

Forensic Science Regulator and Biometrics Strategy Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office with the agreement of Darren Jones, are published separately as Bill 11-EN.

Forensic Science Regulator and Biometrics Strategy Bill

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Schedule – The Regulator

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B I L L

TO

Make provision for the appointment of the Forensic Science Regulator; to make provision about the Regulator and about the regulation of forensic science; to require the Secretary of State to publish an annual strategy on biometric technologies; to enable the Secretary of State to limit the use of such technologies when that is recommended in the strategy; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 The Forensic Science Regulator

- (1) There is to be a Forensic Science Regulator.
- (2) In this Act “the Regulator” means the Forensic Science Regulator.
- (3) The Schedule makes further provision about the Regulator.

2 Regulator’s duty to publish a code of practice

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- (1) The Regulator must prepare and publish a code of practice about the carrying on of forensic science activities in England and Wales.
- (2) The code—
 - (a) must specify the forensic science activities to which it applies;
 - (b) need not make provision about every forensic science activity; 10
 - (c) may make different provision for different purposes or descriptions of person.
- (3) The Regulator must publish the code in a way that the Regulator considers is likely to bring it to the attention of persons likely to be interested in it.
- (4) The Regulator— 15
 - (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.

- (5) In this Act “the code” means the code of practice published under this section that is for the time being in force (as altered from time to time).

3 Code of practice: procedure

- (1) Before publishing a code of practice under section 2 or any alterations to the code, the Regulator must consult such persons as the Regulator considers appropriate. 5
- (2) 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.
- (3) The Regulator must not publish a code of practice under section 2 or any alterations to the code unless – 10
- (a) a draft of the code or the alterations has been sent to the Secretary of State,
 - (b) the Secretary of State has approved the draft and laid it before Parliament, and 15
 - (c) the draft has been approved by a resolution of each House of Parliament.
- (4) A code of practice published under section 2 comes into force on the day specified in it for that purpose.
- (5) Alterations to the code come into force on the day specified in the alterations for that purpose. 20
- (6) Different days may be specified under subsection (4) or (5) for different purposes.

4 Status of the code

- (1) A failure by a person to act in accordance with the code does not of itself make that person liable to civil or criminal proceedings. 25
- (2) The code is admissible in evidence in criminal and civil proceedings in England and Wales.
- (3) A court may in particular take into account a failure by a person to act in accordance with the code in determining a question in any such proceedings. 30

5 Investigations by the Regulator

- (1) This section applies if the Regulator has reason to believe that a person may be carrying on a forensic science activity to which the code applies in a way that creates a substantial risk of – 35
- (a) adversely affecting any investigation, or
 - (b) impeding or prejudicing the course of justice in any proceedings.
- (2) The Regulator may investigate the carrying on by that person of any forensic science activity to which the code applies.
- (3) For the purposes of any such investigation, the Regulator may require the person mentioned in subsection (1) to provide to the Regulator – 40
- (a) copies of documents in the person’s possession or control;

- (b) other information in the person’s possession or control.
- (4) A requirement under subsection (3) may include a requirement for information to be provided orally.
- (5) A requirement under subsection (3) is imposed by giving a written notice to the person specifying – 5
 - (a) a description of the information that is required;
 - (b) when, or the time by which, the information is to be provided;
 - (c) the form and manner in which the information is to be provided.
- (6) A person may not be required under subsection (3) to do anything that the person could not be compelled to do in proceedings before the High Court. 10
- (7) The Regulator may bring proceedings for an injunction (including an interim injunction) for the purpose of securing compliance with a requirement imposed under this section.
- (8) In this Act “proceedings” means proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales, within the meaning of section 4 of the Rehabilitation of Offenders Act 1974. 15

6 Compliance notices

- (1) This section applies if the Regulator believes that a person is carrying on a forensic science activity to which the code applies in a way that creates a substantial risk of – 20
 - (a) adversely affecting any investigation, or
 - (b) impeding or prejudicing the course of justice in any proceedings.
- (2) The Regulator may serve a compliance notice on the person.
- (3) A compliance notice is a notice requiring the person on whom the notice is served to take one or more steps specified in the notice within the period or by the date specified in the notice. 25
- (4) A compliance notice may prohibit the person on whom the notice is served from carrying on any forensic science activity in England and Wales specified in the notice until the Regulator is satisfied that a step specified in the notice has been taken or does not need to be taken (see section 7). 30
- (5) In deciding whether to serve a compliance notice on a person and in determining the content of a notice the Regulator may take into account any failure by a person to act in accordance with the code.
- (6) A compliance notice must be in writing and include information as to – 35
 - (a) the Regulator’s reasons for serving the notice,
 - (b) rights of appeal (see section 8), and
 - (c) the consequences of not complying with the notice.
- (7) The Regulator may bring proceedings for an injunction (including an interim injunction) for the purpose of securing compliance with any step or prohibition specified in the notice. 40
- (8) The Regulator may at any time vary or cancel a compliance notice after it has been served by giving notice in writing to the person on whom it was served.

7 Completion certificates

- (1) This section applies if the Regulator has served a compliance notice on a person under section 6.
- (2) If the Regulator is satisfied that any step specified in the notice has been taken or does not need to be taken the Regulator must issue a certificate to that effect (a “completion certificate”). 5
- (3) A person on whom a compliance notice is served may at any time apply for a completion certificate.
- (4) Within the period of 14 days beginning with the day after the day on which the Regulator receives such an application the Regulator must send to the person – 10
 - (a) a completion certificate relating to the compliance notice, or
 - (b) written notice of the Regulator’s decision not to issue such a certificate together with the Regulator’s reasons for that decision.
- (5) A compliance notice ceases to have effect to the extent specified in a completion certificate relating to that notice on the date the certificate is issued. 15

8 Appeals

- (1) A person served with a compliance notice under section 6 may appeal to the First-tier Tribunal against the decision to serve the notice.
- (2) The grounds for an appeal under subsection (1) are that – 20
 - (a) the decision was based on an error of fact;
 - (b) the decision was wrong in law;
 - (c) the decision was unreasonable;
 - (d) any step or prohibition specified in the notice is unreasonable.
- (3) On an appeal under subsection (1) the First-tier Tribunal may – 25
 - (a) confirm the notice;
 - (b) cancel the notice;
 - (c) vary the notice;
 - (d) remit to the Regulator the decision whether to confirm, cancel or vary the notice; 30
 - (e) award costs.
- (4) A person served with a compliance notice under section 6 may appeal to the First-tier Tribunal against a decision not to issue a completion certificate under section 7 relating to that notice.
- (5) The grounds for an appeal under subsection (4) are the grounds mentioned in subsection (2)(a) to (c). 35
- (6) On an appeal under subsection (4) the First-tier Tribunal may –
 - (a) confirm the decision not to issue a completion certificate;
 - (b) require the Regulator to issue a certificate;
 - (c) remit to the Regulator the decision whether to issue a certificate; 40
 - (d) award costs.

- (7) Where a person has brought an appeal under subsection (1) or (4), the First-tier Tribunal may suspend any requirement or prohibition specified in the compliance notice until the appeal is determined, withdrawn or abandoned.

9 Other functions of the Regulator

- (1) The Regulator may prepare and publish guidance or reports on any matter relating to forensic science activities carried on in England and Wales. 5
- (2) The Regulator may provide advice relating to forensic science activities carried on in England and Wales to any person.
- (3) The reference to any person in subsection (2) includes any person in a country or territory outside the United Kingdom. 10
- (4) As soon as reasonably practicable after the end of each reporting period the Regulator must –
- (a) prepare a report about the exercise of the Regulator’s functions during that period,
 - (b) publish the report in such manner as the Regulator considers appropriate, and 15
 - (c) provide the report to the Secretary of State.
- (5) The Secretary of State must lay the report before Parliament.
- (6) In subsection (4) “reporting period” means –
- (a) the period of 12 months beginning with the date on which section 1 comes into force, and 20
 - (b) each successive period of 12 months.
- (7) The Regulator may do anything (except borrow money) the Regulator thinks necessary or appropriate for the purposes of, or in connection with, the Regulator’s functions. 25

10 Disclosure by the Regulator

- (1) The Regulator may disclose to any other public authority any information received by the Regulator in connection with any of the Regulator’s functions if –
- (a) the disclosure is made for the purpose of enabling or assisting the other public authority to discharge any of its functions, or 30
 - (b) the information so disclosed is otherwise relevant to the discharge of any of the functions of the other public authority.
- (2) A disclosure of information under subsection (1) does not breach –
- (a) any obligation of confidence owed by the Regulator, or 35
 - (b) any other restriction on the disclosure of information (however imposed).
- (3) But subsection (1) does not authorise a disclosure of information that –
- (a) would contravene the data protection legislation (but in determining whether a disclosure would do so, the power in that subsection is to be taken into account), or 40
 - (b) would be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

- (4) In subsection (3)(a) “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).
- (5) In this section “public authority” means –
- (a) any court or tribunal,
 - (b) any constable, 5
 - (c) any government department,
 - (d) any local authority,
 - (e) any person discharging regulatory functions in relation to any description of activities, and
 - (f) any other person discharging functions of a public nature. 10

11 Meaning of “forensic science activity”

- (1) In this Act “forensic science activity” means an activity relating to the application of scientific methods for a purpose mentioned in subsection (2).
- (2) Those purposes are –
- (a) purposes relating to the detection or investigation of crime in England and Wales; 15
 - (b) purposes relating to the preparation, analysis or presentation of evidence in criminal proceedings in England and Wales;
 - (c) such other purposes as the Secretary of State may specify in regulations made by statutory instrument. 20
- (3) Regulations under subsection (2)(c) –
- (a) must not specify a purpose that could be specified by provision falling within the legislative competence of Senedd Cymru (including any provision that could only be made with the consent of a Minister of the Crown within the meaning of the Ministers of the Crown Act 1975); 25
 - (b) may make transitional, transitory and saving provision;
 - (c) may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.

12 Crown application 30

- (1) This Act binds the Crown, subject to subsection (2).
- (2) Sections 5 to 8 do not bind the Crown.
- (3) A person serving or employed for policing purposes is not to be treated as a servant or agent of the Crown for the purposes of subsection (2).
- (4) The reference in subsection (3) to a person serving or employed for policing purposes is to – 35
- (a) a member of a police force,
 - (b) a special constable appointed under section 27 of the Police Act 1996 or section 25 of the Railways and Transport Safety Act 2003,
 - (c) a person employed for the purposes of a police force, or 40
 - (d) a community support volunteer or a policing support volunteer designated under section 38 of the Police Reform Act 2002.
- (5) In subsection (4) “police force” includes –

- (a) the British Transport Police Force,
 - (b) the Civil Nuclear Constabulary, and
 - (c) the Ministry of Defence police.
- (6) The reference in subsection (4)(d) to section 38 of the Police Reform Act 2002 includes that section as applied by section 28 of the Railways and Transport Safety Act 2003 (application to British Transport Police). 5

13 Extent, commencement and short title

- (1) This Act extends to England and Wales only, subject to subsections (2) and (3).
- (2) Each of the amendments in paragraphs 8 to 11 of the Schedule has the same extent as the enactment amended. 10
- (3) This section extends to England and Wales, Scotland and Northern Ireland.
- (4) This Act comes into force on such day as the Secretary of State appoints by regulations made by statutory instrument, subject to subsection (6).
- (5) Different days may be appointed for different purposes.
- (6) The following provisions of this Act come into force on the day on which this Act is passed – 15
- (a) section 11;
 - (b) this section.
- (7) The Secretary of State may by regulations made by statutory instrument make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act. 20
- (8) This Act may be cited as the Forensic Science Regulator and Biometrics Strategy Act 2020.

SCHEDULE

Section 1

THE REGULATOR

Status

- 1 The Regulator carries out functions on behalf of the Crown.
- 2 Service as the Regulator is not service in the civil service of the state. 5

Appointment and terms of office

- 3 (1) The Regulator is to be appointed by the Secretary of State.
- (2) The Regulator must be a person who appears to the Secretary of State to have expertise in forensic science.
- (3) The Regulator holds office in accordance with the terms of the Regulator's appointment. 10
- (4) Sub-paragraph (5) applies to any person who, at the time this Schedule comes into force, holds the office known immediately before that time as the Forensic Science Regulator.
- (5) That person – 15
- (a) is to be treated as having been appointed as the Regulator by the Secretary of State under sub-paragraph (1) at that time, and
- (b) holds office as the Regulator in accordance with the terms of the person's appointment to the office mentioned in sub-paragraph (4).

Remuneration etc 20

- 4 (1) *The Secretary of State may pay to or in respect of the Regulator such remuneration as the Secretary of State may determine.*
- (2) *The Secretary of State may –*
- (a) *pay such pension, allowances or gratuities as the Secretary of State may determine to or in respect of a person who is or has been the Regulator, or* 25
- (b) *make such payments as the Secretary of State may determine towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person.*
- (3) *Sub-paragraph (4) applies if the Secretary of State determines that there are special circumstances which make it right for a person ceasing to be the Regulator to receive compensation.* 30
- (4) *The Secretary of State may pay to the person a sum by way of compensation of such amount as the Secretary of State may determine.*

Expenses

- 5 *The Secretary of State may pay to the Regulator or another person amounts in respect of expenses incurred by the Regulator in the exercise of the Regulator’s functions.*

Staff etc

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- 6 *The Secretary of State may, after consultation with the Regulator, provide the Regulator with –*
 (a) *such staff, and*
 (b) *such accommodation, equipment and other facilities,*
as the Secretary of State considers necessary for the carrying out of the Regulator’s functions.

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- 7 *A person employed in the civil service of the State continues to be employed in the civil service of the State during any period of service as a member of the staff mentioned in paragraph 6(a).*

Investigation by the Parliamentary Commissioner

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- 8 *In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation), at the appropriate place insert –*
 “The Forensic Science Regulator.”

House of Commons disqualification

- 9 *In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), at the appropriate place insert –*
 “The Forensic Science Regulator.”

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Freedom of information

- 10 *In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities to which that Act applies), at the appropriate place insert –*
 “The Forensic Science Regulator.”

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Public sector equality duty

- 11 *In Part 1 of Schedule 19 to the Equality Act 2010 (authorities subject to the public sector equality duty), in the group of entries under the heading “Criminal justice”, at the appropriate place insert –*
 “The Forensic Science Regulator.”

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Presented by Darren Jones

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