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| ONR Guidance Document  Accessing Health and Safety Laboratory Services for Investigation Purposes |



ONR Guidance Document

Accessing Health and Safety Laboratory Services for Investigation Purposes

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| 1 | Update to new document to reflect digital analysis. |
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# Introduction

1. The ‘Health and Safety Laboratory’ (HSL) is located in Buxton, Derbyshire.   
   It is a part of HSE’s Science Division. Its correct name is the HSE Science and Research Centre (but is also known as HSL).
2. It is able to provide technical support on a range of subjects. Through the Service Management Agreement (SMA) between HSE and ONR we are able to access its services, on a Full Economic Cost basis. HSL services to ONR include the storage of material that may become evidence or a production in criminal proceedings, and examination and analytical services. It is also able to provide specialist/expert reports to support enforcement action.
3. HSL may not be able to transport or store radioactive material or if the material is contaminated with other substances that require specialist handling techniques. In such cases seek the advice of ONR’s Investigation Resource Group (IRG). In all cases inform IRG that you are considering using HSL.

## Purpose and Scope

1. This document informs ONR staff about the services provided by HSL, how to access them, and how to procure those services.

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# Services Offered by the HSL Part of HSE’s Science Division

1. Colleagues are referred to the [HSL website](https://www.hsl.gov.uk/a-to-z-index) to get a flavour of the services HSL can offer, in particular the A-Z index. **Note:** The above link is current at July 2023; however, you should be mindful that such links can be broken. In this event, colleagues are advised to contact HSL direct through the details below:

Telephone: +44 (0)203 028 2000

Postal address: The HSE Science and Research Centre, Harpur Hill, Buxton, Derbyshire, SK17 9JN, UK

1. Help from HSL is likely to be required in support of an investigation into an incident. Here, HSL will be able to provide advance imaging solutions (laser scanning, photography, videography) and the rapid deployment of their image’s specialist. The specialists are also able to support investigations through sampling, evidence collection, and similar activities. They have experience in rapid response and are able to deploy in the event of a ‘blue light’ incident (see case study for’ Incident Investigation at Buncefield Oil Storage Depot’ [1]). Such work is rated at Category 1 – High, on HSE Science Division rating criteria. This is worth noting in any communication with HSL.
2. HSL is most likely to help ONR investigations in a support function. HSL services will always need direction from ONR specialists. Their ability to work with, and store materials that might be radiologically contaminated will also be limited. There may be instances where ONR will have to turn to other external sources of expertise to support an investigation. However, HSL should always be approached in the first instance as they already have contracts in place with other providers for services HSL cannot provide directly.

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# Digital Analysis and ISO 17025

1. At this juncture it is important to mention a limit to HSE’s current services, and the role of [The Forensic Science Regulator](https://www.gov.uk/government/organisations/forensic-science-regulator/about#contents).
2. Although sponsored by the Home Office, the Forensic Science Regulator is a public appointee and operates independently of the Home Office, on behalf of the criminal justice system as a whole. The Forensic Science Regulator ensures that the provision of forensic science services across the criminal justice system is subject to an appropriate regime of scientific quality standards.
3. Digital analysis is an area of forensic science which is constantly evolving, and so an enforcing authority that relies upon digital evidence to prove elements of an offence must ensure that digital material has been collected and analysed to current standards in order to become robust evidence. Whilst HSL is accredited for many of its services it is not currently accredited to ISO 17025 for digital analysis.
4. ONR has considered this issue and has in place a contract for digital forensic services by qualified forensics officers, including live memory capture and analysis, using facilities accredited to ISO 17025.  If such analysis is necessary, then contact ONR’s CNSS division for further information.

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# Management of HSL Services

1. Seeking approval to procure the service of HSL is addressed later in this document. The following relates to the management of those services.
2. The lead contact with HSL should always be the lead investigator. The lead investigator shall be responsible for:

* Following procurement procedures to engage and manage HSL and any other external resources
* Monitoring and reviewing the progress and delivery of the work
* Reviewing the output of HSL to ensure it meets the specified requirements, and
* Seeking approval for payment of invoices from ONR’s procurement team.

1. The lead investigator is expected to identify the objectives required of the HSL assistance. When seeking support, they should:

* Agree the priority of the request
* The purpose of the support
* When the support is needed, and
* The probable output required (report, expert report, Court appearance etc.)

1. Any request made to HSL will need to be accompanied by a COIN SD Service Order (COIN is HSE’s Corporate Operational Information System.) ONR is not expected to generate the entry on the COIN system – HSL will help with this - but must be mindful that extra information might be requested of them to ensure accuracy of data accompanying a request of HSL.
2. Early sharing of information about the material with HSL is important in order to make best use of the expertise they have in:

* dealing with hazards associated with the material
* dealing with situations that involve risk, e.g. a lifting operation to recover a crane
* labeling and identification of the material [5]
* arranging recovery of the material
* organising transport to collect the material from the incident scene or ensuring security and continuity during transit.

1. HSL has qualified staff who can organise and oversee contract lift plans to recover overturned or heavy machinery and place items on transporters.
2. The lead investigator should also consider the following when seeking to use HSL services:

* conveyance of material from the investigator to HSL
* retention at HSL
* disposal or return of material

## Conveyance of material

1. The lead investigator should always agree arrangements with HSL for the collection and conveyance of the material to ensure its security. They should specify the relevant requirements, for example, time constraints, continuity (and corroboration if storage is for Scotland), and any risks associated with the material and its collection.

## Retention at HSL

1. The lead investigator should agree with HSL the method and conditions of retention (indoors, outdoors, refrigerated etc.) They should liaise with relevant parties in situations where the material requires maintenance to preserve it, such as an engine that may need to be started periodically
2. They should arrange for material to be retained that relates to legal proceedings, and which may be relevant (see ONR-ENF-GD-005 for further information), until a convicted person is released from custody, and in all other cases for 6 months post-conviction. Finally, they should agree arrangements with HSL for reviewing the need for continued retention, setting dates for review or disposal.

## Disposal

1. Any material should be retained or disposed of as soon as possible in cases where there are no legal proceedings, once the possibility of a judicial review of a decision not to prosecute has passed (See [Victims Right to Review Scheme](https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme) as one example), and there is no over-riding business or legal need.
2. Requests to collect return or dispose of material should be made in writing to the owner. Relevant templates are found on HOW2. However, take advice from the relevant specialist where the return of material involves risk, e.g. hazardous substances, as to whether safe disposal is more appropriate
3. Finally, the lead investigator should inform relevant parties to civil proceedings (where known to be ongoing) of the intention to dispose of material.

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# Storage of Material at HSL

1. There is an agreement between HSL and ONR that physical material can be stored at HSL’s evidence storage facility at Buxton, by exception, where the facilities at the respective ONR offices are not suitable.
2. Material not subject to HSL analysis may be stored where all the following conditions are met,

* Where the material relates to ‘live’ cases only;
* it is an on-going investigation and there is a realistic prospect of enforcement action;
* the item is bulky;
* a reason can be provided to justify why the Inspector cannot store it elsewhere; and,
* an end-date for the storage period can be identified.

1. However, HSL will need to be given notification of any shipment to ensure that Buxton has the space available and that the correct authorisation and paperwork is in place. Without this, any shipment, however big or small, will be turned away.
2. The lead investigator is urged, then, that any such instances are communicated to Buxton as soon as possible. This will enable HSL to confirm if there is space available, raise the appropriate paperwork and ensure that the gate house is aware of any impending delivery.

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# Testing of Material – Access at HSL

1. The following does not consider what testing might be carried out/supervised at HSL; that is part of accessing HSL services discussed above.
2. Whilst the material is stored at Buxton, HSL is able to perform or arrange examination and analysis of such materials, where it has the facilities. HSL is compliant with the evidence continuity requirements of Great Britain *so long as the material is correctly dispatched to it to preserve the chain of evidence, with accompanying instructions on what task/service is being requested (see part 7 below).* Colleagues are reminded to consider whether they are asking HSL to carry out such examinations/analysis as specialists, or experts.(*refs 2,3)*
3. Whilst HSL can perform or arrange examination and analysis it may be necessary for ‘interested parties’ to witness those tests being performed, especially if inspectors have exercised their powers. Interested parties include:

* any potential defendants, or in Scotland the potential accused
* their legal representatives and technical advisers
* persons who have responsibility for premises
* Coroner’s officers, Procurator Fiscal, police, other regulators and medical examiners, and
* any person ordered by a court.

1. The entitlement of any interested party to access the material will depend upon the status of the material in relation to the investigation.
2. Further information on access to materials at HSL is found at appendix 1.

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# Chain of Evidence (continuity and integrity)

1. HSL is fully conversant with the requirements of evidence management. It has a management system for handling material once it is at HSL. If material is to be sent to HSL for storage/ examination or analytical services then the chain of evidence (continuity) from site to HSL, and its return must be maintained to protect the material’s value as evidence in any future court proceedings. That the chain of evidence needs to be preserved should be discussed with the relevant contact at HSL prior to any material being dispatched. Also, that the integrity of that material must be maintained whilst in the chain of evidence. Further information on the collection of exhibits/productions, and material storage in ONR offices can be found in other ONR guidance *(refs 4, 5, 6)*.
2. 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 includes whilst they are at HSL. 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.
3. 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.
4. 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.
5. So, for example, in respect of a sample which is seized and taken to HSL 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 HSL, testing etc., to its production in court (though those statements do not need to be from each person in that handling chain, see paragraph above). You should obtain a statement from the officer(s) carrying out the analysis to be able to say how the sealed sample came into their possession and how it was identified.
6. Only if the steps above are followed can the continuity 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.

# Procurement of HSL Services

1. It is incumbent on the lead investigator commissioning storage/analysis by HSL to contact ONR’s procurement team, where possible before action is needed. Approval of the use of HSL must be given by the relevant DL/PL prior to contacting procurement. (In some instances where the cost of services is significant approval from higher in the management chain may also be needed.) ONR’s procurement team will be able to determine costs, whether HSL is able to handle a request (in conjunction with the lead investigator) and generate invoices as appropriate. ONR’s procurement team can be contacted via [ONR.Procurement@onr.gov.uk](mailto:ONR.Procurement@onr.gov.uk).
2. The process for procuring services from HSE, and accompanying guidance is found via the following link:

[HSE / ONR Services – Call-Off Request](http://how2/Control/CtrlWebIsapi.dll/?__id=webDiagram.show&map=Process+-+Call-Off+Services&dgm=F81660020E1E4ED6BCB59E0D232D36BA&one=30)

## Procuring urgent services from HSL

1. There may be a need to reactively procure urgent services from HSL; an example would be that found in the Buncefield incident (link given in references). In this type of situation, it is recognised that the process above involving a business case in advance might not allow for the required response time.
2. In such a situation please contact the Investigation Resource Group (IRG) e-mail [Operational.Investigation@onr.gov.uk](mailto:ONR.Operational.Investigation@onr.gov.uk) for information on direct access to HSL.

# References

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| [1] | HSE, “Buncefield response,” [Online]. Available: https://www.hse.gov.uk/comah/buncefield/. |

# Further Reading

ONR-ENF-GD-010 - The expert witness in Criminal Proceedings in England and Wales

ONR-ENF-GD-011 - The expert witness in Criminal Proceedings in Scotland

ONR-ENF-GD-012 - Guide to collecting and exhibiting material

ONR-ENF-GD-014 - Guide to collecting productions for use in Scotland

ONR-ENF-GD-016 - Guide for managing ONR investigation Material

# Appendix 1 - Management of Access to Material by Interested Parties at HSL to Meet ONR Investigation Requirements

1. The following is adapted from HSE Guidance. The original guidance is fully open on the HSE website.
2. The lead investigator retains overall responsibility for all evidential material and therefore has the central role in managing access to any items at HSL. All requests for such access to be directed to the lead investigator.
3. If destructive or dismantling tests are to be undertaken, the lead investigator should proactively inform interested parties and offer access to witness these tests. Similarly, if an expert witness will be required later, they may need to be involved when tests are undertaken.
4. Lead investigators should consider the following issues in relation to requests and take appropriate action as indicated below:

* receipt and routing of requests from interested parties
* establishing their entitlement to access
* defining the scope of access to be allowed
* supervision and liaison arrangements for the visit.

## Receipt and routing of requests

* ensure that all relevant staff are aware that any requests they receive should be directed to the lead inspector
* accept requests only when they are made in writing and advise interested parties to that effect where requests are made by other means.

## Entitlement to access

* confirm that the request adequately describes the reason for wanting to see the material, whether they intend to bring someone else with them, and if so, who, and what they would like to do to or with the material
* decide whether to grant the request in principle, guided by the criteria below.

## Scope of access

1. Agree the scope of access with the interested party, first consulting with the relevant specialist if appropriate. Confirm permission and scope of access in writing. (Template letter is found at end of this appendix.)

* seek the permission of the Procurator Fiscal for all requests in Scotland

1. Include consideration of the following when confirming the scope of access to HSL and interested parties:

* numbers and identity of those who have been given permission to attend (Note: if they have not been identified to HSL, then they will be not be permitted access to the site)
* specifying the material to which access has been granted (reference to material agreed with HSL)
* the level of access permitted – e.g. observation
* arrangements for and confirmation of the date and time for the visit
* health and safety precautions, e.g. PPE
* additional facilities HSL can provide to assist the level of access agreed
* who from ONR should also be present
* HSL requirements for visitors
* HSL contact
* constraints on the use of recording media – e.g. video of other evidence in the store.

## Supervision and liaison arrangements

1. Plan for you or the specialist to be present during the visit to supervise the interested parties, unless there is no need for an ONR presence, for example, visits limited to visual examination of the material that HSL can supervise
2. Determine with HSL which member of their staff will be appointed to act as host for the visit and confirm who will do what to fulfil the necessary supervisory functions.

## Background

1. Persons facing criminal prosecution have a right to examine the material involved. Similarly, where material taken into possession is going to be dismantled or subjected to any process or test, the owner (or person responsible for the premises) is entitled to witness such activities. Interested parties for civil matters may also request access.
2. Interested parties are entitled to be accompanied by technical representative(s) to assist in their understanding of any processes or tests.   
   If destructive or dismantling tests are to be undertaken, the lead investigator should inform interested parties and offer access to witness these tests. If the specialist determines that testing is required, then they need to inform the lead investigator so that they may inform the owner and other relevant interested parties. It is good practice (in appropriate circumstances) to discuss the scope of the tests with interested parties and consider any suggestions they may offer.
3. If testing is being undertaken by HSL the need for fairness and continuity of evidence needs to be balanced with the need to ensure the presence of observers will not impede or inhibit the test. For this reason, the numbers attending may need to be limited.
4. HSL staff are not permitted to engage with interested parties in conversation about ongoing criminal investigations. Any such questions should be directed to the ONR lead investigator. Interested parties should only be given access to what has been agreed with ONR, and requests to see other materials should be declined.
5. Video recording of tests may be undertaken by to create a historical record. The lead investigator may disclose such recordings to interested parties when considered appropriate.
6. The confirmatory letter to interested parties informs them that HSL are unable to provide facilities for formal meetings.

## Template Letter

Dear XXX

I am writing to confirm that we have arranged for you and XXXX to visit the Health and Safety Laboratory, Buxton SK17 9JN on ………. The Gatehouse and Reception will be informed that you will be arriving around XX:XX and you should report in at the Gatehouse where you need to sign in and receive a temporary pass(which you return when you sign out following the visit).

XXX should be notified when you arrive at Reception and you will be escorted by XXX to the Evidence Store where the items listed below will be laid out in a special area for………………. PPE will be required in the form of…………….. Please note that you will be escorted at all times during this visit and you will not be allowed access to any other items in the Evidence Store.

If questions arise out of the visit to HSL, you should submit these to ………….for consideration. This also applies if you believe or recommend further testing is needed. These cannot be responded to at the visit.

If a discussion between interested parties is required on-site, then informal café facilities are available on site. Facilities for formal meetings are not available at HSL.

Please will you keep us aware of any updates on arrival times (contact details for HSL are…………………….)

You are reminded that you may use/not use the following recording equipment

The items that will be available for viewing are as follows:

|  |  |  |
| --- | --- | --- |
| Sample No. | Description | Scope & purpose of access |
|  |  |  |