EXPLANATORY MEMORANDUM TO

THE POLICE AND CRIMINAL EVIDENCE ACT 1984 AND THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994 (APPLICATION TO FOOD CRIME OFFICERS) REGULATIONS 2025

2025 No. 300

AND

THE FOOD CRIME OFFICERS (COMPLAINTS AND MISCONDUCT) REGULATIONS 2025

2025 No. 301

1. Introduction

1.1 This explanatory memorandum has been prepared by the Food Standards Agency (FSA) and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Ashley Dalton, Parliamentary Under Secretary of State for Public Health and Prevention at the Department of Health and Social Care, confirms that this Explanatory Memorandum meets the required standard.

2.2 Andrew Quinn, Deputy Director and Head of the National Food Crime Unit (NFCU) at the FSA, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Sally Cott at the FSA email: nfcufutures@food.gov.uk can be contacted with any queries regarding the instruments.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Police and Criminal Evidence Act 1984 and the Criminal Justice and Public Order Act 1994 (Application to Food Crime Officers) Regulations 2025 ("the PACE Regulations") apply provisions of the Police and Criminal Evidence Act 1984 (PACE) including powers of entry, search and seizure, and the interview of suspects in custody (but not the power of arrest) to the investigation of offences conducted by food crime officers within the NFCU of the FSA. This instrument also applies provisions of the Criminal Justice and Public Order Act 1994 (CJPOA) to investigations by food crime officers to enable them to issue 'special warnings' to suspects in questioning under caution and for inferences to be drawn in certain situations.

4.2 The Food Crime Officers (Complaints and Misconduct) Regulations 2025 ("the IOPC Regulations") confer functions on the Director General (DG) of the Independent Office for Police Conduct (IOPC) to handle complaints regarding food crime officers' use of PACE investigatory powers and provisions of CJPOA.

4.3 The PACE Regulations and the IOPC Regulations are connected and run in parallel. Both instruments will come into force at the same time to ensure the necessary framework for complaint handling accompanies food crime officers' exercise of investigatory powers under PACE and CJPOA.

Where does the legislation extend to, and apply?

4.4 The extent of these instruments (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.5 The territorial application of these instruments (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 The NFCU was created within the FSA in 2015 in line with the recommendations of the 2014 Elliott Review[1], undertaken following the discovery of horsemeat in beef products. In 2018, investigatory capabilities were added to the NFCU's existing intelligence functions. The NFCU operates as a preventative and investigatory function within the FSA and can independently submit case files to the Crown Prosecution Service in respect of criminal offences, in particular, food fraud. However existing investigatory powers are insufficient. They focus on food business operators' compliance with food hygiene and safety related regulatory requirements, rather than the investigation of food crimes. Food crime is defined as serious fraud and related criminality in food supply chains, with the main examples being adulteration, misrepresentation, substitution, the use of stolen food in the supply chain, illegal processing (e.g. unlawful slaughter), waste diversion, and document fraud.

5.2 The PACE Regulations will provide food crime officers with powers including entry, search and seizure of evidence under a judicial warrant (under PACE), and to issue 'special warnings' and draw inferences (under CJPOA). This instrument will enable food crime officers to independently and effectively detect and investigate serious dishonesty, which may detrimentally impact the authenticity and safety of food. These investigatory powers are necessary for food crime officers to lead investigations and to autonomously prosecute serious, organised, and complex food crimes. This will reduce burdens on partners (such as the police) by removing the need to rely on their support in these circumstances. This will also improve the operational efficiency and effectiveness of NFCU investigations, including increasing the opportunity to secure evidence (which may otherwise be lost or destroyed).

5.3 The IOPC Regulations will provide oversight of complaints in relation to food crime officers by the IOPC. This is a necessary safeguard to ensure the proportionate exercise of the PACE Regulations investigatory powers by conferring functions on the DG of the IOPC, so that complaints and related procedures are in place regarding food crime officer conduct. The IOPC Regulations are similar to those which already give the IOPC oversight of other agencies whose officers may exercise quasi-policing powers (e.g. officers of the Gangmasters and Labour Abuse Authority and HMRC).

[1] Elliott review into the integrity and assurance of food supply networks: final report - a national food crime prevention framework: https://www.gov.uk/government/publications/elliott-review-into-the-integrity-and-assurance-of-food-supply-networks-final-report

5.4 The IOPC Regulations set out the circumstances, including timescales, in which complaints and matters should be referred to the IOPC and give the DG power to determine the form of investigation (if the IOPC DG decides an investigation should take place) following a referral from the FSA. The forms which an investigation may take are: an investigation by the FSA chief executive on the chief executive's own behalf, an investigation by the FSA chief executive under the direction of the IOPC DG, an investigation by a police force or the National Crime Agency under the direction of the IOPC DG, and an investigation by the IOPC DG. The IOPC Regulations also provide the circumstances in which reviews relating to the handling of a complaint can be sought.

What was the previous policy, how is this different?

5.5 NFCU investigators had limited powers to independently investigate food crime, particularly serious criminal offences (e.g. food fraud). NFCU investigators were therefore dependent on partners, in particular the police and local authorities, to perform critical functions in an investigation – for example, to apply for search warrants, seize evidence and supervise interviews with suspects under arrest.

5.6 The non-food related priorities of partners, and competing resource demands they faced, resulted in delays to the investigation of suspected food crimes. This increased the risk of serious food crime going undetected, failed prosecutions, vulnerability to legal challenge and a lack of justice for victims whilst the public purse was exposed to investigatory costs.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 54 of the Police, Crime, Sentencing and Courts Act 2022 (PCSC) inserted section 114C into PACE and section 39A into CJPOA. These enable the Secretary of State to make regulations to apply provisions of PACE and CJPOA to investigations of offences conducted by police officers, to investigations conducted by food crime officers. Section 114C of PACE defines a "food crime officer" as an officer of the FSA who is acting for the purposes of the performance by the FSA of its functions under the Food Standards Act 1999 or any other enactment (including functions relating to the investigation of offences) and who is authorised by the Secretary of State to use PACE powers and provisions of CJPOA. PACE provides the core powers of the police to investigate criminal offences, and the PACE Regulations apply certain provisions to the investigation of offences conducted by food crime officers. The PACE Regulations also apply provisions of CJPOA to food crime officers to enable them to issue 'special warnings' to suspects in questioning under caution and for inferences to be drawn in certain situations.

6.2 The IOPC was established by the Police Reform Act 2002 (PRA) to provide an effective and independent means of overseeing the investigation of complaints and misconduct relating to the actions of the police. The IOPC remit has since been extended to other organisations that exercise police powers including officers of the FSA in their capacity as food crime officers, drawing on an enabling power in section 26E of PRA (inserted by section 54 of PCSC). The IOPC Regulations bring food crime officers under the complaint handling remit of the IOPC insofar as exercising the relevant powers in PACE and / or CJPOA given to them by the PACE Regulations.

Why was this approach taken to change the law?

6.3 The making of the instruments is the most effective way to achieve the required changes, noting the enabling powers afforded to the Secretary of State in PACE, CJPOA and PRA. There is no alternative way to achieve this.

7. Consultation

Summary of consultation outcome and methodology

7.1 Public consultations held in 2022 and 2023 demonstrated support for proposals that some NFCU investigators are appointed food crime officers, and given investigatory powers under PACE and CJPOA, to enable the effective investigation of serious food crime with appropriate measures in place for oversight of the use of these powers. High levels of media reporting during 2023 relating to a live NFCU investigation into suspected meat fraud reflected the public interest in what the FSA does to investigate and prevent food fraud.

7.2 The twelve-week public consultation held between 26th May and 18th August 2022 sought views on whether investigatory powers under PACE and CJPOA should be extended to food crime officers and whether proposed safeguards provided a justified and proportionate set of measures to enable the FSA to tackle food crime effectively. A supplementary four-week public consultation held between 10th July and 6th August 2023 sought views specifically on the FSA's intentions to seek investigatory powers of entry and search (after arrest by the police) under PACE for food crime officers, as these powers were not explicitly identified in the original consultation. These consultations were published on the FSA website and are publicly available.[2] [3]

7.3 Twenty responses to the 2022 consultation were received from local authorities, academics, private individuals, campaigners and representatives of food businesses in England and Wales. All were supportive of the FSA's acquisition of these investigatory powers for food crime officers, and of the introduction of appropriate oversight for their use. Key themes were that investigatory powers for food crime officers are needed to enable the FSA to lead and operate more effectively on the response to food fraud matters and reduce the strain on local authority and law enforcement partners. Respondents observed that it was appropriate for investigators in the NFCU to be equipped with these investigatory powers as a centralised, national and internationally focused crime unit.[4]

7.4 Thirteen responses to the 2023 consultation were received and were generally supportive of the need for investigatory powers of entry and search under PACE for food crime officers and of the introduction of appropriate oversight for the use of these powers.[5]

7.5 In November 2023 Professor Susan Jebb, FSA Chair, consulted the IOPC, the National Police Chiefs' Council, the Association of Police and Crime Commissioners (APCC), and the Mayor's Office for Policing and Crime (via APCC) on the proposal

[2] 2022 consultation on investigatory powers for the Food Standards Agency: https://www.food.gov.uk/news-alerts/consultations/enhanced-investigatory-powers-for-the-food-standards-agency

[3] 2023 supplementary consultation on additional proposal for investigatory powers: https://www.food.gov.uk/news-alerts/consultations/consultation-on-the-additional-proposal-for-enhanced-investigatory-powers-for-the-food-standards-agency

[4] Summary of responses to 2022 consultation: https://www.food.gov.uk/our-work/summary-of-fsa-consultation-responses-on-enhanced-powers-for-the-nfcu

[5] Summary of responses to 2023 consultation: https://www.food.gov.uk/our-work/consultation-on-the-additional-proposal-for-enhanced-powers-for-the-national-food-crime-unit-nfcu-summary-of-stakeholder

that regulations be brought forward to bring food crime officers under the remit of the IOPC for complaints regarding their use of PACE investigatory powers. This fulfilled the statutory requirement under section 24 of PRA that before making regulations the Secretary of State must consult with the specified people and bodies. Other relevant bodies including the Chartered Institute of Environmental Health and Association of Chief Trading Standards Officers (ACTSO) were also consulted at this time.

7.6 Two formal responses were received (APCC and ACTSO) which both supported the proposal in principle for oversight by the IOPC, though APCC referred to concerns with the IOPCs remit expanding at a time when the volume of police complaints has increased, and funding decreased. In response, the FSA Chair confirmed that IOPC Regulations would include provision for funding and should the IOPC be required to investigate a complaint raised about a food crime officer this would be on a full cost recovery basis from the FSA.

7.7 In January 2025 the draft IOPC Regulations were sent to the Police Advisory Board for England and Wales (PABEW) in accordance with section 63 of the Police Act 1996 which also requires that any representations of PABEW be taken into account before the Regulations are laid. A paper detailing the purpose of the IOPC Regulations and any impacts upon the police, including the potential for investigations into complaints to be delegated on behalf of the IOPC, was also presented to PABEW. At its quarterly meeting held on 10th February 2025, PABEW agreed and endorsed the intention to lay the IOPC Regulations, with no concerns raised.

8. Applicable Guidance

8.1 The IOPC Regulations reference guidance issued by the IOPC DG. This is the IOPC statutory guidance[6] issued under section 22 of PRA. This guidance will be followed by the FSA unless there is sound rationale and justification for departing from this, as set out in the guidance.

8.2 The FSA will publish guidance to set out what an external complainant must do if they wish to make a complaint against a food crime officer using their powers. This will be published on the food.gov.uk website during the intervening period between laying and the legislation coming into force. It is established practice to publish guidance updates when changes take effect to mitigate the high risk of users referring to the wrong version.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for these instruments because under the UK Government's Better Regulation Framework[7], a regulatory Impact Assessment is required to be prepared for all Regulatory Provisions where impacts are greater than ± £10m Equivalent Annual Net Direct Cost to Business (EANDCB). The FSA has assessed and self-certified the monetised regulatory impact of this measure to be below the +/- £10m EANDCB. It has not been possible (proportionately) to monetise the direct benefits of the investigatory powers which will enhance the efficiency and effectiveness of the NFCU, alongside reducing the burden placed on

[6] IOPC statutory guidance on the police complaints system: https://www.policeconduct.gov.uk/complaints/information-for-police

[7] Better Regulation Framework Guidance: https://www.gov.uk/government/publications/better-regulation-framework

enforcement partners who are currently relied upon to support NFCU investigations. Indirectly, the investigatory powers are intended to reduce the risk of food crime going undetected and prevent further crime from being perpetrated.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the legislative changes do not place any new duties or responsibilities on these sectors or impact the standards to be achieved by them. The PACE Regulations support the effective investigation of offences that are already undertaken by the NFCU and will apply only where relevant food crime offences are suspected. A low level of impact per business is therefore anticipated with no material change to the status quo.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the impacts are limited to initial and ongoing training and familiarisation to food crime officers within the FSA, concerning the new powers given to them under the PACE Regulations and the handling of complaints under the IOPC Regulations. This supports the investigation of offences already undertaken by the FSA and will reduce the need for assistance from other public sector and regulatory partners, although the economic benefits are not easily quantifiable.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through the course of normal departmental business.

10.2 The instruments do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Ashley Dalton, Parliamentary Under Secretary of State for Public Health and Prevention at the Department of Health and Social Care has made the following statement: A review would be disproportionate taking into account the economic impact of the regulatory provision on the qualifying activity.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 These instruments are not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").