

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT CRIMINAL JUSTICE AND POLICE ACT  
2001 (POWERS OF SEIZURE) ORDER 2018

*Tuesday 20 March 2018*

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**The Committee consisted of the following Members:**

*Chair:* JOAN RYAN

- |   |   |
|---|---|
| † Allan, Lucy ( <i>Telford</i> ) (Con)  | Jarvis, Dan ( <i>Barnsley Central</i> ) (Lab)               |
| † Bacon, Mr Richard ( <i>South Norfolk</i> ) (Con)                                      | † Kawczynski, Daniel ( <i>Shrewsbury and Atcham</i> ) (Con) |
| Bradshaw, Mr Ben ( <i>Exeter</i> ) (Lab)  | † Robinson, Mary ( <i>Cheadle</i> ) (Con)                   |
| † Charalambous, Bambos ( <i>Enfield, Southgate</i> ) (Lab)                              | † Smith, Nick ( <i>Blaenau Gwent</i> ) (Lab)                |
| Cooper, Rosie ( <i>West Lancashire</i> ) (Lab)  | † Tredinnick, David ( <i>Bosworth</i> ) (Con)               |
| † Day, Martyn ( <i>Linlithgow and East Falkirk</i> ) (SNP)                              | † Villiers, Theresa ( <i>Chipping Barnet</i> ) (Con)        |
| George, Ruth ( <i>High Peak</i> ) (Lab)   | † Whitehead, Dr Alan ( <i>Southampton, Test</i> ) (Lab)     |
| † Gyimah, Mr Sam ( <i>Minister for Universities, Science, Research and Innovation</i> ) |   |
| † Harris, Rebecca ( <i>Lord Commissioner of Her Majesty's Treasury</i> )                | Gail Bartlett, <i>Committee Clerk</i>                       |
| † Harrison, Trudy ( <i>Copeland</i> ) (Con)   | † <b>attended the Committee</b>                             |

## Sixth Delegated Legislation Committee

Tuesday 20 March 2018

[JOAN RYAN *in the Chair*]

### Draft Criminal Justice and Police Act 2001 (Powers of Seizure) Order 2018

2.30 pm

**The Minister for Universities, Science, Research and Innovation (Mr Sam Gyimah):** I beg to move,

That the Committee has considered the draft Criminal Justice and Police Act 2001 (Powers of Seizure) Order 2018.

It is a pleasure to serve under your chairmanship, Ms Ryan. The UK wholesale energy markets are of great significance to the UK economy. The large sums involved and the importance of the wholesale energy market for financial services, industry and consumers make integrity of the market a matter of national and international importance. Insider trading and price manipulation in wholesale energy markets harms hard-working consumers and businesses. It drives up prices and distorts markets, which should be fair and transparent. The Government believe it is therefore vital that the energy regulator in Great Britain, Ofgem, has strong powers to investigate and punish those behaving in this way. Strong powers also have a deterrent effect, making those considering cheating the system think twice.

Insider trading and market manipulation in wholesale energy markets is prohibited by the EU regulation on energy market integrity and transparency, or REMIT, which has been in force since December 2011. In June 2013, the Government made civil enforcement regulations for REMIT, the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013. The 2013 regulations give Ofgem powers to impose unlimited financial penalties, access information and enter premises of a regulated person under warrant. In March 2015, the Government strengthened that regime by making further regulations to create criminal offences of intentionally or recklessly breaching the prohibitions on insider trading and market manipulation.

The 2013 regulations gave the regulator power to search for and seize information and documents which appear to be relevant under warrant. There are, however, cases where Ofgem may have difficulty exercising this power of seizure. For example, investigating officers may be presented with a large volume of documents. Identifying documents relating to suspicious transactions among many documents of a similar nature can be difficult and time-consuming. Ofgem currently has no power to take away an entire body of documents in order to sift them for relevance off premises and evidence relevant to Ofgem's investigation could therefore be missed.

Section 50 of the Criminal Justice and Police Act 2001 enables a person exercising such a power of seizure to remove material from the premises being searched. This information can then be adequately sifted to determine whether it is something which the person is entitled to

seize, if it would not be reasonably practical to determine that on the premises. The power in section 50 applies where a person is exercising the power of seizure listed in schedule 1 to the Criminal Justice and Police Act. Over 60 such powers are already listed in the schedule. The effect of this order is to extend this power to Ofgem when it is searching premises to investigate breaches of REMIT. The Government believe that this will be a proportionate and reasonable extension of Ofgem's powers, which will help to ensure it can take effective enforcement action.

The Government sought views in December 2015 through consultation on whether Ofgem powers should be strengthened to bring them in line with this provision. This measure was consulted on as part of a wider package of reforms to Ofgem regulatory powers. It received relatively few comments, as would be expected for a specialised issue. It is perhaps not surprising that most industry stakeholders who responded to the consultation argued that the powers were disproportionate. One industry stakeholder supported the powers being given to Ofgem with sufficient oversight. Other stakeholders were neutral.

We have considered stakeholder views carefully. We must weigh up the importance of giving Ofgem sufficient powers to tackle anti-competitive behaviour versus the need to respect stakeholder views. With that in mind, the Government concluded that sufficient safeguards will be in place to meet stakeholder concerns and that it will be proportionate to proceed with this instrument. The first such safeguard is that the power will apply only where a court has granted Ofgem a warrant to search premises. Secondly, when Ofgem exercises this power, it will be under a statutory duty to sift information as soon as reasonably practicable after seizing it, and return anything that it was not entitled by the warrant to seize. Thirdly, a person who is the owner of a document can apply to the court for the return of such material. Finally, magistrates may of course refuse warrant applications, preventing a potential investigation where it is not seen to be justified. Ofgem will have to provide extensive evidence to support an application, and therefore we expect it to do so only when it is absolutely necessary to support an investigation.

Further, ensuring that the relevant evidence is identified more quickly should lead to less disruption to those businesses being investigated, with more efficient investigations overall. Co-operation with Ofgem will also ensure that investigations run quickly and smoothly. The Government would certainly encourage those under investigation to help Ofgem in whatever way they can.

In conclusion, this additional power will aid Ofgem in its investigation of market abuse, but with safeguards that should ensure that it is used proportionately. I commend this order to the House.

2.36 pm

**Dr Alan Whitehead** (Southampton, Test) (Lab): It is a pleasure to serve under your chairmanship, Mrs Ryan. As the Minister has already set out in detail, the order gives Ofgem additional powers concerning the seizure and examination of documents—I note that those are both paper and electronic—in respect of an inquiry about possible market abuse. We support the idea that Ofgem should have sufficient powers to do these

investigations. It is important that Ofgem is able to conduct investigations effectively and properly. We know that on occasions there have been suggestions of market abuse and it is important that the market is as clean as it can be—for example, in relation to energy trading or the relationship between trading and distribution—and that everything is on the table and transparent. In terms of what we are doing over the next period with the price cap, for example, it is particularly important that there are no manipulations of the market to get round regulations. This is a timely addition to the powers that Ofgem has and a timely putting right of the restrictions that it previously had, under the EU REMIT legislation, to search and seize documents. The issue is that Ofgem has the power of search and seizure at the moment, but not the power to take away and look at the documents it has come across, and the order puts that right.

I welcomed the Minister's setting out of the safeguards that might be in place as far as those seizures are concerned. However, given the wide range of powers that Ofgem has in different areas of the energy markets, it is important that any action by Ofgem is not seen as a fishing expedition. It is important to have confidence that Ofgem, as an even-handed and fair regulator, would not undertake seizures and examinations of material that might then be used for purposes other than the investigation that Ofgem is engaged in. It is important that there are safeguards, particularly on the extent to which Ofgem would need an application to undertake the seizure of the documents, but it is also important that we are absolutely clear that any suggestion that Ofgem has attempted, or will attempt, to remove documents at any point for purposes other than the one that it is centrally engaged in not only should be frowned upon, but would not be countenanced. I would welcome it if the Minister clarified that that is behind what his proposals this afternoon.

The Opposition do not want to delay the introduction of the new powers; I am afraid it is the Government that have done so. The power was first mooted in a consultation, as the Minister mentioned, launched on 18 December 2015. Its urgency meant that responses to the consultation were required by the end of January 2016—a pretty short window. As a result of that rapid turnaround, those people in industry responding to the consultation would have expected action to be taken subsequently. However, 2016 and 2017 came and went, with no response. Eventually, a response to the consultation came on 1 February 2018—more than two years after the original proposals were mooted in consultation. Frankly, that gives no confidence to people who take part in such consultations that what is intended to be done as a result of a consultation actually will be done. Indeed, in this instance, that proved to be the case; nothing was done for two years.

It seems to me quite important that Ofgem has these powers. It was therefore incumbent on the Government at the time to make some progress in translating the consultation into the reality of an order. On this occasion, that has not happened. I do not know whether the Minister has any observations he wishes to make on why that process was so unbelievably slow. Were there good reasons why the process between consultation and the introduction of an order was so slow, or was it just forgotten about, and has only just come back to the surface of the pile, and been acted on? I hope that there

is a good reason for the lengthy delay, but I fear that that may not be the case. In any event, I would be grateful for the Minister's observations on that.

2.43 pm

**David Tredinnick (Bosworth) (Con):** As always, it is a pleasure to serve under your chairmanship, Ms Ryan. I have a few quick points to put to my hon. Friend the Minister, although I broadly welcome the additional powers for the gas and electricity market authority commonly known as Ofgem. First, he mentioned the problem of a large volume of documents. What exactly is a “large volume”? Does that mean that any documents of any kind can be taken? Are there any limits to that provision?

Secondly, the Minister mentioned the responses. There were only 20 responses altogether, albeit they may have come from important and large organisations. Were there any notable exceptions? I could not hear all of his speech, so he may have mentioned that, in which case he will no doubt make that point. Thirdly, and most importantly, the order addresses the issue of documents stored electronically. We have had a lot of problems with electronic media in the news recently. Is this a blanket power? Does it mean that people could access Facebook accounts? Could they seize mobile phones? Are those electronic documents? What if documents that are relevant to an investigation have been photographed and stored on an iPhone? How would that work? If my hon. Friend is not able to address those issues today, perhaps he would write to me.

2.45 pm

**Mr Gyimah:** I thank hon. Members for their valuable and relevant comments on the order. The first point made by the Opposition spokesperson was about whether this power would encourage fishing expeditions on the part of Ofgem. To assuage his concerns and those of the Committee, the terms of the warrant to conduct seize and sift will be clear and well defined. Ofgem will only seize and retain information that is relevant to the investigation at hand and specified in the warrant.

There was also concern about the timing and the sense of urgency regarding the consultation and the path to where we are now. The Government have been considering priorities against a very restricted legislative timetable, as the hon. Member for Southampton, Test, will be aware. A decision was taken in July 2017 to take forward the proposals on REMIT separately from the other proposals in the consultation. The timeline was driven by the non-REMIT part of the consultation, which included proposals for new primary legislation, on which decisions were due to be taken in early 2016. The opportunity for that decision to be taken was then delayed. I hope that that gives some background on the timing.

**Dr Whitehead:** The other piece of secondary legislation to which the Minister has referred comes under another area of law and, as far as we understand, that has been laid before Parliament as a negative statutory instrument and will come into force on 9 April, I think. That appears to suggest that the two bits of legislation that were set out in the consultation ran in parallel and not separately, as he appears to be suggesting.

**Mr Gyimah:** The basic point is getting the time. The hon. Gentleman is aware of the restrictions on the legislative timetable. As he rightly recognises, this is a timely addition to the powers of Ofgem that provides safeguards as far as seizure is concerned. As a relatively new Minister in the Department, I welcome the fact that we are able to get on with it. I refer to what the hon. Gentleman said: it is important that action is taken, and is taken swiftly. That is why we are here.

I turn to the comments made by my hon. Friend the Member for Bosworth. I am happy to write to him to give some detail on the definition and how many documents constitute too many documents. To give the Committee an idea, there may be many documents of a similar nature—for example, buy and sell orders—that may appear relevant to an investigation. Rather than going through someone's social media accounts, if we think about the number of trades that are conducted in any given day or any given period, it might not be possible to sift all of them on site. I am happy to write to Committee members to illuminate in more detail the definition and limits of what counts as far as documentation is concerned.

**David Tredinnick:** On electronic media, will the Minister look at whether iPhones and other types of equipment are covered?

**Mr Gyimah:** Documents that are stored electronically are definitely included. I do not think that extends to social media accounts. I will write and set that all out in detail.

**David Tredinnick:** I have to say to my hon. Friend that it should. He needs to look at this, because we now have such a wide range of communication systems at our disposal that it is pointless coming forward with an order that does not cover all the possibilities. I think that should be addressed.

**Mr Gyimah:** As I have said, I will write to my hon. Friend to set out in full detail all the electronic media that are covered. That will be the best way to proceed so that he has a comprehensive answer to his questions.

The order provides Ofgem with the necessary tools to aid its enforcement efforts in this area. That is self-evident. The proposed seize-and-sift power will enable Ofgem to scrutinise information thoroughly and to identify what is relevant. It will do so under the scrutiny of the magistrate's warrant, which is an important safeguard. It will contribute to Ofgem's ability to effectively investigate and prosecute market manipulation and insider trading offences. I commend the order to the Committee.

*Question put and agreed to.*

2.51 pm

*Committee rose.*