

This Explanatory Memorandum replaces the previous version, laid before Parliament on 20 March 2025 (Session 2024-25), which has been withdrawn. Copies will be provided free of charge to all known recipients of the previous version.

EXPLANATORY MEMORANDUM TO

THE FORENSIC SCIENCE REGULATOR DRAFT CODE OF PRACTICE 2025 (VERSION 2)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Dame Diana Johnson, Minister for Policing, Fire and Crime Prevention at the Home Office confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Alex MacDonald, Deputy Director for the Data and Identity Directorate, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Mark Lipczynski at the Home Office Telephone: +44 (0)7469571390 or email: forensicspolicy@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 The Forensic Science Regulator Act 2021 (the Act) requires the Forensic Science Regulator (the Regulator) to prepare and publish a Code of Practice (the Code) about the carrying on of forensic science activities in England and Wales. The Code sets out the required standards of conduct and practice for forensic science providers, including the requirements for quality management systems. It also provides definitions of forensic science activities, and states which activities the Code does and does not apply to.
- 4.2 Version 2 will streamline the compliance process for forensic science providers. The previous Code caused unnecessary replication as all 149 sites that deploy crime scene investigators were individually inspected despite each forensic department following the same processes (known as a quality management system) across all of their sites. The new Code will mean that sites no longer need individual assessments, and only require accreditation for each department, saving policing significant staffing hours. Revisions have also been made to requirements in fingerprint and toxicology analyses to improve consistency and quality control.

Where does the legislation extend to, and apply?

- 4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

- 4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

- 5.1 The Act states the Regulator must keep the Code under review and may from time to time prepare and publish alterations or a replacement Code. Given the novelty of statutory regulation of forensic science, a second version of the Code is required.
- 5.2 The most significant change in Version 2 of the Code relates to the regulation of incident scene (crime scene) examination as forensic practitioners, forensic leaders and Chief Police Officers raised concerns to the regulator regarding the effectiveness of the regulation. Version 2 will streamline the compliance process for crime scene examination by requiring a corporate approach by each police organisation avoiding unnecessary replication across 149 sites where currently individual sites are assessed. The new requirements for crime scene examination introduced into the Code will also ensure a risk based and proportionate approach is taken to regulation. This will save significant staffing hours.
- 5.3 In addition, a clarification in Version 2 of the Code in relation to the use of forensic DNA grade consumables (products used to collect, store, and analyse DNA evidence) will negate the need for local batch testing, and will reduce costs for policing estimated to be at least £350k per annum. Taken together with other changes in Version 2 relating to contamination measures and validation exercises, the overall changes to the regulation of incident scene examination requirements is likely to lead to cost avoidance of c£1m for policing per annum.
- 5.4 The new requirements, which have been incorporated into Version 2 of the Code, are supported by forensic practitioners, forensic leaders and Chief Police Officers and have been endorsed by the NPCC Policing Productivity Review.

What was the previous policy, how is this different?

- 5.5 Version 1 of the Code set out the forensic science activities to which the Code applies, and the processes that providers would need to meet in order to be compliant. Version 2 of the Code mostly contains minor changes (other than in crime scene examination) from Version 1. These changes address practical issues that have arisen as the Code has been implemented.
- 5.6 Clarifications on investigations under section 5 of the Act have been made, making a clear distinction between the information gathering stage of an investigation by the Regulator and adverse findings by the Regulator. Clarifications have also been made on establishing compliance with the Code and the Regulator's role in determining and interpreting international standards and the applicability of third party guidance.
- 5.7 Additional requirements on the estimation of vehicle speed from video footage has also been made in Version 2 of the Code.
- 5.8 Some technical changes have also been made in consultation with specialist advisory groups:

Incident Scene Examination –

- Introduction of specific requirements covering activities such as scene management.
- Additional and contextual requirements on areas covered in Version 1 of the Code.

Friction Ridge Detail: Comparison –

- Modified specific requirements to address concerns raised about changes to the scope of accreditation introduced by the UK Accreditation Service (UKAS).

Toxicology: Analysis for drugs in relation to section 5A of the Road Traffic Act 1988 –

- Requirements are more prescriptive regarding the analysis and quality control measures that support the reporting of a drug level above the specified limit.

- 5.9 The requirement for compliance with the Code has been removed for some forensic science activities where an appropriate regulatory model still needs to be developed and implemented.
- 5.10 The structure of the Code has been altered with the intention to allow the Regulator to set requirements for compliance with sections of the Code, rather than the Code in its entirety. General requirements that would need to be met by any forensic unit undertaking any forensic science activities have been grouped together.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Version 2 of the Code will not change the law. It gives effect to a statutory duty under the Act for the Regulator to prepare and publish a Code of practice about the carrying on of forensic science activities in England and Wales and keep it under review.

Why was this approach taken to change the law?

- 6.2 The statutory duty under the Act for the Regulator to prepare and publish a Code of practice was necessary in order to put the code on a statutory footing.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The Office of the Forensic Science Regulator engaged in statutory consultation as required in Section 3(1) and Section 3(2) of the Act.
- 7.2 The consultation was launched in February 2024 and closed in March 2024¹. It was undertaken through a survey on the Regulator's website with the options to respond online, by email and by post. Proposed changes to the Code were set out and direct feedback requested from stakeholders. Direct approaches were made to organisations that had informed the Regulator they were involved in undertaking forensic science activities. Other stakeholders and agencies across the Criminal Justice System were informed of the consultation, as well as all interested parties who had signed up to the Regulator's distribution list. The Regulator also conducted a separate targeted

¹ <https://www.gov.uk/government/consultations/forensic-science-code-of-practice-version-2>

consultation with forensic units on the technical changes within draft Version 2 of the Code between August and October 2024.

- 7.3 The initial consultation in February 2024 asked stakeholders whether they had any comments on the draft Code and the forensic science activities it sets out; and whether they thought there was anything missing and what could be added. Approximately 1230 comments were received from 96 respondents during the initial consultation from a range of organisations and sectors, including law enforcement, academia, and commercial providers. Law enforcement made up 64 of the 96 respondents.
- 7.4 A consultation was launched on 22 August 2024 and closed on 13 September 2024 on a revised definition and specific requirements for friction ridge detail comparison. The consultation was aimed at the community who undertake this activity and supported with webinars held on 28 August 2024 and 4 September 2024.²
- 7.5 A consultation was also launched on 20 September 2024 and closed on 11 October 2024 on revised requirements for analyses of drugs in relation to s5a of the Road Traffic Act 1988. The consultation was aimed at the community who undertake this activity and was carried out through specific engagement with a section 5a toxicology specialist group.³
- 7.6 Finally, a consultation was also held from 24 September 2024 to 11 October 2024 on proposed amendments to human biological material examination and testing, human biological material distribution and interpretation, the glossary terms for biological material and body fluids, and a proposed new definition for attribution of DNA. The consultation was aimed at the forensic units undertaking these activities. Consultation was carried out through targeted engagement with the Chair of the Regulator’s Biology specialist advisory group and key stakeholders.⁴
- 7.7 The Regulator will publish a comprehensive report on the consultations alongside Version 2 of the Code.

8. Applicable Guidance

- 8.1 Guidance on the Code and the Act can be found at the Regulator’s website.⁵

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument as Version 2 of the Code streamlines and clarifies existing requirements under Version 1 of the Code, for which a full impact assessment was submitted.⁶ Version 2 of the Code has no new regulatory burdens but is likely to lead to cost avoidance of c£1m for policing per annum according to feedback from the Forensic Capability Network.

² <https://www.gov.uk/government/consultations/friction-ridge-detail-comparison>

³ <https://www.gov.uk/government/consultations/section-5a-drug-driving-revised-fsa-specific-requirements>

⁴ <https://www.gov.uk/government/consultations/proposed-amendments-to-fsas-for-the-examination-and-testing-of-human-biological-material-and-material-distribution>

⁵ <https://www.gov.uk/government/organisations/forensic-science-regulator>

⁶ <https://webarchive.nationalarchives.gov.uk/ukgwa/20250312203139/https://www.gov.uk/government/publications/forensic-science-regulator-code-of-practice>

Impact on businesses, charities and voluntary bodies

- 9.2 The impact on business, charities or voluntary bodies is limited to some commercial forensics providers who will have to declare compliance with the Code and may need to attain accreditation and establish quality management systems for the activities they undertake. This is not a new requirement and has been the case since October 2023 when Version 1 of the Code came into force. The changes in the Code mostly effect policing so the effect on other bodies should be minimal.
- 9.3 To minimise the impact of the requirements including on small or micro businesses (employing up to 50 people), the approach taken is to allow a transitional period from the date of Parliamentary approval until October 2025 for all providers (including small businesses) to become compliant with Version 2 of the Code. Full exemption for small businesses could not be granted as all providers are required to be compliant with the Code.
- 9.4 The impact on the public sector is limited to law enforcement and public bodies who undertake criminal investigations and are required to declare compliance with the Code and may need to attain accreditation for the activities they undertake. This is not a new requirement and has been the case since October 2023 when Version 1 of the Code came into force. Therefore, it will not incur any extra costs in this area.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is that it will be subject to review at regular intervals.
- 10.2 A statutory review clause is included in section 2(4) of Act, which requires that the Regulator must keep the Code under review.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Policing, Fire and Crime Prevention has made the following statement regarding Human Rights:

“In my view the provisions of the Forensic Science Regulator Draft Code of Practice 2025 (Version 2) are compatible with the Convention rights.”

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).