

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL JUSTICE AND POLICE ACT 2001 (POWERS OF SEIZURE)**  
**ORDER 2018**

**2018 No. 435**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This Order amends the Criminal Justice and Police Act 2001 (“the 2001 Act”) to confer on the Gas and Electricity Market Authority (“Ofgem”) the additional powers in section 50 of that Act, when Ofgem is exercising its existing powers of search and seizure for the purpose of investigating possible breaches of EU legislation on energy market integrity and transparency.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

**4. Legislative Context**

- 4.1 Ofgem is the authority responsible for the monitoring and enforcement in Great Britain of obligations and prohibitions under Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (“REMIT”). The Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013 (“the REMIT Enforcement Regulations”) give Ofgem enforcement powers including, in regulation 16(4)(d), power to take copies of, or extracts from, certain kinds of documents or information, when searching premises pursuant to a warrant under that regulation.
- 4.2 Section 50 of the 2001 Act confers certain additional powers on a person exercising a power of seizure to which that section applies. This instrument amends Part 1 of Schedule 1 to the 2001 Act to specify Ofgem’s power of seizure under the REMIT Enforcement Regulations as a power to which section 50 applies.

**5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is Great Britain.

## **6. European Convention on Human Rights**

6.1 The Secretary of State for Business, Energy and Industrial Strategy has made the following statement regarding Human Rights:

“In my view the provisions of the Criminal Justice and Police Act 2001 (Powers of Seizure) Order 2018 are compatible with the Convention Rights.”

## **7. Policy background**

### *What is being done and why*

7.1 REMIT prohibits insider trading and market manipulation in energy markets. Under the REMIT Enforcement Regulations, Ofgem can search premises under a warrant and remove relevant documents, when investigating suspected breaches of REMIT. However, it is sometimes not reasonably practicable to determine at the time of carrying out a search whether material is relevant (if there are a large number of documents for example). Documents stored electronically present a particular problem in this regard.

7.2 The additional powers conferred by this instrument would allow Ofgem to investigate market abuse more effectively by allowing it to remove documents from premises and sift these elsewhere to establish whether they are relevant to the investigation. This will improve Ofgem’s ability to investigate potential breaches of REMIT requirements.

## **8. Consultation outcome**

8.1 The Department of Energy and Climate Change published a consultation paper in December 2015 seeking views on wider changes to Ofgem’s enforcement powers. In total, 20 responses were received from a range of stakeholders, a full list of which can be found in the government response to the consultation.

8.2 Some energy companies expressed support for the initially proposed “seize and sift” powers, but the majority of companies and representative groups argued that these were disproportionate, unnecessary or gave Ofgem too much leeway on which information to remove.

8.3 Having taken account of the consultation responses, BEIS considers that the aim of the policy, to increase the effectiveness of enforcement of REMIT by Ofgem, justifies the additional burdens identified by industry. Additionally, companies will be protected by the controls in Part 2 of the 2001 Act on the exercise of the powers in section 50, which will impose on Ofgem certain duties regarding the use, return, retention and security of the seized property.

## **9. Guidance**

9.1 Ofgem will provide relevant parties with guidance on enforcement under the Enforcement Guidelines on the Ofgem website<sup>1</sup>.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is largely on energy market participants.

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<sup>1</sup> <https://www.ofgem.gov.uk/publications-and-updates/enforcement-guidelines>

10.2 The impact on the public sector is largely on Ofgem, and is negligible.

10.3 An Impact Assessment has not been prepared for this Instrument.

**11. Regulating small business**

11.1 The legislation applies to some activities that are undertaken by small businesses, but the impact on them is negligible.

**12. Monitoring & review**

12.1 The REMIT Enforcement Regulations require the Secretary of State to carry out a review of those Regulations at intervals not exceeding five years.

**13. Contact**

13.1 Chris Chown at the Department for Business, Energy and Industrial Strategy  
Telephone: 0300 0068 6085 or email: [chris.chown@beis.gov.uk](mailto:chris.chown@beis.gov.uk) can answer any queries regarding the instrument.