

EXPLANATORY MEMORANDUM TO
THE ACCREDITATION OF FORENSIC SERVICE PROVIDERS (AMENDMENT)
REGULATIONS 2019

2019 No. 1384

1. Introduction

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

2. Purpose of the instrument

2.1 The purpose of the instrument is to amend The Accreditation of Forensic Service Providers Regulations 2018 (S.I. 2018/1276) (“the Regulations”).

2.2 The Regulations transpose into UK legislation EU Council Framework Decision 2009/905/JHA (“the Forensic Services Framework Decision”) on the accreditation of forensic service providers carrying out laboratory activities. The Forensic Services Framework Decision applies specifically to laboratory activities carried out at the request of law enforcement agencies responsible for the prevention, detection or investigation of crime.

2.3 The Regulations require UK law enforcement agencies to use an accredited forensic service provider to conduct any laboratory activity which results in a DNA-profile or fingerprint data.

2.4 The Government owns laboratories located at the Atomic Weapons Establishment (AWE) Aldermaston, Defence Science and Technology Laboratory (Dstl) Porton Down and Fort Halstead. These laboratories specialise in the analysis and forensic interrogation of evidence where there is the presence of hazardous chemical, biological, radiological, nuclear and explosive (CBRNE) materials.

2.5 For these laboratories working with chemical, biological, radiological and nuclear materials, the majority of their forensic capabilities are currently not accredited due to their highly unique operating models which differ from that of a traditional forensic laboratory. These laboratories face specific challenges to accreditation associated with the relatively low number of samples they handled, and the necessary additional layers of safeguards, quality standards, and training required to work with potentially extremely hazardous materials.

2.6 Such challenges are less pronounced for those laboratories handling explosives materials. A higher throughput of casework means that accreditation is held in a number of forensic disciplines that allow the analysis of explosives and DNA recovery. However, accreditation of fingerprint processes continues to pose a challenge because of the very low throughput of items.

2.7 In respect of the laboratory activity that is within the scope of these Regulations, this instrument amends the Regulations such that the requirement for accreditation will be satisfied where laboratory activity is carried out in the specified CBRNE laboratories by, or under the supervision of, an individual employed by an accredited laboratory for the purpose of carrying out that laboratory activity. Forensic analysis of evidence in the CBRNE laboratories is already conducted by or under the supervision of

experts who are present when the work is undertaken and with the required expertise to judge if the work is carried out to the required standard. This amendment provides clarity that evidence processed by these laboratories will comply with the accreditation requirement in the Regulations, and therefore assurance that prosecutors can rely on such evidence to inform charging decisions and build cases.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the UK.

4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Regulations transposed the Forensic Services Framework Decision into domestic legislation. The Forensic Services Framework Decision was one of a series of legislative measures, commonly known as the “Prüm decisions”, to improve cross-border cooperation between EU countries’ police and judicial authorities in combatting terrorism and cross-border crime. The Prüm decisions provide for the automated exchange of DNA, fingerprint and Vehicle Registration Data for the purpose of solving and preventing crime.

6.2 The transposition of the Forensic Services Framework Decision was necessary to enable the UK to undertake the relevant functions required to operate the exchange of DNA and fingerprints as is required under the Prüm Decisions.

6.3 The relevant EU law for the Prüm decisions is:

- Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime;
- Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime;
- Council Decision 2014/836/EU of 27 November 2014 determining certain consequential and transitional arrangements concerning the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial

cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon;

- Council Decision 2014/837/EU of 27 November 2014 determining certain direct financial consequences incurred as a result of the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon;
- Commission Decision (EU) 2016/809 of 20 May 2016 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in certain acts of the Union in the field of police cooperation adopted before the entry into force of the Treaty of Lisbon and which are not part of the Schengen acquis; and a number of Council Implementation Decisions.

7. Policy background

What is being done and why?

- 7.1 The Regulations were implemented by the Home Office to fulfil the obligations of the Forensic Services Framework Decision on the accreditation of forensic service providers.
- 7.2 The Regulations require UK law enforcement agencies to use an accredited forensic service provider to conduct any laboratory activity which results in a DNA-profile or fingerprint data.
- 7.3 Accreditation of forensic service providers is therefore required to assure that those who carry out the relevant laboratory activities, for both domestic and international law enforcement cooperation purposes in the UK, meet the required standard. This applies to all forensic service providers, irrespective of whether the provider is public sector, police or commercial.
- 7.4 The Government owned CBRNE laboratories do not hold full accreditation across the DNA and fingerprint disciplines, due to their specialist and unique nature. As set out above, this instrument amends the Regulations such that the requirement for accreditation will be satisfied where laboratory activity is carried out in CBRNE laboratories by, or under the supervision of, an individual employed by an accredited laboratory for the purpose of carrying out that laboratory activity.
- 7.5 This amendment therefore provides clarity that evidence processed by these laboratories will comply with the accreditation requirement in the Regulations. This is necessary to ensure that prosecutors can rely on such evidence to inform charging decisions and build cases.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 On 23 June 2016, the EU referendum took place and the people of the UK voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once

the UK has left the EU. This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no related instruments to consolidate.

10. Consultation outcome

10.1 No public consultation has been undertaken. However, UK law enforcement agencies, the Forensic Science Regulator, UK Accreditation Service, Chief Science Adviser and the devolved administrations (Justice Department, Police Service of Northern Ireland, Forensic Science Northern Ireland, Scottish Government and Police Scotland) have been consulted on the amendment. The Devolved Administrations have noted the impact the Regulations will have on the relevant laboratories.

11. Guidance

11.1 No guidance is being issued in relation to this instrument. However, guidance on related matters published by the Forensic Science Regulator for forensic science providers and practitioners in the Criminal Justice System is contained in the Regulator's Codes of Practice. This can be found on the Gov.uk website at the following link: <https://www.gov.uk/government/collections/forensic-scienceproviders-codes-of-practice-and-conduct>

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no additional impact on business, charities or voluntary bodies as this instrument applies to law enforcement authorities responsible for the prevention, detection and investigation of criminal offences.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 However, the instrument does not impose any additional requirements on those small business (forensic service providers) as they are currently mandated to meet the required international standard by virtue of the existing requirement for them to comply with the Codes of Practice.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Home Office will engage with UK prosecution agencies and the courts to review and monitor any issues with the operation of the legislation.

15. Contact

15.1 Nikita Cannan at the International Criminality Unit (email: nikita.cannan@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 Lizzy Gummer at the International Criminality Unit can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt. Hon. Brandon Lewis at the Home Office can confirm that this Explanatory Memorandum meets the required standard.