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| ONR Guidance Document  Guide to Collecting, Managing and Exhibiting Material as Evidence |



ONR Guidance Document

Guide to Collecting, Managing and Exhibiting Material as Evidence

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| 1.1 | Content transferred into latest ONR Guidance Document template and review date extended to align with wider enforcement suite of guidance. |
| 1.2 | Review date extended to April 2024 |

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# Introduction

1. The status of material can change during a criminal investigation (e.g., non-relevant can become relevant, unused can become used) and it is therefore important that inspectors regularly review material and make timely decisions as to its status, rather than waiting until the investigation is considered to be complete. This means that good practice for collecting, maintaining, and exhibiting material as evidence should be considered and applied throughout the investigation process.
2. It is also vital that any material collected or generated during the course of a criminal investigation is logged to ensure that it can be correctly classified as non-relevant or relevant, unused and used, and that the log of material is maintained.
3. The tools described later in this document are available via DDS.

## Purpose and Scope

1. This practical guidance gives pragmatic guidance on collecting, maintaining, and exhibiting material as evidence during an investigation, and should be read in conjunction with HSE’s enforcement guides for England, Wales and Scotland [1] and other relevant guidance.

## Definitions

1. Material (as defined by the Criminal Procedures and Investigations Act 1996) is**:**

* Material of any kind, including information and objects which is obtained or inspected in the course of a criminal investigation, and which may be relevant to the investigation. This includes not only material coming into the possession of the investigator (such as documents gathered in the course of an investigation) but also material generated by the investigator.

1. In Scotland, the definition is different; Section 116 of the Criminal Justice and Licensing (Scotland) Act 2010 defines 'information' as, in relation to an accused, material of any kind given to or obtained by the investigator/prosecutor in connection with the case against the accused. Practically, ‘information’ in Scotland and ‘material’ in England and Wales are the same; throughout the rest of this document the term ‘material’ should be read to be the same in both jurisdictions, and the same processes for gathering material for evidence should be applied.
2. Examples of material are included in Appendix 1 to this guidance.
3. The status of material can change at any time during an investigation i.e.:

* non-relevant material can become relevant
* unused material can become used, and
* material which doesn’t initially meet the disclosure test may need to be disclosed later in the prosecution process.

1. Used material is evidence forming part of the prosecution case against the accused.
2. Unused material is material that is relevant to the investigation, but which does not actually form part of the prosecution case against the accused. Unused material falls into two categories; Non sensitive and sensitive.
3. It is vital to remember the following points:

* Material only becomes evidence if it is collected in accordance with rules of evidence [2].
* Failure to ensure that any material collected or generated during the course of a criminal investigation is logged, and the log of material is maintained can undermine the belief of a court in the investigation process, leading to a court case being lost. An example of what such a log can look like can be found in the ONR ‘investigation report’ template.

# Maintaining the Continuity and Integrity of Evidence

1. The following doctrine is applicable to all material collected for evidential purposes: the onus is on the prosecution to show to the court that the evidence produced is no more and no less now than when it was first taken into the possession of law enforcement. Material collected for evidential purposes must be handled from point of collection to presentation at court in a manner that ensures that it is the same as when collected or, if not, why not.
2. The continuity and integrity of evidence is often referred to as the ‘chain of evidence’ which in simple terms is the way the evidence has been handled from the moment that it is collected to the point that it is presented in court as an exhibit or a production.
3. In order to effectively ensure the continuity of evidence an investigator will need to be able to demonstrate the following:

* Who took the material into possession
* Where it was found, and the time and date that the material was taken
* What happened next to the material

1. In order to achieve continuity of evidence a combination of witness statements and tools for collecting evidence (described below) will be needed.
2. Once the material has been taken into possession the investigator must ensure that all such material is kept safely, and that there is a clear, identifiable audit trail from the moment that material is taken into possession to the moment it is presented in evidence. The prosecution may have to prove that the exhibit before the court is the same exhibit that was referred to by a witness in their statement, or that the exhibit has not been tampered with illicitly while being retained for court proceedings. ‘Illicitly’ does not include examinations or testing which can reasonably be explained via a witness statement, and where the evidential chain has been maintained. Where material evidence has been collected through the use of inspector powers, you are reminded of Section 20(4) of the Health and Safety at Work etc. Act 1974, and Schedule 8, para 11(5) of the Energy Act 2013 (refer to Appendix 2 for further information).
3. You must ensure that all potential exhibits/productions are kept safely and that there is a clear, identifiable audit trail from the moment they are seized to the moment they are presented in evidence. This is because the prosecution may have to prove that the exhibit/production before the court is the same as that referred to by the witness in their statement, or that the exhibit/production has not been tampered with illicitly while being retained for court proceedings.
4. In establishing this chain of evidence, each person handling an exhibit/production should consider whether their part in the chain means they need to write a brief statement identifying the material and its whereabouts, stating when they received it and who they received it from, and saying to whom they passed it and when. As a minimum, where the material is stored in evidence bag(s) with a continuity label or is accompanied by an ONR LP1 Material form the relevant fields on the panel or form must be signed by each person handling the material.
5. In many instances a brief statement will be needed. However, if a person’s part in the chain which transfers it to e.g., safe storage or testing facilities is that of a courier or similar, then completion of the relevant fields on the panel or form will be sufficient, and there will be no need to write a brief statement.
6. So, for example, in respect of a sample which is seized and taken for testing, you need to obtain a range of statements that cover all the stages from the taking of the sample or the taking into possession of an article, through submission to the testing facility, the testing itself etc. to its production in court (though those statements do not need to be from each person in that handling chain, refer to preceding paragraph). You should obtain a statement from the person(s) carrying out the analysis to be able to say how the sealed sample came into their possession and how it was identified.
7. Only if the steps above are followed can the evidence chain be preserved. Remember, this requirement extends out to all links in the chain including those who dispatch the material, transport it, and receive the material.
8. The investigator must use their knowledge wisely to ensure that there are no breaks in the chain of evidence that can lead to a challenge of lack of continuity.
9. ONR enforcement guidance reflects the requirement for managing the continuity of evidence, as described above ( [3] and [4]).
10. It is paramount that the role that DDS play in maintaining the evidence chain is not ignored. They are integral to the process and must be appointed and involved from the start of evidence collection.
11. It is also vital that a record of any material collected or generated through the course of any enquiry/investigation is started and maintained.

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# Digital Material – Documents

1. A significant amount of material examined and collected during preliminary enquiries and subsequent investigation may be held by the duty holder in a digital form. They could be documents, operational records etc. It is now common to find that such material is considered by the duty holder as being uncontrolled if it is downloaded. This makes sense as if the digital version of the document is subsequently revised the downloaded document is out of date. If adequate steps are not taken to ensure that material which may subsequently be used for evidential purposes is not collected following the relevant rules of evidence, then the value of that material can become questionable. This section of the guide considers what steps should be taken, and where specialist advice should be sought. It should be read in conjunction with other relevant guidance.
2. Digital material such as emails that require metadata to demonstrate their provenance are not considered in this guide. Metadata is data stored in an email about the email. Often this data is not easily viewable even in the application used to create the email. The amount of email metadata available for a particular email varies greatly depending on the email system. For this kind of material, specialist advice is required; such advice is available through ONR’s Investigation Resource Group (IRG).
3. The current version (March 2020) of Section 133 of the Criminal Justice Act 2003 says the following about documentary evidence:

**‘133 Proof of statements in documents**

Where a statement in a document is admissible as evidence in criminal proceedings, the statement may be proved by producing either—

* 1. the document, or
  2. whether or not the document exists) a copy of the document or of the material part of it, authenticated in whatever way the court may approve.’

1. Sections 68 and subsequent of the Criminal Procedure Scotland Act 1995 create similar standards for the admissibility of documentary productions.
2. Where a digital document contains a statement that might be used in the future as evidence, it is necessary to ensure that the admissibility of a copy of that digital document cannot be challenged. If it can be, then the document containing the statement could be rendered inadmissible.
3. In the context of such digital documents, you must be able to:

* Demonstrate that the hard copy of the document is an accurate copy of the original digital document, and
* Have a witness who is able to introduce the hard copy as an exhibit, and verify that it is an accurate copy.

1. As well as the above Act, the current rules regarding evidence in England and Wales, and practice in Scotland, there are other requirements that must be followed when seeking to use digital material as evidence. As mentioned above, such material is outside the scope of this guide and specialist advice should be sought via the IRG.
2. To collect key digital material/statements the following paragraphs in this section should be borne in mind.
3. The ACPO Good Practice Guide for Digital Evidence [5] introduces four principles which should be followed when seeking to collect digital material in a form which means it can have evidential value. They are:

* Principle 1: The data held on an exhibit must not be changed.
* Principle 2: Any person accessing the exhibit must be competent to do so and explain the relevance and the implications of their actions.
* Principle 3: A record of all processes applied to an exhibit should be kept.   
  This record must be repeatable to an independent third party.
* Principle 4: The person in charge of the investigation has responsibility for ensuring that the law and these principles are adhered to.

1. The above principles should be considered when seeking to obtain copies of documents which might be held on duty holder digital devices (the ‘exhibit’ referred to in the principles above). All digital evidence is subject to the same rules and laws that apply to documentary evidence. You are reminded of the doctrine of evidence: the onus is on the prosecution to show to the court that the evidence produced is no more and no less now than when it was first taken into the possession of law enforcement.
2. As digital devices have become more intuitive and user friendly, it has become custom and practice for the investigator to merely ask a person to print out a copy of a document held on a duty holder’s digital management system; this is not acceptable if the printout may subsequently be used for evidential purposes, particularly if the information it contains is key to a case. Instead, the investigator should:

* Explore the IT competencies of the person who is providing the document to the investigation, to ensure they would recognise whether the digital device is working correctly/as normal;
* Ask them to download a copy of the book, register, or document (that was in use at the time of the incident and not a version that has been modified after the incident took place) that the investigator might require for evidential purposes, ensuring that this will not materially affect the digital information stored on the device;
* Obtain a CJA.9 (voluntary) statement from the person who will be ‘producing’ the document which indicates:
  + Who they are and that they are competent to print out information from the digital device
  + that they would recognise if the device is not working correctly
  + What steps they took to generate the printout
  + That the steps did not change the original digital information (other than metadata)
  + That they believe the downloaded item is a true copy of that held digitally, and that
  + They identify the down load as an exhibit to their statement.

1. The format of the statement will differ according to the witness and the context in which the statement is being taken. However, the investigator should ensure the elements above are captured in an admissible form, in order to collect the best evidence.
2. The investigator must be cognisant of the limit of their abilities. Principle four is clear that they have responsibility for ensuring that the law and these principles are adhered to. They should seek specialist help via the IRG if considering matters outside their experience.

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# Tools for Gathering Evidence

## Evidence Bags

1. Evidence bags are used to ensure the continuity and integrity of exhibits. They have a tamper proof seal and when used they can:

* Demonstrate that a material item has not been altered prior to any testing of the material or its production in court.
* Provide an audit trail of the handling of a material item from the moment it was taken into possession to when it is produced in court.

1. Evidence bags have a label printed on the bag which when completed provides essential continuity information (who, where, when, what). The label has fields which can be signed by each person handling the bag, and also by those opening the bag and the reasons why.
2. Use of evidence bags should be recorded in a witness statement by referencing the Unique Reference Number (URN) and assigning an exhibit number to the material e.g.,’ I placed the [material description] in evidence bag no. d00023857 which I now produce marked exhibit no. ‘RS1’ (**note**: the URN is not the exhibit number, merely the number of the bag within which the exhibit is stored).
3. If an exhibit bag is opened e.g., for examination and/or testing of the material, upon completion of the examination/testing, the material item and any previous evidence bags should be placed and sealed in the new evidence bag. Whilst the URN for the bag now in use for the material will have changed, the exhibit number for the material will remain the same e.g., RS1 above. An appropriate record should be made of URN changes.
4. There is not a requirement for most documentary material taken into possession to be placed into an evidence bag. However, there will be occasions when inspectors will want to retain the integrity of a document taken into possession.   
   Examples include original signed documents such as permits to work, forged medical certificates, asbestos clearance certificates etc. In prosecutions where the original material document is key evidence in the case, it will be important that the material in question has not been altered in any way. Such material should be taken into possession, copied as soon as possible, and the original sealed within an evidence bag. Inspectors will have to account for the integrity of the material whilst it is in their possession and not sealed in an evidence bag i.e., where there is any delay in the above process as access to copying facilities is not immediately available.
5. Evidence bags should be sealed as soon as possible after taking a material item into possession. Inspectors may wish to leave the bag open until a documentary material can be photocopied, or an object be photographed, however the integrity of the material item will have to be accounted for until the bag is sealed.

## ONR LP Material Form 1 (ONR LPMat1)

1. ONR LPMAT1s are primarily designed to be used with documentary material which is referred to in a witness statement as an exhibit. However, they could be used as an alternative to the luggage label with objects (non-documentary material) provided they can be securely attached to the object. They allow for the continuity process, similar to that found on evidence bags
2. ONR LPMat1 has been introduced to comply with changes in the Criminal Procedure Rules 2015 (England and Wales). Witnesses exhibiting documents in their witness statement should:

* Describe the material clearly in their statement
* Give it an exhibit number, and
* Sign and date the LPMat1, either the ‘Obtained from’ field (if obtained from the person who is exhibiting the material) or the ‘Exhibited by’ field (if the person exhibiting the material is different from the person from whom the material was obtained).

1. Whilst not a requirement of the Criminal Procedure Rules, ONR LPMat1 can also be signed by witnesses who subsequently refer to an exhibit in their witness statement by signing one of the fields in the ‘Subsequently identified by’ section of the form. The purpose of doing so is to confirm that this was the document they were shown at the time of their interview.
2. ONR LPMat1 is only required for material which is being ‘exhibited by’ a witness in a witness statement. Witness Statements do not require an ONR LPMat1. An ONR LPMat1 should be completed either prior to, or at the time of interviewing the witness who is exhibiting the material. As indicated above, the witness should sign the LPMat1, and it should be attached to the exhibit.
3. ONR LPMat1 is also used to introduce photo albums. A single ONR LPMat1 can be completed in respect of the entire album. The person who took the photographs should exhibit the album of photographs and sign ONR LPMat1 accordingly. Witnesses referring to any of the photographs can refer to the photograph within their statement and sign the ONR LPMat1 attached to the album e.g. ‘I refer to photograph 10 in album RS1 shown to me by the Inspector. The photograph shows the ………………’

## Production Backing Sheet (LPS8)

1. The Production backing sheet performs a similar role to the ONR LPMat1 described above but is for use in Scotland. It is compliant with the Act of Adjournal (Criminal Procedure Rules) 1996 (the Rules) and applies to the investigation and prosecution of crime in Scotland. These rules are made by the High Court of Justiciary and are binding and must be followed by those investigating or prosecuting a crime.
2. The Rules contain provisions on evidence at Part VI.

## Luggage Labels

1. Luggage labels are primarily used for use with objects where an evidence bag is not practicable. They are usually used in conjunction with an evidence tag, the tag being used to provide a secure attachment to the object and the label providing the continuity. In this configuration both URNs of the tag and label should be clearly identified in the inspector’s notebook.
2. The name of the person taking the material into possession should be recorded in the ‘obtained by’ field and it should be signed accordingly. The person who took the material into possession may also be the person who exhibits the material, and if that is the case completing the ‘obtained by’ field is sufficient. However, if the person exhibiting the material is different, their details should be completed in one of the fields on the rear of the label and signed accordingly. If the person is not ONR staff, the word ‘staff’ should be crossed out. Other persons referring to the material can sign any of the other field on the rear of the label.

## CD Seal Label

1. A CD Seal should be used to label and secure the Master CD and label the Working Copy of photographs or other visual media (CCTV / video) taken by Inspectors or taken into possession from others. The Signature field on the label should be signed by the person who will exhibit the Master CD (Inspector or other ONR staff).
2. The images/video taken by Inspectors should be exhibited in their statement e.g., ‘Whilst on site I took [no.] photographs. On return to the office/home on [date] the photographs were burned from my camera to Master CD No. [CD Ref No.]. I now produce the MASTER CD exhibited RS1’.
3. In the case of photographs / video taken by someone and taken into possession by Inspectors, the photographs should be exhibited in the Inspectors statement along with how they came into their possession e.g. ‘On [date/time] I received an email from [Name of sender] attaching [description]. The images were burned to Master CD No. [CD Ref No.]. A Working Copy CD was also produced. I now produce the MASTER CD exhibited RS1’.
4. A statement however will be required from the person who took the photographs or in the case of video / CCTV, can confirm their source e.g. ‘I confirm that the video shown to me by the Inspector marked exhibit RS1 is CCTV coverage taken by camera [No. or description] on [date].’

## PACE CD Label

1. A Police and Criminal Evidence (PACE) CD Seal should be used to label and secure the Master CD and label the Working Copy of an interview under caution. The Master Label should be signed by both the Interviewee and the Inspector leading the interview.
2. The Master CD should be exhibited in the statement of the Inspector leading the interview. The statement should refer to the Unique Reference Number (URN) on the Master CD label and an exhibit No. should be assigned e.g. ‘On [date] I interviewed [Name], representative of [Company Name] under caution. I now exhibit Master CD No. [URN] marked exhibit RS1’.
3. A transcript or summary of the interview would also be produced and exhibited in the statement of the Inspector leading the interview e.g.,’ I now produce a transcript / summary of the interview under caution marked exhibit RS1’
4. The Master CD label provides a secure seal to one CD of the interview under caution. There is therefore no requirement to place the Master CD into a sealed evidence bag. If the Working Copy has to be sent for typing and there is a risk it may be lost (e.g., in the post), a copy should be made and sent rather than the Working copy itself. Taking this precaution prevents the need to open the Master CD which should only be done in Court.

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# Exhibiting: Exhibit Numbers and Unique Reference Numbers

## Exhibit Numbers

1. Material that is ‘Used’ in a prosecution case must be produced by a witness as an exhibit. The material should be:

* given an Exhibit No.;
* sufficiently described in a witness statement which produces the exhibit; and be,
* given a label or other mark which should be signed by the maker of the statement i.e. person exhibiting the material.

1. Normally the exhibit number should contain the initials of the person exhibiting the material, and be a consecutive number e.g., AB1, AB2, AB3 ……. However, it may be necessary to make reference to a material item in a statement before it has been formally exhibited by the best person to do so. In such instances other initials can be used e.g., the Inspectors initials or the person from whom a material item was initially obtained.
2. The material should be exhibited in a statement, ‘I now produce [material description] marked exhibit AB1’.

## Unique Reference Numbers (URNs)

1. URNs are provided on a number of tools used by an Inspector e.g., evidence bags, luggage labels, tags, PACE labels, CD labels, notebooks. URNs are *not* exhibit numbers and should not be used as such. They are assigned to the bag, label, notebook itself, and by recording and referencing the URN, can assist:

* in proving continuity where a material item is passed from one person to a another (evidence bags, luggage labels);
* to show that a material item has not been tampered with, or altered when used on evidence bags, Master PACE and CD labels which have a tamper proof seal;
* on a tag to show that material or an incident scene (or part of ) has been kept secure e.g. by applying one to an electrical enclosure, cupboard, crate or a locking off point on a latch, clasp or switch;
* to identify specifically in which notebook, written records were made.

1. In addition, duty holders may also use URNs e.g., given to drawings, safety plans and files, and serial numbers on machines. There is no requirement to create an URN for a material item where one doesn’t exist as such material will be given exhibit numbers if used in court.
2. Each ‘piece’ of material should be exhibited by one individual i.e., the person who can best identify, describe or explain the material. The material should be given an exhibit no., normally using the initials of the person exhibiting the material but others can be used e.g., Inspectors initials or the persons from whom the material was obtained where they are not formally ‘exhibiting’ the material.
3. Each person referring to the exhibit in their statement should use the existing exhibit no. i.e., a new one should not be assigned as this would result in an exhibit having more than one exhibit no.
4. The exhibit no. alone acts as the identifier for the material item e.g.,’ I now produce a copy of the [description] marked exhibit no. RS1’. However, where an evidence bag or label (luggage, PACE or CD label) is used, there will be an URN associated with the bag or label and this should be referenced in the statement in addition to the exhibit no. e.g., ‘Whilst on site, I took possession of [material description], which I placed and sealed in evidence bag no. 0001234. I now produce the [description] marked exhibit no. RS1’.
5. Duty Holders may assign URNs to material e.g., drawings, plans, serial no. of machines. Where assigned it is good practice to reference such URNs in addition to the assigned exhibit no. e.g., ’Whilst on site I took possession of a copy of Drawing No. 12345 which I now produce marked exhibit RS1’.
6. Whilst using the initials of the person who formally exhibits the material is considered to be good practice as it indicates who is exhibiting a material item, there is no legal requirement to do so. Where a witness is required to refer to a material item which has not yet been formally exhibited by the person best placed to do so, Inspectors may wish to use their own initials to create an exhibit no.
7. Material should be securely stored, in accordance with local rules. Further guidance can be found in the Enforcement Guides for both jurisdictions.

# References

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| [1] | HSE, “How HSE Regulates,” [Online]. Available: https://www.hse.gov.uk/enforce/index.htm. |
| [2] | Criminal Procedure Rule Committee and Ministry of Justice, “Guidance - Criminal Procedure Rules 2020 and Criminal Practice Directions 2023,” 29 May 2023. [Online]. Available: https://www.gov.uk/guidance/rules-and-practice-directions-2020#Anchor6. |
| [3] | ONR, “ONR-ENF-GD-016 - Managing ONR Investigation Material”. |
| [4] | ONR, “ONR-ENF-GD-014 - Collecting Productions for Use in Criminal Proceedings in Scotland”. |
| [5] | ACPO Crime, “Good Practice Guide for Digital Evidence,” 2007. |

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# Appendix 1 - Examples of material which may be relevant in both jurisdictions

Physical objects such as plant, tools, personal protective equipment etc.;

* samples such as chemicals, asbestos, lead etc.;
* photographs, video including CCTV, models and sketches;
* documents such as safety policies, plans, risk assessments, method statements, drawings, inspection and examination reports, diaries and other logs;
* enforcement notices, and any correspondence), including responses from duty holders;
* correspondence and other documentation in relation to previous ONR inspections, investigation and enforcement;
* reports of concerns and accidents;
* notebooks;
* final and draft versions of witness statements (particularly where content differs from final version);
* records of interviews under caution (written records, or audio or video tapes);
* communications between investigators, specialists / experts and others, including letters and e:mails;
* reports including drafts (where their content differs from final version) from specialists and experts, including any associated notes, calculations, workbooks or other records;
* forensic reports, including any associated notes, calculations, workbooks or other records; and
* material casting doubt on the reliability of a witness, including Police National Computer checks.

# Appendix 2 - Extracts from legislation

## Health and Safety at Work etc. Act 1974

Section 20(2)(h) in the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause danger to health or safety, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purpose mentioned in subsection (1) above)

Section 20(4) Where an inspector proposes to exercise the power conferred by subsection (2)(h) above in the case of an article or substance found in any premises, he shall, if so requested by a person who at the time is present in and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of the State.

## The Energy Act 2013 Schedule 8, Para 11

(1) An authorised inspector may cause any article or substance in relevant premises—

(a) to be dismantled;

(b) to be tested;

(c) to have any other process applied to it.

(2) The inspector may exercise any of those powers only if it appears to the inspector—

(a) that the article or substance has caused, or is likely to cause, danger to health or safety,

or

(b) that it is desirable to do so for the nuclear security purposes.

…

(5) If requested by a person who has responsibilities in relation to the relevant premises, and is on the premises, the inspector must allow anything done to the article or substance under this paragraph to be done in that person's presence, unless the inspector considers that that would be prejudicial to national security.