



Home Office

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

Consultation document

July 2015

Introduction

1. The purpose of this consultation is to obtain views on which bodies should be granted access to the investigation powers under the Proceeds of Crime Act 2002 (POCA). This consultation covers the following five issues:
 - i. The extension of powers to bodies with some existing investigation powers.
 - ii. The provision of powers to new public bodies.
 - iii. The allocation of new powers provided by the Policing and Crime Act 2009.
 - iv. Changes to the level of seniority for Senior Appropriate Officers (SAO) for the authorisation of the exercise of certain powers.
 - v. The removal of existing powers from two bodies.

2. POCA provides financial investigation powers to officers, in connection with the various kinds of investigations permitted by Part 8 of the Act in connection with the recovery of the proceeds of crime. 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). There are provisions in Parts 2 and 4 of POCA relating to restraint orders and the seizure of property. AFIs operate in England and Wales and Northern Ireland not Scotland.

3. Public bodies use civilian staff as AFIs to conduct criminal finance investigations - money laundering, cash detention, and confiscation investigations. AFIs may also apply for a restraint order. To have access to the POCA powers, AFIs must currently be a member of staff of a public body designated by order by the Secretary of State, and trained and accredited by the National Crime Agency. The current order is 'The Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009, Statutory Instrument number 2009/975 as amended by 2009/2707'. The public bodies include the Gambling Commission, the Serious Fraud Office, Royal Mail, local authorities and some government departments such as the Home Office, the Department

for Work and Pensions and the Department for Business, Innovation and Skills. The full list is included in Annex A.

4. The Home Office is conducting a review of the public bodies that have access to these powers under POCA. We are also considering the provisions under the Policing and Crime Act 2009 that came into force on 1 June 2015, which provide further powers to officers, including AFIs, working in the designated bodies. These new powers are to be granted to various designated bodies and so changes are required to the order. We are seeking views on these proposed changes.

Proposed Changes

Extension of Existing Powers to Current Designated Bodies

5. We have received requests for extensions to the existing powers from two organisations.

Environment Agency (EA) and Natural Resources Wales, Cyfoeth Naturiol Cymru (NRW/CNC)

6. The Environment Agency (EA) and Natural Resources Wales, Cyfoeth Naturiol Cymru (NRW/CNC) are regulatory and enforcement authorities with responsibility for combating environmental crime in England and Wales respectively. Each has its own regulatory, enforcement and legal teams responsible for gathering evidence and conducting prosecutions into serious environmental offending. Their AFIs currently deal with criminal and confiscation investigations and have the powers to obtain restraint orders. They have no power to obtain evidence from financial institutions to support a criminal money laundering investigation. Individuals who provide the financial support to those committing serious environmental crime but are not directly involved in the environmental crimes therefore avoid prosecution. Money laundering offences contrary to Proceeds of Crime Act 2002 are being committed and so the EA and NRW/CNC are requesting access to the powers to investigate these offences.

7. Waste crime is a cash rich enterprise. The Environment Agency have advised us there have been numerous occasions when cash has been found during a search as part of a criminal investigation in to waste crime. The EA and NRW/CRC are requesting access to the cash seizure and forfeiture powers.

Senior Appropriate Officers

8. At certain points in an investigation, POCA requires an AFI to obtain authorisation from a Senior Appropriate Officer (“SAO”) within their organisation to exercise the powers conferred on them by the Act. Section 378 of POCA defines who is an SAO for each kind of investigation. In the police, a SAO must not be below the rank of superintendent. Under Statutory Instrument 2013 Number 1542, the equivalent grade in Her Majesty Revenue and Customs is a Senior Executive Officer (SEO) and in relation to immigration officers, the equivalent grade is an Immigration Inspector. Because AFIs come from a range of organisations with different structures, the definition of who is a SAO varies between organisations and is specified in the order, but always meets the minimum requirement of being the equivalent of a police superintendent or SEO in the civil service. We have received the following requests for the SAO levels to be adjusted:

Department for Work and Pensions (DWP)

9. Two changes:
 - A change from Grade 7 (in civil service) to SEO for money laundering investigations. All other powers exercised by the Department for work and pensions that require SAO authorisation have an SEO authority level. The SEO is the Unit Head in the Fraud and Error Service with responsibility for proceeds of crime work.
 - For the purposes of confiscation investigations, a change from SEO to High Executive Officer (HEO) level. DWP has more than 50 financial investigators. A change to HEO level will allow a more efficient and quicker approval of applications.

Gangmasters Licensing Authority

10. A change from Enforcement Manager to not below the grade of Intelligence Manager or Operations Manager, the equivalent of an SEO, has been requested. This is due to internal managerial changes and does not alter the grade of SAO.

Counter Fraud and Security Management Service (now named NHS Protect)

11. A change from grade 8D to 8C. They have advised us that a 8C grade is the equivalent of a Grade 6 in the Civil Service (a more senior grade than SEO).

AFI Powers to Proposed New Designated Bodies

12. We have received the following requests from organisations who do not currently have investigation powers under POCA to be granted them:

Food Standards Agency

13. Following the Elliot Report into the horsemeat incident, the Food Standards Agency (FSA) are working to implement the recommendation that a Food Crime Unit be established within the FSA to target food crime. The Agency is developing its intelligence gathering and analysis function. The next stage will be to consider development of investigation and prosecution function. As part of this, they anticipate the use of POCA powers playing a significant role.

14. The FSA has previously relied on other agencies for financial investigations. The type of cases the FSA deals with include those in which food business operators have been convicted of offences and made subject of a Prohibition Order but continue to operate food businesses despite these Orders. In a recent example, concerning the operation of a meat business by a prohibited person the criminal benefit was in the region of £300,000 to £500,000.

Marine Management Organisation

15. The Marine Management Organisation (MMO) was created from the Marine and Fisheries Agency (MFA), an executive agency of DEFRA in April 2010 by the Marine and Coastal Access Act 2009. The MMO is a non-departmental public body of the Department for the Environment, Food and Rural Affairs (DEFRA), which investigates and prosecutes fisheries offences. The MFA's AFIs had access to the investigation powers under POCA, being designated as a member of staff of DEFRA. MMO have been relying on DEFRA and Regional Asset Recovery Teams for confiscation investigation work, but this was intended to be a stopgap after the creation of the MMO. The MMO has in-house prosecutors who pursue confiscation proceedings and wish to use in-house AFIs to conduct investigations in to serious and organised crime. It is proposed to grant the MMO the same powers that DEFRA currently hold, namely restraint, confiscation, money laundering and detained cash investigation in England, Wales and Northern Ireland. The SAO would be an SEO.

Security Industry Authority

16. The Private Security Industry Act 2001 created the Security Industry Authority (SIA). The UK's Private Security Industry is estimated to be worth £3.2bn. Despite being largely compliant with regulations, it is susceptible to organised crime groups seeking to benefit through the illegal provision of security services, exploiting vulnerable workers in the process. The SIA have requested confiscation investigation, restraint, and search and seizure powers. The SIA is funded through licence application fees and approved contractor fees. Funds recovered under confiscation would be used to fund further AFIs, financial investigations, and to support new initiatives, for example 'anti-violence' and 'women in security' strategies.

The Department of Health (DH)

17. The NHS Counter Fraud and Security Management Service (now named NHS Protect) currently have the powers to conduct restraint, money laundering and confiscation investigations. They do not have powers to conduct detained

cash investigations or the search of premises. NHS Protect have previously assisted the Department of Health (DH) by undertaking some investigation work including full use of POCA powers. The Department of Health has requested the same powers as NHS Protect plus the powers to apply for search and seizure warrants and searches where a production order is not available. The Department of Health do not envisage conducting search and seizure exercises without police assistance

18. The Department of Health (DH) is a government department and its investigators have powers under sections 2(1) (b) and 195(2) National Health Service Act 2006 (NHS Act) to prevent, detect and investigate offences and other unlawful activities carried out against the health service. The Crown Prosecution Service conducts its prosecutions. The DH created a new Anti-Fraud Unit (AFU) on 1st November 2014 to conduct investigations for departmental cases, arm's length bodies and for national, large or complex cases that it is not realistic for NHS Protect to take on. It is proposed that the unit will initially consist of one AFI, which may expand to three or four over time, dealing with large scale, complex, money laundering and fraud cases in excess of £100k each. Prosecutions for offences are likely to be conducted under the Fraud Act, Theft Act and Bribery Act.

19. The DH consider confiscation to be an essential tool to deprive offenders of the proceeds of their criminal conduct; to deter the commission of further offences; and to reduce the profits available to fund further criminal enterprises. DH AFU's investigators will consider asset recovery in every case in which a defendant has benefited from criminal conduct and intend to instigate confiscation proceedings in appropriate cases.

20. NHS Protect has a directed remit and this does not include department cases and those where the health services are not affected and so the DH has requested access to the investigation powers under POCA. The DH will assume responsibility and costs for certain large complex cases that NHS Protect is not funded or resourced to carry out.

Removal of Investigation Powers

The Office of Communications (Ofcom)

21. From May 2009, Ofcom was able to exercise powers under POCA in respect of the conduct of financial investigations, restraint orders and confiscation orders. Ofcom initially considered employing financial investigators but have concluded that it is more cost effective to enter into an agreement with a Regional Asset Recovery Team. Ofcom do not have any AFIs and are content to lose their investigative powers under POCA. They may seek to reinstate them in the future.

Health and Social Care (Northern Ireland)

22. HSCNI have one investigator accredited with access to the powers under POCA. That investigator has had their accreditation suspended by the NCA due to their non-compliance at the required ongoing continued professional development. HSCNI have considered their position and as they have no active AFIs and no plan to replace or reinstate the existing investigator they accept that investigative powers under POCA will be rescinded.

Immigration officers

23. Section 55 and schedule 21 of the Crime and Courts Act 2013 provide immigration officers with direct access to POCA powers, similar to that of police officers. Accordingly, they no longer have to be AFIs to access the powers and so references to them in the order are moribund. These will be removed.

Policing and Crime Act 2009

24. On 1 June 2015, the Home Office brought into force powers under Policing and Crime Act 2009, which amends POCA to provide AFIs with further powers. These powers are:

- the retention of seized property under a restraint order, section 41A of POCA (section 190A for Northern Ireland)

- seizure of property that may otherwise be unavailable for satisfying a confiscation order or where the value of the property may be diminished by the actions of the defendant or another person, section 47A-47S of POCA (section 195A-195S for Northern Ireland)
- realisation of seized property under 67A-67D of POCA (section 215A-215D for Northern Ireland)

25. We propose to allocate these powers to bodies with an existing central focus and caseload of financial investigation and asset recovery. These bodies are already significantly active in pursuing confiscation investigations and proceedings and have a number of AFIs.

- Police forces – for their civilian financial investigation capability and capacity
- National Crime Agency
- Serious Fraud Office
- Local authorities

The Medicines and Healthcare Products Regulatory Agency, Natural Resources Body for Wales and Department of the Environment in Northern Ireland have requested the powers. We intend to monitor the broader use and effect of the powers before extending them to more bodies with AFIs.

The deadline for responses is 4th September 2015 (6 weeks from issue of letter).

How to Respond

The consultation is open to other Government Departments, organisations using these powers, organisations affected by the proposed changes and the public (via the Home Office gov.uk website).

We would welcome views on the proposed changes set out in the document.

There are a variety of ways in which you can provide us with your views:

You can email us at: Stephen.Goadby@homeoffice.x.gsi.gov.uk

Or you can write to us at:

POCA - AFIs
Strategic Centre for Organised Crime - Pursue
Home Office
6th Floor Peel Building
2 Marsham Street
London
SW1P 4DF

Alternative Formats

You should also contact us as specified above should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio.

Responses: Confidentiality and Disclaimer

The information you send us may be passed to colleagues within the Home Office, the Government, the Devolved Administrations, the Appointed Person and related agencies.

Furthermore, 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) and the Data Protection Act 1998 (DPA)).

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 sets out, amongst other things, the 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, by itself, be regarded as binding on the Department.

Please ensure that your response is marked clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

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

Individual contributions will not be acknowledged unless specially requested.

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

What Will Happen Next?

The Consultation Period will end on 4th September 2015

We will consider the responses to this consultation and modify the draft Codes if appropriate. We will then lay the Codes in Parliament for approval, following which they will come into force.

Consultation Co-ordinator

If you have any complaints or comments specifically about the consultation process only, you should contact the Home Office Co-ordinator Stephen Goadby by email at:

Stephen.Goadby@homeoffice.x.gsi.gov.uk

Alternatively, you may wish to write to him at:

Stephen Goadby
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ANNEX A

LIST OF THE CURRENT ACCREDITED FINANCIAL INVESTIGATOR BODIES

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

1. Counter Fraud and Security Management Service
2. Department for Business, Innovation and Skills
3. Department for Environment, Food and Rural Affairs
4. Department for Work and Pensions
5. Environment Agency
6. Financial Conduct Authority
7. Gambling Commission
8. Gangmasters Licensing Authority
9. Home Office
10. Intellectual Property Office
11. Local authorities
12. Medicines and Healthcare Products Regulatory Agency
13. Natural Resources Body for Wales
14. National Crime Agency
15. Office of Communications
16. Office of Fair Trading
17. Pensions Regulator
18. Police Forces in England and Wales
19. Post Office
20. Prudential Regulation Authority
21. Royal Mail
22. Rural Payments Agency
23. Serious Fraud Office
24. Transport for London
25. Vehicle and Operator Services Agency

Additional Northern Ireland bodies

1. Department of Agriculture and Rural Development in Northern Ireland
2. Department of the Environment in Northern Ireland
3. Department for Regional Development in Northern Ireland
4. Department for Social Development in Northern Ireland
5. HSC (Health and Social Care) Business Services Organisation
6. Police Service of Northern Ireland