

HUMAN TISSUE: SEIZURE, RETENTION AND DISPOSAL POLICY

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HUMAN TISSUE: SEIZURE, RETENTION AND DISPOSAL

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Legal Basis

Legislation specific to the subject of this policy document:

- Human Tissue Act 2004 (HTA) and Codes of Practice
- Police and Criminal Evidence Act 1984 (PACE 1984) [S.19,22,33](#)
- Coroners and Justice Act 2009 [S.14](#)
- Coroners (Investigations) Regulations 2013 (CIR 2013) [Regs12, 13\(5\)\(a\)](#)
- Criminal Procedure and Investigations Act 1996 (CPIA 1996)

Other relevant legislation which you must check this document against (required by law)

- Human Rights Act 1998 (in particular A.14 – Prohibition of discrimination)
- Equality Act 2010
- Crime and Disorder Act 1998
- Health and Safety at Work etc. Act 1974 and associated Regulations
- General Data Protection Regulation (GDPR) and Data Protection Act 2018
- Freedom of Information Act 2000
- The Civil Contingencies Act 2004

Other documentation which you must check this document against:

- College of Policing – Code of Ethics
- Norfolk and Suffolk Constabularies' Standards of Professional Behaviour
- College of Policing – Authorised Professional Practice

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1. Introduction

- 1.1 In cases where the police are investigating a suspicious death or a suspected homicide, a forensic post mortem examination will be required to:
- Determine the identity of the deceased person;
 - Determine the cause and circumstances of the death; and
 - Facilitate the collection of forensic evidence to assist in the investigation of the death.
- 1.2 All of the above three elements form part of the criminal investigation, albeit the first two elements will also be part of the coroner's investigation.
- 1.3 By virtue of Section 14 of the Coroners and Justice Act 2009, a senior coroner can authorise a post mortem examination of the body of a deceased person.
- 1.4 In cases where a coroner is informed by the chief officer of police (in practical terms the senior investigator) that a homicide offence is suspected, the coroner must consult with the chief officer of police about who should make the post mortem examination (Regulation 12, Coroners (Investigations) Regulations 2013 (CIR 2013)).
- 1.5 Regulation 13(5)(a) of CIR 2013 allows for a representative of the chief officer of police to be present during a forensic post mortem examination. In such cases, a forensic pathologist on the Home Office Register of Forensic Pathologists should be appointed to conduct the post mortem examination.
- 1.6 In order to fully investigate the medical cause of death, the Home Office registered forensic pathologist will take samples of tissue and bodily fluids. This may include whole or parts of organs of the body for examination by sub-specialty medical or scientific experts.

2. Statement of Policy

- 2.1 This policy and its associated procedure have been formally agreed via the approved policy development/review process. It will be maintained by the Specialist Crime and Capabilities Command in conjunction with the Central Policy Unit.
- 2.2 The policy and its associated procedure are intended to promote equality, eliminate unlawful discrimination and actively promote good relations regardless of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, economic or family status.
- 2.3 Managers have a responsibility to ensure this policy and its associated procedure are applied fairly, and unless otherwise stated, all policies and procedures are non-contractual.

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3. Applicability

3.1 Unless otherwise stated, this policy/procedure applies to all police officers (including officers of the Special Constabulary) and all members of police staff (including police support volunteers).

4. Police Seizure of Human Tissue

4.1 In the investigation of a homicide or in suspicious death cases, as with all criminal investigations, it is essential that the appropriate lawful power is used to enable the seizure and continued lawful retention of evidence by police.

4.2 The main sources of law relating to powers of seizure of evidence in the investigation of crime by the police are provided under the Police and Criminal Evidence Act 1984 ('PACE 1984') (particularly section 19) and the common law. Police will rely on their common law powers of seizure when they are not on premises. Note however that the definition of premises in section 23 of PACE 1984 is broad. It includes 'any place' and in particular vehicles, tents and movable structures, so in reality, rarely will it be necessary for the police to rely on their common law powers.

4.3 Under section 19 of PACE 1984, an officer lawfully on premises may seize material which he has reasonable grounds for believing is evidence of an offence and that it is necessary to seize it in order to prevent it being lost, altered or destroyed.

4.4 The Police have a lawful right to be present at a post mortem examination in accordance with CIR 2013 and it therefore follows that they have a right to take tissue samples under section 19 of PACE, provided of course that the requirements of this section are met.

4.5 It should be noted that while any human tissue samples that are retained during a post mortem examination conducted for criminal justice purposes and seized under police powers, are likely to be exempt from the Human Tissue Act 2004 ('HTA 2004'), the Home Office and the Human Tissue Authority ('HTA') recommend that the principles of the HTA 2004 and relevant codes of practice are followed.

4.6 In some circumstances, material initially taken by the forensic pathologist at a post mortem examination on behalf of the coroner may need to be seized as evidence by the police. Such cases may arise where tissue from a non-forensic post mortem examination was initially taken for the purposes of the coroner, but later information comes to light that leads the police to believe that they are dealing with a homicide or that the death is suspicious.

4.7 In the same way as any other evidence seized by police under section 19 of PACE 1984, human tissue can lawfully be retained under section 22 of PACE 1984. It should be noted that section 22 of PACE 1984 only applies to human tissue seized under section 19 of PACE 1984. If human tissue is seized by police using their common law powers, then their power to retain it is determined by the common law too.

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- 4.8 Sections 19 and 22 of PACE 1984 are drafted widely to justify the retention of human material for so long as there remains a compelling criminal justice purpose. Conversely the developed common law police power of retention of seized items permits them to be retained for the duration of criminal proceedings but for no longer. There is no doubt that the seizure and retention of human tissue either under PACE 1984 or the common law will automatically engage police obligations of retention and disclosure under the Criminal Procedure and Investigations Act 1996 ('CPIA 1996').
- 4.9 When considering the lawfulness of retention, it is important to be able to demonstrate that certain requirements are met, for example:
- The rationale for retention should be recorded with reference to the test in section 22 of PACE 1984 (where applicable).
 - The lines of authority and decision-maker/s should be clearly defined.
 - There should be provision for reasonably regular reviews of the question of retention.
- 4.10 The system adopted should be one which strives to identify an end point for police retention. There may be cases in which retention of some samples is virtually indefinite but that should be the result of the application of a test to the particular case which at least some, if not, most cases, results in an end point being reached. Material taken from the body and seized under section 19 of PACE 1984 or the common law is subject to the same level of continuity as any other police criminal property or exhibit. For this reason, a trained exhibits officer should be present at the post mortem to ensure that tissue is correctly documented and proper continuity is maintained.
- 4.11 It is important to note that if a forensic post mortem examination is ordered by a coroner in circumstances where a criminal offence is not suspected, the powers under PACE 1984 will not be engaged.

5. Guiding Principles

- 5.1 The guiding principle for police is that if it is deemed by the Senior Investigating Officer ('SIO') that the human tissue in question may assist the criminal investigation into the death of the deceased, it should be seized and retained under police authority using section 19 and 22 of PACE 1984 or the common law and not the coroner's authority. The decision to seize and retain human tissue under the police's authority eliminates the complexities arising from the simultaneous application of two separate systems for seizure and retention decision making, which arises when retained under the coroner's authority as well as the police's.
- 5.2 The SIO should also consider (in consultation with the forensic pathologist and Crown Prosecution Service ('CPS')) whether an image or histological samples would be sufficient when deciding whether to retain human tissue during the police investigation and for subsequent trial and potential appeal purposes.
- 5.3 All human tissue must be accounted for and capable of audit at all stages of the investigation, from initial seizure through to final lawful disposal. The SIO must therefore be confident of:

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- A lawful power to seize;
- A continuing lawful purpose to retain and examine;
- A clear policy for disposal;
- The fact that the coroner has been informed in writing of all material preserved; and updated where the status of the investigation reverts to non-criminal.

5.4 Forces are advised to adopt a policy whereby human tissue exhibits are reviewed periodically by force review teams, as reliance cannot be placed on those originally investigating homicide cases, due to the passage of time and the retirement and turnover of staff. This will help to prevent human tissue exhibits being overlooked and retained unnecessarily when they are no longer required for a criminal justice purpose. This will be completed every two years by the Norfolk and Suffolk Major Crime Review Team.

6. Single Point of Contact

6.1 Each force should appoint an officer as a Single Point of Contact ('SPOC') to oversee the management of human tissue and to ensure that force policy concerning the seizure, retention and disposal of human tissue is complied with. The SPOC will also act as a central referral point for notifications of human tissue finds at HTA licensed establishments. Other responsibilities of the SPOC should include:

- Maintaining a single central data set of human tissue held by the force;
- Making determinations about tissue after the relevant enquiry team has ceased to exist;
- Liaising with the relevant forensic pathology group practice over tissue retention.