



Enhanced Investigatory Powers for the Food Standards Agency (FSA) under:

- The Police and Criminal Act (PACE) 1984 (England and Wales)
- The Criminal Justice and Police Act 2001
- The Criminal Justice and Public Order Act 1994

Government consultation

This consultation begins: 26 May 2022

This consultation end: 18 August 2022

About this consultation

This consultation is open to the public and targeted at individuals, businesses and organisations in England and Wales.

Separate legislation governing investigatory powers applies in Northern Ireland. The Food Standards Agency intends to hold a consultation for Northern Ireland in due course.

This consultation will be of most interest to legislators, ministerial and non-ministerial government departments concerned with food safety and fraud investigation, those working in policing and enforcement, professional standards bodies and inspectorates, the devolved administrations, local authorities, trading standards officers, environmental and public health professionals, food business operators and trade bodies, consumers and civil liberties organisations.

Subject

The purpose of this consultation is to gather stakeholders' views on the Food Standards Agency's (FSA) plans to seek enhanced investigatory powers for the National Food Crime Unit (NFCU) by way of a Statutory Instrument (SI).

The Police Crime and Sentencing Courts Act 2022 received Royal Assent on 28 April 2022. It provides a power for the Secretary of State by regulations to confer relevant powers from the Police and Criminal Evidence Act 1984 (PACE), the Criminal Justice and Police Act 2001 and the Criminal Justice and Public Order Act 1994 (CJPO) upon officers of the NFCU.

It is proposed that enhanced investigatory powers would enable the FSA NFCU to more effectively detect and investigate food crime.

Duration:

From 26 May 2022 to 18 August 2022.

Responses:

Responses to this consultation should be sent to: nfcuconsultation@food.gov.uk

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Introduction

The threat posed by food crime is serious, complex, dispersed throughout the UK and – owing to the global supply chains for many higher risk products – across international borders, requiring a coordinated and sophisticated response. Examples of food crime include the diversion of unsafe food meant for disposal back into the supply chain, the illegal processing of food, or the adulteration of food with other substances.

The National Food Crime Unit (NFCU) was established in 2015 within the Food Standards Agency to provide a singular focus on countering fraud and related criminal offences, such as conspiracy to defraud, in food supply chains across England, Wales and Northern Ireland, working in conjunction with its sister Unit in Food Standards Scotland.

The NFCU was set up on the recommendation of the [Elliott Review](#) into the integrity and assurance of food supply networks, conducted following the widespread discovery of horsemeat in beef products in 2013.

The review determined that a two-phase approach was sensible to create a new Food Crime Unit:

- Phase one would be an evidence gathering and business case development period. Phase one would need to be subject to a fundamental review before the case for moving to phase two could be demonstrated.
- Phase two would then put in place the mechanisms required to investigate cases and take action.

Initially, as part of phase one, the NFCU's primary role was to build the intelligence picture of the risks and nature of food crime in the UK. In 2016, phase one was subject to the [Kenworthy Review](#)¹ which recommended the Unit's mandate be expanded beyond its intelligence function and be provided the resources and powers required to perform a full preventative and investigatory role. Following a cross government consultation, the

¹ The [Kenworthy Review](#) was completed in 2016 to review the operation of the current NFCU and propose options for future improvements.

business case to expand the role of the NFCU was approved in June 2018 and phase two commenced.

The NFCU now comprises over 80 specialist staff led by a former Deputy Chief Constable. Its investigations (particularly those related to fraud) are often complex and challenging, and it does not currently have the full range of powers needed to gather the evidence necessary to secure prosecutions in such cases. Although it has access to some powers and investigatory tools, it remains reliant on external partners, primarily the police, or potentially local authorities to carry out certain basic investigatory functions such as applying for search warrants, seizing evidence and supervising interviews with suspects under arrest.

In its report [Ensuring Food Safety and Standards](#), June 2019, the National Audit Office identified that **“the regulatory system lacks the full range of enforcement powers to ensure businesses supply safe food”**. The NAO also said:

- “An effective regulatory regime is underpinned by appropriate enforcement powers that enable food officers to take effective action when businesses fall short of legislative requirements”;
- “[The NFCU] has agreed arrangements to work with police forces because it currently lacks the full range of investigative powers it needs to operate independently”;
- Legislation is required to provide access to additional [investigatory] powers.

The NAO recommended that **“the FSA should address gaps in the enforcement powers, including those available to the National Food Crime Unit**. Given the additional funding that has been directed towards the NFCU, the FSA should make firm plans to provide the powers the NFCU needs to work independently.”

The [Police, Crime, Sentencing and Courts Act 2022](#), which received Royal Assent in April this year, contains a power for the Secretary of State to make regulations extending certain additional statutory powers to the NFCU.

This consultation seeks views on whether certain additional statutory powers should be extended to the NFCU. It also seeks views on additional safeguards that might be put in place alongside such an extension. By consulting on this issue, the FSA is seeking views

from stakeholders on whether the powers and safeguards proposed are a justified and proportionate set of measures to enable the NFCU to tackle food crime effectively.

In pages 10 to 11 we set out which powers the FSA proposes should be extended to the NFCU, and the evidence received in this consultation will inform the recommendations made by the FSA to the Secretary of State for Health and Social Care. It will be for the Secretary of State to decide on the content and timing of any legislation to make such changes.

Details of our stakeholder engagement is available in Annex A.

Current NFCU powers

The NFCU is part of the FSA, which is a non-ministerial government department and regulatory body with a range of powers in relation to the enforcement of food law. The NFCU tackles serious, organised or complex cases of fraud in relation to food.

The NFCU delivers a holistic response to food crime utilising a 4P approach defined by the [Home Office Serious & Organised Crime Strategy](#). This allows us to not only gather an intelligence picture but use it to prevent businesses falling victim to criminality, protect the public, and bring about investigative responses where appropriate.



Prepare - ensure the necessary capabilities exist to tackle food crime



Pursue - prosecute offenders and confiscate the proceeds of food crime



Protect - reduce the vulnerability of businesses and consumers to food crime threats and risks



Prevent - stop individuals / businesses from committing food crime

The NFCU works with partners such as police and local authorities, domestically and internationally, to carry out investigations which can lead to prosecutions. These cases can involve complex supply chains across national borders. An example of more proactive international engagement is the NFCU's participation in Operation OPSON, an international initiative led by Europol and INTERPOL which targets counterfeit and substandard food and drink. This can involve collaboration with international partners on themes of shared interest. This initiative removes from the market potentially inauthentic food and drink worth tens of millions of pounds around the world each year.

The FSA has investigatory powers under 'food law'² which, in general terms, enable it to investigate regulatory offences in relation to food. It also has other powers under the Investigatory Powers acts³ (around directed surveillance, securing communications data and the management of covert human intelligence sources) as well as access to law enforcement systems including the Police National Computer (PNC), Police National Database (PND) and the National Automatic Number Plate Recognition (ANPR) database. However, NFCU officers in the FSA do not have access to powers under the Police and Criminal Evidence Act 1984 (PACE) necessary to investigate wider criminal offences that impact the food supply chain, e.g. offences under the Fraud Act 2006.

This creates two main problems for the NFCU:

- Currently, food legislation limits the powers available to the FSA to the enforcement of non-compliance by food business operators with food law identified during the delivery of 'Official Controls'. Official controls are activities performed by the authorities to verify that food business operators are complying with food law. The statutory powers are not wide enough in scope to permit their use to investigate criminal offences outside of general food law.
- The investigatory powers already available to the FSA outside food law, while useful, are not sufficient to perform a fully effective investigatory role into serious food related criminality, as they:
 - largely pertain to intelligence collection by covert means, and, as such;
 - do not provide the full spectrum of investigatory powers that would usually be necessary to gather the standard of evidence required to secure a conviction in serious or complex cases.

² The principal aim of retained EU law Regulation (EC) 178/2002, 'General Food Law' is to protect human health and consumer's interest in relation to food. It applies to all stages of production, processing and distribution of food and feed with some exceptions. Food businesses must comply with food and feed safety law.

³ Regulation of Investigatory Powers Act 2000 and Investigatory Powers Act 2016

The NFCU is therefore dependent on partners to perform basic investigatory functions – for example, to apply for search warrants, seize evidence and supervise interviews with suspects under arrest. Not only does this place strain on police resources, it can also cause practical difficulties.

Relying on partners to exercise their investigatory powers on the FSA's behalf can be inefficient (leading to delayed investigations), organisationally more complex, and can take partners' time and resources away from their own operational priorities. For example, NFCU investigations may be delayed due to the requirement for police involvement in warrant applications. Time may also be lost in collecting evidence or conducting interviews due to police availability. This is fully understandable as the FSA recognises that local police forces have their own operational priorities which they need to focus on.

The food crime threat

The true extent of food crime can be hard to quantify although efforts are being made to better achieve this through [ongoing academic research](#). Fraud is, by definition, a hidden activity and the parties involved may be skilled at cloaking their criminality. What is clear is that the impact of food crime both on consumers and on businesses, can be wide-ranging and in some cases extremely harmful.

Food crime can impact consumers physically, emotionally and financially. Toxic chemicals illicitly marketed as supplements, or food which is otherwise unsafe, can pose serious health risks.

The NFCU recently coordinated an investigation into the unlawful processing of meat, which involved meat being prepared in unsanitary conditions on the floor of a car wash and then sold online. A total of 5.3 tonnes of meat was seized. It was believed that a significant amount of meat had already been supplied to customers and the product was due to be distributed nationally.

This sort of food crime is often linked to other manifestations of food crime, such as livestock theft, document fraud, and misrepresentation. Such practices are damaging to law-abiding food business operators who comply with the regulatory requirements. This is due both to the lower costs associated with operating outside of approval, but also

because the existence of unregulated businesses can undermine broader confidence in the UK food industry.

Food crime is principally an economically motivated crime. Perpetrators may misuse premium status labels, or substitute or adulterate with products or ingredients of lower quality, to profit at the expense of consumers and other legitimate businesses. Academic research has suggested that this can create in consumers a 'willingness to pay' a premium to avoid exposure to fraudulent food.

The financial impact on businesses can take other forms. In one ongoing NFCU investigation, theft offences facilitating further food crimes (in the form of waste diversion) have involved the removal of food worth over £6 million. Interventions as part of that same investigation have led to the suspension of approval to handle Animal By-Products of a multi-million-pound business.

Proposals for investigatory powers

The FSA is seeking views on the proposal that the NFCU should be granted additional investigatory powers to enable it to more effectively detect and investigate serious criminal offences such as fraud that may impact the safety or authenticity of food. Secondary legislation would be required to provide such powers to the FSA.

The FSA believes further investigatory powers are necessary for the NFCU to be able to execute its remit and mandate to lead criminal investigations into complex food crimes, for prosecution by the Crown Prosecution Service (CPS), independently. The proposed powers concern the ability to apply for search warrants, seize evidence and interview suspects who are under arrest.

These powers have been made accessible to other non-police bodies such as the Gangmasters and Labour Abuse Authority (GLAA) and the Welsh Revenue Authority.

The use of investigatory powers is a serious responsibility and must be carefully exercised, controlled and monitored to retain public confidence and prevent misuse. For this reason, the powers of search and seizure require the judicial authorisation of a search warrant. The FSA are engaging with the Home Office on the appropriate

additional accountability and governance arrangements for the exercise of these powers, given their intrusive nature.

The FSA already has access to a range of investigatory powers and has extensive experience in exercising them in a proportionate manner that is consistent with relevant safeguards and professional standards and is subject to independent oversight. Despite the wide-ranging powers available under PACE, the FSA have objectively assessed which specific powers are required to deliver the NFCU's mandate most effectively and propose a proportionate and limited number of powers to be made available to food crime officers. These do not, for example, include powers of arrest.

Additional Investigatory Powers Proposal

Proposal A: The FSA would welcome views on whether the FSA (NFCU) should be granted powers under the Police and Criminal Evidence (PACE) Act 1984, Criminal Justice and Police Act 2001 (CJPA) and Criminal Justice and Public Order Act 1994 (CJPO) listed below:

PACE 1984 (England and Wales)	Power Description
Section 8	The power of evidential entry, search and seizure warrant to conduct searches of premises where there are reasonable grounds to believe there may be evidence of an indictable offence and seize material for evidential purposes.
Section 9	The power of evidential entry, search and seizure warrant, under Schedule 1 - which unlike section 8, permits the search of special procedures material, which includes business records. Due to nature of investigations NFCU would primarily rely on this type of warrant.
Section 9 (Schedule 1)	The power to obtain a 'Production Order' for 'Special Procedure Material' to compel suspects to provide information to investigators which could otherwise be held in confidence.
Section 19	General Power of Seizure when lawfully on premises to seize evidence of other crimes when it is necessary to seize it to prevent the evidence being concealed, lost, altered or destroyed.
Section 20	Extension of powers of seizure to computerised information. This allows officers to seize information stored in any electronic form
Section 21	Access and Copying of any material seized and requirement to provide a record of seized material.
Section 22	The powers to retain seized material This allows NFCU officers to retain anything seized as part of a criminal investigation for as long as necessary in particular circumstances

Section 39	<p>The powers to take custody of detained persons in custody suites for the purpose of interview.</p> <p>This would not involve NFCU officers arresting persons but taking custody of them following arrest by the Police (NFCU officers would assume responsibility for their welfare) in order to interview them under caution.</p>
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CJPA 2001	Power Description
Sections 50-53	<p>Enables the seizure of items which are believed to contain evidence of the offence(s) under investigation where it is not practical to separate the relevant evidence at the location where it is found.</p> <p>These are commonly referred to as seize and sift powers</p>

CJPO 1994	Power Description
Sections 36	<p>Where a person is arrested by a constable, and on his person, clothing or otherwise in his possession , or in any place which he is at the time of his arrest has an item, substance or mark that may be reasonably attributable to the participation of a crime, an inference can be drawn if he fails to account for the object, subject or marks.</p>
Sections 37	<p>Similar to the above, whereby an inference can be drawn if an arrested person refuses to account for their presence at a particular place at or about the time the offence is alleged to have been committed.</p>

To further ensure enhanced powers would be exercised by the FSA NFCU in the same professional manner as those the FSA already have, the FSA have in place, or propose to put in place, the following safeguards:

- Restricted access to powers to those with appropriate vetting and training: access to powers will be limited to specialist NFCU officers with appropriate vetting who

are either assessed as having previously been trained and suitably experienced in the previous use of these powers whilst complying with the relevant Codes of Practice (for example former Police Officers), or are NFCU officers that have been suitably trained in the use of these powers, trained regarding the relevant Codes of Practice and are accredited as fraud investigators.

- Processes and procedures are in place, adhered to, and regularly updated: NFCU Standard Operating Procedures (SOPs) will be updated to reflect the appropriate use of the enhanced powers in line with the relevant Codes of Practice.
- Dedicated legal advisors: The NFCU will have access to dedicated specialist legal advice on the use of their powers.
- Continued collaboration with law enforcement: The NFCU will continue to collaborate closely with law enforcement partners, drawing on their expertise where necessary.
- Existing external scrutiny, audit and inspection: The NFCU is already subject to the Investigatory Powers Commissioners Office (IPCO) inspection regime and has received favourable feedback regarding process and governance. Requests for communications data are independently scrutinised by the Office for Communications Data Authorisations (OCDA).
- Independent complaints procedure: The Police, Crime, Sentencing and Courts Act 2022 amends the Police Reform Act 2002 to ensure the remit of the Independent Office of Police Conduct (IOPC) covers the NFCU's use of PACE and associated powers.

Additional external scrutiny which could be put in place:

- HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS): This would be a matter for the Home Secretary to decide upon. The FSA are willing to submit voluntarily to inspection on relevant matters or the statutory remit of HMICFRS could be extended to cover the activities of the NFCU, this would require new legislation.

Although the Police, Crime, Sentencing and Courts Act 2022 enables the Secretary of State to confer any of the provision under PACE upon food crime officers, the legislative

measures the FSA are proposing are in our view, restricted to those necessary to allow the NFCU to execute its investigatory functions effectively and efficiently, and to reduce the burden the FSA places on partners. The powers – to apply for search warrants, seize evidence and interview suspects in custody – are fundamental to criminal investigations, without which the NFCU cannot effectively discharge its intended functions independently.

Devolved administrations

The FSA's remit extends to England, Wales and Northern Ireland. Whilst it is the FSA's ambition to obtain additional investigatory powers for England, Wales and Northern Ireland, the scope of this consultation is exclusively for England and Wales as the enabling regulation making power within the Police, Crime, Sentencing and Courts Act 2022 is confined to the Police and Criminal Evidence Act 1984, which is limited in application to England and Wales.

A separate consultation will be held for Northern Ireland in due course.

Food Standards Scotland retains responsibility for food safety and hygiene in Scotland with a dedicated Scottish Food Crime and Incidents Unit (SFCIU).

Further information and how to respond

If you require a more accessible format of this document please send details to the named contact for responses to this consultation and your request will be considered.

This consultation has been prepared in accordance with [HM Government consultation principles](#).

Responses are required by close 18 August 2022. Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

Please send response to nfcuconsultation@food.gov.uk

For information on how the FSA handles your personal data, please refer to our [Consultation privacy notice](#).

Thank you on behalf of the Food Standards Agency for participating in this public consultation.

Annex A: Engagement and Consultation Process

Through this engagement the FSA are seeking to gather wider stakeholders' views on the FSA's proposed plans to seek enhanced investigatory powers from Government. To date, the FSA have mainly focused engagement cross-government and with law enforcement partners, so this will be the first opportunity for a wider set of stakeholders, including consumers and individual food businesses, to have their say.

Engagement to date

The FSA has worked alongside partners over a number of years to explore the potential benefits for the NFCU obtaining enhanced investigatory powers. Engagement to date has spanned across Whitehall, including the cross-departmental Food Integrity & Food Crime Group (whose membership is Defra, DHSC, Home Office and BEIS).

The FSA are continuing to engage the devolved administrations as food is a devolved matter in Wales (under Section 5 of the Government of Wales Act 2006) and Northern Ireland (not being an excepted or reserved matter). Policing is also a devolved matter in Northern Ireland and the FSA will be working closely with the Northern Ireland Executive to determine the best course of action in relation to any enhanced powers in Northern Ireland.

The FSA has already received the written support of both the National Police Chiefs Council (NPCC) and the Food Industry Intelligence Network, a collective of major food businesses who work together to share anonymised sampling data and authenticity concerns.

Process following consultation

Following the consultation, the FSA will review stakeholder responses and publish a summary of response report on its website. Stakeholder views will help build the evidence basis and inform consideration of FSA proposals to seek enhanced investigatory powers for the NFCU.

Subject to the outcome of the consultation, the FSA will publish its decision on whether it intends to ask the Secretary of State to grant an extension of the FSA's investigatory powers by way of regulations.