

---

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations extend to the United Kingdom and create criminal offences for two sets of prohibitions in Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ No L 326, 08.12.2011, p1) (“REMIT”) – those for insider dealing (Article 3) and for market manipulation (Article 5).

REMIT imposes obligations and prohibitions in relation to trading in wholesale energy products within the European Union. “Wholesale energy products” are contracts and derivatives relating to electricity and gas, as defined in Article 2(4) of REMIT.

The Regulations prescribe an Authority, in regulation 2, that is primarily responsible for the investigation and prosecution of offences under these Regulations in particular geographical areas. The Authority is Ofgem for Great Britain and the UK offshore marine area, and the Northern Ireland Authority for Utility Regulation for Northern Ireland.

The offences created refer to specific provisions in REMIT, and exemptions in REMIT to any relevant prohibitions apply. The offences created do not criminalise activity that is not prohibited by REMIT.

Regulation 3 creates offences for insider dealing, based on the underlying prohibitions in Article 3 of REMIT. The offences in regulation 3 are limited to persons who possess inside information in relation to wholesale energy products as defined in REMIT, know (or ought to have known) that the information is inside information and are within the categories of persons to whom the REMIT prohibition applies. The offences in paragraph (2) of regulation 3 can only be committed if there is sufficient territorial link to the UK. Conditions for establishing such a link are set out in paragraph (9) of regulation 3.

The offences do not apply to activity required by orders made under the Energy Act 1976 (c. 76) or the Civil Contingencies Act 2004 (c. 36).

Regulation 3 provides for specific defences in paragraphs (4) to (8).

Regulation 4 creates offences for market manipulation, as prohibited by Article 5, when read with the definition of market manipulation in Article 2(2)(a) and (b), of REMIT. The offences in paragraphs (1) to (3) of regulation 4 can only be committed if there is sufficient territorial link to the UK. Conditions for establishing such a link are set out in paragraph (7) of regulation 4.

Regulation 4 provides for specific defences in paragraphs (4) to (6).

Regulations 5 and 6 amend the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013 (S.I. 2013/1389) and the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations (Northern Ireland) 2013 (S.I. (NI) 2013/208), so as to provide that powers available to the regulatory Authorities (defined in regulation 2) under those instruments are available for the investigation of offences under these Regulations.

Regulations 7 and 8 make provision for the application of the offences in these Regulations to partnerships and bodies corporate.

Regulation 9 requires each Authority to consult and then publish guidance on enforcement. Regulation 9(3) allows for the consultation requirement to be dispensed with where earlier consultation covers enforcement guidance.

Regulation 10 states who can prosecute offences under these Regulations. Provision for Scotland is omitted, as this would be by the Lord Advocate in all cases.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:  
*The Electricity and Gas (Market Integrity and Transparency) (Criminal Sanctions) Regulations 2015 No. 979*

Regulation 11 makes provisions for the penalties available to the court for offences under these Regulations.

Regulation 12 provides for the review of these Regulations.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change at 3 Whitehall Place, London, SW1A 2AW and is published with the Explanatory Memorandum alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).