



Inspection of Human Tissue Seizure, Retention and Disposal Processes in Northern Ireland

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Introduction

In Northern Ireland when a person dies in unexplained or suspicious circumstances, a post-mortem examination is carried out by a pathologist to establish the cause of death. During the post-mortem examination, samples of human tissue are taken and retained for analysis by medical specialists and, if the death is suspicious, for analysis by Forensic Science Northern Ireland (FSNI).

The samples taken for analysis vary from case to case but could include cuttings of hair or small samples of internal organs, or depending on the circumstances of death whole organs or limbs.

Such analysis can take many weeks to complete and it is often inevitable that the samples cannot be returned to the body for burial or cremation within the traditional three days of death, as observed in Northern Ireland. In cases where the samples are seized and used as evidence in a criminal trial then the police are required to hold onto them until the convicted person is released from prison.

The taking and retention of human tissue samples is understandably distressing for families of the deceased. Therefore, the procedures adopted by the police, coroner and pathologist need to be professional, appropriate and sensitive.

The Coroners Act (Northern Ireland) 1959 provides the legal basis for the taking of samples in non-suspicious deaths and the Police and Criminal

Evidence (Northern Ireland) Order 1989 provides the legal basis for seizure of samples as evidence in suspicious deaths.

The Human Tissue Act 2004 (the Act)¹ provides the legal basis for the Human Tissue Authority (HTA) to regulate the removal, storage, use and disposal of human tissue samples by hospitals and some research and teaching organisations. The Act excludes from the HTA's remit any samples taken or used for any criminal investigation.

In the summer of 2009, the HTA inspected hospital mortuaries across England, Wales and Northern Ireland and found poor compliance with HTA standards giving rise to serious concerns about practices and procedures relating to post-mortem examinations.

As a result of the HTA inspection, the Association of Chief Police Officers (ACPO) requested Chief Constables across the United Kingdom to conduct their own audit of human tissue samples retained by the police for criminal investigations. For the purpose of the ACPO audit, samples were divided into categories depending on their size. Category 1 included cuttings of hair, category 2 included small samples of organs, and category 3 included whole organs and limbs. The audit focussed on the category 3 samples held by the police.

Along with police forces in England and Wales, the Police Service of Northern Ireland (PSNI) carried out its own audit and found that it was holding 71 category 3 samples from 63 deceased people.

¹ See Annex C

As a result of the audit carried out by forces, ACPO, assisted by the then National Police Improvement Agency (NPIA)², published a report³ and made 10 recommendations (see Annex A).

In October 2012, the Minister of Justice for Northern Ireland, Mr David Ford MLA, commissioned Her Majesty's Inspectorate of Constabulary (HMIC), under section 41 of the Police (Northern Ireland) Act 1998, to undertake an inspection of the PSNI to provide assurance that the 10 recommendations made by the ACPO human tissue audit report had been fully implemented.

² The NPIA ceased to operate in December 2012, transferring its responsibilities for learning to the newly established College of Policing. The NPIA Forensic Pathology Unit which assisted ACPO in the audit and report, transferred to the Home Office

³ *Report on the Police Human Tissues Audit 2010-2012* ACPO, London, 2012

Methodology

This inspection was conducted by a team comprising representatives from the Home Office Forensic Pathology Unit (HOFPU), HTA and HMIC.

The aims of the HMIC inspection are:

- to evaluate the work done by the Office of Police Ombudsman for Northern Ireland (OPONI), PSNI, Coroners Service and State Pathologist's Department – (hereinafter referred to as the 'inspected organisations'), individually and collaboratively, to implement the recommendations of the ACPO human tissue audit report;
- to assess progress made in embedding new policies and procedures into operational practices of the inspected organisations, including how tissue samples found during the audit were dealt with; and
- to provide assurance on the procedures for the lawful retention of tissue samples relating to current and future criminal cases.

HMIC has authority to inspect the PSNI but not the other inspected organisations. These organisations agreed the terms of reference and methodology and invited HMIC to review their work as part of this inspection.

The inspection was conducted in four phases:

- agreeing terms of reference;
- analysing relevant documentation supplied by the inspected organisations;
- conducting interviews and focus groups with senior managers and staff at various grades across the inspected organisations;
- evaluating the evidence of progress made against the ten recommendations, found during the inspection, reporting and making recommendations.

HMIC liaised with the Commission for Victims and Survivors Northern Ireland and Victim Support Northern Ireland to discuss the impact of the ACPO human tissue audit on families of victims.

Full terms of reference for the inspection can be found at Annex B.

In 2010, following its own audit of human tissue samples retained, the PSNI declared a 'critical incident'⁴ and immediately led action to contact families and restore public confidence. A separate multi-agency group was established by the PSNI comprising the inspected organisations and two victim groups. A process was adopted to trace all the affected families and decide with them how to deal with the human tissue samples from their loved ones. The PSNI agreed to finance all reasonable funeral costs incurred by families. At the time of this inspection one case remained unresolved and efforts continue to trace family members abroad.

In 2012, following publication of the ACPO human tissue audit report, the PSNI was quick to respond, convening meetings and workshops chaired by a senior police officer involving all the inspected organisations as well as the Department of Justice.

It is evident from the minutes of those meetings that some procedures to deal with human tissue had been established after the introduction of the Act; indeed significantly fewer human tissue samples had been retained since 2006.

During these meetings, each of the inspected organisations examined its own human tissue procedures and where necessary revised them. Agreement was reached as to how they would work together in the future. A service procedure

⁴ A Critical Incident is any incident where the effectiveness of the police response is likely to have a significant impact on the confidence of: the victim, their family, and/or the community. *Practice advice on critical incident management. ACPO 2007*

document was published by PSNI in 2013 describing how suspicious deaths and human tissue retention will now be dealt with⁵.

As part of this inspection, HMIC compared these new procedures with those operated by five police forces in England and Wales⁶ and found them to be broadly consistent. The PSNI procedures were more comprehensive and clearer. However, further detail is still needed as outlined in this report. The PSNI is aware that more work needs to be done and HMIC is satisfied that this is progressing. Further details of this work are outlined below.

Findings

⁵ PSNI use the term 'service procedure document' to refer to the documents that contain their policies and procedures relating to specific parts of their policing responsibilities.

⁶ Kent Police, West Yorkshire Police and the joint policy shared by Bedfordshire, Cambridgeshire and Hertfordshire Police forces.

ACPO Recommendation 1 - That a debrief takes place at the end of each suspicious death or homicide inquiry to decide on the question of tissue retention. This should involve as appropriate the police, coroner and the pathologist and be documented in a recoverable form.

The inspection found that the PSNI and OPONI senior investigating officers (SIOs) conduct the required debriefings at the end of each suspicious death and homicide investigation. Since the ACPO human tissue audit report, these debriefings consider the retention of human tissue samples. Decisions taken at debriefings are recorded on the appropriate case management systems of the inspected organisations.

However, the Coroners Service and State Pathologist's Departments are not routinely involved in the decisions made at such debriefings. HMIC found that there have been occasions when the State Pathologist's Department has not been informed that criminal proceedings have concluded or that cases are no longer being treated as suspicious. This could delay the return of samples to families.

HMIC Recommendation 1

The PSNI and OPONI SIOs should routinely involve as appropriate the Coroners Service and State Pathologist's Department in debriefings at the end of each suspicious death and homicide investigation to decide on human tissue retention.

ACPO Recommendation 2 - In cases where it is determined following post-mortem examination that a case is not suspicious and there is no further

police investigation, a clear process should be followed between the police and the coroner to ensure material is suitably dealt with. To this end, ACPO and the Chief Coroner (when appointed) should agree the process to be followed in consultation with the Human Tissue Authority (HTA).

The Chief Coroner has no jurisdiction in Northern Ireland.

The inspection found that the PSNI and OPONI have, in consultation with the Coroners Service and State Pathologist's Department, created a clear process to be followed in non-suspicious deaths for the return of human tissue samples.

All non-suspicious deaths in Northern Ireland are investigated by a police constable on behalf of the Coroners Service, including those first thought to be suspicious. However, as the process created by the inspected organisations was only adopted in 2013, HMIC found that some police constables are still uncertain about their role regarding the return or disposal of human tissue samples.

The PSNI involved police trainers at the outset of the work to address the ACPO recommendations, and they will deliver training to police constables later this year. However, no date has been set for the training.

HMIC Recommendation 2

The PSNI should carry out training for police constables who deal with non-suspicious deaths by the end of 2013. This should address the role and responsibilities of the constable in such investigations particularly regarding the review, retention, return or disposal of human tissue samples.

ACPO Recommendation 3 - Senior Investigating Officers (SIO) must review the retention of material, samples seized and the continuity of exhibits periodically during the investigation of a suspicious death/homicide and specifically at the stage when the body of the deceased is being released to relatives and at the post-trial debrief. Material should not be disposed of without prior consultation with the coroner who may require material for the purpose of their duties at an inquest and, when appropriate, with the CPS.

[Public Prosecution Service – PPS]

Although ACPO did not specify the frequency of the periodic reviews, the inspection found that the PSNI and OPONI SIOs review the retention of samples at least every three months, and also when the body of the deceased is being released and at the debriefing stage. In addition, retention of human tissue is considered at reviews that are required in all homicide cases as set out in the Murder Investigation Manual⁷, and decisions are recorded on case management systems. HMIC found that the PSNI conducts monthly 'Disposal Review' meetings to ensure that these reviews are being carried out. Where appropriate, the PPS, Coroners Service and State Pathologist's Department

⁷ *Murder Investigation Manual* ACPO 2006

are consulted by the SIO but HMIC found that communication between the inspected organisations is not consistent.

The State Pathologist's Department identified that when samples are sent to medical specialists for examination, other than FSNI, the SIO is not routinely informed. Whilst this does not occur often it is important that the police know where all exhibits are so they can account for them.

HMIC Recommendation 3

The State Pathologist's Department should ensure that the SIO is informed of the movement of samples to other medical specialists for examination.

HMIC examined several cases recorded on case management systems of each of the inspected organisations. In one case, details of samples taken by the State Pathologist's Department for histological tests as shown on their computer had not been known to the police and did not appear on the PSNI records. This reflects practice by the State Pathologist's Department of grouping samples together as opposed to referring to each sample individually. This prevents SIOs being able to review all samples retained.

HMIC Recommendation 4

The State Pathologist's Department and PSNI should record individually all human tissue samples taken at post-mortem examination for histological analysis.

ACPO Recommendation 4 - Forces are advised to adopt a policy whereby there are periodical reviews of retained material as reliance cannot be made on those originally investigating homicide cases due to turnover and retirements of staff.

Again, although ACPO did not specify the frequency of the periodic reviews, HMIC found the PSNI and OPONI have adopted a policy of conducting six-monthly audits of all retained human tissue samples seized. This establishes that samples are still being retained lawfully and it also ensures that reviews are not missed as staff turn-over or retire.

ACPO Recommendation 5 - The learning descriptors for the National SIO's training should be amended to include information in relation to human tissue as part of the curriculum.

Learning descriptors are the levels of knowledge and skills that SIOs are expected to learn as part of their training. These have been addressed by the HOFPU, which also provides an input to all national SIO development courses, concerning seizure, retention and disposal of human tissue; and on the 10 recommendations in the ACPO report.

The inspection established that the PSNI and OPONI have delivered their own training for SIOs and crime scene investigators (CSIs) and that the Coroners Service and State Pathologist's Departments have been involved in the preparation and delivery of that training.

ACPO Recommendation 6 - Review of police exhibits held on HTA licensed premises should be included within the regular HTA inspection process with a mechanism for reporting back to the police and the Home Office.

HMIC found that this recommendation had not yet been fully implemented. The HTA will write to all licensed post-mortem facilities later this year to plan for their future inspections.

ACPO Recommendation 7 - Consideration should be given to a further audit [inspection] in the future, conducted by an appropriate body to ensure that police forces have implemented new policies set out in these recommendations.

There are currently no further audits planned to ensure that PSNI has implemented new policies set out in the ACPO recommendations. However, HMIC recommends that a further audit is undertaken to provide assurance that the ACPO recommendations and those made by HMIC contained in this report are fully implemented.

HMIC Recommendation 5

The inspected organisations should conduct a joint audit within 12 months of this inspection to ensure the new policies comply with the ACPO recommendations.

ACPO Recommendation 8 - Forensic Pathologists on the Home Office register (Home Office Pathologists) and the State Pathologists in Northern Ireland should be fully appraised of the issues raised by this audit.

The State Pathologist's Department has regular contact with the HOFPU and the HTA. HMIC found that the State Pathologist's Department was fully involved in the PSNI audit and the subsequent work to implement the ACPO recommendations.

ACPO Recommendation 9 - Samples of human tissue taken by or sent to the defence expert should be subject to the same level of continuity, recording and disposal as all other tissue samples taken by the Pathologist at the initial post-mortem examination. Relevant bodies will be consulted as to how this may be regulated in the future.

The Coroners Service, at the request of the defence lawyers, will usually agree to a second or 'defence' post-mortem examination to be conducted by another pathologist. This provides the defence with an examination of the deceased separate from that done by the State Pathologist's Department.

However, there was uncertainty shared at a senior level in all the inspected organisations as to what the current legal basis is for the coroner to agree to 'defence' post-mortems. The Coroners Act (Northern Ireland) 1959 provides the legal basis for the Coroners Service to direct the State Pathologist's Department to carry out the initial post-mortem examination, the purpose of which is to establish the identity of the deceased and the cause of death.

Once these facts have been established there is no explicit provision that allows the Coroners Service to authorise a second or 'defence' post-mortem.

The vast majority of homicides in Northern Ireland have a second or 'defence' post-mortem examination. A member of the State Pathologist's Department is always present at any 'defence' post-mortem examination and provides a briefing on the original findings. If additional exhibits are requested, the State Pathologist's Department ensures the same level of continuity, recording and disposal as at the initial post-mortem examination.

In Northern Ireland, if no offender has been identified or charged then a 'defence' post-mortem examination is not carried out. This potentially deprives the defence of an examination of the deceased separate from that conducted by the State Pathologist's Department if an offender is arrested some time later.

HMIC Recommendation 6

The Department of Justice with the inspected organisations should clarify the law regarding defence post-mortem examinations and consider conducting such examinations where no offender has been identified or charged.

ACPO Recommendation 10 - New police guidance on pathology issues, including procedures for dealing with human tissue in suspicious death and homicide cases should be implemented in all forces (currently in draft), and will include; the appropriate powers to seize human tissue, the retention of

such material and specific advice on the return of any tissue to bereaved relatives.

The police forces in England, Wales and Northern Ireland have adopted the standards set out in the ACPO Murder Investigation Manual.

The Murder Investigation Manual has been rewritten to provide guidance on pathology issues including procedures for dealing with the retention and disposal of human tissue samples after post-mortem examinations. The Murder Investigation Manual will be published as College of Policing's Approved Professional Practice (APP) by the end of 2013.

As identified above, for the PSNI to have fully implemented the ACPO recommendations, communication needs to be improved, procedures need to be understood and further audits need to be coordinated between all the inspected organisations.

The appointment of a member of police staff to oversee the entire process would ensure there is consistency in the way human tissue samples are dealt with across the inspected organisations.

HMIC Recommendation 7

The PSNI, Coroners and State Pathologist's Department should agree to appoint a dedicated police coordinator to oversee the way in which human tissue samples are dealt with across the inspected organisations to ensure there is consistency.

Conclusions

As part of the inspection, HMIC reviewed the process adopted by the PSNI to identify and return samples from their audit. The inspection found that, accepting the audit was traumatic for many families, the process appears to have been conducted as quickly as reasonably possible and with sensitivity.

The PSNI has developed closer working relationships with the Coroners Service and State Pathologist, as indeed have the OPONI. The PSNI led the changes in working practices with their partners and a considerable amount of progress has been achieved in a relatively short time frame.

The recommendations that affect the PSNI within the ACPO human tissue audit report have been largely achieved. That being said, as this report highlights there are still areas that need progressing to ensure a consistent and accurate approach to the ACPO recommendations across all the inspected organisations is taken.

Recommendations

HMIC Recommendation 1

PSNI and OPONI SIOs should routinely involve as appropriate the Coroners Service and State Pathologist's Department in debriefings at the end of each suspicious death and homicide investigation to decide on human tissue retention.

HMIC Recommendation 2

PSNI should carry out training for police constables who deal with non-suspicious deaths. This should address the role and responsibilities of the constable in such investigations particularly regarding the review, retention, return or disposal of human tissue samples.

HMIC Recommendation 3

The State Pathologist's Department should ensure that the SIO is informed of the movement of samples to other medical specialists for examination.

HMIC Recommendation 4

The State Pathologist's Department and PSNI should record individually all human tissue samples taken at post-mortem examination for histological analysis.

HMIC Recommendation 5

The inspected organisations should conduct a joint audit within 12 months of this inspection to ensure the new policies comply with the ACPO recommendations.

HMIC Recommendation 6

The Department of Justice with the inspected organisations should clarify the law regarding defence post-mortem examinations and consider conducting such examinations where no offender has been identified or charged.

HMIC Recommendation 7

The PSNI, Coroners and State Pathologist's Department should agree to appoint a dedicated police coordinator to oversee the way in which human tissue samples are dealt with across the inspected organisations to ensure there is consistency.

Annex A

ACPO recommendations

The following recommendations have been made in consultation with, and are being progressed by appropriate authorities:

1. That a debrief takes place at the end of each suspicious death or homicide inquiry to decide on the question of tissue retention. This should involve as appropriate the police, coroner and the pathologist and be documented in a recoverable form.
2. In cases where it is determined following post-mortem examination that a case is not suspicious and there is no further police investigation, a clear process should be followed between the police and the coroner to ensure material is suitably dealt with. To this end, ACPO and the Chief coroner (when appointed) should agree the process to be followed in consultation with the Human Tissue Authority (HTA).
3. Senior Investigating Officers (SIO) must review the retention of material, samples seized and the continuity of exhibits periodically during the investigation of a suspicious death/homicide and specifically at the stage when the body of the deceased is being released to relatives and at the post-trial debrief. Material should not be disposed of without prior consultation with the coroner who may require material for the purpose of their duties at an inquest and, when appropriate, with the CPS.
4. Forces are advised to adopt a policy whereby there are periodical reviews of retained material as reliance cannot be made on those originally investigating homicide cases due to turnover and retirements of staff.
5. The learning descriptors for the National SIO's training should be amended to include information in relation to human tissue as part of the curriculum.
6. Review of police exhibits held on HTA licensed premises should be included within the regular HTA inspection process with a mechanism for reporting back to the police and the Home Office.
7. Consideration should be given to a further audit in the future, conducted by an appropriate body to ensure that police forces have implemented new policies set out in these recommendations.
8. Forensic Pathologists on the Home Office register (Home Office Pathologists) and the State Pathologists in Northern Ireland should be fully appraised of the issues raised by this audit.

9. Samples of human tissue taken by or sent to the defence expert should be subject to the same level of continuity, recording and disposal as all other tissue samples taken by the Pathologist at the initial post-mortem examination. Relevant bodies will be consulted as to how this may be regulated in the future.

10. New police guidance on pathology issues, including procedures for dealing with human tissue in suspicious death and homicide cases should be implemented in all forces (currently in draft), and will include; the appropriate powers to seize human tissue, the retention of such material and specific advice on the return of any tissue to bereaved relatives.

Annex B

Commissioning letter and inspection terms of reference

FROM THE OFFICE OF THE JUSTICE MINISTER



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Our ref: COR/554/2012

Mr Steve Otter QPM
HM Inspectorate of Constabulary
6th Floor
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11 October 2012

Dear Mr Otter

HUMAN TISSUE AUDIT

I am writing in relation to the report published on 21 May 2012 by the Association of Chief Police Officers (ACPO), with the assistance of the National Policing Improvement Agency (NPIA), on the retention of human tissue by police forces in England, Wales and Northern Ireland. Following publication of the report, I indicated in a statement to the Assembly that I would be putting in place arrangements to provide independent assurance that the recommendations of the report were fully implemented.

Since publication of the report, colleagues in the Police Service of Northern Ireland (PSNI), State Pathologist's Department, Coroners Service, and Office of the Police Ombudsman have been working collaboratively on responding to the recommendations within the report. I understand that good progress has been made against the recommendations and that the development of procedures for the retention of human tissue relating to criminal cases is well advanced.

FROM THE OFFICE OF THE JUSTICE MINISTER



You may be aware that a conference being arranged by the NPIA for representatives of police forces across England, Wales and Northern Ireland has been cancelled. That is unfortunate and I know that you were keen to await the outcome of the conference to review what action would be taken to audit implementation of the recommendations in the ACPO report. It is important, however, that arrangements are confirmed as soon as possible given the extent of interest from families affected by the audit and the public when the report was published.

There is also a need to ensure public confidence in the procedures around the retention of human tissue and so it is important that progress against the recommendations is independently verified. As the majority of the recommendations fall to the PSNI, and given the Inspectorate's role in inspecting the PSNI, I should be grateful if you would consider leading an independent review of progress against the recommendations in the ACPO report.

As the recommendations also touch on matters that fall within the responsibility of the Human Tissue Authority (HTA), it would be appropriate for inspectors within the HTA to contribute to the audit. Officials have already made contact with the Chief Executive of the HTA and he has agreed, in principle, to reviewing those recommendations which touch specifically on the retention of human tissue at the State Pathologist's Department.

I would not anticipate the review being too onerous and could be scheduled around May next year by which stage all of the recommendations should be implemented. I have also attached draft Terms of Reference for the review but they are, of course, subject to discussion.

FROM THE OFFICE OF THE JUSTICE MINISTER



We are due to meet on 17 October on a separate matter and I would welcome a short discussion at that meeting on whether the Inspectorate would be able to assist with a review.

*Yours
David Ford*

DAVID FORD MLA
Minister of Justice

Inspection of Human Tissue Audit Report

Terms of Reference

An audit carried out by the Association of Chief Police Officers (ACPO), with the assistance of the National Policing Improvement Agency (NPIA), into the retention of human tissues by police forces in England, Wales and Northern Ireland made 10 recommendations to improve processes and procedures for the retention of human tissue in criminal cases.

Since the audit report was published on 21 May 2012, the Police Service of Northern Ireland (PSNI), State Pathologist's Department (SPD), Coroners Service and Office of the Police Ombudsman for Northern Ireland (OPONI) have been working collaboratively to implement the recommendations. It is anticipated that all the recommendations will be completed by spring 2013.

The Department of Justice wishes to commence an independent assessment of progress made against implementation of the recommendations within the ACPO report. The aim of the review is to provide an independent assessment to the Minister of Justice on responses by the inspected organisations to the recommendations identified in the ACPO audit.

The aims of the inspections are:

- to evaluate the work done by the inspected organisations, individually and collaboratively, to implement the recommendations of the ACPO human tissue audit report;
- to assess progress made in embedding new policies and procedures into operational practices of the inspected organisations, including the disposal of 'legacy' tissue samples; and
- to provide assurance on the procedures for retention of tissue samples relating to current and future criminal cases.

The key activities which are in scope of this inspection are:

- to carry out a review of PSNI regarding their implementation of the recommendations of the ACPO audit report, and to engage with other stakeholders to assess their contribution to the recommendations;
- to conduct a document/policy review, reality testing, and interviews of key staff within PSNI and stakeholder organisations;
- to identify and disseminate good practice across England, Wales and Northern Ireland; and
- to report findings to the Minister of Justice and the Northern Ireland Policing Board (NIPB).

Annex C

Summary of the law relating to human tissue taken at post-mortem examinations

Human Tissue Act 2004 (the Act)⁸

The Act covers England, Wales and Northern Ireland. It established the Human Tissue Authority to regulate activities involving the removal, storage, use and disposal of human tissue, consent being the fundamental principle of the legislation. The Act has been fully in force since in September 2006.

The HTA has published codes of practice, which provide guidance and lay down expected standards for each of the sectors regulated by the HTA, including post-mortem examination. The current versions of the codes were approved by Parliament in July 2009 and were brought into force via [Directions 002/2009](#).

Section 39 of the Act excludes from the HTA's remit anything done for criminal justice purposes, as set out below:

Criminal justice purposes

(1) Subject to subsection (2), nothing in section 14(1) or 16(2) applies to anything done for purposes related to—

- (a) the prevention or detection of crime, or*
- (b) the conduct of a prosecution.*

(2) Subsection (1) does not except from section 14(1) or 16(2) the carrying-out of a post-mortem examination for purposes of functions of a coroner.

(3) The reference in subsection (2) to the carrying-out of a post-mortem examination does not include the removal of relevant material from the body of a deceased person, or from a part of the body of a deceased person, at the first place where the body or part is situated to be attended by a constable.

(4) For the purposes of subsection (1) (a), detecting crime shall be taken to include—

- (a) establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed, and*
 - (b) the apprehension of the person by whom any crime was committed;*
- and the reference in subsection (1) (a) to the detection of crime includes any detection outside the United Kingdom of any crime or suspected crime.*

⁸ Source – Human Tissue Authority

(5) In subsection (1) (b), the reference to a prosecution includes a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.

(6) In this section, references to crime include a reference to any conduct which—

(a) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom),
(b) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences, or
(c) constitutes one or more service offences within the meaning of the Armed Forces Act 2006.

The Act creates a number of offences, including:

- removing (from the deceased), storing or using human tissue for Scheduled purposes without appropriate consent;
- storing or using human tissue donated for a Scheduled Purpose for another purpose;
- carrying on a licensed activity otherwise than under a licence granted by the HTA;
- possessing bodily material with the intention of undertaking DNA analysis without qualifying consent;
- engaging in commercial dealings in human material for transplantation.

The police service can in most cases rely on the exemption provided by Section 39 of the Act and will not commit an offence. Furthermore, because the key offences created by the Act can only be committed in respect of material retained for a 'scheduled purpose' set out in the Act, it is likely the police service shall be excluded from committing any offence since a criminal investigation, even though no longer active, is not a scheduled purpose. However, if, on conclusion of the investigation tissue is retained with the intention that it might be used for one of the scheduled purposes, this would be unlawful without appropriate consent under the Act.

The Coroners Act (Northern Ireland) 1959 and Coroners (Practice and Procedure) Rules (NI) 1963.⁹

The pathologist who takes the tissue at the post-mortem examination, under whatever power, should make a list of all material retained. A form C1 is completed detailing what has been seized under coronial powers. If tissue has also been taken under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), reference is made to a form C1A which identifies all such tissue and is forwarded to the Coroners Service by PSNI. The family is informed by the Coroners Service or PSNI depending on whether or not the death is being treated as suspicious. In theory therefore, the family should always be informed. All registered forensic pathologists are aware of this requirement.

General

Any human tissue samples that are retained following a post-mortem examination conducted for criminal justice purposes and seized under police powers, are primarily the responsibility of the police service and are completely exempt from the Act. That said, the Home Office and the HTA advise that the principles of the Act and relevant codes of practice should be followed as closely as possible.

It is of course quite feasible that any sample could be relevant to the Coroners Service, the police investigation or both. It is for this reason that it is essential that the lawful basis of seizure and retention of every sample taken during a post-mortem examination is accurately recorded in all cases.

It is essential to have:

- A lawful power to seize and retain;
- A lawful purpose to examine; and
- A clear policy to dispose of the human tissue when no longer required.

⁹ Source – Coroners Service Northern Ireland

Criminal Procedures and Investigations Act 1996¹⁰

There is no lawful power to retain samples without a specified purpose. Human tissue can be retained by police indefinitely as long as the rationale for such retention is lawful and documented. This should normally be recorded within the SIOs policy or decision log. However the police are bound by the Criminal Procedure and Investigations Act 1996 which requires that subject to certain reservations, any material obtained in the course of a criminal investigation, and which may be relevant to the investigation should be retained until the end of criminal proceedings and following completion of any appeals procedure. In general terms, this may be interpreted as the release from detention of a person convicted of a crime. This can be as long as 30 or more years.

Police and Criminal Evidence (Northern Ireland) Order 1989¹¹

Under Article 21 of the Police and Criminal Evidence (Northern Ireland) Order 1989), when a constable is lawfully on any premises he can seize anything which he finds on the premises if he has reasonable grounds for believing:

- (i) that it has been obtained in consequence of the commission of an offence;
- or
- (ii) that it is evidence in relation to an offence which he is investigating or any other offence and
- (iii) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

The police have the power to seize material including "relevant material" as evidence. It is also clear that they have the power to seize material held under the authority of the coroner.

The police have a lawful right to be present at a post-mortem examination in accordance with the Coroners Act (Northern Ireland) 1959 and Coroners (Practice and Procedure) Rules (NI) 1963 and it therefore follows that they have a right to take tissue samples under this article of the Order.

Under Article 24 of the Police and Criminal Evidence (Northern Ireland) Order 1989, the police may retain any items seized 'only for as long as is necessary in all the circumstances'

¹⁰ Source - *ACPO Report on the Police Human Tissue Audit 2010-2012* ACPO, London 2012

¹¹ Source – Department of Justice Northern Ireland

Paragraphs 7.14 to 7.15 of Code B of the Codes of Practice to the Police and Criminal Evidence Act 1984 contain guidance on the retention of material and state as follows:

Subject to paragraph 7.15, anything seized in accordance with the above provisions may be retained only for as long as is necessary. It may be retained, among other purposes:

- (i) for use as evidence at a trial for an offence;*
- (ii) to facilitate the use in any investigation or proceedings of anything to which it is inextricably linked,*
- (iii) for forensic examination or other investigation in connection with an offence;*
- (iv) in order to establish its lawful owner when there are reasonable grounds for believing it has been stolen or obtained by the commission of an offence.*

7.15 Property shall not be retained under paragraph 7.14 (i), (ii) or (iii) if a copy or image would be sufficient.

Common Law¹²

Common Law powers of seizure still exist and may be relevant where Article 21 of the Order does not apply. In the context of suspicious death investigations, this may include seizure of evidence from the body of the deceased where Article 21 of the Order does not apply, for instance where the seizure takes place when not 'in premises'.

¹² Source – Department of Justice Northern Ireland

Annex D

Glossary

ACPO Association of Chief Police Officers.

CLO Coroners liaison officer, who works directly for the Coroner Service and provides the link between the PSNI, the OPONI the State Pathologist's Department and the public.

CPS Crown Prosecution Service.

CSI Crime scene investigator, employed by PSNI to attend crime scenes and gather physical evidence for further examination.

FSNI Forensic Science Northern Ireland is an Agency within the Department of Justice.

HMIC Her Majesty's Inspectorate of Constabulary.

HOFPU Home Office Forensic Pathology Unit monitors and maintains forensic pathology standards set by the Home Office and the Forensic Science Regulator.

HTA Human Tissue Authority. The HTA is a regulatory body set up in 2005 following events in the 1990s that revealed a culture in hospitals of removing and retaining human organs and tissue without consent.

NPIA National Policing Improvement Agency. The NPIA has now transferred all but one of its operational functions to The College of Policing and is preparing for closedown.

PPS Public Prosecution Service

PSNI Police Service of Northern Ireland

SIO Senior investigating officer