

DRAFT STATUTORY INSTRUMENTS

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**2015 No. 0000**

**ELECTRICITY**

**GAS**

**The Electricity and Gas (Market Integrity and Transparency)  
(Criminal Sanctions) Regulations 2015**

*Made* - - - - - *2015*

*Coming into force in accordance with regulation 1*

The Secretary of State is designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to energy and energy sources.

A draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, the Secretary of State makes these Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Electricity and Gas (Market Integrity and Transparency) (Criminal Sanctions) Regulations 2015, and come into force 21 days after the day on which they are made.

**Definitions**

2.—(1) In these Regulations—

“the 2013 Regulations (GB)” means the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013<sup>(c)</sup>;

“the 2013 Regulations (NI)” means the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations (Northern Ireland) 2013<sup>(d)</sup>;

“the Authority” means—

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(a) S.I. 2010/761.

(b) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(c) S.I. 2013/1389.

(d) S.I. (NI) 2013/208.

- (a) in respect of England, Wales, Scotland and the UK offshore marine area, GEMA,
  - (b) in respect of Northern Ireland, the NIAUR;
- “benefit” means direct personal gain or the direct avoidance of personal loss;
- “England” includes the territorial sea adjacent to England;
- “GEMA” means the Gas and Electricity Markets Authority established under section 1(1) of the Utilities Act 2000(a);
- “NIAUR” means the means the Northern Ireland Authority for Utility Regulation established under Article 3 of the Energy (Northern Ireland) Order 2003(b);
- “Northern Ireland” is as defined in section 98(1) of the Northern Ireland Act 1998(c);
- “REMIT” means Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency(d);
- “Scotland” is as defined in section 126(1) of the Scotland Act 1998(e);
- “UK offshore marine area” is the “UK marine area”, as defined in section 42(1) of the Marine and Coastal Access Act 2009(f), excluding the area within the seaward limits of the territorial sea adjacent to the United Kingdom;
- “United Kingdom” includes the UK offshore marine area;
- “Wales” is as defined in section 158(1) of the Government of Wales Act 2006(g).

(2) Other terms used in these Regulations and in REMIT have the same meaning in these Regulations as they have in REMIT.

### **Offences of insider dealing in relation to wholesale energy products**

- 3.—(1) This regulation applies to a person—
- (a) who possesses inside information(h) in relation to a relevant wholesale energy product;
  - (b) who knows, or ought to know, that the information is inside information; and
  - (c) who is a person to whom the prohibition in Article 3(1) of REMIT applies.
- (2) A person to whom this regulation applies commits an offence if—
- (a) the person intentionally or recklessly uses the inside information to acquire or dispose of, for their own account or for the account of a third party, either directly or indirectly, relevant wholesale energy products to which the information relates, as prohibited by Article 3(1)(a) of REMIT;
  - (b) the person intentionally or recklessly discloses the inside information to another person other than in the normal course of the exercise of the person’s employment, profession or duties, as prohibited by Article 3(1)(b) of REMIT;
  - (c) the person intentionally or recklessly recommends or induces another person, on the basis of the inside information, to acquire or dispose of relevant wholesale energy products to which that information relates, as prohibited by Article 3(1)(c) of REMIT.
- (3) For the purposes of Article 3(4)(c) of REMIT, the national emergency rules are—
- (a) the Energy Act 1976(i); and
  - (b) the Civil Contingencies Act 2004(j).

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(a) 2000 c. 27.  
 (b) S.I. (NI) 2003/419. The Authority was renamed by Article 3 of the Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. (NI) 2006/3336).  
 (c) 1998 c. 47.  
 (d) OJ No L 326, 08.12.2011, p1.  
 (e) 1998 c. 46.  
 (f) 2009 c. 23.  
 (g) 2006 c. 32.  
 (h) As defined in Article 2(1) of REMIT.  
 (i) 1976 c. 76.  
 (j) 2004 c. 36.

- (4) It is a defence for a person charged with an offence under paragraph (2) to prove that—
- (a) the person did not expect any person to obtain a benefit from the activity listed in paragraph (2) to which the charge relates; or
  - (b) the person acted in the way that a reasonable market participant would have acted and conformed to accepted market practices.

(5) It is a defence for a person charged with an offence under paragraph (2)(b) to prove that, at the time the person disclosed the information, the person reasonably believed that no trading in relevant wholesale energy products would be prejudiced by the disclosure.

(6) It is a defence for a person charged with an offence under paragraph (2)(c) to prove that, at the time the person made the recommendation or inducement, the person reasonably believed that the inside information had been or would be disclosed widely enough to ensure that no trading in relevant wholesale energy products would be prejudiced by the recommendation or inducement.

(7) It is a defence for a person charged with an offence under paragraph (2)(b) or 2(c) to prove that the person disseminated the information for the purposes of journalism or artistic expression.

(8) The defence in paragraph (7) does not apply where it is proved that—

- (a) the person derived, directly or indirectly, an advantage or profits from the dissemination of the information; or
- (b) the person disseminated the information with the intention of misleading the market as to the supply of, demand for or price of wholesale energy products.

(9) A person does not commit an offence under paragraph (2) unless at least one of the following conditions is met—

- (a) at the time of the offence, the person was in the United Kingdom;
- (b) at the time of the offence, the person was registered in accordance with Article 9 of REMIT with a national regulatory authority in the United Kingdom;
- (c) where the wholesale energy product is a contract, the electricity or gas represented by the wholesale energy product to which the offence relates is for delivery in the United Kingdom;
- (d) where the wholesale energy product is a derivative, the electricity or gas represented by the wholesale energy product to which the offence relates is produced in, is traded in or is for delivery in, the United Kingdom;
- (e) the wholesale energy product to which the offence relates is for the transport of electricity or gas in the United Kingdom;
- (f) in the case of an offence under paragraph (2)(a), the acquisition or disposal took place in the United Kingdom;
- (g) in the case of an offence under paragraph (2)(b) or (c), the recipient of the disclosure, recommendation or inducement was in the United Kingdom.

(10) In this regulation “relevant wholesale energy products” means wholesale energy products to which Article 3 of REMIT applies(a).

#### **Offences of market manipulation in wholesale energy products**

**4.—**(1) It is an offence for a person to enter into a transaction or issue an order to trade in relevant wholesale energy products where—

- (a) the person entered into the transaction or issued the order with the intention that the action would give false or misleading signals as to the supply of, or demand for, or price of relevant wholesale energy products, or
- (b) the person was reckless as to whether entering into the transaction or issuing the order would give such false or misleading signals,

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(a) See Article 1(2) of REMIT.

as prohibited by Article 5 of REMIT when read with Article 2(2)(a)(i) or Article 2(2)(a)(iii).

(2) It is an offence for a person to enter into a transaction or issue an order to trade in relevant wholesale energy products where—

- (a) the person entered into the transaction or issued the order with the intention that the action would secure (by one person or a number of persons acting in collaboration) the price of relevant wholesale energy products at an artificial level, or
- (b) the person was reckless as to whether entering into the transaction or issuing the order would have that result,

as prohibited by Article 5 of REMIT when read with Article 2(2)(a)(ii).

(3) It is an offence for a person to disseminate information through the media (including the internet or by any other means) where—

- (a) the person disseminated the information with the intention that this would give false or misleading signals as to the supply of, demand for, or price of relevant wholesale energy products, or
- (b) the person was reckless as to whether disseminating the information would give such false or misleading signals,

as prohibited by Article 5 of REMIT when read with Article 2(2)(b).

(4) It is a defence for a person charged with an offence under paragraph (1), (2) or (3) to prove that—

- (a) the person did not expect any person to obtain a benefit from the activity, or
- (b) the person acted in the way that a reasonable market participant would have acted and conformed to accepted market practices.

(5) It is a defence for a person charged with an offence under paragraph (3)(b) to prove that the person disseminated the information for the purposes of journalism or artistic expression.

(6) The defence in paragraph (5) does not apply where it is proved that—

- (a) the person derived, directly or indirectly, an advantage or profits from the dissemination of the information; or
- (b) the person disseminated the information with the intention of misleading the market as to the supply of, demand for or price of wholesale energy products.

(7) A person does not commit an offence under this regulation unless at least one of the following conditions is met—

- (a) at the time of the offence, the person was in the United Kingdom;
- (b) at the time of the offence, the person was registered in accordance with Article 9 of REMIT with a national regulatory authority in the United Kingdom;
- (c) where the wholesale energy product is a contract, the electricity or gas represented by the wholesale energy product to which the offence relates is for delivery in the United Kingdom;
- (d) where the wholesale energy product is a derivative, the electricity or gas represented by the wholesale energy product to which the offence relates is produced in, is traded in or is for delivery in, the United Kingdom;
- (e) the wholesale energy product to which the offence relates is for the transport of electricity or gas in the United Kingdom;
- (f) in the case of an offence under paragraph (1) or (2), the transaction took place, or the order to trade was issued, in the United Kingdom;
- (g) in the case of an offence under paragraph (3), the information was disseminated in or into the United Kingdom.

(8) In this regulation, “relevant wholesale energy products” means wholesale energy products to which Article 5 of REMIT applies<sup>(a)</sup>.

### **Investigation powers under the 2013 Regulations (GB)**

5.—(1) Regulation 10 of the 2013 Regulations (GB) is amended as follows.

(2) After paragraph (1)(b) omit “or”.

(3) After paragraph (1)(c) insert—

“or

(d) may be guilty of an offence under the Electricity and Gas (Market Integrity and Transparency) (Criminal Sanctions) Regulations 2015.”

(4) For paragraph (2) substitute—

“(2) For the purposes of an investigation under paragraph (1)(a),(c) or (d) the Authority has the powers conferred by regulations 11 to 19.”

### **Investigation powers under the 2013 Regulations (NI)**

6.—(1) Regulation 10 of the 2013 Regulations (NI) is amended as follows.

(2) After paragraph (1)(b) omit “or”.

(3) After paragraph (1)(c) insert—

“or

(d) may be guilty of an offence under the Electricity and Gas (Market Integrity and Transparency) (Criminal Sanctions) Regulations 2015.”

(4) For paragraph (2) substitute—

“(2) For the purposes of an investigation under paragraph (1)(a),(c) or (d) the Authority has the powers conferred by regulations 11 to 19.”

### **Offences by bodies corporate and partnerships**

7.—(1) If an offence under these Regulations committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as it applies to an officer of a body corporate.

(3) If an offence under these Regulations committed by a partnership (including a limited liability partnership and a Scottish partnership) is proved—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In this regulation—

(a) “officer” includes—

(i) a member of an administrative, management or supervisory body of the body corporate, and

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(a) See Article 1(2) of REMIT.

- (ii) a person purporting to act as such a member, and
- (b) “partner” includes a person purporting to act as a partner.

### **Proceedings against partnerships**

**8.**—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of its members).

(2) In proceedings for such an offence brought against a partnership—

- (a) section 33 of the Criminal Justice Act 1925<sup>(a)</sup> (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates’ Courts Act 1980<sup>(b)</sup> (corporations) apply as they do in relation to a body corporate;
- (b) section 70 of the Criminal Procedure (Scotland) Act 1995<sup>(c)</sup> (proceedings against bodies corporate) applies as it does in relation to a body corporate;
- (c) section 18 of the Criminal Justice (Northern Ireland) Act 1945<sup>(d)</sup> (procedure on charge) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981<sup>(e)</sup> (corporations) apply as they do in relation to a body corporate.

(3) Rules of court relating to the service of documents have effect in relation to proceedings for an offence under these Regulations as if the partnership were a body corporate.

(4) A fine imposed on the partnership on its conviction of such an offence is to be paid out of the funds of the partnership.

(5) In this regulation, references to a partnership do not include a Scottish partnership or a limited liability partnership.

### **Enforcement Guidance**

**9.**—(1) Each Authority must publish guidance (“enforcement guidance”) on the following matters—

- (a) its policy in respect of prosecuting under these Regulations, and
- (b) such other matters as it considers appropriate.

(2) Before publishing its enforcement guidance, each Authority must consult—

- (a) the other Authority, and
- (b) such other persons as it considers appropriate.

(3) The obligation in paragraph (2) may be satisfied by consultation that took place, or began, before these Regulations come into force.

### **Proceedings for offences**

**10.**—(1) Proceedings for an offence under these Regulations may be instituted in England and Wales only—

- (a) by GEMA or the Secretary of State,
- (b) by the Director of the Serious Fraud Office, or
- (c) by or with the consent of the Director of Public Prosecutions.

(2) Proceedings for an offence under these Regulations may be instituted in Northern Ireland only—

- (a) by the NIAUR or the Department for Enterprise, Trade and Investment,

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(a) 1925 c. 86.  
(b) 1980 c. 43.  
(c) 1995 c. 46.  
(d) 1945 c. 15.  
(e) 1981 S.I. 1675 (N.I. 26).

- (b) by the Director of the Serious Fraud Office, or
- (c) by or with the consent of the Director of Public Prosecutions for Northern Ireland.

## **Penalties**

**11.**—(1) A person guilty of an offence under these Regulations is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.

(2) Paragraph (3) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(a) (removal of limit on certain fines on conviction by magistrates' court) is in force on the day these Regulations are made.

(3) A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine or both;
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.

(4) Paragraph (5) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is not in force on the day these Regulations are made.

(5) A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.

(6) In relation to an offence committed in England and Wales before section 154(1) of the Criminal Justice Act 2003(b) comes into force, the references in paragraphs (3)(a) and (5)(a) to “12 months” are to be read as references to “6 months”.

## **Review**

**12.**—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how REMIT is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

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(a) 2012 c. 10.  
(b) 2003 c. 44.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

	<i>Name</i>
	Secretary of State
Date	Department of Energy and Climate Change

## **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.

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).

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