

EXPLANATORY MEMORANDUM TO
THE ACCREDITATION OF FORENSIC SERVICE PROVIDERS REGULATIONS
2018

2018 No. 1276

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 transpose into United Kingdom (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.
- 2.2 The scope of the Forensic Services Framework Decision is to require UK forensic service providers to be accredited to international standards, and by a national accreditation body, to ensure that the results of laboratory activities carried out by those service providers are recognised as being equally reliable to the results of similarly accredited laboratory activities within any other EU Member State.
- 2.3 This instrument requires UK law enforcement agencies to use an accredited forensic service provider to conduct any laboratory activity which results in a DNA-profile or dactyloscopic (fingerprint) data. Such laboratory activity includes locating and recovering traces on items, as well as developing, analysing and interpreting forensic evidence, with a view to providing expert opinions or exchanging forensic evidence. It also supports forensic activity associated with the identification of victims, particularly after disasters.

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 the 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 UK wide.
- 4.2 The territorial application of this instrument is UK wide.

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 UK is required to transpose the Forensic Services Framework Decision into domestic legislation. The Forensic Services Framework Decision will be implemented through Regulations made under Section 2(2) of the European Communities Act 1972. It is 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.
- 6.2 Collectively, the Prüm decisions provide for a system which allows participating countries to exchange DNA, fingerprints, and Vehicle Registration Data. Unlike alternative channels, the automated exchange under Prüm provides a hit/no-hit response for DNA within 15 minutes, and fingerprints within 24 hours. The UK has not yet connected to Prüm in respect of the automated exchange of DNA, fingerprints and Vehicle Registration Data, but is operational in respect of the elements of the Prüm Decisions which provide for civil contingencies and for fighting terrorism.
- 6.3 The transposition of the Forensic Services Framework Decision is necessary to enable the UK to undertake the relevant functions required to operate the exchange of DNA and fingerprints as is required under Prüm.
- 6.4 Accreditation of forensic service providers is therefore required to provide assurance 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.
- 6.5 The relevant EU law for the Prüm decisions is:
- 6.5.1 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;
- 6.5.2 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;
- 6.5.3 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;
- 6.5.4 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;
- 6.5.5 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 This instrument is being implemented by the Home Office to fulfil the obligations of the Forensic Services Framework Decision on the accreditation of forensic service providers.
- 7.2 It requires UK law enforcement agencies to use an accredited forensic service provider to conduct any laboratory activity which results in a DNA-profile or dactyloscopic (fingerprint) data. Such laboratory activity includes locating and recovering traces on items, as well as developing, analysing and interpreting forensic evidence, with a view to providing expert opinions or exchanging forensic evidence. It also supports forensic activity associated with the identification of victims, particularly after disasters.
- 7.3 The Forensic Services Framework Decision is a measure which forms part of what is commonly known as the “Prüm decisions”. Prüm provides for a system which allows participating countries to exchange DNA, fingerprints, and Vehicle Registration Data. Unlike alternative channels, the automated exchange under Prüm provides a hit/no-hit response for DNA within 15 minutes and fingerprints within 24 hours. The UK has not yet connected to Prüm in respect of the automated exchange of DNA Fingerprints and Vehicle Registration Data, but is operational in respect of the elements of the Prüm Decisions which provide for civil contingencies and for fighting terrorism.
- 7.4 The aim of this instrument is twofold. First, it ensures that UK law enforcement agencies use forensic service providers who are accredited to international standards for carrying out specified forensic activity (as set out above) in carrying out Prüm fingerprint and DNA exchanges. Second, the instrument ensures that the results of the specified laboratory activities can be recognised by law enforcement authorities across the EU and in the UK. The transposition of the Forensic Services Framework Decision is necessary to enable the UK to undertake the relevant functions required to operate the exchange of DNA and fingerprints as is required under Prüm.
- 7.5 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.
- 7.6 This instrument sets out that accreditation must be granted by a national accreditation body which has the authority to assess if a forensic service provider meets the relevant requirements for accreditation. Presently, the United Kingdom Accreditation Service fulfils this function for the UK through powers conferred under regulation 3 of the Accreditation Regulations 2009 (SI No 3155/2009) and the EU Regulation (EC) 765/2008.
- 7.7 Whilst transposing the Forensic Services Framework Decision places obligations on law enforcement agencies in the UK to ensure their laboratory services are provided by accredited forensic service providers, the revised Codes of conduct and practice for forensic science providers and practitioners in the criminal justice system (“the Codes

of Practice”) relating to fingerprint comparison, issued by the Forensic Science Regulator in October 2018, sets the same standard for fingerprint comparison as is required under the Forensic Services Framework Decision. The effect of this instrument is that laboratory activities relating to DNA and fingerprints in the Codes of Practice are now subject to a legal requirement to meet that standard, providing regulatory harmony for the forensic sector.

- 7.8 Forensic science plays a vital role in the criminal justice system by helping to identify victims, suspects and witnesses. Its proper use is therefore a critical component of an efficient system, in the delivery of justice and of public confidence in the Criminal Justice System as a whole. If the Forensic Services Framework Decision is not transposed into UK law, there remains a lack of regulatory standards for the key forensic laboratory activities dealing with DNA and fingerprints. Accreditation is crucial for mutual recognition of laboratory results in international exchange mechanisms for law enforcement and security cooperation, particularly in combating terrorism and cross-border crime.
- 7.9 Finally, the Forensic Services Framework Decision sets out that accreditation must be granted by the national accreditation body which has exclusive competence to assess if a laboratory meets the requirements set by harmonised standards. Presently, the United Kingdom Accreditation Service (UKAS) fulfils this function for the UK (under regulation 3 of the Accreditation Regulations 2009 (SI No 3155/2009) and the EU Regulation (EC) 765/2008.

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

- 8.1 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 and the devolved administrations (Justice Department, Police Service of Northern Ireland, Forensic Science Northern Ireland, Scottish Government and Police Scotland) have been consulted and the Home Office is content with the approach of the Devolved Administrations.

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-science-providers-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. Domestic standards equivalent to those required by this instrument on accreditation have been put in place via the Forensic Science Regulator's Codes of Practice as of October 2018.

13. Regulating small business

13.1 The instrument does apply to activities that are undertaken by small businesses that are forensic service providers.

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 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 Hilary Brown at the International Criminality Unit email: hilary.brown@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. Nick Hurd at the Home Office can confirm that this Explanatory Memorandum meets the required standard.