

**GUIDANCE REGARDING THE STORAGE,  
RETENTION AND DESTRUCTION OF  
RECORDS AND MATERIALS THAT HAVE  
BEEN SEIZED FOR FORENSIC EXAMINATION**

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## 1. PURPOSE

- 1.1.1 The purpose of this document is to set out requirements regarding the storage, retention and destruction of records and materials that have been seized for forensic examination.
- 1.1.2 The document will provide information to understand individual roles and responsibilities so that the police service and FSP's<sup>1</sup> work in partnership in serving the needs of the wider Criminal Justice System (CJS) and to ensure the proportionate and lawful retention of seized and submitted materials.
- 1.1.3 For the avoidance of doubt, this document shall supersede all previous guidance on the subject of retention issued previously. Changes from the previous version are highlighted in grey for ease of reference.

<sup>1</sup> FSP includes both forensic units within Law Enforcement Agencies and commercial providers

## 2. SCOPE

### 2.1 Parties

2.1.1 This guidance has been agreed between the Crown Prosecution Service (CPS), the National Police Chiefs' Council (NPCC) and the Forensic Science Regulator (FSR) will refer to it in their Codes of Practice and Conduct.

### 2.2 Territorial Extent

2.2.1 This guidance applies only to England and Wales and covers material and information recovered/seized by Law Enforcement Agencies as result of investigation into criminal investigations, submitted to and retained by FSP, as well as those retained within law enforcement property stores.

### 2.3 Extent

2.3.1 This guidance applies to any material submitted to an FSP for administration of justice purposes.

2.3.2 In this guidance the term FSP refers to any organisation, or part of an organisation, which provides forensic science services to the CJS. Examples include:

- a. Any private forensic science provider;
- b. Any public forensic science provider;
- c. Any part of a police force, or other law enforcement agency providing such services;<sup>2</sup>
- d. The National Ballistics Intelligence Service (NaBIS); and
- e. The Forensic Archive Ltd (FAL).<sup>3</sup>

<sup>2</sup> Where the FSP is part of a police force the references, in the document, to the FSP and police force will have to be interpreted as referring to (a) that part of the force providing forensic science services and (b) that part of the force responsible for the investigation.

<sup>3</sup> The FAL is the body responsible for the material previously held by the Forensic Science Service (FSS). In this protocol it shall be treated as a separate body from the FSS. In this protocol the

2.3.3 Other bodies may adopt this guidance by means of agreement with FSPs.

### 3. MODIFICATION

3.1.1 This is the first issue of this document published by the NPCC.

### 4. EFFECTIVE DATE

4.1.1 Issue 1 of this protocol became effective on 8th January 2018 following approval of the NPCC Performance and Standards Group.

### 5. LEGAL ISSUES

5.1.1 This guidance has been prepared to ensure the various legal requirements, or issues, which apply to the retention of evidence are complied with. The key requirements are as follows.

- a. Police powers to seize and retain evidence under,
  - i. The Police and Criminal Evidence Act 1984 (PACE); and
  - ii. Common Law,
- b. Requirements to retain evidence and disclose information under the Criminal Procedure and Investigations Act 1996 (CPIA),
- c. Requirements, potentially applicable, to the retention of human tissue under the Human Tissue Act 2004,
- d. The role and powers of the Criminal Cases Review Commission (CCRC) under the Criminal Appeals Act 1995,<sup>4</sup>
- e. Management of Police Information (MOPI) and Information Management Authorised Professional Practice,

terms Forensic Science Service and FSS shall be used to represent that organisation throughout its existence as an operational FSP - regardless of its legal status (e.g. part of the Home Office, executive agency of the Home Office or a limited liability company).

<sup>4</sup> This guidance deals with the position of the CCRC but FSPs should deal with the Scottish Criminal Cases Review Commission in a similar manner.

- f. PACE following amendments from the Protection of Freedoms Act 2012 and the supporting guidance provided by the Forensic Information Databases Strategy Board,
- g. Regulation of Investigatory Powers Act 2000,
- h. Data Protection Act<sup>5</sup>, 2000,
- i. Police Reform Act, 2002, with regards to the power of seizure.

5.1.2 Understanding of this protocol does not require an in depth knowledge of the legal issues, however, it may assist in understanding the requirements so an overview is provided at Appendix A.

## 6. REGULATORY ISSUES

6.1.1 The Forensic Science Regulator's Codes of Practice and Conduct [L] discuss relevant requirements as follows.

- a. Section 23.4 – Exhibit return and disposal; and
- b. Section 25.4 – Retention, recording, revelation and prosecution disclosure.

6.1.2 FSPs are expected to comply with the provisions of the FSR Codes of Practice.

## 7. INVESTIGATOR'S DUTY

### 7.1 Seizure, Retention and Disclosure

7.1.1 The power to seize and retain evidence is held by the police. It is therefore for the investigator to determine whether there is a need to retain items seized as evidence, whether it is necessary to retain the item itself or a copy/photograph and the period for retention taking into account the requirements of legislation, policy and regulations.

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It should be noted that the General Data Protection Regulations come into force in May 2018 and this should be considered once the impact on this protocol is understood.

- 7.1.2 It is for the investigator to inform the FSP as to the requirement and period for retention.
- 7.1.3 The investigator has a duty to ensure relevant material is recorded retained and revealed to the prosecutor. This must be retained in a suitable format. This is to ensure the prosecutor can fulfil the duty to disclose relevant material to the defence taking into account the requirements of legislation, policy and regulations.
- 7.1.4 Material is considered relevant, in relation to disclosure obligations, if it:
- a. Might reasonably be considered capable of undermining the prosecution case; or
  - b. Might assist the case for the accused.
- 7.1.5 Clearly any material which gives rise to evidence which may be used in the case should be considered relevant.
- 7.1.6 To comply with the disclosure obligations the investigator must be fully informed of records/materials held by FSPs. As a minimum the investigator should be informed that a casefile is created and retained by the FSP. The presence of this casefile should be disclosed to the defence on the basis that it is held and available for inspection and review on request.
- 7.1.7 This area is considered in more detail in Appendix A.
- 7.2 ACPO Guidance - Human Tissue**
- 7.2.1 In 2012 ACPO, and the National Policing Improvement Agency (NPIA), published a report on the audit of tissue held by, or on the authority of, the police.
- 7.2.2 This report, which is discussed in more detail in Appendix A, made recommendations about determining when tissue should be retained and the need to have processes for regular review of any such retention.

### **7.3 ACPO Guidance - Management of Police Information (MOPI)**

7.3.1 The MOPI Guidance specifically relates to police records and states that regardless of the seriousness of an offence all records must be retained for an initial period, which is set to a minimum of six years. The guidance goes on to stipulate the minimum retention periods for offences that for the purpose of the guidance, have been separated into the following four groups:

- a. Group 1 – Certain public protection matters;
- b. Group 2 – Other sexual and violent offences;
- c. Group 3 – All other offences; and
- d. Group 4 – Undetected crime, Criminal Records Bureau disclosures, Intelligence products, missing persons, victim/witness details

7.3.2 The length of retention of records categorised by the four groups can be found in Appendix B of the MOPI Guidance.

7.3.3 As this protocol sets out the retention requirements to achieve the aims of the CJS the periods set out here will apply whenever they are longer than the MOPI guidance.

## **8. TYPES OF CASE RECORDS/MATERIALS**

### **8.1 General**

8.1.1 The seizing and submission of items to a FSP can create different types of records and material related to the case.

8.1.2 In relation to the materials there can be the following.

- a. Seized items,
- b. Native and copies of analogue and digital still and moving images,
- c. Submitted items,

- d. Recovered materials. This covers materials recovered from a submitted item. Examples would include debris, trace materials, swabs or samples for extraction,
- e. Generated materials. This covers materials generated by the FSP, Examples include slide mounted fibres, scanning electron microscope stubs, paint sections, mark impressions, copies of digital media, files and artefacts and DNA extracts.

8.1.3 In relation to records there can again be a number of types (which may be electronic or hard copy).

- a. The case file which may include (but is not limited to);
  - i. Records of seizure,
  - ii. Records of submission,
  - iii. Records of communications/instructions,
  - iv. Records of examination,
  - v. Analytical reports,
  - vi. Native and copies of analogue and digital still and moving images,
  - vii. Records of continuity,
  - viii. Reports,
  - ix. Statements,
- b. Analytical data,
- c. Laboratory Information Management System (LIMS) data and police crime recording and property systems as well as relevant documents within quality management systems (as defined later on in this guidance).

8.1.4 In considering the retention of records the sequence of creation and the need for continuity and ability to challenge the results must be borne in mind. For example many analytical systems produce electronic results which can be

converted to hard copy. In such circumstances the electronic data is the important record as:

- a. It is what is produced by the system; and
- b. Without it the accuracy of the hard copy output could be challenged.

## 8.2 **Digital images (including photographs)/Copies**

8.2.1 The power to retain items is normally only employed when a digital image or copy would not be sufficient.

8.2.2 Should the police determine that a digital image/copy is sufficient, the provisions of this guidance should be applied as they would have applied to the original.

## 9. **FORENSIC SERVICE PROVIDER'S DUTIES**

9.1.1 Although FSP's (other than those that are part of the police), being a third party, do not have a specific direct duty under the CPIA;<sup>6</sup> it is crucial that FSP's comply with CPIA principles and retain case records/material as part of its service to investigators as set out in this guidance, in order to assist forces to fulfil their duty under the CPIA.

9.1.2 The arrangements mentioned will apply to all case records held by FSP's as well as other materials recovered/generated in casework, irrespective of whether they are covered by the CPIA. All retained material will be subject to periodic review the length of which to be agreed with the FSP and police force. This can be:

- a. On a case by case basis; or
- b. By application of an agreement between the FSP and the police;
- c. Defined within the FSR Codes of Practice and Conduct or its associated appendices.

<sup>6</sup> The police contracts may include provisions to ensure FSPs assist in meeting the CPIA requirements.

- 9.1.3 It is the duty of the FSP to supply a full list of retained materials upon the conclusion of the case, confirming the agreed retention periods that were assigned upon the submission of these items (or later if changed before the close of the case). For example, this could be completed as part of the unused material schedule (MG6C form).

## 10. RETENTION OF SEIZED AND SUBMITTED ITEMS AND MATERIALS

### 10.1 General Provisions

#### Seized and Submitted Items

- 10.1.1 Seized items not submitted for examination are still subject to the same principles of storage, retention and destruction.
- 10.1.2 All items submitted to FSP will be returned to the submitting LEA, normally as soon as possible after the laboratory examination is complete, except where:
- They fall within the special provisions set out below (see section 10.2),
  - They were submitted to NaBIS (see section 10.3),
  - Agreement has been reached with a relevant police force/organisation for the FSP to retain them, or part of them, under specialised storage conditions, for reference purposes, training purposes or for possible future re-examination using improved techniques<sup>7</sup>;
  - The submitting Law Enforcement Agency request continued retention (perhaps to allow subsequent review of the case), or
  - They relate to critical findings in the case, this will be at the FSP's discretion, following appropriate agreement with the submitting LEA.

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Where a request is made for the FSP to retain material not linked to the critical findings in the case, a charge may be levied by the FSP. Such requests are considered out of scope for the purpose of this guidance.

10.1.3 When returning a firearm to the submitting LEA the FSP may wish to recommend its submission (or via a judge's decision) to one of the national collections.

#### Recovered Materials

10.1.4 All relevant<sup>8</sup> case recovered material from the item(s) submitted will be packaged, labelled and exhibited by the FSP. They will be returned to the submitting LEA with the submitted item(s), unless:

- a. Special circumstances exist whereby it is retained by the FSP, or
- b. Any of the conditions set out in paragraph 10.1.2 apply.

10.1.5 The existence of recovered material will be documented on the case file and the submissions receipt/returns paperwork and is then communicated to the submitting LEA so that are aware of its existence.

#### Generated Materials

10.1.6 Generated material will be retained or returned by the FSP in line with agreed protocols between the FSP and LEA, or as prescribed by currently accepted industry standards (eg FSR Codes of Practice and Conduct).

- a. The examination of submitted items or recovered materials may lead to the production of generated materials which are used at intermediate stages in the process. Examples include (but not exclusive to) the following.
  - i. Solutions of material believe to be drugs.
  - ii. Extracts from materials for analysis.
  - iii. DNA dispersions used for dilution processes.

- b. These items are created with the intention that their existence should be short lived. Their continued existence is not, in general, required for the purposes of the CJS.
- c. Intermediate generated materials do not, normally, need to be retained under this guidance and may be destroyed at the discretion of the FSP. The creation, existence and destruction of such materials must be clear from the records maintained. The fact that retention is not required by this guidance does not require immediate destruction of the materials. The FSP may wish to retain the materials for purposes such as to allow reconsideration of results, reanalysis or investigation of issues surrounding the analysis.
- d. Intermediate generated materials must not be knowingly destroyed if the destruction would adversely affect the interests of the CJS. It is not possible to give a comprehensive list of such circumstances but an example would be where the sample may contain the only sample left for re-analysis.

#### Records

- 10.1.7 The FSP will maintain a documented audit trail in relation to retained and destroyed material as required by their statutory/contractual obligations.
- 10.1.8 Contingency plans must be given to the scenario which relates to an FSP going into liquidation; LEA casework material and records must be easily identified and returned promptly according to the submitting LEA protocols, or national guidance relevant to any given situation. It should be noted that this links directly to the FSR Codes of Practice, version 3, section 6 (or the equivalent section in subsequent versions) and relates to both accessible and inaccessible information.

## 10.2 Special Provisions

10.2.1 The general provision set out in sections 9 and 10 above shall not apply in the following circumstances.

- a. Liquid body fluids (e.g. urine and liquid blood toxicology samples or whole blood) will be destroyed by the FSP, after the examination is complete and following the appropriate notification to the submitting LEA, unless the circumstances of the case necessitate the exhibit be returned to the submitting LEA. The protocol for retention should consider the appropriate storage conditions of the material and any specific elements which may affect the analysis to gain an accurate result for example a substance may degrade over time, or the classification of an offence may change periodically.
- b. Material that is subject to legal control or prohibition on possession, production or use (e.g. human tissue, images and photographs, drugs or firearms) will be retained, returned or destroyed as appropriate.
- c. Exhibits stained with, or containing, a body fluid are returned to the submitting LEA, as soon as possible after the laboratory examination is complete, unless:
  - i. It is submitted solely for DNA intelligence purposes,
  - ii. It is believed that the exhibit is infested with parasites, or
  - iii. A stated biohazard (e.g. HIV or Hep B) is declared.

10.2.2 In the circumstances listed at C above, after the laboratory examination is complete and following the appropriate notification to the submitting LEA, the exhibits shall be destroyed by the FSP unless the circumstances of the case necessitate the exhibit be returned to the submitting LEA.

The provisions above reflect procedures established by a series of Home Office Circulars (HOC), for a list see section 18. These HOC set out processes which must be adhered to.

- 10.2.3 Although it is recognised that exhibits stained with, or containing, a body fluid may pose a potential biohazard risk, use of appropriate packaging and labelling limits the occasions where such exhibits need to be disposed of by the FSP, and should typically be returned to the submitting LEA.

### 10.3 Specific FSP Provisions

#### Forensic Archive Ltd (FAL)

- 10.3.1 Any materials submitted to, or recovered/generated by, the FSS (which are still retained) and any FSS case records are now held by the FAL.

- 10.3.2 These materials shall be held by the FAL on the basis that it has been requested to retain the material on behalf of the submitting force<sup>9</sup>.

- 10.3.3 Should there be any newly generated material to a case retained within FAL, this new material should be returned for retention with the case. It should be noted that this is the principle that should be reflected within other FSP working procedures.

#### National Ballistics Intelligence Service

- 10.3.4 All cartridge cases and bullets submitted to NaBIS from shots-fired incidents, as well as test fires generated by NaBIS, shall be retained by NaBIS on the basis that the submitting force has requested its retention for a minimum of 30 years with the authority to destroy given by the customer. (Items may be returned to the submitting forces for court purposes, but should always be returned to NaBIS for continued comparisons after the judicial process has been completed).

<sup>9</sup> As FAL is centrally funded this will not involve a charge to the force.

10.3.5 NABIS, or the submitting customer, may supply items or recovered/generated materials to another FSP for examination. In such cases the submitting customer must determine whether the material :

- a. Must be dealt with as if it had been submitted to the new FSP
- b. Returned to NaBIS.

## 11. RETENTION OF CASE RECORDS

11.1.1 Case records generated by the FSP will comprise the primary records contained on the case file and any secondary records such as:

- a. Batch records,
- b. Standardisation and calibration records specific to the case,
- c. Digital material, including analogue and digital media, audio and other data and artefacts,
- d. Computer records and any archived electronic data (including digital downloads) specific to the case, and
- e. Survey information, (for example Cellsite analysis and fibres).

11.1.2 The FSP will retain all case records in line with the relevant protocols, standards and legislation.

## 12. RETENTION OF OTHER RECORDS/MATERIALS

12.1.1 The purpose of retention of records and other materials is to allow there to be a future review, investigation, prosecution or appeal. It follows that retention must be approached in a manner which meets that aim.

12.1.2 The retention of case records and materials alone is unlikely to achieve the aim. These records/materials may only be properly understood<sup>10</sup> or be of any value<sup>11</sup>

<sup>10</sup> For example the results of analytical processes may be difficult to assess if the analytical procedures are not available.

<sup>11</sup> For example analytical results may be of little value if it cannot be shown that the instrument was properly calibrated and the operator was competent.

if other records/materials are also retained. It is not possible to provide an exhaustive list<sup>12</sup> but examples of other materials which would be required include the following.

- a. Staff records. These should be retained for a minimum of 30 years from the individual leaving an organisation, followed by a review of appropriateness for further retention.
  - i. Records of when staff worked for the FSP,
  - ii. Records to identify staff involved in the case and the associated training and competence records,
- b. Technical Procedures and supporting validations of methodology. These should be retained for a minimum of 30 years after the method ceased being used in any cases, followed by a review of appropriateness for further retention,
  - i. Standard operating procedures,
  - ii. Documents supporting the standard operating procedures.
  - iii. Records to identify the periods in which specific procedures were in use,
  - iv. Records to demonstrate appropriate authorisation of procedures and changes to procedures,
- c. Equipment and environment and related records. Records to demonstrate relevance and reliability of results<sup>13</sup>. These should be retained for a minimum of 6 years, followed by a review of appropriateness for further retention.

The table below gives guidance through examples of retention periods.

<sup>12</sup> Further information can be found in the FSR Codes of Practice and Conduct, ISO17025 and ISO17020.

<sup>13</sup> As defined further in ISO17025, 170202 and FSR Codes and Practice and Conduct.

Retention Period			
Less than 6 years	Minimum 6 years	Minimum of 30 years then review	Keep in case file
Records of audits and Quality Assurance information including Proficiency Test results.	Equipment and Environment and related records	Staff records.	Unpublished studies or research and development materials that relate to the case. It should be noted the quality management system of the organisation should contain any more mature research that has not been published.
Records of accreditations or approvals	Records to demonstrate relevance and reliability of results <sup>14</sup> .	Technical Procedures and supporting validations of methodology.	
		Records related to validation exercises	

### 13. STORAGE CONDITIONS

#### Access Requirements

13.1.1 Under the terms of this guidance, FSP will store any records and materials which they retain in such a way as to allow retrieval at all times. Parts of items which are biometric samples and have been retained by the FSP, will be stored separately to facilitate their destruction in compliance with PACE (through the amendment provided by PoFA) and Data Protection Act<sup>15</sup>.

<sup>14</sup> As defined further in ISO17025, 170202 and FSR Codes and Practice and Conduct.

<sup>15</sup> Note that the implications for the General Data Protection Regulations will need to be taken into account when it is enforced.

13.1.2 Where records are held in an electronic format the FSP must maintain the capability to access those records throughout the retention period, this is particularly important to consider the electronic material which is retained for 30 years as the future for systems and retrievable information can be unknown. There must be a digital continuity plan associated with the retained electronic material.

13.1.3 The FSP undertakes to facilitate access, where a request is appropriate, to any case records and case material retained in line with this guidance<sup>16</sup>.

- a. Access by the submitting LEA shall be a matter for local agreement (including funding of requests) but should be efficient,
- b. As a result of police co-operation some submitting LEAs may wish other forces to have routine access to its materials. Where the FSP has been notified of such an arrangement it shall treat a request from a relevant force in the same way it would deal with a request from the submitting force,
- c. Access by any other person/body acting with lawful authority (e.g. the CCRC exercising its powers against public FSPs, any private body, or persons acting on a court order) shall be dealt with on an individual basis. The submitting force should be notified, at the earliest practical opportunity, of the access,
- d. Access by any other person/body shall only be permitted on the authority of the submitting LEA or the CPS,

13.1.4 Access to other records/materials (as discussed in section 12) is not dealt with in this guidance. Access to such material will be dealt with on a case by case basis by the FSP.

#### Storage Standards

<sup>16</sup> This refers to materials and records discussed in section 10 and 11.

- 13.1.5 The storage conditions must be those necessary to maintain the integrity of the evidence and, by doing so, achieve the CJS aims of retention discussed above.
- 13.1.6 The storage conditions must be such as to maintain the relevance of the evidence. The storage conditions must be designed to:
- a. Maintain the continuity of the evidence, and
  - b. Ensure the security of the evidence.
- 13.1.7 The storage conditions must be such as to maintain the reliability of the evidence. The storage conditions must be designed to:
- a. Preserve the evidence,
  - b. Avoid, to the extent possible, any degradation of the evidence,
  - c. Avoid any contamination of the evidence, and
  - d. Avoid any event which could interfere with the future use of the evidence.
- 13.1.8 The storage must be designed to avoid external events (e.g. power cuts, flooding, etc.) interfering with the requirements set out above.
- 13.1.9 The FSP must have processes in place to deal with any external event which is likely to have an adverse impact on achieving the requirements set out above.
- 13.1.10 A table highlighting Exhibit Packaging and Storage Guidance is provided in Annex 2. It should be noted that all designated storage areas/ facilities should be secure and access controlled.

## **14. RETENTION PERIODS – CASE MATERIALS/RECORDS**

### **14.1 Minimum Retention Periods**

- 14.1.1 The minimum retention periods set out in this section are for guidance only. They can, however, be used as the default position.
- 14.1.2 For the purpose of considering minimum retention periods, three crime categories (major, serious and volume) have been used as a starting point.

Typical offences under these category headings, can be found in Appendix B. This list is not exhaustive and the categories are for guidance only, each case should be assessed on an individual basis; if there is any ambiguity as to how long to retain material, the FSP should consult the submitting LEA which has ultimate discretion as to how long to retain material and who can request to increase (with a documented rationale as to the reason for increasing the retention period) or decrease the minimum retention period at any time. An example of a case where an increase to the minimum retention period may be required would be a minor sexual assault on an adult (volume crime) where body fluids have been detected but where the case remains undetected and where the case has the potential for cold case review; in such a case it may be that the investigating officer requests for the case material to be retained for 30 years and at that point reviewed again.

14.1.3 Unless otherwise notified by the force (see section 14.2), case material should be retained for a minimum of:

- a. 30 years (with ten year reviews before that time being advisable) – major and serious crime,
- b. 6 years – volume crime, and
- c. 3 years – simple possession of drugs cases and alcohol/drugs driving offences,
- d. or through other agreements such as 28 day retention agreements for the submissions form, GF111 ,submissions where there is no substantive exhibit to return to submitting authority.

The table below gives guidance on retention periods.

Retention Periods Guidance		
Major crime	Serious offences	Volume offences
30 years With ten yearly reviews before this time. The trigger of this review will be initiated by the FSP holding the information or material.	30 years With ten yearly reviews before this time. The trigger of this review will be initiated by the FSP holding the information or material.	6 years 3 years
No records will be destroyed without timely prior notification from the LEA.	No records will be destroyed without timely prior notification from the LEA.	No notification of disposal required
If extension to the retention period FSP will destroy the records/materials at the end of the re-negotiated retention period without further notice	If extension to the retention period FSP will destroy the records/materials at the end of the re-negotiated retention period without further notice	

- 14.1.4 Where there are a number of linked offences of different types the submitting LEA may wish to determine the retention period on the basis they were all of the most serious class.
- 14.1.5 The retention period will commence on 31 December of the year in which the case was first received by the FSP.
- 14.1.6 Perishable items may be disposed of as discussed at 10.2 above and a record of destruction kept by the FSP.

## 14.2 Changing Retention Periods

- 14.2.1 Case records/material in the possession of the FSP will be retained for valid reasons, by the FSP, for longer than the minimum retention periods at the formal request of the submitting LEA. If there is a significant change, additional funding and the associated commercial arrangements may apply.
- 14.2.2 Should the submitting LEA need to change the retention period (for example through a court order for a single case, or change their wider retention protocol), the submitting LEA will request the change of retention as defined in the submitting LEA protocols and agreements.
- 14.2.3 Where a conviction led to the imposition of a sentence of imprisonment for public protection the force should notify the forensic science provider that the normal retention periods do not apply. The force should notify the provider of the retention period to be applied.
- 14.2.4 Other parties may have legitimate reasons to request changes to retention periods. It will be for the submitting LEA to determine whether records/materials are retained and this will be communicated to the FSP through the submitting LEA, examples of other parties might include:
- a. The Home Office,
  - b. The prosecuting authority,
  - c. Defendants and their lawyers,
  - d. Complainants or victims and their families,
  - e. Parties to civil litigation,
  - f. The CCRC,<sup>17</sup> and

<sup>17</sup> The CCRC can demand retention and disclosure of materials from any FSP which is part of a public body, or any private body after obtaining a court order. In such cases it could approach the FSP directly but may also send a request to the relevant police force to obtain or preserve such material.

g. The Independent Police Complaints Commission.

## 15. SECURITY OF RETENTION

15.1.1 The importance of retained materials to the CJS is not linked to the existence of the FSP which is responsible for that retention. Security provisions within the FSP will be in line with legislation, standards and submitting LEA protocols and contractual requirements for external non LEA FSP's.

15.1.2 It follows that FSPs must have processes in place to ensure that the retention of records/materials will be maintained if it withdraws (for any reason) from the provision of forensic science services in the UK, which is defined in the FSR Codes of Practice and Conduct.

## 16. DISPOSAL OF RETAINED RECORDS/MATERIALS AT THE POINT WHEN RETENTION PERIOD HAS EXPIRED

### 16.1 Requirement

16.1.1 At the expiry of the retention period, or after a review point, the FSP shall proceed with the disposal of all case records, submitted items, recovered materials and generated materials once notification from the submitting LEA. If a reply is not received within a timely period this will be determined as authority to progress with destruction.

16.1.2 Disposal within the FSP will be in line with legislation, standards and submitting LEA protocol(s) and the detail of the table defined in section 14 of this document.

### Supervision

16.1.3 The destruction of materials/records does not have to be attended or supervised by the submitting LEA unless requested.

- 16.1.4 Where material due for destruction poses a potential hazard (e.g. body fluid samples) the FSP will arrange for their destruction in compliance with the relevant Home Office Circulars].

#### General Provisions

- 16.1.5 The disposal process must:

- a. Comply with all relevant legal requirements,
- b. Achieve the purposes set out above, and
- c. Address any health and safety risks posed by the materials.

- 16.1.6 Where the records/materials to be destroyed are subject to any legal restriction or prohibition (e.g. drugs, firearms or child pornography) the product of the destruction process must not be subject to the restriction/prohibition.

#### Records

- 16.1.7 All case records, held in hard-copy, must be incinerated or shredded before being disposed of. The nature of the shredding process should be appropriate to the sensitivity of the records. In all cases the shredding must result in a product which means, that for all practical purpose, the original records cannot be recreated.

- 16.1.8 Where case records are held in electronic format the approach depends on the nature of the media.

- a. For permanent media (e.g. CD or DVD) the material must be physically destroyed in a manner which means that, for all practical purposes, the records cannot be recreated.
- b. For temporary media (e.g. hard drives or USB drives) the records must be subjected to an electronic “shredding” process which, for all

practical purposes, means the records cannot be recreated.<sup>18</sup>

Following the process the media may be reused or destroyed.

- 16.1.9 Records which are not related to a case (e.g. the records discussed at section 12) can be disposed of in a manner determined by the FSP.

#### Materials

- 16.1.10 The varieties of types of materials which may be retained by an FSP make it difficult to provide set processes.
- 16.1.11 The materials must be disposed of in a manner which achieves the purposes discussed above.
- 16.1.12 Special consideration may be required in certain circumstances.
- a. Where the materials are subject to any restriction/prohibition on possession.
  - b. Where the material is linked to an individual (e.g. fingerprints or DNA).
  - c. Where there are health and safety issues.
  - d. Where the materials may have achieved notoriety as a result of their involvement in a crime (e.g. a murder weapon or clothing of a victim).
- 16.1.13 The provisions with regard to electronic records discussed above apply equally to materials which are in electronic format.
- 16.1.14 Materials which are not related to a case (e.g. the materials discussed at section 12) can be disposed of in a manner determined by the FSP.

<sup>18</sup>

This means that the “shredding” process must deal with the records, any temporary copy of the record produced by software using the record, any copy of the record created by the operating system (e.g. in a swap file) and any copy of the record held in “file slack” on the media. In this regard the term copy should be interpreted to include any partial copy.

## 16.2 Records

16.2.1 The FSP shall maintain appropriate records of the destruction of all records and materials which are related to cases.

## 17. REVIEW

17.1.1 This guidance is subject to review at regular intervals. The next review will coincide with the changes required by the General Data Protection Regulation, May 2018.

17.1.2 Appendix C provides version control history for this document.

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17.1.3

## 18. REFERENCES

- A The Forensic Science Service Retention of Case Material a Memorandum of Understanding Between ACPO and FSS, 2003.
- B Exhibit Retention Guidance, National Policing Improvement Agency, 2012.
- C Home Office Circular 40 of 1973; Handling and Disposal of Blood Samples.
- D Home Office Circular 41 of 1973; Handling and Disposal of Blood Samples.
- E Home Office Circular 125 of 1976; Handling and Disposal of Saliva Samples.
- F Home Office Circular 55 of 1980; Risk of Infection from Stained Exhibits
- G Home Office Circular 25 of 1987; Disposal of Body Samples.
- H Legal Issues in Forensic Pathology and Tissue Retention, Forensic Science Regulator, FSR-G-203.
- I Report on the Police Human Tissue Audit 2010-2012, Association of Chief Police Officers of England Wales and Northern Ireland and National Policing Improvement Agency, 2012.
- J Attorney General's Guidelines on Disclosure (2005).
- K Attorney General's Guidelines on Disclosure: Supplementary Guidelines on Digitally Stored Material (2011)
- L Codes of Practice and Conduct for Forensic Science Providers and Practitioners in the Criminal Justice System.
- M Report on the Police Human Tissue Audit 2010-2012, ACPO and NPIA, May 2012.

N Guidance on the Management of Police Information, 2<sup>nd</sup> Edition, ACPO and NPIA, 2010.

0 Misuse of Drugs Regulations 2001: (to include 2015 Amendments)

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## 19. ABBREVIATIONS

Abbreviation	Meaning
ABH	Actual Bodily Harm
ACPO	Association Chief Police Officers
CCRC	Criminal Cases Review Commission
CD	Compact disc
CPIA	Criminal Procedure and Investigations Act 1996
CPS	Crown Prosecution Service
CRB	Criminal Records Bureau
CTU	Counter Terrorist Unit
DNA	Deoxyribonucleic Acid
DVD	Digital Versatile Disc
EDTA	Ethylenediaminetetraacetic acid (anti-coagulant)
ESLA	Electrostatic Lifting Apparatus
F/arms	Firearms
FAL	Forensic Archive Ltd
FP	Fingerprints
FSP	Forensic Science Provider, including Forensic Units within a Law Enforcement Agency or a commercial provider

FSR	Forensic Science Regulator
FSS	Forensic Science Service
FSU	Forensic Science Unit
H&S	Health and Safety
HepB	Hepatitis B
HIV	Human Immunodeficiency Virus
HOC	Home Office Circular
ISO	International Standards Organisation
LEA	Law Enforcement Agency
LIMS	Laboratory Information Management System
MAPPA	Multi-Agency Public Protection Arrangement
MID	Murder Investigation Department
MISC	Miscellaneous
MOPI	Management of Police Information
MOU	Memorandum of Understanding
NaBIS	National Ballistics Intelligence Service
NPCC	National Police Chiefs' Council in England, Wales and Northern Ireland
NPIA	National Policing Improvement Agency

OIC	Officer In Case
PACE	Police and Criminal Evidence Act 1984
POFA	Protection of Freedoms Act 2012
POLKA	Police Online Knowledge Area
SCCRC	Scottish Criminal Cases Review Commission
TWOC	Taking Without the Owner's Consent
UK	United Kingdom
URL	Uniform Resource Locator
USB	Universal Serial Bus

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## APPENDIX A - LEGAL ISSUES

### 19.1 Criminal Cases Review Commission

19.1.1 The CCRC was created by Part 2 of the Criminal Appeals Act 1995. It is responsible, in England, Wales and Northern Ireland, for the investigation of possible miscarriages of justice and reference of appropriate cases to the relevant appeal court.

19.1.2 To facilitate its work the Act provides the CCRC with certain powers.

- a. Section 17 provides the CCRC with the power to order a public authority not to destroy, damage or alter records/materials and to require disclosure of relevant records/materials in the possession of public authorities.
- b. Section 18A allows the CCRC to seek a court order requiring a person in the private sector to preserve and give the CCRC access to documents or other material in that person's possession or control. (In practice, the CCRC will liaise with the FSU to seek an informal agreement without the need to resort to a court order.)

19.1.3 Section 22 defines "public authority" – a definition which covers the police. It is also likely to cover any FSP which is part of a public body. Section 17 applies in that respect. It does not cover non-government (local, devolved or national) organisations providing forensic science services. Section 18A applies in that respect.

19.1.4 Non-government FSPs may be bound by contractual provisions which require they act in a manner which assists the forces in discharging their obligations.

19.1.5 Regardless of the statutory and contractual provisions all FSPs are expected to act in a manner to facilitate the work of the CCRC.

19.1.6 The CCRC role is, in Scotland, performed by the Scottish Criminal Cases Review Commission (SCCRC). This was created by Crime and Punishment

(Scotland) Act 1997. Although probably rare it is possible that material retained in England or Wales could be relevant to a matter being investigated by the SCCRC. FSPs are expected to facilitate the work of the SCCRC.

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## ANNEX B – CLASSIFICATION OF OFFENCES

Offences categorised as major crime investigations.

- a. Murder,
- b. Attempted murder,
- c. Threat to kill,
- d. Manslaughter,
- e. Infanticide,
- f. Child destruction,
- g. Kidnapping,
- h. Terrorist related crimes.
- i. Any offenders managed under MAPPA,
- j. Sexual and violent offending against children and vulnerable adults,
- k. Rape,
- l. Wounding with intent to cause grievous bodily harm,
- m. Possession / use of a weapon or firearm with criminal intent,
- n. Abduction,
- o. Robbery or assault with intent to rob,
- p. Causing death by dangerous driving or causing death / injury by driving under the influence of drink or drugs,
- q. Aggravated burglary,
- r. Dangerous persons that, by their actions, are perceived as a threat to the public through the possibility of further 'specified offences'.

Offences categorised as serious crime investigations.

- a. Arson with intent to endanger life,
- b. Abduction,
- c. Aggravated burglary - residential and non-residential,
- d. Arson high value or life endangered,

- e. Blackmail,
- f. Drug trafficking,
- g. Death by dangerous driving,
- h. Fraud and associated offences (80hrs + investigation time),
- i. Gross Indecency Child,
- j. Kidnapping (unless in major investigation category),
- k. Perverting justice,
- l. Public order (racially motivated),
- m. Robbery (F/Arms or ABH injury),
- n. Sexual assault (children under 13),
- o. Assault occasioning actual bodily harm,
- p. Affray,
- q. Sexual exposure,
- r. Voyeurism,
- s. Violent disorder,
- t. Soliciting for prostitution,
- u. Assault with intent to resist arrest,
- v. Harassment,
- w. Wounding (S18/20)<sup>19</sup>.

19.1.7 Offences categorised as volume crime investigations.

- a. Arson,
- b. Burglary - residential and non-residential,
- c. Cheque/ credit card fraud,
- d. Criminal damage,
- e. Drugs offences,

<sup>19</sup>

The s18/20 references are to sections of the Offences Against the Person Act 1861 which created the offences,

- f. Firearms Act offences,
- g. Going equipped for stealing etc,
- h. Handling stolen goods,
- i. Other fraud,
- j. Public order,
- k. Sexual assault – (not against children),
- l. Street robbery,
- m. Theft from the person or motor vehicle,
- n. Theft of motor vehicle,
- o. TWOC – including aggravated offences,
- p. Shoplifting,
- q. Theft,
- r. Dwelling burglary (exception aggravated burglary which is level 1),
- s. Driving offences (exception see group 1),
- t. Drug misuse/supply,
- u. Theft of a motor vehicle,
- v. Bogus / distract offences,
- w. Economic crime,
- x. Poaching / animal related,
- y. Vandalism.

### APPENDIX 3

#### VERSION CONTROL OF THE DOCUMENT

Version	Date of issue	Author	Approval	Details of change
2.1 December 2017	8th January 2018	Kirsty Faulkner, Forensic Delivery Board Chair.	ACC David Lewis, Chair of NPCC Performance and Standards Group	Minor change to include Drugs Offences in appendices

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**ANNEX 1**

**EXAMPLE OF AN LEA SUMMARY OF RETENTION**

Minimum retention periods <sup>20</sup> are defined by the below force procedures unless otherwise specified by the Investigating Officer in each case					
Crime Type	Exhibit Type	Detected Cases		Undetected Cases	
		Retention Policy	Storage Location	Minimum Retention Period	Storage Location
<b>Major Crime</b>					
Terrorism	All (inc Fingerprints & Photographs)	Consider for each case	CTU	30 years	CTU
Homicide	"	Consider for each case, Defence agreement In writing	M.I.D. Exhibits Store	30 years	MID exhibits Store or Archive
	DNA Samples, Blood Swabs submitted to Forensic Provider <sup>21</sup>	30 Years (ACPO MOU)	Forensic Provider	30 Years (ACPO MOU)	Forensic Provider
Rape and Attempted Rape	All (inc Fingerprints & Photographs)	Consider for each case, Defence agreement In writing	Misc Prop Store unless MID	30 years	Misc Prop Store unless MID
Death by Dangerous Driving	All Exhibits except controls below	"	"	"	"
	Controls e.g. glass, tapings	"	"	5 years	"
<b>Serious Crime</b>					
Offences against the person, Sexual Assaults, Assaults & Woundings (Rape and Attempted	Dry Clothing & Other Exhibits	Consider for each case, Defence agreement In writing	Misc Prop Store	7 years (OIC discretion for clothing if Forensics complete)	Misc Prop Store
	DNA Samples, Blood Swabs, Intimate Samples retained in force	"	"	7 Years	"
	DNA Samples, Blood Swabs	7 Years (ACPO MOU)	Forensic Provider	7 Years (ACPO MOU)	Forensic Provider

<sup>20</sup> Exhibits examined in volume crime cases that do not yield a positive forensic outcome, and have no further investigative value, can be considered for immediate destruction after the investigation with authority of the OIC.

<sup>21</sup> Non processed blood swabs would not normally be retained by an FSP but returned to the LEA

Rape see Major Crime)	submitted to Forensic Provider				
	Fingerprints	30 years	Fingerprint Bureau	30 years	Fingerprint Bureau
	Exhibits bearing enhanced marks (e.g. FPs, Footwear) e.g. paper or cowlings not for return to owner.	Consider entirety* photograph. Marks retained as above, Items destroyed	"	Consider entirety photograph. Marks retained as above, Items retained for 7 Years	Misc Prop Store
	Exhibits bearing enhanced marks (e.g. FPs, Footwear) e.g. paper or cowlings for return. (K.I.V. H & S)	Consider entirety* photograph. Marks retained as above, Items returned via Misc Prop Store	Misc Prop Store	Consider entirety photograph. Marks retained as above, Items returned via Misc Prop Store	"
	Photographs & Photographic Negatives	15 Years	Digital Storage	15 Years	Digital Storage
	Footwear marks (Lifts and Photographs)	Consider for each case	Misc Prop Store	1 year	Forensics Store
	Footwear casts	"	"	"	Misc Prop Store
	Footwear on ESLAs or large items	Consider entirety* photograph. Photograph marks, retain prints and ESLA as above.	"	Consider entirety photograph. Photograph marks, retain prints and ESLA as above.	"
Aggravated Burglary, Distraction Burglary, High Risk Aquisitive Crime	Forensic Controls e.g. glass, tapings	Consider for each case	"	6 months	Forensics Store
	Footwear	"	"	1 year	"
<b>Acquisitive Crime</b>					
Burglary, Theft of Motor Vehicle, Theft from Motor Vehicle, Drugs Offences	Dry Clothing & Other Exhibits	Consider for each case	Misc Prop Store	1 year (OIC discretion for clothing if Forensics complete)	Misc Prop Store
	DNA Samples, Blood Swabs retained in force	"	"	1 Year	"
	DNA Samples, Blood Swabs submitted to Forensic Provider	28 days (ACPO MOU)	Forensic Provider	28 days (ACPO MOU)	Forensic Provider

Fingerprints	7 years	Fingerprint Bureau	7 years	Fingerprint Bureau
Exhibits bearing enhanced marks (e.g. FPs, Footwear) e.g. paper or cowlings not for return to owner.	Consider entirety* photograph. Marks retained as above, Items destroyed	"	Consider entirety photograph. Marks retained as above, Items destroyed	"
Exhibits bearing enhanced marks (e.g. FPs, Footwear) e.g. paper or cowlings for return. (K.I.V. H & S)	Consider entirety* photograph. Marks retained as above, Items returned via Forensics or Misc Prop Store	Misc Prop Store	Consider entirety photograph. Marks retained as above, Items returned via Forensics or Misc Prop Store	Misc Prop Store
Photographs & Photographic Negatives	7 Years	Digital Storage	7 Years	Digital Storage
Footwear marks (Lifts, on Paper and Photographs)	Consider for each case	Misc Prop Store	1 year	Forensics Store
Footwear casts	"	"	"	Misc Prop Store
Footwear on ESLAs or large items	Photograph marks, retain prints and ESLA as above.	"	Photograph marks, retain prints and ESLA as above.	"
Forensic Controls e.g. glass, tapings	Consider for each case	"	3 months	Forensics Store
Controlled Drugs	Upon conclusion of case and/ or with production of Judges Order	Secure Drugs Safe	1 year post completion of analysis and upon review	Secure Drugs Sage

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## ANNEX 2: Exhibit Packaging and Storage Guidance

### Please note:

1. The following table provides guidance for the packaging and storage of exhibits unless otherwise instructed by a Reporting Scientist or Expert as per the requirements of a specific case
2. Freeze/thaw cycles of frozen exhibits should be minimised when DNA evidence is relevant to the exhibit
3. Some exhibits can also be stored frozen as an alternative to refrigeration; seek advice from the external FSP.

Exhibit Type	Forensic Opportunity	Packaging Type	Storage Conditions
Clothing/Fabric – DRY	DNA, Fibres, Glass, Other Trace  Excluding Accelerant	Paper Exhibit Bag	Ambient Dry Storage
Clothing/Fabric - DRY	Accelerant	Double Nylon bagged –sealed at top with Swan neck tie	Ambient Dry Storage
Shoes -DRY	DNA Footmark	1 shoe per windowed paper exhibit bag	Ambient Dry Storage
Clothing/Fabric – WET	DNA Fibres Glass Other Trace  Excluding Accelerant	Plastic Exhibit Bag	Freezer  Temp Range -15 to -30°C

Exhibit Type	Forensic Opportunity	Packaging Type	Storage Conditions
Clothing/Fabric - WET	Accelerant	Plastic Exhibit Bag, or consider swiss roll in brown paper and package in paper bag	Freezer Temp Range -15 to -30°C Small items only Drying cabinet for all other items
Shoes -WET	DNA Footwear	Dry within a controlled environment and package 1 shoes per windowed paper exhibit bag	Ambient Dry Storage
Acetate Lifted Impression	Footwear Fingerprints	Plastic Exhibit Bag	Ambient Dry Storage, if force policy defines retention
Gel Lifted Impression	Footwear Fingerprints	Secured in Robust 'shed free' Cardboard Box NB - Replace backing sheet and put in envelope	Ambient Dry Storage
CAST	Footwear Fingerprint	Secured in Robust Cardboard Box	Ambient Dry Storage
CAST	Tool Impression	Secure in screw lid tube or vial and plastic exhibit bag	Ambient Dry Storage
Hair	DNA	Package whole item (e.g. Brush) Paper or Plastic Exhibit Bag Consider Tapings or Beechams wrap for individual hairs	Ambient Dry Storage
Hair	Toxicology	Wrap in Foil and Plastic Exhibit Bag	Ambient Dry Storage

Exhibit Type	Forensic Opportunity	Packaging Type	Storage Conditions
Blood	Toxicology DNA	EDTA Tube Mark packaging as Biohazard	Fridge Temp range 0 to 8°C
Urine	Toxicology	Urine Collection Kit	Fridge Temp range 0 to 8°C
Swab	DNA	Swab Tube and plastic exhibit bag	Freezer Temp Range -15 to -30°C <sup>22</sup>
Chewing Gum	DNA	Sterile Plastic screw lid container and plastic exhibit bag	Freezer Temp Range -15 to -30°C
Swab	DNA	Swab Tube and plastic exhibit bag	Freezer Temp Range -15 to -30°C <sup>23</sup>
Cigarette (smoked)	DNA	Sterile Plastic screw lid container and plastic exhibit bag	Ambient dry storage unless wet then Freezer Temp Range -15 to -30°C

<sup>22</sup> If a swab is to be processed straight away, consider storing using ambient dry storage to avoid defrosting and re-freezing

<sup>23</sup> If a swab is to be processed straight away, consider storing using ambient dry storage to avoid defrosting and re-freezing

Exhibit Type	Forensic Opportunity	Packaging Type	Storage Conditions
Condom	DNA	Condom Collection Kits or sterile plastic screw lid container and plastic exhibit bag	Freezer Temp Range -15 to -30°C
Sanitary Wear	DNA	Sanitary Wear Collection Kit	Freezer Temp Range -15 to -30°C
Nappies	DNA	Plastic Exhibit Bag	Freezer Temp Range -15 to -30°C
Dry Non-porous (e.g: Metals/Plastics/ Glass)	DNA and /or Fingerprints	Plastic Exhibit Bag or a tube or box	Ambient Dry Storage
Wet Non-porous Items (e.g:Metals/Plastics /Glass)	DNA and /or fingerprints	Dry within a controlled environment and package in plastic exhibit bag/tube or box	Ambient Dry Storage
Dry Porous (e.g: Paper, cardboard)	DNA and /or fingerprints	Plastic or paper exhibit bag/box	Ambient Dry Storage
Wet Porous (e.g: Paper, cardboard)	Fingerprints	Dry within a controlled environment and package in plastic exhibit bag/box	Ambient Dry Storage

Exhibit Type	Forensic Opportunity	Packaging Type	Storage Conditions
Dry Documents	Indented Writing	Robust cardboard packaging and plastic exhibit bag  Do Not Sign Exhibit Label Over Contents	Ambient Dry Storage
Liquid Containing Vessels	DNA  Fingerprints  Identification	Where possible decant contents into a plastic sealable container  Package item in plastic or cardboard container, if glass consider use of knife tube where appropriate	Ambient Dry Storage
Firearms	DNA and /or  Fingerprints  Ballistics	Sealed Gun Tube / packaging  Made Safe Label on outside	Ambient Dry Storage
Ammunition	DNA and /or  Fingerprints  Ballistics	Consider use of sealable plastic tube/vial and plastic exhibit bag	Ambient Dry Storage
Broken Glass	DNA and /or  Fingerprints	Robust cardboard packaging with hazard marking on outside	Ambient Dry Storage
Knives/ Sharps/ Tools	DNA and /or  Fingerprints	Sealed Knife tube /appropriate tube/vial with hazard marking on outside	Ambient Dry Storage

Exhibit Type	Forensic Opportunity	Packaging Type	Storage Conditions
Drugs –Cannabis non-resin	Identification Purity Fingerprints DNA	Plant material should be dried prior to packaging  Robust paper sack exhibit bags	Ambient Dry Storage
Drugs- Other	Identification Purity Fingerprints DNA	Plastic Exhibit Bag	Ambient Dry Storage
Accelerants	Identification	Sealed robust plastic container / glass accelerant vial for liquids within double layer Nylon bag, swan neck tied	Ambient Dry Storage
Post Mortem Tissue/Body Parts	DNA Toxicology Fingerprints Cause Death	Suitable sealable plastic opaque container and plastic exhibit bag with Biohazard labelling on outside	Freezer  Temp Range -15 to -30°C