

Consultation on the Additional Proposal for Enhanced Powers for the National Food Crime Unit (NFCU): summary of stakeholder responses

The Food Standards Agency (FSA) has sought views on the proposal for a further investigatory power for the NFCU.

Introduction

The Food Standards Agency (FSA) has sought views on the proposal for a further investigatory power for the NFCU to enable it to more effectively detect and investigate serious criminal offences, such as fraud, that may impact the safety or authenticity of food. This is in addition to a suite of powers already consulted upon in 2022.

Section 18 of the Police and Criminal Evidence Act 1984 (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.

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. 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.

Section 18 PACE powers have been made accessible to other non-police bodies such as the Gangmasters and Labour Abuse Authority (GLAA). 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. The NFCU is proposing that only a proportionate and limited number of powers to be made available to food crime officers. These do not, for example, include powers of arrest.

The responses to this consultation have been supportive of NFCU's acquisition of section 18 PACE powers, and of the introduction of appropriate oversight for the use of these powers.

About this consultation

This consultation was issued on 10 July 2023 and closed on 6 August 2023.

The purpose of the consultation was to gather stakeholders' views across England and Wales on the FSA plans to seek a further enhanced investigatory power for the NFCU under section 18 of

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

The FSA believes enhanced legal powers are necessary for the NFCU to be able to execute its remit and mandate to lead investigations, and to provide case files to the Crown Prosecution Service for prosecution, around serious, organised, and complex food crimes, independently.

The powers sought (which include both section 18 of PACE and a number of other provisions which have previously been consulted on) concern the ability to apply for search warrants, seize evidence and interview suspects.

By exploring the views of stakeholders through consultation, we wish to satisfy the principles of necessity and proportionality. We also wish to ensure that the proposed safeguards are sufficient to ensure civil liberties are appropriately protected.

The FSA is grateful to those stakeholders who responded.

The proposal on which the consultation sought views was:

- 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)

We received 13 responses from a range of academics, industry, local authorities, and individuals. An additional response was received which related to other matters not linked to section 18 PACE powers and has not been included within this summary.

Analysis of respondents

Sector	Number of responses	%
Individual	4	30%
Industry	4	30%
Local Authority	3	24%
Academic	1	8%
Campaigners	1	8%
Total	13	100%

Summary of stakeholder responses

There was broad support for FSA to be granted section 18 PACE powers from all respondents. A key theme among the responses was that the additional powers under section 18 of PACE was a logical, necessary and proportionate next step in further enabling the NFCU to operate more effectively on food fraud matters and with more resilience. Respondents also observed that this extension of powers would strengthen the NFCU's ability to discourage and disrupt food fraud and is likely to lead to the more efficient collection and preservation of evidence.

Another theme within the responses was the importance of having appropriate safeguarding measures in place for the proposed powers under section 18 of PACE. Respondents felt that safeguarding measures are necessary to ensure that these investigatory powers are carefully exercised, controlled and monitored, to retain public confidence and prevent misuse. There was recognition of FSA's commitment to ensuring accountability and governance arrangements for the exercise of the powers being sought, which in the respondents' views further strengthens the case for granting powers to food crime officers in the NFCU. A further observation was that given this proposal for section 18 PACE powers has emerged separately from the 2022 consultation, these powers should be considered in conjunction with the other investigative powers previously consulted on when reviewing or evaluating operational developments in future.

Other stakeholders also felt that the further extension of investigatory powers would have the following positive impacts:

- further reducing the burden placed upon police officers;
- benefiting people living with auto-immune conditions such as coeliac disease as they would be more likely to report concerns about food establishments, with increased confidence in FSA having the ability to collect evidence and take enforcement action more easily;
- helping to uphold the reputation of law-abiding members of a tightly regulated food production and processing chain throughout the varying channels of the industry and lessening the possibility of negative media, public portrayal and impact on the food industry.

Some stakeholders, while in agreement that the NFCU should have powers, raised the following points/concerns. These have been tabulated against FSA's observations on the points raised.

Response	FSA observations
<p>Respondents from the Trading Standards East Midlands Food and Allergens group commented on the importance of the “NFCU to continue to work with, and alongside, Local Authority Food Safety (both Standards and Hygiene) officers to share intelligence and information to ensure investigations and operations are not compromised”.</p> <p>An individual responding in a private capacity expressed a similar view on the importance of both the NFCU and Local Authority each knowing what the other was doing, to enable effective cooperation and reduce any risk to operational activity that has been months in planning.</p>	<p>The NFCU's regional intelligence officer network allows for both routine and operationally specific engagement with local authorities around ongoing intelligence and investigation work. The Unit recognises the clear benefits from taking this approach. In most cases it will be appropriate to share information around ongoing investigations with local authorities and this will be our default position. However, in a small number of cases it may not be possible or appropriate to share information. We anticipate that it will only ever be in a minority of investigations where it will not be possible to engage in this way.</p>

Response	FSA observations
<p>Some respondents from the East of England Trading Standards Association felt whilst they supported the NFCU being granted greater powers, they questioned whether extending powers to include section 18 PACE were the most appropriate. They felt there is a higher degree of certainty required under section 18 PACE, compared to powers under Food Safety Act; with the latter also being more wide- ranging.</p>	<p>It is correct that a level of confidence needs to be reached in order to make the case for a section 18 search to be authorised. However, our case for securing this power relates to a very specific scenario following the arrest of an individual and concerning timely entry to residential premises. Under food law this would be possible but require the provision of 24 hours' notice to the occupier, or the obtaining of a court warrant. It is the intention of the FSA that, if secured, Section 18 powers would exist as a modest complementary power alongside the broader suite of powers consulted on last year.</p>
<p>Respondents from The University of Manchester and Manchester Metropolitan University commented that the “proposed new power should be accompanied by appropriate safeguards to ensure that NFCU officers receive the necessary (re)training on how to access and search potential crime scenes without unintentionally disrupting evidence”. They further suggested that “appropriate complaint handling and accountability processes are established and embedded as part of NFCU officer training, along with guidelines of relevant escalation points, for example, from FSA to IOPC where appropriate”.</p> <p>Respondents from the East of England Trading Standards Association asked if sufficient numbers of staff have been adequately trained to make use of these powers.</p>	<p>The appropriate safeguards will be put in place to ensure the correct training and Continued Professional Development (CPD) is developed and delivered to food crime officers who will be discharging these new powers, once regulations granting access to them have been laid.</p> <p>Many NFCU investigators joined from law enforcement careers and will have already received training and have extensive experience of using these powers.</p> <p>Regardless of prior professional background, however, CPD within the Unit will ensure a resilient cadre of trained officers is maintained, and that skills and knowledge are regularly verified and refreshed.</p>

Response	FSA observations
<p>Respondents from the East of England Trading Standards Association posed two additional general questions:</p> <p>(1) Do NFCU [have the] systems, processes and capabilities to make use of these extended investigative powers?</p> <p>(2) Does the NFCU have adequate internal governance and supervision arrangements in place?"</p>	<p>(1) The NFCU does have the appropriate capabilities to make use of the extended powers under section 18 PACE. Our investigations will be able to draw on material from section 18 searches as part of ongoing enquiries and to contribute towards case files submitted to prosecutors. In terms of system and process – the NFCU can already draw on software allowing the compilation of electronic case files. While officers will not have direct access to police custody systems, it is the Unit's intention that powers will extend to applying to access premises under section 18 and executing that visit, rather than to authorising applications, which we assess would require further systems access than is currently held.</p> <p>(2) The NFCU has adequate internal governance and supervision arrangements in place, through investigative reviews and Tasking & Coordination Group (TCG) supervision. This is further backed up by our intention to secure oversight arrangements with the Independent Office for Police Conduct (IOPC) and His Majesty's Inspectorate of Constabulary, Fire & Rescue Services (HMICFRS). Several senior managers within the NFCU investigations command hold accreditations (PIP3 and PIP4) from the College of Policing, which require the evidencing of their ability to lead, supervise and manage serious and complex criminal investigations.</p> <p>With regards to these particular powers, Section 18 powers will only be accessible following authorisation by a suitably ranked police officer. Arrests after which section 18 powers might be requested are most likely to accompany the execution of a search warrant under PACE, which will have been authorised by a judge and consequently met the required threshold for justification.</p>

Response	FSA observations
<p>Respondents from The University of Manchester and Manchester Metropolitan University also made an additional observation:</p> <p>“As a wider point, while we generally support this proposal, it is also very specific, and seems to have emerged from challenges with operational activity. More widely, in future consultations it would be useful to elaborate a little further on examples of how further powers would be useful, for example, in this case, difficulties that NFCU officers encountered while being on premises and assisting with searches (operational sensitivities aside). This would allow for a more detailed and rigorous response from stakeholders.”</p>	<p>The comments from the respondents were noted .</p> <p>This fresh consultation on an additional power stemmed from a recent occasion, following the execution of a warrant, where NFCU officers were unable to lead or support a section 18 search of home addresses following arrest, owing to the absence of these powers. This was in contrast to the preceding warrant where, as named parties on the warrant, NFCU officers were able to participate in the search of the business premises.</p>
<p>An individual who is a campaigner around E. coli 157 provided the following observations:</p> <ul style="list-style-type: none"> - disagreement with FSA’s position on not having or seeking powers of arrest. - a requirement for FSA to understand resourcing challenges within policing, for example with regards to the police not having enough resources to undertake work in relation to food fraud. 	<p>The comments from the respondents were noted.</p>

Next steps

FSA will ensure that local authority partners are alerted to this publication and to the reassurances it contains with regards to NFCU’s interactions with local authorities.

FSA will also be continuing to work with partners across government in pursuit of measures required to place aspects of the work of food crime officers under HMICFRS oversight, and under IOPC with regards to complaint handling.

After secondary legislation is tabled, which is required to equip FSA food crime officers with the additional powers described earlier in this consultation and in the previous consultation, the NFCU will devise and deliver a clear implementation plan. This will take into consideration the concerns expressed within these responses, for example around training.

The findings of this consultation will also be used to inform the early stages of any activity to develop and take forward legislation to equip food crime officers with similar powers in Northern Ireland.