

## The Use of Evidence Bags, Tags and Labels

### ◆OM 2001/128

**Target Audience:**

**All HSE Inspectors**

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## SUMMARY

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This OM gives practical guidance on the use of bags, tags and labels when collecting evidence, and advises on the retention and disposal of this evidence. It should be read in conjunction with the Enforcement Guide (England and Wales) (investigations commenced before 4 April 2005 and investigations commenced on or after 4 April 2005) **which describes the requirements of the Criminal Procedure and Investigation Act (CPIA). The provisions of this Act and code are not applicable in Scotland, but the advice over the use of evidence bags is.** It does not include the taking and handling of statements and declarations, PACE tapes or photographs. Further guidance on collecting evidence is also in the Enforcement Guide (England & Wales), and the Enforcement Handbook (Scotland), Chapter 2. Version 3 of the OM removes out-of-date references and provides new ones.

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## INTRODUCTION

1 This OM advises on the availability of bags, tags and labels now. It provides guidance on how to use them, and it indicates the importance of being able to demonstrate continuity of the item taken into our possession. For the context of this OM, evidence does not include witness statements, PACE tapes recorded or photographs taken by Inspectors. For the purpose of this OM the term inspector includes all persons who obtain, retain, dispose of, or otherwise handle evidence. →

←<sup>1</sup> However, we wish to take on board matters raised during operational use of the advice in this minute, therefore any issues identified or areas for improvement should be sent to FOD FSU2. For further details on collecting evidence, see Enforcement Guide (England & Wales), and Enforcement Handbook (Scotland), Chapter 2. Appendix 1 is a copy of the layout of the design of the label for bags and tags (see also para 5). Appendix 2 shows the format for the evidence room book (see also para 19).

3 Although inspectors frequently collect large amounts of written information (and sometimes objects) from dutyholders and witnesses during the course of their work, not all of it will become evidence. However, if legal proceedings are likely to be instigated, it will need to be retained as either used or unused material. Written information, or an object, will become evidence when it is in a form that can be used in court and is attributable, eg when a witness cross-references to it in a witness statement. Inspectors should consider carefully if there is an evidential need to take an item into possession or if that item can be demonstrated in another way such as photographs. However, when we do present such information as evidence it is vital that we can show its origin, and its integrity since its collection.

4 It is important that inspectors collect evidence properly and in accordance with good practice. They should:

- 1) always carefully consider the evidence that they may need to collect;
- 2) when taking items into their possession, seek, whenever possible, to obtain the best evidence available;
- 3) consider proportionality, and issues of evidential significance;
- 4) record in their notebook all objects (including evidential documents) taken.

### **Use of bags, tags, and labels**

5 A selection of bags, plastic tags and card labels (each with its own unique number) is available to all HSE divisions. Labels and bags have space to record details of the circumstances of collection and also spaces to record subsequent movement and handling. Inspectors should complete these, as far as possible, at the time they take the item into our possession. The bags have tamper-proof seals. The tags are strong plastic ties with unique numbers. They can be used in conjunction with a label or bag - or on their own. They are more robust than a label and are clearly of use when the exhibit is not clean and/or where a label on its own could be compromised. They may also be of use in sealing items until a further examination is carried out. If they are to be used on their own then the inspector must enter the tag's unique number, in addition to the other information listed in para 6, in their notebook.

6 Whenever possible, inspectors should complete as much information as possible in each of the boxes on the bag or label, and as soon as possible. Inspectors should ensure that they use ballpoint or waterproof pen and complete wherever possible the following:

- 1) description of the item;
- 2) time /date obtained;
- 3) location where obtained;
- 4) by whom;
- 5) signature of investigator;
- 6) any additional information, eg from whom the evidence was obtained, or health and safety information.

7 It is a matter of judgement whether an item should be placed in a bag or if an exhibit label or tag will suffice. The type, size, condition, weight, etc of the item will influence this. Some items taken into possession may already have unique numbers, eg a serial number, if so then these might be merely cross-referenced. Every bag, label and tag has its own unique number.

### **8 Examples**

- 1) A fax produced on site, was a copy of an altered asbestos licence. This item had clear evidential value. It was placed in an evidence bag after the details on the bag had been completed.

- 2) A copy of a method statement outlining a system of work which was not being followed at the time of the accident had an evidence label stapled to it, and details on the label were completed.
- 3) An accident book was copied after the inspector had signed it. There were a number of reportable accidents listed which had not been reported. The copy taken was cross-referenced by a witness and an order to produce the original was sent to the company when the matter went to court.

Note: in all of the above cases the inspector should also record actions taken, and relevant details, in their notebook.

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10 Where specific statutory provisions or codes (eg HFL or FEPA) detail sampling requirements then they must be followed, eg when dealing with a potential or actual HFL, we should seek to follow the principles of obtaining 3 samples of substances under the Highly Flammable Liquids and Liquefied Petroleum Gases Regulations 1972, reg.16. Whenever possible it would be prudent to follow a similar procedure for other general samples not covered by specific legislation or codes.

### **Health and safety**

11 If there are any health and safety risks associated with the contents of a bag, or with an item that has a label, then these should be clearly stated in the relevant space on the bag/label. Examples where this might be appropriate include:

- 1) inspectors may take samples of substances that could be hazardous, (eg to demonstrate the presence of lead). It is important that inspectors follow the guidance on PPE in *Your health and safety*. Inspectors should wear any appropriate PPE before taking such items into possession;
- 2) if any item is contaminated by body fluids, eg a harness has blood on it and it has been taken into our possession, then this should be clearly stated in the space at the bottom of the bag;
- 3) if there is a risk from manual handling because of the weight, size or shape of the item then that should also be clearly and prominently indicated.

12 The evidence bags should be seen as an additional security precaution beyond the routine level of packaging, eg an asbestos sample should be double-wrapped prior to placing into the evidence bag. This inner packaging should be fit-for-purpose, suitable and sufficient.

13 If an inspector considers that there may be an inherent risk from the storage of an item (eg it is unstable or is severely contaminated) then they must consider alternative

means of recording that evidence, eg video recording of the item or recording of laboratory tests on the item. If a video is made, then the original should be copied as soon as possible. The original should then be secured in an evidence bag, and all copies made from the first copy only.

### **Originals and copies**

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←<sup>3</sup> A copy should also be made, for the dutyholder or owner, of any document that is removed where its removal could cause them other difficulties, eg the accident book.

### **Receipts**

15 If an inspector takes an item into possession, then they should give a receipt (LP6 notice of taking into possession) to the person from whom the article or item was taken. Items freely produced and given to the inspector do not require a receipt. However, if they are to be produced as evidence then a tag or label must be attached or the article placed in an evidence bag (see Enforcement Guide (England and Wales) and Enforcement Handbook (Scotland), Chapter 2. The article should be sufficiently described in a statement to identify it.

## **RETENTION OF EVIDENCE**

16 Inspectors have historically taken a wide range of items into their possession. Inspectors who do this are responsible for the security of that item until its disposal, including transportation, and safe and secure storage. Bags, tags or labels are of particular use in recording movements and changes, so by using them appropriately we are better placed to demonstrate the ongoing integrity of the evidence. A selection of various-sized evidence bags are available. Each bag has a unique reference number, and tamper-proof seals, which help in tracking both movements and opening of the bag. Seals may need to be broken, eg for examination by SG or HSL, and there is a space on the bag to record when it was done, who did it and who witnessed it. It is important that the reasons for doing this are part of a clearly auditable trail. If a bag is opened and the contents sealed in another bag then reference should be made to the old serial number on the new bag. The old bag should be retained. The tags and labels for items which do not need placing into bags, or which are too large to fit, also have unique numbers, to enable accurate cross-referencing. Labels also have space to record movements.

### **Packaging**

17 Inspectors should ensure that items are packaged securely to prevent damage during transit or storage, eg a chain with an attached tag and/or label could be placed in a cardboard box rather than just placed unrestricted into the rear of a vehicle. The box could

also be labelled, indicating its contents and referring to the unique number of the tag on the exhibit inside. This would allow an easier record to be kept of any movements.

### **Secure storage of evidence**

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20 Whilst the item is in our possession we may receive requests by third parties or the owner to examine the item. Such examinations should be supervised, they should not be allowed to affect the item, and they must only be done in the presence of an inspector.

21 If it is not possible to move the item/article into the FOD office, and to the designated lockable room, because of its size or difficulty of moving it then inspectors should consider the following:

- 1) Do I really need to take this into possession?
- 2) Is there another way of recording this information?
- 3) Is there another secure store that I can make use of? Further storage facilities for larger items are available at HSL's central laboratories in Sheffield and Buxton. If the police are involved in an investigation then they may also be able to provide secure storage. The costs of arranging a private company to securely store it, or arranging transport to HSL or the police, may be considerable and the cost should be carefully considered against the evidential value.

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### **DISPOSAL OF EVIDENCE**

23 When there is no longer any evidential use for an item then the inspector who took it into possession should return it whenever possible to the owner. →

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24 If the owner declines to accept the return of this item then a letter should be sent to the owner seeking their written authorisation for its disposal. If there is no reply to our letter then we should make all reasonable attempts to contact the owner, eg by visiting known addresses. If this proves unsuccessful then we can arrange for its disposal, provided that this has been agreed by the inspector's line manager.

25 There is no need to retain items for possible future civil actions. Once HSE has no need of them then they should be disposed of. However, if we have already been asked for disclosure of documents/ information/ exhibits in relation to a civil action then we should not destroy them. In the case of a fatal accident in Scotland which has not resulted in a prosecution then the inspector should consult with the Procurator Fiscal before following the above procedure.

#### CANCELLATION OF INSTRUCTIONS

26 Cancel version 2 of this OM and replace with version 3.

Date first issued: 21 December 2001