



Home Office

Changes to bodies granted investigatory and other powers under the Proceeds of Crime Act 2002

Government consultation

This consultation begins on 7th December 2022

This consultation ends on 1st March 2023

About this consultation

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

Duration: From 7th December 2022 to 1st March 2023

Responses and enquiries (including requests for the paper in an alternative format) to: AFI Order Consultation,
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Please respond by 1st March 2023.

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Introduction

The Proceeds of Crime Act 2002 (POCA) grants a wide variety of powers to law enforcement officers in relation to recovery of the proceeds of crime. Staff at certain law enforcement agencies can use these powers by becoming an accredited financial investigator of a description specified in an Order made by the Secretary of State.

An additional 5 public sector organisations have applied to the Home Office and NCA's Proceeds of Crime Centre to be designated as agencies whose staff can use these powers. Granting these organisations access to the powers will increase our capacity to pursue asset recovery and further combat serious organised crime.

This consultation seeks views on whether the public bodies specified in paragraph 6 should be granted access to certain powers under POCA to conduct the following types of investigation:

- confiscation investigations
- detained cash investigations
- detained property investigations
- frozen funds investigations
- money laundering investigations
- cryptoasset investigations¹

POCA is an Act of Parliament that sets out a large number of measures designed to make the recovery of unlawfully held assets more effective. Section 378 of POCA defines who an appropriate officer is in respect of each type of investigation and includes officers of the National Crime Agency, police constables, officers of HM Revenue & Customs, immigration officers and Accredited Financial Investigators (AFIs). This consultation relates to the extension of the latter—AFI powers—to additional bodies. AFIs can exercise their functions in England and Wales and Northern Ireland, but not Scotland.

To exercise the relevant POCA powers, an AFI must when using them be a member of staff of a public body designated by the Secretary of State and trained and accredited by the National Crime Agency's Proceeds of Crime Centre. The list of organisations with AFI powers, and the legislation that grants those powers, is in Annex A.

¹ This is subject to powers being inserted into POCA by the Economic Crime and Corporate Transparency Bill being passed by Parliament and receiving Royal Assent

We are consulting on whether to grant 5 additional organisations access to AFI powers, and/or to extend the remit of their existing powers. Those agencies are:

1. Security Industry Authority (see pages 4-5)
2. Food Standards Agency (see pages 6-7)
3. Environment Agency (see pages 8-9)
4. Public Sector Fraud Authority (see pages 10-11)
5. Department for Work and Pensions (see pages 12-13)

Currently, each of these agencies either rely on other agencies designated with financial investigation powers—such as the National Crime Agency or police forces—or have no staff who can exercise POCA powers to recover proceeds of crime within their jurisdiction.

By granting these POCA powers to a wider range of public sector organisations, a greater number of bodies will be able to contribute directly to efforts to recover proceeds of crime to achieve the Government's asset recovery objectives:

- **disrupt** criminal activity and the further funding of crime;
- **deprive** people of their proceeds of crime;
- **discredit** negative role models in society, and
- **deter** people from becoming involved or continuing in crime.

Accredited Financial Investigators cannot use their powers in Scotland.

The Security Industry Authority, the Food Standards Agency and the Public Sector Fraud Authority will use their powers in England, Wales and Northern Ireland.

The Environment Agency and the Department for Work and Pensions will use their powers in England and Wales.

A regulatory impact assessment has not been produced for this instrument as it has no direct impact on business, the public sector, charities or voluntary bodies.

The proposals

Security Industry Authority

The Security Industry Authority (SIA) is an executive non-departmental public body, sponsored by the Home Office, responsible for regulating the UK's private security industry.

The statutory basis under which the SIA currently undertake financial investigations is POCA. This was made available through Statutory Instrument 2015/1853 which allows the SIA to undertake confiscation investigations.

In 2015, when the SIA originally applied to become a designated body under POCA, it did so for confiscation and restraint powers only. Since then the SIA have secured confiscation orders totalling £852,000. Extending the SIA's existing POCA powers would support the SIA's purpose to protect the public through effective regulation of the private security industry and provide an effective and meaningful tool against those who cause the greatest harm.

The SIA's current financial investigation capability sits within the Criminal Investigation function which is part of the SIA's Inspections and Enforcement directorate. At present, this consists of two substantive financial investigators.

As this capability has developed, cases have been identified where additional POCA powers would have been of benefit. The SIA has previously sought assistance from partner agencies to bring POCA proceedings in appropriate cases. However, those agencies are not always in a position to assist due to competing financial investigation priorities, and in those cases, it could present a lost opportunity in recovering the proceeds of crime.

Proposal A: We would welcome your views on whether the SIA should be granted the powers listed on the next page (page 5):

Power – Part and section of POCA				Is this power being sought by the SIA?
1.	Part 2	42(2)(c) & 68(3)(c)	Restraint order powers and authorisation for applications and appeals	No
2.		47 for E&W or 195 for NI	Search and seizure powers	Yes
3.	Part 5	290(4)(c)	Cash search powers	Yes
4.		297A(6)(c)	Forfeiture without a court order powers	Yes
5.		303A(1)	Detained cash powers, cash forfeiture powers and appeal powers under Chapter 3 Part 5	Yes
6.	Part 7	336D(7)(h)	Powers to extend the moratorium period	No
7.	Part 8	352 & 353	Powers to execute search and seizure warrants in confiscation investigations	No
8.		378(1)(b) & 378(2)(d)	Confiscation investigation powers	No
9.		378(3A)(ab) & 378(3AA)(b)	Detained cash investigations	Yes
10.		378(4)(a) & 378(6)(c)	money laundering investigation powers	Yes

Food Standards Agency

The Food Standards Agency (FSA) is a Non-Ministerial Government department responsible for protecting the public's health and consumer interests in relation to food. The FSA is the national authority responsible for food safety and hygiene across the England, Wales and Northern Ireland (but not Scotland).

The statutory basis under which the FSA currently undertake financial investigations is POCA. This was made available through Statutory Instrument 2015/1853, which allows the FSA to conduct money laundering, civil recovery and confiscation investigations against food criminals.

The National Food Crime Unit (NFCU) is part of the FSA and acts as the enforcement arm within England, Wales and Northern Ireland. NFCU AFIs use their POCA powers in furtherance of money laundering and asset recovery matters, and to support and provide advice to local authorities who are conducting investigations concerning food.

The FSA is using its existing powers under POCA to good effect to tackle the serious risk and harm posed by the most grievous and serious food criminals. To date the FSA have recovered £28,000.00, with further funds in the process of being recovered.

The FSA seeks the additional search and seizure powers that are contained within s47 of POCA. The absence of s47 powers is hindering the ability of the FSA and NFCU to search for and seize assets that may be later used to satisfy confiscation orders, leading to missed opportunities.

In gaining powers under s47 of POCA the FSA will enhance their capability in this area and be better able to deprive food criminals of the benefit and assets they have accrued as a result of their criminality.

Proposal B: We would welcome your views on whether the FSA should be granted the powers listed on the next page (page 7):

Power – Part and section of POCA				Is this power being sought by the FSA?
11.	Part 2	42(2)(c) & 68(3)(c)	Restraint order powers and authorisation for applications and appeals	No
12.		47 for E&W or 195 for NI	Search and seizure powers	Yes
13.	Part 5	290(4)(c)	Cash search powers	No
14.		297A(6)(c)	Forfeiture without a court order powers	No
15.		303A(1)	Detained cash powers, cash forfeiture powers and appeal powers under Chapter 3 Part 5	No
16.	Part 7	336D(7)(h)	Powers to extend the moratorium period	No
17.	Part 8	352 & 353	Powers to execute search and seizure warrants in confiscation investigations	No
18.		378(1)(b) & 378(2)(d)	Confiscation investigation powers	No
19.		378(3A)(ab) & 378(3AA)(b)	Detained cash investigations	No
20.		378(4)(a) & 378(6)(c)	Money laundering investigation powers	No

Environment Agency

The Environment Agency was established in 1996 and is responsible for protecting and improving the environment. It is an executive non-departmental public body, sponsored by the Department for Environment and Rural Affairs.

The Environment Agency has enforcement capability at both area and national levels throughout England. Criminal offences are investigated under the Environmental Protection Act 1990 and generally involve (but are not limited to) waste offences including illegal waste sites (non-permitted), permitted sites where there are serious breaches, misdescription of hazardous waste and separate to EPA, fraud against the Producer Responsibility Scheme.

The statutory basis under which the Environment Agency currently undertake financial investigations is POCA. This was made available through Statutory Instrument 2004/8.

This capability includes an established Financial Investigations Team that sits centrally at a national level and services both national and area enforcement. At present this consists of seven substantive financial investigators. Investigations are mainly concerned with illegal waste activity and can result in multi-million pound benefit figures.

When the Environment Agency originally applied to become a designated body under POCA, it did not apply for s.47 search and seizure powers. Extending the Environment Agency's existing POCA powers would be of significant benefit as the subjects of their investigations tend to be in possession of high value property which they are currently unable to seize when pursuing a confiscation investigation under POCA.

At present, the Environment Agency is reliant on support from Regional Organised Crime Units (ROCU) who often have competing priorities, leading to missed opportunities to recover the proceeds of crime.

Proposal C: We would welcome your views on whether the Environment Agency should be granted the powers listed on the next page (page 9):

Power – Part and section of POCA				Is this power being sought by the EA?
21.	Part 2	42(2)(c) & 68(3)(c)	Restraint order powers and authorisation for applications and appeals	No
22.		47 for E&W or 195 for NI	Search and seizure powers	Yes
23.	Part 5	290(4)(c)	Cash search powers	No
24.		297A(6)(c)	Forfeiture without a court order powers	No
25.		303A(1)	Detained cash powers, cash forfeiture powers and appeal powers under Chapter 3 Part 5	No
26.	Part 7	336D(7)(h)	Powers to extend the moratorium period	No
27.	Part 8	352 & 353	Powers to execute search and seizure warrants in confiscation investigations	No
28.		378(1)(b) & 378(2)(d)	Confiscation investigation powers	No
29.		378(3A)(ab) & 378(3AA)(b)	Detained cash investigations	No
30.		378(4)(a) & 378(6)(c)	Money laundering investigation powers?	No

Public Sector Fraud Authority

The Public Sector Fraud Authority (PSFA) was announced in the Spring Statement and launched on 3 August 2022 in response to the increasing risk and exposure to fraud faced by the public sector. Its remit is to work with departments and public bodies to understand and reduce the impact of fraud against the public sector. The PSFA is part of the Cabinet Office and HM Treasury.

Fraud against the public sector is not a victimless crime. It is estimated the cost of fraud against the public sector is at least £33 billion per year. The National Audit Office has concluded that current capacity, capability and powers across government as a whole are not sufficient to deal with the scale of the issue.

To date, the public sector response to fight and reduce fraud loss has predominantly focused on tax and welfare, the areas of highest known loss. Most other government departments and public bodies do not have direct access to fraud investigation powers despite having significant public spending. This results in avoidable pressure on the police and wider law enforcement to pursue cases on their behalf.

Part of the PSFA mission and mandate is to develop capability in the public sector to find, prevent and respond to fraud by building an expert led enforcement service. The enforcement unit will operate centrally in the PSFA and provide a service to ministerial departments and public bodies by investigating cases of potential fraud against them and applying sanctions and recovering assets as appropriate.

To have the impact expected of it and to give it 'teeth', it is vital that the PSFA has access to proportionate and targeted investigation and recovery powers that already exist. This centralised approach is not only efficient, but also a proportionate and measured use of the powers. It negates the need for every ministerial department to have direct access to investigation and recovery powers for counter fraud purposes and also makes oversight of the powers simpler and more targeted.

POCA powers will assist the PSFA to investigate potential fraud and, where appropriate, recover assets obtained through fraudulent conduct whilst, reducing pressure on the police and wider law enforcement and maintaining due process in the criminal justice system.

Proposal D: We would welcome your views on whether the PSFA should be granted the powers listed on the next page (page 11):

Power – Part and section of POCA				Is this power being sought by PSFA?
31.	Part 2	42(2)(c) & 68(3)(c)	Restraint order powers and authorisation for applications and appeals	Yes
32.		47 for E&W or 195 for NI	Search and seizure powers	Yes
33.	Part 5	290(4)(c)	Cash search powers	Yes
34.		297A(6)(c)	Forfeiture without a court order powers	Yes
35.		303A(1)	Detained cash powers, cash forfeiture powers and appeal powers under Chapter 3 Part 5	Yes
36.		Part 7	336D(7)(h)	Powers to extend the moratorium period
37.	Part 8	352 & 353	Powers to execute search and seizure warrants in confiscation investigations	Yes
38.		378(1)(b) & 378(2)(d)	Confiscation investigation powers	Yes
39.		378(3A)(ab) & 378(3AA)(b)	Detained cash investigations	Yes
40.		378(4)(a) & 378(6)(c)	Money laundering investigation powers	Yes

Department for Work and Pensions

The Department for Work and Pensions (DWP) is a Ministerial department responsible for the administration of welfare, pensions and child maintenance policy.

The statutory basis for DWP's investigatory and enforcement function is the Social Security Administration Act 1992. DWP can also undertake financial investigations using POCA powers. This was made available through Statutory Instrument 2009/975.

DWP's financial investigation capability sits with the Economic and Serious Organised Crime team. At present this consists of 23 financial investigators. Financial investigators use POCA powers to recover money from persons convicted of benefit fraud, and to progress investigations involving money laundering linked to organised crime.

Fraud is an ever-present and dynamic challenge, and much of DWP's counter-fraud legislation is now decades old. Earlier this year, in the policy paper 'Fighting Fraud in the Welfare System' the Department announced plans to modernise fraud powers, bringing them more in line with other parts of Government tackling fraud, when Parliamentary time allows.

Extending DWPs access to existing POCA powers, to include Part 2 Section 47: Powers of Search and Seizure, compliments this approach. It supports the Department in investigating and disrupting serious and organised fraud activity more decisively, independently and quickly, enabling DWP to act more often when opportunities to search for and seize proceeds of crime arise.

Having access to these powers would increase DWP's independence in investigating criminality in the welfare system and reduce the current reliance on support from other law enforcement agencies.

Proposal E: We would welcome your views on whether the Department for Work and Pensions should be granted the powers listed on the next page (page 13):

Power – Part and section of POCA				Is this power being sought by DWP?
41.	Part 2	42(2)(c) & 68(3)(c)	Restraint order powers and authorisation for applications and appeals	No
42.		47 for E&W or 195 for NI	Search and seizure powers	Yes
43.	Part 5	290(4)(c)	Cash search powers	No
44.		297A(6)(c)	Forfeiture without a court order powers	No
45.		303A(1)	Detained cash powers, cash forfeiture powers and appeal powers under Chapter 3 Part 5	No
46.	Part 7	336D(7)(h)	Powers to extend the moratorium period	No
47.	Part 8	352 & 353	Powers to execute search and seizure warrants in confiscation investigations	No
48.		378(1)(b) & 378(2)(d)	Confiscation investigation powers	No
49.		378(3A)(ab) & 378(3AA)(b)	Detained cash investigations	No
50.		378(4)(a) & 378(6)(c)	Money laundering investigation powers?	No

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Q1. To what extent do you agree or disagree with proposal A, on whether the SIA should be granted the powers listed on page 5?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Q2. If you disagree with proposal A, please give reasons.

Q3. To what extent do you agree or disagree with proposal B, on whether the FSA should be granted the powers on page 7?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Q4. If you disagree with proposal B, please give reasons.

Q5. To what extent do you agree or disagree with proposal C, on whether the Environment Agency should be granted the powers listed on page 9?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Q6. If you disagree with proposal C, please give reasons.

Q7. To what extent do you agree or disagree with proposal D, on whether the Public Sector Fraud Authority should be granted the powers listed on page 11?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Q8. If you disagree with proposal D, please give reasons.

Q9. To what extent do you agree or disagree with proposal E, on whether the Department for Work and Pensions should be granted the powers listed on page 13?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Q10. If you disagree with proposal E, please give reasons.

Thank you for participating in this consultation.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (for example, member of the public)	
Date	
Company name/organisation (if applicable)	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details and how to respond

Please send your response by 1st March 2023.

There are a variety of ways in which you can provide us with your views. You can email or write to us at the following addresses:

AFIConsultation@homeoffice.gov.uk

AFI Order Consultation,
Homeland Security Group,
6th Floor,
Peel Building Home Office
2 Marsham Street London
SW1P 4DF

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Home Office at the above address.

Extra copies

Further paper copies of this consultation and alternative format versions of this publication can be requested from AFIConsultation@homeoffice.gov.uk

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In

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view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Home Office.

The Home Office will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Annex A: list of the current accredited financial investigation agencies

The following legislation grants these agencies AFI powers:

- The Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales and Northern Ireland) Order 2021

This order supersedes the following statutory instruments:

- The Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009
- The Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2009
- The Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales) Order 2015
- The Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2017
- The Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) (England and Wales) Order 2018
- The Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) (England and Wales) Order 2020

Bodies operating in England and Wales (some operate in Northern Ireland)

- Competition and Markets Authority
- Counter Fraud and Security Management Service
- Department for Business, Energy and Industrial Strategy
- Department for Environment, Food and Rural Affairs
- Department for Work and Pensions
- Department of Health and Social Care
- Department for Transport
- Driving and Vehicle Standards Agency
- Environment Agency
- Financial Conduct Authority
- Food Standards Agency
- Gambling Commission
- Gangmasters and Labour Abuse Authority
- Home Office
- Information Commissioner's Office
- Intellectual Property Office
- Local authorities
- London Fire Commissioner
- Marine Management Organisation
- Medicines and Healthcare Products Regulatory Agency
- Ministry of Justice
- Natural Resources Body for Wales
- National Crime Agency
- NHS Counter Fraud Authority
- Office of Fair Trading
- Pensions Regulator

- Police forces in England and Wales
- Post Office
- Prudential Regulation Authority
- Royal Mail
- Rural Payments Agency
- Security Industry Authority
- Serious Fraud Office
- Transport for London
- Velindre National Health Service Trust

Additional bodies operating in Northern Ireland

- Department of Agriculture, Environment and Rural Affairs
- Department for Communities
- Department of the Environment
- Department for the Economy
- Department of Infrastructure
- Department for Social Development
- Police Service of Northern Ireland



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