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Forensic Science Regulator
O v e r s e e i n g Q u a l i t y

Forensic Science Regulator Guidance

Provision of Human Tissue to the Defence
(England and Wales)

FSR-G-215

Issue 2

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1. INTRODUCTION

- 1.1.1 In 2010 the issue of provision of tissue to the defence was considered by the Forensic Pathology Specialist Group and the Pathology Delivery Board (PDB). This led to a letter being sent, on behalf of the Home Office and the PDB, to all forensic pathologists on the Home Office Register. This letter set out the approach to the provision of tissue to the defence.
- 1.1.2 In 2014 the PDB again discussed the provision of tissue to the defence and it was considered necessary to re-issue the advice noted above.
- 1.1.3 This document, issued by the PDB and the Forensic Science Regulator, provides a record of the approach set out in a form that allows it to be accessible and reviewable.

2. SCOPE

- 2.1.1 This document covers the provision, by forensic pathologists, of human tissue to the defence or those instructed by the defence.
- 2.1.2 This document is drafted to support the standards for forensic pathology in England, Wales and Northern Ireland. It is, however, based on the law in England and Wales and, as a result, applies only to that jurisdiction.

3. IMPLEMENTATION

- 3.1.1 This document restates, and replaces, advice issued, by letter dated 15 October 2010, on behalf of the PDB and the Home Office.
- 3.1.2 This advice was published on 30 December 2014 and is effective as of that date. A new issue of the document was issued on 22 September 2020 to ensure the published document was sufficiently accessible (see section 4).
- 3.1.3 There is a separate document, dealing with the wider issues of provision of evidence to the defence, in preparation by the Regulator and Crown Prosecution Service (CPS). When that document is issued this document may be re-issued in an edited form or withdrawn depending on the extent to which the content can be addressed within the new document.

4. MODIFICATION

4.1.1 This is the **second** issue of this document.

4.1.2 Significant changes to the text have been highlighted in grey

4.1.3 The modifications made to create Issue 2 of this document were, in part, to ensure compliance with The Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018.¹

4.1.4 The Regulator uses an identification system for all documents. In the normal sequence of documents this identifier is of the form 'FSR-#-###' where (a) the '#' indicates a letter to describe the type or document and (b) '###' indicates a numerical, or alphanumerical, code to identify the document. For example, the Codes are FSR-C-100. Combined with the issue number this ensures each document is uniquely identified.

4.1.5 In some cases, it may be necessary to publish a modified version of a document (e.g. a version in a different language). In such cases the modified version will have an additional letter at the end of the unique identifier. The identifier thus becoming FSR-#-####.

4.1.6 In all cases the normal document, bearing the identifier FSR-#-###, is to be taken as the definitive version of the document. In the event of any discrepancy between the normal version and a modified version the text of the normal version shall prevail.

5. PROVISIONS

5.1.1 In 2010 it became clear that some medical practitioners involved in the Criminal Justice System (CJS) had adopted practices that created a risk to the CJS and could leave themselves open to criticism. These practices included the following.

- a. The provision of samples (e.g. blocks and slides) held on the authority of the police to persons acting for the defence.

¹ To facilitate compliance with the Regulations changes to the document are noted here. The following sections of the document have been changed – 3.1.2, 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5, 4.1.6. 5.4.3 and 8.1.1. The following footnotes have been altered – 1 and 2.

- b. The transmission of samples held on the authority of the police to those acting for the defence by routine post.
- c. The retention, by those acting for the defence, of tissue samples.

5.2 Pathologists Instructed by the Coroner and Police

- 5.2.1 Forensic pathologists instructed by the coroner and police are likely to hold samples on the authority of the police. Those acting for the defence have the right to examine such samples and review the results obtained by those instructed by the coroner, police and/or prosecution. However, they do not (as a general rule) have the right to take possession or control of the samples.
- 5.2.2 Those instructed by the coroner/police are therefore advised that the samples, held on the authority of the police, should not be transferred to those acting for the defence unless:
- a. They have received clear, written, instructions from the police that the samples are to be transferred; or
 - b. They have received clear written instructions from the CPS that the samples are to be transferred; or
 - c. They have received an order from a court of competent jurisdiction, directed at them, ordering the transfer of the material to those acting for the defence.
- 5.2.3 Where they have received a court order directing the transmission of the samples to the defence, they should immediately notify the police of the court order.
- 5.2.4 If the court order is not directed to them (e.g. it is directed to the police) the pathologist should not transfer the sample without clear written instructions from the police or CPS.
- 5.2.5 In all cases the samples must be transferred to those acting for the defence in a way which is secure and provides evidence of continuity. Routine post is not an acceptable method.
- 5.2.6 Where samples held on the authority of the coroner are involved, the above process should be followed but also seeking the agreement of the coroner or notifying the coroner as relevant.

5.3 Pathologists Instructed by the Defence

- 5.3.1 Pathologists instructed by the defence should normally examine any samples whilst they are in the control of the pathologist instructed by the coroner or police. If, for any reason, this is not possible they should notify the defence of this fact and the reasons for it. It is for the defence to contact the police/prosecution and arrange suitable access to, or transfer of, the evidence.
- 5.3.2 Those instructed by the defence must return the samples to the control of the coroner, police or prosecution once the examination is complete. This must be done in a manner which is secure and provides written evidence of continuity.
- 5.3.3 Where those acting for the defence believe additional samples, or sub-samples, must be taken (or created) there are two options they may employ.
- a. They may contact the pathologist instructed by the coroner to have samples taken under the authority of the coroner.
 - b. Alternatively, they should (either directly or through those instructing them) contact the police for authority.
- 5.3.4 In both cases the samples, or sub-samples, taken should be returned to the pathologist instructed by the coroner to be retained/destroyed according to the applicable provisions. These samples (or sub-samples) must not be retained by the pathologist instructed by the defence. At all times a duty exists to keep a clear and accurate audit trail of the movements of all samples and sub-samples.

5.4 Retention

- 5.4.1 Those instructed by the coroner, police or the CPS should be aware of their obligations under the code of practice issued under the provisions of s23 Criminal Procedure and Investigations Act 1996.
- 5.4.2 Specific guidance has been issued by the CPS and is provided in:
- a. Crown Prosecution Service: Guidance on Expert Evidence; and
 - b. The Disclosure Manual also known as “The CPS Guidance for Expert Witnesses”, May 2010.

5.4.3 These are available at: ²

www.cps.gov.uk

www.cps.gov.uk/legal-guidance/disclosure-manual

www.cps.gov.uk/legal-guidance/cps-guidance-experts-disclosure-unused-material-and-case-management

5.5 Human Tissue Act 2004

5.5.1 The application of the Human Tissue act 2004 to work in the CJS is discussed in the document Legal Issues in Forensic Pathology and Tissue Retention (FSR-G-203).

5.5.2 Forensic pathologists should ensure that, to the extent the Act applies, it is complied with.

6. ACKNOWLEDGEMENTS

6.1.1 The Regulator acknowledges the assistance of the following groups in the preparation of this document.

- a. The Pathology Delivery Board.
- b. The Forensic Pathology Specialist Group.
- c. The Human Tissue Authority.

7. REVIEW

7.1.1 This document is subject to review at regular intervals.

7.1.2 If you have any comments please send them to the address or e-mail set out on the Regulator's Internet site at URL:

<https://www.gov.uk/government/organisations/forensic-science-regulator>.

8. ABBREVIATIONS AND ACRONYMS

8.1.1 The following abbreviations and acronyms are employed in this guidance.

² This URL was accessed on 18 April 2020.

| TEXT | DEFINITION |
|-------------|---------------------------|
| CJS | Criminal Justice System |
| CPS | Crown Prosecution Service |
| PDB | Pathology Delivery Board |
| URL | Uniform Resource Locator |

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