Newsletter

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Message from the Forensic Science Regulator

On the 2nd of October 2023 a major milestone was achieved in the statutory regulation of forensic science in England and Wales with the statutory Code of Practice coming into force and all of the remaining provisions of the FSR Act 2021 being commenced. We can now get down to the business of regulation.

The focus over the coming months and next year will be twofold, first on achieving high levels of compliance with the Code to ensure that accurate and reliable forensic science evidence is used in criminal investigations and proceedings, and taking enforcement action where substantial risks are identified. Secondly to ensure that the regulatory model for forensic science, that is based on organisations having robust quality management systems, is effective and focused on the general and FSA specific requirements set out in the Code and the risk of error is mitigated or eliminated.

Following the approval by Parliament of the Code in March a further compliance survey was conducted in June of this year to identify the organisations that are undertaking forensic science activities and their levels of compliance with the Code. An initial analysis of the information provided focussed on the levels of compliance of the 34 forensic science activities that were subject to the Code when it came into force. Initial analysis indicated over 20 forensic science activities with high levels of compliance but a small number that had relatively low compliance. Some of the survey returns did not give a complete picture of the forensic science activities that were being undertaken and a small number of organisations that are undertaking forensic science activities that are subject to the Code did not respond. Over the last few months, forensic units have been contacted to develop a comprehensive picture of compliance that will form the basis for action to improve levels of compliance particularly where there are limited quality management systems in place and the risk of error or quality failure is increased. I will be writing to Senior Accountable Individuals in the coming months to seek their plans to achieve compliance with the Code and seeking reassurance that risks are being managed giving priority to FSAs where there is a low level of compliance with the Code. As I have set out previously my approach to

enforcement will be proportionate, based on escalation and seeing the use of the enforcement powers under the Act in general as a last resort. Alongside this I will be closely monitoring how the criminal justice system responds to the statutory regulation of forensic science in particular the admissibility provisions under Section 4 where non-compliance is declared.

In my first newsletter as the Forensic Science Regulator in July 2021, I set out the importance to effective regulation of a quality management system that was not overlaying existing structures, but integral to operational delivery, managing risk, ensuring technical competence, implementing change and improving services, and the importance of recognising the cultural change and leadership required to bring this about. Over the last two years I have seen the leadership and commitment in many organisations to deliver this change. I have also heard concerns about the impact of gaining accreditation on productivity and the effectiveness of accreditation to ISO standards as the mechanism of demonstrating compliance with the Code. When I took up this post my first instinct was to reach out to practitioners, managers and quality leaders to understand the frontline issues in the implementation of statutory regulation of forensic science. Sadly, I have had limited time to repeat this exercise with all of the work required to bring the Code and the provisions of the Act to fruition. I would now like to spend a greater proportion of my time understanding how regulation is impacting on the delivery of forensic science and the concerns that have been raised with me. I will be looking to attend accreditation assessments and to attend management review meetings to listen and observe and I will be writing to Senior Accountable Individuals to ask them to facilitate this. While there is undoubtedly an operational impact and cost to implementing quality management system, the ultimate goal for organisations must be to achieve a virtuous circle of continuous improvement. As the Regulator, I want the regulation of forensic science to be credible with practitioners, managers and leaders, meaningful in ensuring compliance with the requirements of the Code, and effective in identifying and mitigating the risks of error or quality failure. If it does not achieve this, then it needs to change.

Forensic Science Regulator **December 2023**

Code of Practice

The Forensic Science Regulator Act 2021 (“the Act”) requires the Regulator to prepare and publish a code of practice about the carrying on of forensic science activities in England and Wales. In accordance with the provisions of the Act, the statutory Code of

Practice was approved by Parliament, published in March 2023, and came into force on the 2nd of October 2023. The Act 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.

As forensic units implement the Code, queries have been raised leading the Regulator to consider amendments to the Code to:

- clarify existing clauses
- make editorial changes
- update references
- contextualise existing requirements
- correct inaccuracies and ambiguities

In addition, the Regulator's Incident Examination Specialist Group has been reviewing the Code and proposing amendments to ensure that the Code reflects the requirements for incident scene examination. The group has identified where clarification of existing requirements or addition of requirements for performing forensic science activities at incident scenes are needed. The amendments and additions cover considerations on the application of professional judgement and the undertaking of forensic scene management, particular in complex incidents.

As a result of the queries raised and the targeted review of the Code by the IESG, an updated version is being drafted, version 2. This is in line with the requirement in the Act to keep the Code under review and publish alterations. No additional FSAs will be made subject to the Code in version 2. A consultation on version 2 is expected to start in mid-January 2024 and will run for a period of four weeks. The draft of version 2 will be published at https://www.gov.uk/government/organisations/forensic-science-regulator.

Comments, issues and/or feedback on the existing Code and version 2 when published can be submitted to the Regulator by emailing FSREnquiries@forensicscienceregulator.gov.uk. The Regulator may not respond directly to all issues raised, but all will be logged and considered.

FSR Regulatory notifications

The Regulator is committed to keeping the forensic and wider Criminal Justice System (CJS) community informed of any developments in regulation, new policy, or changes to

policies and proposed significant changes to the Code. To achieve this the Regulator is introducing “FSR Regulatory Notifications”.

FSR Regulatory Notification 01/2023 (FSR Regulator’s notification 01-2023: accreditation requirements and making a declaration of compliance - GOV.UK (www.gov.uk)), published on the 26th of September 2023 informed of the suspension of accreditation requirements for activity level reporting. This notice addressed an unintentionally unachievable expectation in the Code in respect of the accreditation requirement for the provision of activity level interpretation and opinion. Interpretation and opinion on activity level, which is included in the sub-activities of some FSAs, cannot currently be accredited under ISO 17025 or 17020 all the instances where the Code sets a requirement for it. Consequently, it is not possible for forensic units to demonstrate compliance with the Code in these instances. In accordance with the provisions set out at paragraph 14.1.1 of the Code, this notification suspended requirements for accreditation for activity level interpretation and opinion, pending the development of necessary requirements and guidance.

FSR Regulatory Notification 02/2023, which is published alongside this Newsletter sets out the position statement of the Regulator on the status of the defunct Council for the Registration of Forensic Practitioners (CRFP) register. CRFP closed on the 31st of March 2009 with over 3,000 registered forensic practitioners. This list of registered practitioners was not maintained and not transferred to the Forensic Science Regulator. Maintaining a register of forensic practitioners is not part of the statutory regulation of forensic science or the Code of Practice. The Regulator was made aware that a forensic practitioner was continuing to declare registration with CRFP under the belief that the Regulator was holding a legacy register. The Regulator wishes to make clear that any claims to be included on a list of registered forensic practitioners held by the Regulator would be misleading and inaccurate.

Case Review

The Regulator has defined the FSA for Case Review in the Code, but no requirements are set for compliance, including any for accreditation in the first version of the Code. The Case Review FSA is defined in the Code as;

- The assessment of unsolved cases, findings, and/or interpretations to identify additional forensic opportunities and/or to address alternative propositions.
- The assessment of cases, results, and/or interpretations to address alternative propositions for the purposes of defence review.
- The assessment can be performed by both the original forensic unit involved in the case or an independent forensic unit.

- Post-conviction appeal cases and Criminal Cases Review Commission cases, where forensic science work is assessed, are within scope of this FSA.

The Regulator recognises the importance of case review, the need to establish regulation across the CJS and the challenges in regulating this forensic science activity. Given the professional leadership of the Chartered Society of Forensic Sciences (CSFS) and its close links with practitioners who undertake Case Review, the Regulator has commissioned the CSFS to undertake some preliminary work to support the development of a regulatory framework for Case Review. The CSFS will be publishing details of their work on their website and the Regulator encourages all practitioners who undertake Case Review to contribute. The terms of reference for this work are;

- to produce a first draft of the FSA specific requirements for Case Review that would be incorporated into the statutory Code;
- to propose the scope and purpose of any guidance documents that would be required for Case Review and issued under s9 of the FSR Act;
- to identify options and make proposals on how individuals and organisations would demonstrate compliance with the Code;
- to provide the Regulator with an impact assessment of making the Case Review FSA subject to the Code, including the time scales and costs to forensic units and individuals who will be undertaking this FSA and be subject to the Code.

The Regulator will consider the outputs of the work by the CSFS in the development and establishment of the regulation of Case Review prior to making any changes to the Code. Any changes to the Code would be subject to consultation as required by Section 3 of the FSR Act prior to seeking approval form the Secretary of State and parliament.

Urgent classification of firearms

In the Code, the Regulator makes allowance, through an application process, for forensic units to undertake urgent classification of firearms outside the requirements of accreditation, by evidencing to the Regulator that the unit has appropriate assurances in place.

The required assurances are set out in FSA-MTP 601 - Examination, analysis and classification of firearms, ammunition and associated materials, and expanded upon in guidance document FSR-GUI-0027 Firearms Urgent Classification Process (non-accreditation). To date, the three police forces which have applied to the Regulator for permission to carry out urgent firearms classification outside accreditation have all been successful.

The Regulator has also dealt with a number of enquiries about the application process and would encourage forces to contact FSREnquiries@forensicscienceregulator.gov.uk for advice if they undertake any form of firearms assessment or classification, but do not hold accreditation to ISO/IEC 17025 and have not already made application to the Regulator. The application must be from the SAI describing the operating framework which will need to be agreed with the Regulator and cover the procedures, competency of personnel involved and internal audit, and agreement to the other conditions outlined in section 78.2.2 of the Code.

S5a toxicology 'Drug Driving'

S5a toxicology working group

The 'Section 5a toxicology' working group, which is reviewing the FSA-DTN 102 – Toxicology: analysis for drugs in relation to s5A of the Road Traffic Act 1988 specifications, met for the first time in September. The group comprises representatives from s5a toxicology providers, professional organisations, independent practice and UKAS. At the inaugural meeting, the group carried out a high-level review of the existing specifications and identified the key matters for discussion to develop a workplan. The next meeting will be held in early 2024.

Synlab lessons learnt review

In December 2022, the Regulator produced a final position statement on the quality failure in drugs driving analysis conducted by Synlab Laboratory Services. This statement referred to a wider 'lessons learnt' review that he intended to carry out to look at the quality failure holistically. The Regulator has consulted with key stakeholders on a first draft of this review and is currently considering the comments received. The Regulator intends to publish a final version of this "lessons learnt" in the coming months.

Fingerprint Quality Standard Specialist Group update

The Regulator has tasked the Fingerprint Quality Standards Specialist Group (FQSSG), under the chairmanship of Neil Dennison, to draft a definition of the scope of accreditation that should apply to FSA – MTP 101 Friction ridge detail: comparison. This follows issues raised with the Regulator by the NPCC regarding the role that the source of friction ridge detail (e.g. finger, thumb, foot, palm) plays in undertaking comparison. When drafting the scope, the Regulator has asked the FQSSG to consider the relevance of source in terms

of defining accredited methods. The Regulator will take into account the advice and guidance from the FQSSG in considering whether any changes are required in respect of how the comparison of friction ridge detail should be dealt with in respect of its regulation, the requirements in the Code, the scope of accreditation and focus for assessment, to ensure accurate and reliable evidence for criminal investigations and proceedings.

The Regulator wishes to ensure that the accreditation to quality standards such as ISO/IEC 17025 is aligned with the requirements of the Code and the interpretation of quality standards is clear for each forensic science activity that is subject to the Code.

If you have any views on FSA – MTP 101 then please send them marked FAO Lee Parkes to FSREnquiries@forensicscienceregulator.gov.uk as Lee is the lead scientist in this area and will be co-ordinating the progress of this work for the Regulator.

and Finally

We wish everyone compliments of the season. We hope you have found this newsletter useful. If you wish to provide any feedback, please email FSRenquiries@forensicscienceregulator.gov.uk

Office of Forensic Science Regulator