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| ONR GUIDE |
| **Collecting Productions for use in Criminal Proceedings in Scotland** |
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1. INTRODUCTION

When evidence collected during the course of an investigation in Scotland is to be used in criminal proceedings, it will be referred to as a production. Productions (known as exhibits in England and Wales) may take many forms, e.g. photographs, letters, plans, sketches, videos or pieces of equipment.

Particular challenges can arise in relation to the recovery of documents during investigations to ensure that sufficient information about the documents is obtained at the time of their recovery to assist with their use as productions in criminal proceedings. This document considers those challenges, as well as collection of material generally.

It will be a matter for the Procurator Fiscal and other parties to the criminal proceedings whether a particular document will be accepted for evidential purposes and therefore not require a witness to speak to it in court. However the proper verification of any production will assist that process.

1. PURPOSE AND SCOPE

The purpose of this guide is to provide some tools to those who are investigating in the Scottish jurisdiction. This guide is not a substitute for a thorough grounding in conducting investigations in Scotland, but should be read in conjunction with other guides, such as the expert witness in criminal proceedings in Scotland. It should also be considered in conjunction with guidance produced by the Crown Office Procurator Fiscal Service (COPFS), such as:

[Reports to the Procurator Fiscal; a Guide for Specialist Reporting Agencies](https://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Guidelines_and_Policy/Specialist%20Reporting%20Agencies%20-%20Reports%20to%20the%20Procurator%20Fiscal%20-%20A%20Guide%20for%20Specialist%20Reporting%20Agencies%20-%207th%20edition%202006.PDF)

1. documentary productions

Rules relating to the use of documentary evidence in criminal proceedings are set down in Schedule 8 of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act).

As in the English and Welsh jurisdiction the original version of the document is always the best evidence. Schedule 8 contains the provision below which allows, in prescribed circumstances, for copies of documents to be deemed, for evidential purposes, as a true copy:

**Paragraph1— Production of copy documents**

(1) For the purposes of any criminal proceedings a copy of, or of a material part of, a document, purporting to be authenticated in such manner and by such person as may be prescribed, shall unless the court otherwise directs, be—

(a) deemed a true copy; and

(b) treated for evidential purposes as if it were the document, or the material part, itself,

whether or not the document is still in existence.

(2) For the purposes of this paragraph it is immaterial how many removes there are between a copy and the original.

(3) In this paragraph “copy” includes a transcript or reproduction.

Authentication of a copy of a document covered by paragraph 1 will need to be by way of a signed certificate certifying the copy as a true copy. It can be completed by:

 (i) the author of the original of it,

(ii) a person in, or who has been in, possession and control of the original of it or a copy of it, or

(iii) the authorised representative of the person in, or who has been in, possession and control of the original of it or a copy of it.

Paragraph 2 of Schedule 8 contains rules relating to the admissibility of statements made in business documents. A business can be a trade, profession or other occupation. Statements within these documents may be admissible in criminal proceedings as evidence of any fact or opinion of which direct oral evidence would be admissible, if the following conditions are satisfied—

* the document was created or received in the course of, or for the purposes of, a business or undertaking or in pursuance of the functions of the holder of a paid or unpaid office;
* the document is, or at any time was, kept by a business or undertaking or by or on behalf of the holder of such an office; and
* the statement was made on the basis of information supplied by a person (whether or not the maker of the statement) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in it.

Documents can be taken to be kept by a business or undertaking by or on behalf of the holder of a paid or unpaid office if they are appropriately certified (discussed below).

It is important that care is taken at the time of collection of evidence to ensure that no difficulty is caused with the use of it as productions in criminal proceedings. The first step is to ensure that all appropriate information about the document is noted down at the time of its recovery. It is necessary to describe from whom the document was taken, the role of the person the document is taken from e.g. employer, employee, company officer, the status of the document e.g. whether it is the original version, a copy, downloaded from a computer etc. and the circumstances in which the document was taken e.g. from the workplace, from a registered office etc. There should be reference to the obtaining of the documentary productions in the statement of each witness who was present.

Productions ought not to be interfered with in any way by, for example, marking the face of a document by writing on it with an ink highlighter.

All productions should be kept safely with a clear identifiable audit trail from the moment that productions are seized until they are passed to the Procurator Fiscal. This is because the prosecution may have to prove that the production before the court is the same production that was referred to by the witness in his or her statement; or that the production has not been tampered with since it was retained. The original document collected by the investigator will be passed to the Procurator Fiscal, with a copy of that document retained by the investigator for their records/further investigatory work.

Any document which is likely to be used as a production should be accompanied by a witness statement. The format of the statement is not prescribed in legislation, but certain key details are necessary. Those key details are found in the witness template found at appendix 1 to this document. The information is vital to establish who is speaking to particular issues. The witness statement should then go on to describe the document, its contents, and how it was obtained by the investigator.

COPFS have advised that the statement taken from a witness should be hand written by the investigator. This is to ensure that it is clearly a contemporaneous and accurate account of what the witness said. The investigator should ensure that the witness has the opportunity to check the contents of the statement and make any corrections before it is signed by the witness. They should also ensure that the witness understands they will be asked to sign a declaration of truth.

The documents should be taken for use as productions using the form found at appendix 2. The form covers the matters which are appropriate for ONR to consider when collating documents as part of their investigation. The form does not need to be attached to the document, rather co-located in such a way that the form, the document, and any relevant witness statement are held together e.g. in a plastic sleeve.

The form found at appendix 2 has space for a production reference number. This should be generated in the usual way e.g. Initials of inspector/numerical representation of date the production is collected/sequential number. A typical reference number might then look like:

RWS/290919/1

Copies of witness statements for use in Scotland and the production backing sheet are available as legal forms.

1. Other types of productions

It may be necessary during the course of an investigation to collect other types of physical material for subsequent use as productions by COPFS, for example pieces of machinery, safety equipment etc. COPFS have advised that the same process described above for documentary productions should be adopted for other material. Evidence bags and tags can be used in the same way as in England and Wales, but should be accompanied by a witness statement (appendix 1), and a production backing sheet (appendix 2). When completing the production backing sheet the Unique Reference Number (URN) of the evidence bag/tag should be added to the field ‘**Description of article**’.

1. APPENDIx 1 Template Witness Statement

STATEMENT OF WITNESS

Surname ..................................................... Maiden Name ......................................

Forename(s) ....................................................................... Title .............................

Address (Home) ........................................................................................................….

.......................................................................................... Tel No ..........................….

Address (Business) ....................................................................................................…

......................................................................................... Tel No ..........................….

Place and Date of Birth ............................................................................................….

Occupation ................................................................................................................…

"Care of" Address (e.g. students, etc) ...........................................................................

...................................................................................................................................…

Occupation ...................................................................... Tel No ...........................

Known as or Alias .....................................................................................................…

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Taken by ..................................................................... Agency/Dept ..........................

At (Time) ........................................... On (Day, Date) ...........................................…

At (Location) ............................................................................................................….

I was alone/accompanied by ......................................................................................… when the statement was noted. It was/was not signed by the witness.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

States:

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The information contained in this Statement is true to the best of my knowledge

Date ................................... Signed ......................................................................(witness)

1. appendix 2 production backing sheet

**Production Backing Sheet**

**Production Reference Number:**

**Investigator in Charge of Case:**

**Investigator Seizing:**

**Date of Seizing:**

--------------------------------------------------------------------------------------------------------------------

**Owner:**

**Address:**

**Telephone Number:**

**Signature:**

-------------------------------------------------------------------------------------------------------------------

**Case against:**

**Description of article:**

**Where found:**

**At (time): On (date):**

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**Signature(s) of Person(s) identifying article:**

|  |  |
| --- | --- |
| **Signature** | **Print Name** |
|  |  |
|  |  |
|  |  |
|  |  |