



## **Additional Proposal for Enhanced Investigatory Powers for the Food Standards Agency (FSA) under:**

- The Police and Criminal Evidence Act 1984 (PACE) (England and Wales)

### **Government consultation**

This consultation begins: 10<sup>th</sup> July 2023

This consultation end: 6<sup>th</sup> August 2023

## 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 (FSA) intends to hold a separate consultation for Northern Ireland in due course, to gather views on plans to seek enhanced investigatory powers for National Food Crime Unit (NFCU) officers active in Northern Ireland under the Police and Criminal Evidence (Northern Ireland) Order 1989 and other legislation.

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 FSA's plans to seek a further additional enhanced investigatory power for NFCU officers by way of a Statutory Instrument (SI).

The Police, Crime, Sentencing and Courts Act 2022 received Royal Assent on 28 April 2022. It provides a power for the Secretary of State to confer by regulations 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. The likely extent of the powers to be requested was set out in an [earlier consultation](#). Since this consultation, a requirement for an additional power under PACE to be extended to officers of the NFCU has been identified.

It is proposed that enhanced investigatory powers would enable the NFCU to more effectively detect and investigate food crime. These powers have not yet been conferred on the NFCU by the Secretary of State for Health and Social Care but the FSA continues to plan for secondary legislation to achieve this.

**Duration:**

From 10th July 2023 to 6<sup>th</sup> August 2023.

**Responses:**

Responses to this consultation should be sent to: [nfcuconsultation@food.gov.uk](mailto:nfcuconsultation@food.gov.uk)

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## Introduction

The Food Standards Agency have [previously consulted on access to enhanced investigatory powers](#) following the [Police, Crime, Sentencing and Courts Act 2022](#) (PCSC) receiving Royal Assent in April 2022. The PCSC contains a power for the Secretary of State to make regulations extending certain additional statutory powers to the NFCU. Secondary legislation will be required for these powers to be extended.

A 12-week public consultation ran between May and August 2022 to seek views on whether these additional statutory powers should be extended to the NFCU. The [responses to the consultation](#) were broadly supportive both of NFCU's acquisition of these powers, and of the introduction of appropriate oversight for the Unit's use of these powers.

This consultation seeks views on a further investigatory power for the NFCU set out in PACE, namely powers of entry and search after arrest which are listed under section 18 of the Act. Recent operational activity has highlighted that not having access to section 18 powers can create a significant disadvantage to the ability of NFCU officers to be lawfully on premises and assist with searches following an arrest.

By consulting on this issue, the FSA is seeking views from stakeholders on whether the power proposed is justified and proportionate in enabling the NFCU to tackle food crime effectively. On page 7 we set out further details around the power the FSA proposes should be extended to the NFCU.

The evidence received in this consultation will inform the recommendations made by the FSA to the Secretary of State. It will be for the Secretary of State to decide on the content and timing of any legislation to make such changes in respect of both the power that is the subject of this consultation and those outlined in the previous FSA consultation on investigatory powers.

## Proposals for investigatory powers

The FSA is seeking views on the proposal that the NFCU should be granted the additional investigatory power set out in section 18 of PACE, to enable it to more effectively detect and investigate serious criminal offences such as fraud that may impact the safety or authenticity of food, drink or animal feed.

Prior to the earlier consultation on enhanced investigatory powers, the FSA objectively assessed which specific powers are required to deliver the NFCU's mandate most effectively and proposed a proportionate and limited number of powers to be made available to food crime officers. Since that consultation and after further reflection and operational learning, we identified a requirement for further powers under section 18 of PACE.

Section 18 of PACE confers on designated officers powers of entry and search after a person has been arrested, of any premises occupied or controlled by the person arrested for an offence where there are reasonable grounds to suspect that there is evidence on the premises relating to that offence, or to a related offence. A warrant is not required to exercise these powers. Section 18 PACE powers have been made accessible to other non-police bodies such as the Gangmasters and Labour Abuse Authority (GLAA).

While this power relates to activity following an arrest, there remains no intention for the FSA to seek access to powers of arrest for its food crime officers.

The use of investigatory powers is a serious responsibility and must be carefully exercised, controlled and monitored to retain public confidence and prevent misuse. The FSA are continuing to engage 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.

## Additional Investigatory Powers Proposal

**Proposal A: The FSA would welcome views on whether the FSA (NFCU) should be granted powers under section 18 of the Police and Criminal Evidence Act 1984 (PACE)**

PACE 1984 (England and Wales)	Power Description
Section 18	The power to enter and search any premises occupied or controlled by a person who is under arrest where there are reasonable grounds for suspecting that there may be evidence on the premises (other than items subject to legal professional privilege) that relate to that offence or some other indictable offence which is connected with or similar to that offence, and to seize and retain such material if located during the search.

### 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.

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 of 6<sup>th</sup> August 2023. 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](mailto: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.



## 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.