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STATUTORY INSTRUMENTS

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**2013 No. 1389**

**The Electricity and Gas (Market Integrity and  
Transparency) (Enforcement etc.) Regulations 2013**

**PART 3**

**Information and Investigations**

**Obligation to record and retain records**

**Obligation to record and retain records**

- 8.**—(1) This regulation applies to any person (“RP”) who is a regulated person except a person—
- (a) who is an individual; and
  - (b) who is acting in the course of employment by another regulated person.
- (2) In this regulation, “relevant communication” means any telephone conversation or electronic communication made for the direct or indirect purpose of entering into any transaction in wholesale energy products, where—
- (a) “electronic communication” includes any communication made by way of fax, email or instant messaging device; and
  - (b) “wholesale energy products” has the same meaning as in REMIT.
- (3) RP must take reasonable steps to ensure—
- (a) that any relevant communication is recorded; and
  - (b) that a copy of any relevant communication is retained in accordance with paragraph (4).
- (4) A copy of any relevant communication is to be retained—
- (a) for a period of at least six months from the date the record was created; and
  - (b) in a medium that allows the storage of information in a way that is accessible for future reference by the Authority when the Authority is exercising the powers conferred on it by regulation 9, 11, 14 or 16.
- (5) In paragraph (4), the obligation to ensure that storage is accessible for future reference by the Authority includes that—
- (a) the Authority must be able to access the record readily;
  - (b) the Authority must be able to easily ascertain—
    - (i) if any correction or other amendment has been made to a record, and
    - (ii) the content of any record prior to such correction or amendment; and
  - (c) it must not be possible for any record to be otherwise manipulated or altered.
- (6) RP must take reasonable steps to prevent the making, sending or receiving of any relevant communication (including on privately-owned equipment)—
- (a) that it cannot ensure is recorded, or

(b) if it cannot ensure that a copy is retained in accordance with paragraph (4).

(7) The Authority may, by notice in writing, require RP to ensure that any specified relevant communication is retained beyond the period required by paragraph (4)(a) and until a specified date.

(8) If the Authority no longer requires RP to ensure that any specified relevant communication is retained in accordance with paragraph (7) it must notify RP in writing.

(9) In paragraphs (7) and (8), “specified” means specified in the notice.

Power to require information: regulated persons etc

### **Authority’s power to require information: regulated persons etc**

**9.—**(1) This regulation applies only to information and documents reasonably required by the Authority in connection with monitoring the integrity and transparency of the wholesale energy market.

(2) The Authority may, by notice in writing, require any regulated person—

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

(3) The information or documents must be provided or produced—

- (a) before the end of such reasonable period as may be specified; and
- (b) at such place as may be specified.

(4) The Authority may require any information provided under this regulation to be provided in such form as it may reasonably require.

(5) The Authority may require—

- (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
- (b) any document produced to be authenticated in such manner,

as it may reasonably require.

(6) The powers conferred by paragraph (2) may also be exercised to impose requirements on a person who is connected with a regulated person.

(7) In this regulation, “regulated person” includes a person who was at any time a regulated person but who has ceased to be a regulated person.

(8) In paragraphs (2) and (3), “specified” means specified in the notice.

(9) For the purposes of this regulation, a person is connected with a regulated person (“RP”) if the person is or has at any relevant time been—

- (a) a member of RP’s group;
- (b) a controller of RP;
- (c) any other member of a partnership of which RP is a member; or
- (d) in relation to RP, a person mentioned in Part I of Schedule 15 to the Financial Services and Markets Act 2000(1) (the “2000 Act”) (reading references in that Part to the authorised person as references to RP).

(10) In paragraph (9)—

- (a) “group” has the same meaning as in section 421 of the 2000 Act<sup>(2)</sup> (reading references in that section to A as references to RP);
- (b) “controller” has the same meaning as in section 422 of the 2000 Act<sup>(3)</sup> (reading references in that section to B as references to RP).

## Investigations

### Power of Authority to investigate

**10.**—(1) The Authority may conduct an investigation if it appears to the Authority that there are circumstances suggesting that a person—

- (a) may have failed to comply with a REMIT requirement;
- (b) may have failed to comply with a requirement imposed by or under regulation 8; or
- (c) may be guilty of an offence under regulation 20.

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

(3) For the purposes of an investigation under paragraph (1)(b) the Authority has the powers conferred by regulations 11 to 15.

### Authority’s power to require information

**11.**—(1) The Authority may, by notice in writing, require any person—

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description,

which appear to the Authority to relate to any matter relevant to the investigation.

(2) The information or documents must be provided or produced—

- (a) before the end of such reasonable period as may be specified; and
- (b) at such place as may be specified.

(3) The Authority may require any information provided under this regulation to be provided in such form as it may reasonably require.

(4) The Authority may require—

- (a) any information provided, whether in a document or otherwise, to be verified in such manner; or
- (b) any document produced to be authenticated in such manner,

as it may reasonably require.

(5) In paragraphs (1) and (2), “specified” means specified in the notice.

### Authority’s power to summon and hear

**12.**—(1) Paragraphs (2) and (3) apply if the Authority considers that any person (“P”) is or may be able to give information which is or may be relevant to the investigation.

(2) The Authority may require P to attend before a person authorised by the Authority at a specified time and place and answer questions.

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(2) Section 421 was amended by paragraph 212 of Schedule 1 to the Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948).

(3) Section 422 was amended by Schedule 3 to the Financial Services and Markets Act 2000 (Controllers) Regulations 2009 (S.I. 2009/534).

(3) The Authority may also otherwise require P to give the Authority all assistance in connection with the investigation which P is reasonably able to give.

(4) In paragraph (2), “specified” means specified in a notice in writing.

Powers to require information: supplemental provisions

**Reports by skilled persons**

**13.**—(1) This regulation applies where the Authority has required or could require a person to whom paragraph (2) applies (“the person concerned”) to provide information or produce documents with respect to any matter (“the matter concerned”).

(2) This paragraph applies to—

- (a) any regulated person (“RP”);
- (b) any other member of RP’s group;
- (c) a partnership of which RP is a member; or
- (d) a person who has at any relevant time been a person falling within sub-paragraph (a), (b) or (c),

who is, or was at the relevant time, carrying on a business.

(3) In paragraph (2), “group” has the same meaning as in section 421 of the Financial Services and Markets Act 2000 (reading references in that section to A as references to RP).

(4) The Authority may either—

- (a) by notice in writing given to the person concerned, require the person concerned to provide the Authority with a report on the matter concerned, or
- (b) itself appoint a person to provide the Authority with a report on the matter concerned.

(5) When acting under paragraph (4)(a), the Authority may require the report to be in such form as may be specified in the notice.

(6) The Authority must give notice of an appointment under paragraph (4)(b) to the person concerned.

(7) The person appointed to make a report—

- (a) must be a person appearing to the Authority to have the skills necessary to make a report on the matter concerned, and
- (b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the Authority.

(8) It is the duty of—

- (a) the person concerned, and
- (b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned,

to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.

(9) The obligation imposed by paragraph (8) is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988(4).

### **Information and documents: supplemental provisions**

**14.**—(1) If the Authority has power under this Part to require a person to produce a document but it appears to the Authority that the document is in the possession of a third person, that power may be exercised in relation to the third person.

(2) If a document is produced in response to a requirement imposed under this Part, the Authority may—

- (a) take copies or extracts from the document; or
- (b) require the person producing the document, or any relevant person, to provide an explanation of the document.

(3) A document so produced may be retained for so long as the Authority considers that it is necessary to retain it (rather than copies of it) for the purposes for which the document was requested.

(4) If the Authority has reasonable grounds for believing—

- (a) that the document may have to be produced for the purposes of any legal proceedings, and
- (b) that it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

(5) If a person (“FP”) who is required under this Part to produce a document fails to do so, the Authority may require FP to state, to the best of FP’s knowledge and belief, where the document is.

(6) A lawyer may be required under this Part to furnish the name and address of the lawyer’s client.

(7) If a person claims a lien on a document, its production under this Part does not affect the lien.

(8) In paragraph (2), “relevant person”, in relation to a person who is required to produce a document, means a person who—

- (a) has been or is proposed to be a director or controller of that person;
- (b) has been or is an auditor of that person;
- (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
- (d) has been or is an employee of that person.

### **Admissibility of statements**

**15.**—(1) A statement made to the Authority by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) But in criminal proceedings in which that person is charged with an offence to which this subsection applies or in proceedings in relation to action against that person under regulation 26—

- (a) no evidence relating to the statement may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution or (as the case may be) the Authority, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Paragraph (2) applies to any offence other than one—

- (a) under regulation 20(6);
- (b) under section 5 of the Perjury Act 1911(5) (false statements made otherwise than on oath);  
or

(c) under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995(6) (false statements made otherwise than on oath).

(4) In paragraph (1), “information requirement” means a requirement imposed by the Authority under regulation 11, 12 or 14.

Investigations: Power to enter premises for the purposes  
of an investigation under regulation 10(1)(a) or (c)

### **Power to enter premises under a warrant**

**16.**—(1) A justice of the peace may issue a warrant under this regulation if satisfied on information on oath given by a person authorised by the Authority that there are reasonable grounds for believing that the first or second set of conditions is satisfied.

(2) The first set of conditions is—

- (a) that a person on whom a requirement under regulation 11 has been imposed has failed (wholly or in part) to comply with it; and
- (b) that on the premises specified in the warrant—
  - (i) there are documents which have been required; or
  - (ii) there is information which has been required.

(3) The second set of conditions is—

- (a) that the premises specified in the warrant are premises of a regulated person;
- (b) that there is on the premises any document or information in relation to which a requirement under regulation 11 could be imposed; and
- (c) that if such a requirement were to be imposed—
  - (i) it would not be complied with; or
  - (ii) the document or information to which it related would be removed, tampered with, concealed or destroyed.

(4) A warrant under this regulation is a warrant authorising a person authorised by the Authority who is named in it (“AP”)—

- (a) to enter and search the premises specified in it;
  - (b) to take such other persons with AP as the Authority considers are needed to assist AP in doing anything that AP is authorised to do under the warrant;
  - (c) to take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this regulation was issued (“the relevant kind”), or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such information or documents;
  - (d) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
  - (e) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found;
  - (f) to use such force as may be reasonably necessary.
- (5) In the application of this regulation to Scotland—
- (a) for the reference to a justice of the peace substitute reference to a justice of the peace or a sheriff; and

- (b) for the reference to information on oath substitute reference to evidence on oath.

### **Search warrants: safeguards**

**17.**—(1) A warrant under regulation 16 shall authorise an entry on one occasion only unless it specifies that it authorises multiple entries.

(2) If it specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.

(3) A warrant—

(a) shall specify—

- (i) the name of the person who applies for it;
- (ii) the date on which it is issued;
- (iii) that it is issued under these Regulations; and
- (iv) each set of premises to be searched; and

(b) shall identify, so far as is practicable, the documents or information to be sought.

### **Execution of search warrant**

**18.**—(1) Entry and search under a warrant under regulation 16 must be within one month of the date of its issue.

(2) No premises may be entered or searched for the second or subsequent time under a warrant which authorises multiple entries unless a member of the Authority has in writing authorised that entry to those premises.

(3) Entry and search under a warrant under regulation 16 must be at a reasonable hour unless it appears to the Authority that the purpose of a search may be frustrated on an entry at a reasonable hour.

(4) AP must produce—

- (a) the warrant; and
- (b) documentary evidence that AP is authorised by the Authority,

for inspection by the occupier of the premises or anyone acting on the occupier's behalf.

(5) If there is no person present who appears to AP to be in charge of the premises, AP shall leave a copy of the warrant in a prominent place on the premises.

(6) AP must make a written record of—

- (a) the date and time of AP's entry on the premises;
- (b) the number of persons (if any) who accompanied AP on to the premises and the names of any such persons;
- (c) the period for which AP (and any such persons) remained on the premises;
- (d) what AP (and any such persons) did while on the premises; and
- (e) any document or information of which AP took possession while there.

(7) AP must give a copy of the record to the occupier of the premises or someone acting on the occupier's behalf.

(8) Unless it is not reasonably practicable to do so, AP must before leaving the premises comply with the requirements of paragraphs (6) and (7).

(9) On leaving any premises which AP has entered by virtue of a warrant under regulation 16, AP must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as AP found them.

### **Retention of documents taken under regulation 16**

**19.**—(1) Any document of which possession is taken under regulation 16 (“a seized document”) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.

(2) A person claiming to be the owner of a seized document may apply to a magistrates’ court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.

(3) If on an application under paragraph (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.

(4) An order under paragraph (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.

(5) Any right to bring proceedings (as described in paragraph (4)) may only be exercised within 6 months of the date of the order made under paragraph (2) or (3).

### Offences

#### **Offences**

**20.**—(1) If a person fails to comply with a requirement to which paragraph (2) applies the Authority may certify that fact in writing to the court.

(2) This paragraph applies in relation to a requirement imposed under regulation 9, 11, 12, 13 or 14, except a requirement imposed by regulation 13(8).

(3) If the court is satisfied that the defaulter (“DP”) failed without reasonable excuse to comply with the requirement, it may deal with DP (and in the case of a body corporate, any director or officer) as if DP (or the director or officer) were in contempt; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.

(4) The jurisdiction conferred by paragraphs (1) to (3) is exercisable by the High Court and the Court of Session.

(5) A person (“OP”) who knows or suspects that an investigation is being or is likely to be conducted under this Part is guilty of an offence if—

- (a) OP falsifies, conceals, destroys or otherwise disposes of a document which OP knows or suspects is or would be relevant to such an investigation; or
- (b) OP causes or permits the falsification, concealment, destruction or disposal of such a document,

unless OP shows that OP had no intention of concealing facts disclosed by the documents from the Authority.

(6) A person (“OP”) who, in purported compliance with a requirement imposed on OP under this Part—

- (a) provides information that OP knows to be false or misleading in a material particular; or
- (b) recklessly provides information which is false or misleading in a material particular,

is guilty of an offence.

(7) A person guilty of an offence under paragraph (5) or (6) is liable—

- (a) on summary conviction—



- (i) in England and Wales, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both; and
  - (ii) in Scotland, to imprisonment for a term not exceeding three months or a fine not exceeding £5,000, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (8) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under this Part is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.