) to support the provision made in the Code for urgent firearms classification to support a remand in custody application where it may not be feasible to undertake the classification in the required timescales using an accredited process. This guidance document is being produced by the Regulator's Firearms Specialist Group.

## Other forthcoming documentation

The enacting of the Forensic Science Act 2021 places guidance documents produced by the Regulator on a different footing from those produced under the non-statutory Codes of Practice and Conduct. Guidance documents issued under the provisions of section 9 of the Act will not set any requirements (instructions that shall be done) as all requirements must be in the Statutory Code of Practice. In the preparation of the statutory Code all of the non-statutory guidance documents were reviewed and any requirements incorporated into the statutory Code. The guidance documents with requirements removed will be re-published in a new format (using the new logo and with some changes to style and structure) and will be given new naming system to distinguish them from the previous guidance. All of the guidance documents will be subject to external review by the Regulator's Specialist Groups or the Scrutiny Group and where necessary updated before re-publishing. As the documents are ready for publication they will be published in the collection page on the Regulator's website ([Forensic Science Regulator guidance - GOV.UK \(www.gov.uk\)](#)) and a watermark will be added to the previous guidance document to note that it has been replaced. Using a hyperlink to the guidance document collection page when you reference guidance documents will ensure that the reader is always taken

to the most up to date guidance document. The revised guidance documents published under section 9 will come into effect on the 2<sup>nd</sup> of October 2023. Where revised guidance is not published before the 2<sup>nd</sup> of October the current guidance documents should continue to be used until they are replaced.

The indicative timeline of the publication of guidance documents is:

#### August 2023

Guidance: Declarations of Compliance and Non-Compliance with the Code of Practice

Guidance: Methods employing rapid DNA devices

Guidance: Y-STR profiling

Guidance: Firearms Urgent Classification Process (non-accreditation)

#### September 2023

Guidance: DNA contamination controls – laboratory

Guidance: DNA contamination controls - Incident scenes

Guidance: Bloodstain Pattern Analysis

#### Oct 2023

Guidance: Contamination Elimination Databases

Guidance: The use of Allele frequency databases in reports

Guidance: DNA Mixture Interpretation

Guidance: Proficiency Testing for DNA Mixture Analysis and Interpretation

Guidance: DNA contamination controls - forensic medical examinations

Guidance: Sexual Assault Referral Centres

#### Nov 2023 – Mar 2024

Guidance: Expert reports

Guidance: Non-expert reports

Guidance: Autosomal DNA Relationship Testing

Guidance: Validation of scientific methods

Guidance: Method validation in digital forensics

Guidance documents will be published on the Regulator's website [Forensic Science Regulator guidance - GOV.UK \(www.gov.uk\)](#) under the collections page.

# Compliance survey

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In October 2022, the Regulator undertook a Code of Practice Baseline Compliance Survey to provide a starting point and basis for understanding potential compliance with the Code. The survey was structured around Forensic Science Activities (FSA) set out in the draft Code 'Consultation Draft 08.08.2022'.

Now that the Code has been approved by Parliament and published as required by s2 of the Act, the Regulator wants to establish the extent of the compliance with the finalised Code, including the accreditation requirements across all sites for all forensic science activities that will be subject to the Code.

The information from the survey will assist the Regulator in understanding the risks posed to investigation of crime and to criminal proceedings in the undertaking of FSAs subject to the Code.

The Regulator also wants to understand the landscape of who is undertaking FSAs which are not currently subject to the Code. This is in preparation of work on defining the requirements for these activities and hence there are some general questions on FSAs which are not currently subject to the Code in the survey.

The survey was launched on 23rd June 2023 and had a closing date for return of 25th July 2023.

The initial compliance survey indicated that there are:

- 83 organisations are undertaking forensic science activities that are subject to the Code
- high levels of non-compliance in scene examination and digital
- high levels of compliance in biology, drugs/chemistry and marks/traces/patterns

If your organisation did not receive the June 2023 compliance survey, please contact [FSREnquiries@forensicscienceregulator.gov.uk](mailto:FSREnquiries@forensicscienceregulator.gov.uk)