



## Public Sector Fraud Authority

# Factsheet: PSFA search and seizure and disposal of property powers in the Public Authorities (Fraud, Error and Recovery) Bill

## What is the current policy?

The PSFA's Enforcement Unit currently does not have any criminal investigation powers to enter premises, conduct searches or seize evidence when it appears to relate to an offence of fraud committed against a public authority. It also does not have the power to apply to a court for an order to dispose of or make changes to property which has come into its possession.

## Policy intent

The Bill contains measures to give the PSFA the tools it needs to effectively investigate fraud on behalf of other government departments or public bodies. Whilst the powers themselves are not novel, the PSFA will be using them for the first time.

These include the power to allow the PSFA's Authorised Investigators to:

- apply to the courts for a search warrant; and
- apply to the courts for an order to allow the PSFA to gain access to material which is regarded as "*excluded material*" or "*special procedure material*" as defined under sections 11 and 14 of the Police and Criminal Evidence Act 1984 (PACE).

These powers are deemed the minimum necessary to secure evidence in criminal investigations and bring the PSFA in line with other government departments, such as HMRC and DWP, which already have these powers.

Giving the PSFA these powers reduces the police's involvement in PSFA investigations and therefore the burden the PSFA places on the police while pursuing criminal investigations.

The Bill also contains measures so that the PSFA will be able to apply to a court to dispose of property or make changes to property which has come into its possession over the course of an investigation.

## How will it work?

The PSFA will have the power to apply to a court for a search warrant or an order to allow the PSFA to gain access to material which is regarded as "*excluded material*" or "*special procedure material*". Section 11 of PACE defines "*excluded material*" and section 14 of PACE defines "*special procedure material*". This power is necessary to ensure that the PSFA has the tools to respond to allegations of fraud committed against the public sector from a wide range of referring public authorities.

Authorised Investigators will have the right, in law, to execute authorised search warrants and court orders. However, to ensure their safety, Authorised Investigators will always be



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accompanied by at least one officer with powers of a constable who will be able to use their own powers of arrest or reasonable force if necessary. This could be a police officer or an officer from another government department with the powers of a constable.

Authorised Investigators will only have the power to seize material that relates to offences of fraud against a public authority. PSFA Authorised Investigators will not have the power to:

- enter a premises (as defined under section 23 PACE) without a warrant;
- use reasonable force;
- search a person; or
- arrest any person.

The application of PACE powers is limited to England and Wales.

The PSFA will also have a legal route, under the Bill, to apply to a court for an order in relation to property which has come into its possession, such as an order to dispose of or make changes to the property. This applies to all property which has come into the possession of the PSFA through the exercise of its functions under Part 1 of the Bill. It is not specific to property obtained via the application of the PSFA's PACE powers.

### Oversight and safeguards

The use of PACE powers comes with safeguards which protect the public against their misuse, both within PACE and the PACE Codes of Practice. The powers can only be used under strict conditions, in cases that meet the threshold for criminal investigation.

The following safeguards are included in this measure:

- **Professional training** - Authorised Investigators will be trained to industry standards to carry out these activities. Only once an Authorised Investigator is fully trained will they be allowed to execute these powers.
- **Grade** - To use these measures a PSFA Authorised Investigator must be a PSFA official, and their grade must be equivalent to, or higher than, that of a Higher Executive Officer.
- **Authorisation of warrants** - All applications for warrants and orders need to be authorised by the courts. Only when these have been granted can PSFA's Authorised Investigators act.
- **PACE Code of Practice** - PSFA's Authorised Investigators exercising Search and Seizure powers will need to comply with the Home Office's PACE Code of Practice B (England and Wales) which governs the exercise of statutory powers of entry, search and seizure for the Police. This provides a robust safety net to ensure the application of any PACE powers is necessary, proportionate and justified in the circumstances.
- **Independent serious complaints process** - The Independent Office for Police Conduct (IOPC) will investigate the most serious complaints into PSFA's use of



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Entry, Search and Seizure powers.

- **Independent Inspections** - PSFA will commission His Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) to conduct inspections of the use of these powers. In addition, PSFA's internal oversight provisions will be further supported by a new PSFA internal oversight team, separate from those using the powers, who will report to an external Independent Chair.

The PSFA's power to make change to or dispose of property which has come into its possession will also be subject to strict oversight measures:

- All applications to modify or dispose of property must be made to a court and safeguards have been included in the clause to ensure there is sufficient time for other parties to come forward and claim a right to the property in question.
- If the PSFA is successful in obtaining an order from the court, it must wait 6 months before it can destroy or dispose of the property. During this time, any person with an interest in the property can apply to the court to make a case for why a different order should be granted.