



CONSULTATION DOCUMENT

Standard setting and quality regulation in forensic science.

1. There is a growing urgency and expectation among police, CPS and forensic science providers of the provision of some form of regulatory function. A need for regulation is assumed in work being carried out on the ACPO strategy for the future of forensic science and that of the Forensic Science Procurement Steering Group. It is necessary, therefore, to have a view of how such a regulatory function should be established.
2. In evidence given before the House of Commons Science and Technology Committee, on 23 November 2005, Mr Andy Burnham MP announced that the next stage regarding the future regulation of the forensic science market would be consultation.
3. The Minister, Joan Ryan has agreed in principle that creating a forensic science regulatory function is the most appropriate way of overseeing quality, standards and integrity in forensic science and maintaining public confidence. She has also agreed in principle with the proposed scope of that regulatory function and to further consultation with stakeholders to develop a more robust proposal for wider function, detailed structure, governance and costings for the regulatory function.
4. **This document initiates that consultation.**

Background

5. The Royal Commission on Criminal Justice (reported 1993) recommended the establishment of a Forensic Science Advisory Council (FSAC) to oversee accreditation, performance evaluation and professional development, with a view to the possible introduction of an enforceable code of conduct for all forensic scientists.
6. A number of related issues have been presented in Parliament and the Courts which make clear the need for quality in this area to be safeguarded. These include:
 - the need to maintain public confidence in forensic science and the Criminal Justice System (CJS)
 - the need for expert witnesses to be independent of those instructing them and act in the interests of justice

- recent cases which have raised concerns related to expert testimony with regard to the competence and integrity of expert witnesses and, as a consequence, the effectiveness of the CJS
 - the recommendation, by the House of Commons Science and Technology Committee, that a Forensic Science Advisory Council be created, and
 - the need for independent and transparent governance of the National DNA Database (NDNAD) with appropriate legal and ethical safeguards.
7. Reform of the forensic science service market, the recent change in status of the Forensic Science Service (FSS) and retention of the NDNAD under public sector control have resulted in concern about wider oversight and standard setting for forensic science services and highlighted the need for greater clarity about how the oversight could be best provided.

Why Regulate

8. The development of the forensic science market is aimed at creating a fully functioning forensic market with the right services, at the right price, delivered to the appropriate standard. In developing this market it is essential to ensure that the integrity and confidence in the CJS is maintained, that a level playing field is created for all suppliers and that standards are maintained in the face of the growing market and increased competition.
9. The FSS has been the standards setting body for forensic science. With the new status of the FSS as a Government Company (Gov.Co.), this is no longer appropriate. This has resulted in public sector retention of control of NDNAD custodianship on transformation of the FSS's status to Gov.Co.
10. Forensic science is already subject to a number of controls which are specified and monitored through a variety of mechanisms. For example:
- many individuals have formal qualifications, are members of professional bodies, or are registered with the Council for the Registration of Forensic Practitioners
 - forensic science providers must describe their quality systems in order to be awarded contracts under police procurement arrangements
 - scientific processes in laboratories are governed by the standards of quality assurance bodies such as the UK Accreditation Service, and
 - the CJS provides rules and guidance which govern the use of forensic evidence.
- Annex A provides further examples of existing arrangements.
11. However, there has been no strategic oversight of these existing arrangements to ensure that they are fit for purpose and comprehensive. In addition, there is no focussed responsibility for anticipating potential future developments in forensic science and ensuring that they will be appropriately regulated.
12. The new developments in police procurement mean the introduction of commercial contract arrangements between the police and forensic science providers leading to a series of issues:

- the police and others are not well placed to evaluate the quality of the service provided across the range of scientific disciplines
- the forensic service providers would be required to prove the quality of service at each procurement/tendering exercise
- there needs to be a mechanism to identify poor providers or services and protect the police and CJS from them before procurement, and
- the police are not the only user of forensic science and the quality standards must reflect the needs of other stakeholders in the CJS.

13. There is, therefore, regulatory gap. In order to close this gap it is concluded that a forensic science Regulator is required.

What to Regulate

14. It has been proposed that regulation should cover the standards applicable to forensic science, including the definition of quality and fitness for purpose, the oversight/control of national 'forensic' data collections and provision of advice on forensic science matters.

15. Specifically, regulation would cover three main areas:

- the accreditation of those providing forensic science to the police. Subject to further consultation, this could be extended to include in-house police services and forensic science providers to the wider CJS
- the oversight and control of the associated forensic science intelligence databases, beginning with NDNAD and the National Forensic Firearms Database (NFFID) but extending to others as they arise, and
- the provision of advice on matters related to forensic science, including type approval and advice on forensic standards.

16. It is **not** intended that the forensic science Regulator should cover economic regulation or act as a representative body for forensic science practitioners or organisations.

How to Regulate

17. In recommending an FSAC the Science and Technology Committee were following the lead of the Royal Commission. The establishment of such a body would have many benefits. It would allow a mechanism for the setting of quality standards, provide oversight and control of data collections and perhaps for provision of advice on issues of forensic science.

18. However, an FSAC may not be the most effective solution because such a Council (composed of eminent people) might only meet rarely and it would be hard to assign responsibility to them effectively as they work for different organisations.

19. Hence, an FSAC would be unlikely to provide sufficient focus for addressing the issues or provide the clear accountability needed. Further, whilst an FSAC would address the issue of setting standards this would not address the issues of:

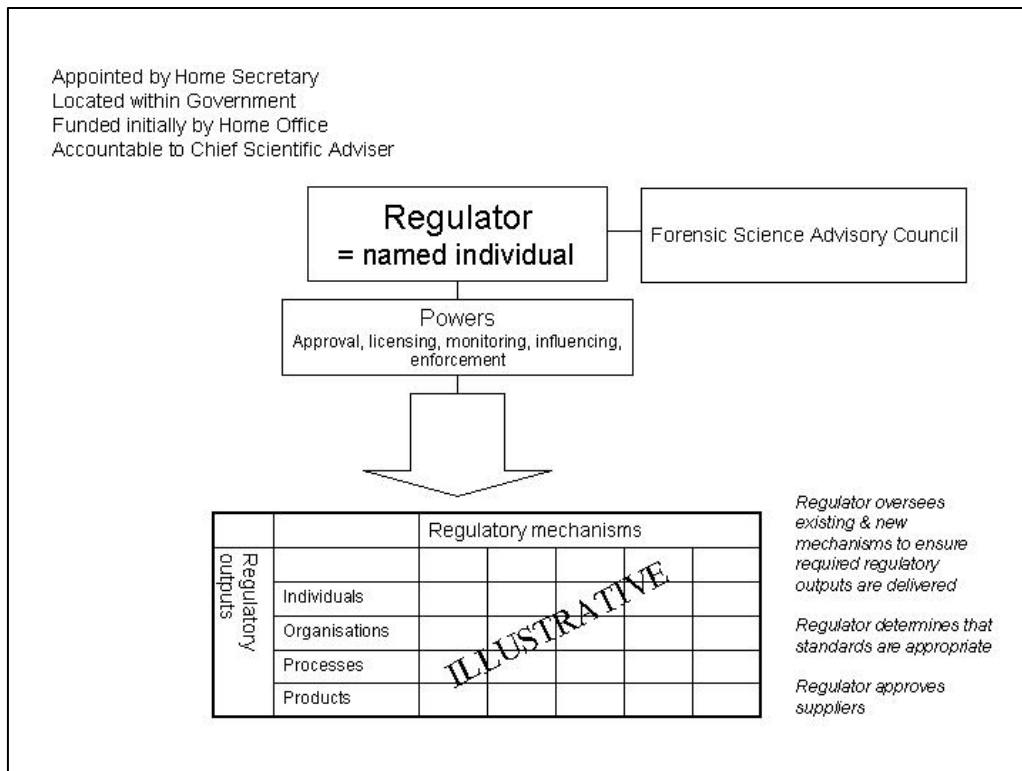
- assisting the police to evaluate the quality of those tendering to provide services
- assisting suppliers in reducing the burden of establishing quality in every tendering exercise, and
- providing a mechanism to exclude poor quality suppliers before procurement.

20. Experience with the Custodianship of the NDNAD, leads to the establishment of a regulatory function headed by a named Regulator with personal accountability for any decisions made. The Regulator would receive advice and guidance from a group that comprises of the stakeholders in the CJS, the wider scientific community and the general public. In this way, the benefits of an FSAC would be realised.

Proposed model for Regulator

21. The forensic science Regulator would not duplicate or replace existing arrangements where they are working well, but rather provide oversight to ensure that existing arrangements provide the required scope, coverage, definition and robustness of monitoring and enforcement to deliver the required level of quality and resilience, and ensure that these are co-ordinated. Where such arrangements do not already exist, the Regulator would take steps to ensure that the gaps are filled.

22. The proposed model for the forensic science Regulator is illustrated in the diagram below, together with a summary of the key issues for consultation.



23. The core proposal is that the Regulator would be:
- independent of any forensic science provider
 - a named individual, initially appointed and with powers delegated by the Home Secretary
 - located in a government department, reporting to the Chief Scientific Adviser
 - guided by an FSAC (which may include representatives of the Government, CJS, police, forensic science suppliers, professional bodies and the general public), and
 - initially funded by the Home Office, with the option for future examination of alternative locations and sources of funding, such as by subscription.
24. It is proposed that the Regulator should be held accountable for ensuring that arrangements are in place for:
- setting standards for entry to the forensic science market
 - setting standards for forensic science activities and processes performed by the police
 - monitoring of compliance with these standards
 - taking action as required to address shortfalls in performance against standards
 - oversight and control of forensic science intelligence databases
 - ensuring that quality standards continue to be assured and improved through development of a contestable and transparent market for forensic science, enabling the entry of new suppliers, with appropriate assurance of continuity of supply
 - creating an environment where innovation is encouraged, with 'type approval' awarded as appropriate to new techniques or products
 - identifying, assessing and mitigating potential future risks through modification of regulatory arrangements
 - supporting public confidence in the contribution of forensic science to the CJS and the reduction of crime and its impact.

An evolutionary model

25. This paper sets out the principles which it is believed should govern the creation of the role of Regulator. Subject to the comments received, detailed design will then take place.
26. A rigid approach to regulation is unlikely to provide the required level of assurance. It is therefore anticipated that the regulatory model, once in place, will need to evolve over time, as the nature of potential risks to quality evolves with the emergence of new techniques and changes in the use of existing techniques.

Questions for consultation

27. We would welcome all responses but in particular wish to invite comments and feedback on the following.
1. Is there a need for a forensic science quality Regulator?
 2. Should this Regulator be a named individual?
 3. Should the Regulator be appointed and with powers delegated by the Home Secretary?
 4. Should the Regulator be located within the Home Office and guided by a Forensic Science Advisory Council?
 5. Who should be the members of the Forensic Science Advisory Council?
 6. Do you agree that the Regulator should be funded initially by the Home Office but that other funding models should be evaluated once the Regulator has been established?
 7. Do you agree with the scope and accountability of the regulatory function as described in this document?
 8. Do you agree that the Regulator should have oversight of existing and new regulatory arrangements to determine that appropriate standards are being set and enforced?
 9. Should the Regulator's role include regulatory oversight of forensic services undertaken by the police service?

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Annex A

Some examples of current arrangements for assuring the quality of forensic science

Area assured	Examples of current arrangements
Individuals	<ul style="list-style-type: none">• Council for the Registration of Forensic Practitioners• Home Office Register of Forensic Pathologists• Royal Society of Chemistry and other professional bodies• Forensic Science Society• occupational standards, eg academic qualifications required for recruitment to positions within the police service or externally
Organisations	<ul style="list-style-type: none">• approval of forensic science providers by police forces as a result of formal procurement processes• Home Office Circulars• legislation imposing general requirements on companies and other organisations, eg Health & Safety at Work Act
Forensic science processes	<ul style="list-style-type: none">• UK Accreditation Service, British Standards Institute, International Organization for Standardization (ISO)• suppliers' own internal quality systems and procedures• ACPO policy and doctrine
Forensic products and services	<ul style="list-style-type: none">• type approval of kits• product definitions as prescribed in police service procurement arrangements
Systems and information	<ul style="list-style-type: none">• National DNA Database Custodian and Team• international standards, eg for DNA exchange• National Firearms Forensic Intelligence Database standards
Legal system requirements	<ul style="list-style-type: none">• Criminal Justice System requirements, including the adversarial system and rules, case law and process, ACPO manual of guidance and the Prosecution Team disclosure rules.• relevant statutes, eg Police and Criminal Evidence Act
Ethical requirements	<ul style="list-style-type: none">• Human Genetics Commission• Information Commissioner