



Home Office

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

Government consultation

This consultation begins on 28th January 2021

This consultation ends on 19th March 2021

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 28/01/2021 to 19/03/2021

Responses and enquiries (including requests for the paper in an alternative format) to: AFI Order Consultation
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Please respond by 19th March 2021.

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Introduction

The Proceeds of Crime Act 2002 (POCA) grants a wide variety powers to law enforcement officers to recover the proceeds of crime. Staff at both traditional and non-traditional law enforcement agencies can use these powers through becoming an accredited financial investigator working in an agency that is granted access to these powers.

Accredited Financial Investigators are non-traditional law enforcement agency staff who have access to powers which allow them to recover the proceeds of crime. An additional five public sector organisations have applied to the Home Office and NCA's Proceeds of Crime Centre to be granted these powers. Granting these organisations access to the powers will improve the law enforcement outcomes that they can deliver and will assist the delivery of the Home Office's Asset Recovery Action Plan.

This paper sets out the consultation in order to obtain views on whether the public bodies specified in paragraph 5 should be granted access to certain powers under POCA to conduct on the following types of investigation:

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

POCA is a comprehensive package 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 have jurisdiction to exercise their functions in England and Wales and Northern Ireland, not Scotland.

To have access to the relevant POCA powers, AFIs must currently 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.

We are consulting on whether to grant five additional organisations AFI powers. Those agencies are:

1. The Service Police (see pages 4-5)
2. Maritime and Coastguard Agency (see pages 6-7)
3. The Information Commissioner's Office (see pages 8-9)
4. Department for the Economy, Northern Ireland (see page 10-11)
5. London Fire Brigade (see page 12)

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 access 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 recovery 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 Service Police, Maritime and Coastguard Agency and Information Commissioner's Office will use their powers in England, Wales and Northern Ireland.

The London Fire Brigade will use their powers in England and the Department for the Economy in Northern Ireland will use their powers in Northern Ireland.

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

The Service Police

The Service Police are comprised of the Royal Navy Police, the Royal Military Police, and the Royal Air Force Police, who are employed directly by the Ministry of Defence.

The Service Police investigate alleged breaches of Service Law; both criminal conduct and non-criminal conduct offences where the suspect is subject to Service Law or Service Discipline, wherever in the world the offence allegedly took place. This can include crimes such as large-scale or systematic abuse of allowances, theft of high value or sensitive equipment (including firearms and ammunition), drug trafficking offences and Service Personnel engaging in various aspects of organised crime. All of the listed offences generate illicit financial gain and, as such, undertaking action to recover the proceeds of crime (in addition to other powers currently available to them) would ensure more effective criminal justice outcomes by depriving people of their proceeds of crime and disrupting further funding of crime.

The Service Police currently have a dedicated Financial Investigations Team which has responsibility for all three services (the Army, the Royal Navy and the Royal Air Force). In the team's first year of operation, over £3.7m was identified as recoverable assets however this is a small percentage of the total value of proceeds of crime investigated by the Service Police. If the Service Police are granted AFI powers, this would enable the Service Police to fund further activity through use of proceeds of crime (a proportion of which is returned to law enforcement).

Currently, compensation can only be awarded post-conviction for loss or damage; this process is limited as compensation does not always equal the full value of the proceeds of a crime (for example, there is no provision to recover the benefit from a crime, or funds intended for further criminality).

The Ministry of Defence Police, separate from the Service Police, has access to POCA powers however due to their separate jurisdictions, it is not possible for the Ministry of Defence Police to take on any Service Police cases where the Service Police have primacy.

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

Power	Is the power being sought?
Apply to the court for a restraint order Part 2, s.42	Yes
Search for, seize and retain property Part 2, s.47A-7R	Yes
Search for, seize, detain and seek forfeiture of cash Part 5, Chapter 3	Yes
Search for, seize, detain and seek forfeiture of certain personal (or moveable) property Part 5, Chapter 3A	Yes
Freeze and seek forfeiture of money held in bank and building society accounts Part 5 Chapter 3B	Yes
Extend the moratorium period in money laundering investigations Part 7, s.336	Yes
Apply to the court for investigation orders and warrants in POCA investigations Part 8, ss. 345, 357, 363, 370	Yes
Execute search warrants in financial investigations Part 8, ss.352-353	Yes
Comparable powers sought in Northern Ireland	Yes

Maritime and Coastguard Agency

The Maritime and Coastguard Agency (the Agency) have a worldwide remit to investigate offences committed on UK flagged vessels, both commercial and private. Offences investigated and prosecuted by the Agency are those under the Merchant Shipping Act 1995 and, with the assistance of partner organisations as appropriate include related offences, such as corporate manslaughter, human slavery/trafficking and money laundering. Due to the nature of these crimes, and the difficulty of accessing persons under investigation, the opportunities available to those persons to dissipate criminal property around the world are significant. Access to POCA powers would be a valuable power to restrict individuals from dealing with their assets and reduce dissipation of recoverable criminal property.

Currently, the Agency's primary investigative powers are provided under Section 259 of the Merchant Shipping Act 1995. Currently, for serious offences, MCA may only seek prison sentences and fines. While the maximum fine awardable is a level 5 (unlimited) fine, these fines may not truly reflect a person's benefit from criminal activity: in one case undertaken by the Agency, the criminal's financial gain from avoiding certification was estimated at £1m however the fine awarded was only £300,000. By being granted POCA powers to seek to recover a person's benefit from committing a crime, the Agency can deter future criminality through depriving people of their proceeds of crime.

The Agency currently investigates/prosecutes approximately 130 cases per year, of which the majority are acquisitive crimes. The ability to recover proceeds of crime, and instrumentalities of crime—i.e. property used to commit a crime—would significantly increase the Agency's ability to tackle and deter crime committed in a maritime context.

The Agency currently works with a variety of organisations which can use POCA powers, including HMRC and police forces, however by being granted powers they will no longer need to rely on other organisations' use of the powers, freeing up resource in those organisations to work on other cases.

Proposal B: We would welcome your views on whether the Maritime and Coastguard Agency should be granted the powers listed on the next page (Page 7):

Power	Is the power being sought?
Apply to the court for a restraint order Part 2, s.42	Yes
Search for, seize and retain property Part 2, s.47A-7R	Yes
Search for, seize, detain and seek forfeiture of cash Part 5, Chapter 3	Yes
Search for, seize, detain and seek forfeiture of certain personal (or moveable) property Part 5, Chapter 3A	Yes
Freeze and seek forfeiture of money held in bank and building society accounts Part 5 Chapter 3B	Yes
Extend the moratorium period in money laundering investigations Part 7, s.336	Yes
Apply to the court for investigation orders and warrants in POCA investigations Part 8, ss. 345, 357, 363, 370	Yes
Execute search warrants in financial investigations Part 8, ss.352-353	Yes
Comparable powers sought in Northern Ireland	Yes

Information Commissioner's Office

Personal data has a monetary value and it is increasingly being recognised and treated as an intangible commodity which is stolen and traded for financial gain, often resulting in significant financial losses for individuals whose data has been compromised. As society changes, and more of our day-to-day activity moves online, the risks to individuals around data protection are increasing.

Currently the only sanction available to the courts following a criminal conviction under the Data Protection Act is a fine, is often significantly less than a person's benefit from committing a crime. For example, in one recent case two individuals were fined £1,000 each despite their benefit from a data-related crime being estimated as over £40,000. By being granted POCA powers to seek to recover a person's benefit from committing a crime, the Information Commissioner's Office (ICO) can deter future criminality through depriving people of their proceeds of crime. This aligns with the ICO's strategy to be 'disruptive and obstructive' to criminality as well as the Government's asset recovery objectives, in particular to disrupt the further funding of crime, deprive people of their proceeds of crime and deter people from becoming involved or continuing in crime.

The ICO 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 would present a lost opportunity in recovering the proceeds of crime.

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

Power	Is the power being sought?
Apply to the court for a restraint order Part 2, s.42	Yes
Search for, seize and retain property Part 2, s.47A-7R	Yes
Search for, seize, detain and seek forfeiture of cash Part 5, Chapter 3	Yes
Search for, seize, detain and seek forfeiture of certain personal (or moveable) property Part 5, Chapter 3A	Yes
Freeze and seek forfeiture of money held in bank and building society accounts Part 5 Chapter 3B	Yes
Extend the moratorium period in money laundering investigations Part 7, s.336	Yes
Apply to the court for investigation orders and warrants in POCA investigations Part 8, ss. 345, 357, 363, 370	Yes
Execute search warrants in financial investigations Part 8, ss.352-353	Yes
Comparable powers sought in Northern Ireland	Yes

The Department for the Economy

The National Crime Agency's Proceeds of Crime Centre, which accredits financial investigators, has confirmed that it will only accredit employees of Trading Standards, Northern Ireland, part of the Department for the Economy, Northern Ireland. Should any other parts of the Department for the Economy wish to access powers, the Proceeds of Crime Centre will implement rigorous processes to ensure that organisation intends to use the powers proportionately and for good reason. Any financial investigator, whether part of Trading Standards, Northern Ireland, or another part of the Department for the Economy must maintain their accreditation across each power that they use, and will have that power removed should they not use it, or fail to meet the required standards.

Trading Standards, Northern Ireland

The Department for the Economy Northern Ireland is the parent department for Trading Standards Northern Ireland.

Trading Standards in England, Wales and Scotland have access to POCA powers. Granting Trading Standards in Northern Ireland access to these powers would bring it in line with the rest of Great Britain. Trading Standards in England and Wales were responsible for recovering £15.3m in 2018/19 (out of a total of £165.6m)¹. The type of case taken on by Trading Standards varies from large-scale counterfeiting to rogue traders.

Currently, Trading Standards Northern Ireland relies on referring cases to the Police Service Northern Ireland (PSNI) where it believes that the use of POCA powers would lead to enhanced criminal justice outcomes. Trading Standards Northern Ireland makes referrals to the PSNI despite having the resource to be able to pursue proceeds of crime cases in-house. Trading Standards Northern Ireland has not been designated with POCA powers and therefore cannot access the necessary training and accreditation to for use of the powers. Importantly, this would allow Trading Standards Northern Ireland to independently execute financial investigations, saving PSNI resource that would otherwise be used to assist in this area.

Proposal D: We would welcome your views on whether the Department for the Economy Northern Ireland should be granted the powers on the following page (page 11).

¹ Asset Recovery Statistical Bulletin <https://www.gov.uk/government/statistics/asset-recovery-statistical-bulletin-financial-years-ending-2014-to-2019>

Power	Is the power being sought?
Apply to the court for a restraint order Part 4, ss.190- 190A	Yes
Search for, seize and retain property Part 4, ss.195A-195H	Yes
Search for, seize, detain and seek forfeiture of cash Part 5, Chapter 3	Yes
Search for, seize, detain and seek forfeiture of certain personal (or moveable) property Part 5, Chapter 3A	Yes
Freeze and seek forfeiture of money held in bank and building society accounts Part 5 Chapter 3B	Yes
Extend the moratorium period in money laundering investigations Part 7, s.336	Yes
Apply to the court for investigation orders and warrants in POCA investigations Part 8, ss. 345, 357, 363, 370	Yes
Execute search warrants in financial investigations Part 8, ss.352-353	Yes
Comparable powers sought in Northern Ireland	Powers are sought only in Northern Ireland

London Fire Brigade

Some fire services in the UK already have AFI powers as they are part of a local authority which has access to the powers, however the LFB is an anomaly. As the London Fire Brigade (LFB) is part of the London Fire Commissioner, which does not have AFI powers, it cannot therefore exercise POCA powers.

LFB cases largely concern commercial properties which break fire safety regulations, often as a cost-saving measure. As these crimes therefore provide a financial benefit to defendants, powers to recover the proceeds of crime would have a stronger criminal justice outcome than the powers currently available to the LFB (to seek fines and prison sentences). As with many other agencies, the fines LFB can seek are often significantly smaller than the financial benefit to a person who breaks fire safety regulations.

Proposal E: We would welcome your views on whether the London Fire Brigade should be granted the following powers:

Power	Is the power being sought?
Apply to the court for a restraint order Part 2, s.42	Yes
Search for, seize and retain property Part 2, s.47A-7R	Yes
Search for, seize, detain and seek forfeiture of cash Part 5, Chapter 3	Yes
Search for, seize, detain and seek forfeiture of certain personal (or moveable) property Part 5, Chapter 3A	Yes
Freeze and seek forfeiture of money held in bank and building society accounts Part 5 Chapter 3B	Yes
Extend the moratorium period in money laundering investigations Part 7, s.336	No
Apply to the court for investigation orders and warrants in POCA investigations Part 8, ss. 345, 357, 363, 370	Yes
Execute search warrants in financial investigations Part 8, ss.352-353	Yes
Comparable powers sought in Northern Ireland	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 Service Police 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 Maritime and Coastguard Agency 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 to you agree or disagree with proposal C, on whether the Information Commissioner's Office should be granted the powers 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 to you agree or disagree with proposal D, on whether the Department for the Economy, Northern Ireland, should be granted the powers 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 to you agree or disagree with proposal E, on whether the London Fire Brigade should be granted the powers on page 12?

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 19th March to:

Post: Accredited Financial Investigators Consultation
6th Floor, Peel Building
2 Marsham Street
London
SW1P 4DF

Email: AFIConsultation@homeoffice.gov.uk

Complaints or comments

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

Alternative formats

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 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.

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) Order 2009, Statutory Instrument number 2009/975

as amended by:

- The Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2009
- The Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2017

and

- The Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales) Order 2015, Statutory Instrument number 2015/1853

as amended by:

- 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)

- 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
- Driving and Vehicle Standards Agency
- Environment Agency
- Financial Conduct Authority
- Food Standards Agency

- Gambling Commission
- Gangmasters and Labour Abuse Authority
- Home Office
- Intellectual Property Office
- Local authorities
- Marine Management Organisation
- Medicines and Healthcare Products Regulatory Agency
- Ministry of Justice
- Natural Resources Body for Wales
- National Crime Agency
- 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

Additional bodies operating in Northern Ireland

- Department of Agriculture, Environment and Rural Affairs
- Department of the Environment
- Department for Regional Development²
- Department for Social Development
- Police Service of Northern Ireland

² The Department for Regional Development is now called the Department for Infrastructure



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