Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Electricity and Gas (Market Integrity and Transparency) (Criminal Sanctions) Regulations 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2015 No. 979

ELECTRICITY
GAS

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

Made - - - - 23rd March 2015

Coming into force in accordance with regulation 1

The Secretary of State is designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) 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.

Commencement Information

I1 Reg. 1 in force at 13.4.2015, see **reg. 1**

Definitions

2.—(1) In these Regulations—

"the 2013 Regulations (GB)" means the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013(**3**);

(**1**) S.I. 2010/761.
(**2**) 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).
(**3**) S.I. 2013/1389.

"the 2013 Regulations (NI)" means the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations (Northern Ireland) 2013(**4**);

"GEMA">the Authority" means—

(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(**5**);

"NIAUR" means the means the Northern Ireland Authority for Utility Regulation established under Article 3 of the Energy (Northern Ireland) Order 2003(**6**);

"Northern Ireland" is as defined in section 98(1) of the Northern Ireland Act 1998(**7**);

"REMIT" means Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency(**8**);

"Scotland" is as defined in section 126(1) of the Scotland Act 1998(**9**);

"UK offshore marine area" is the "UK marine area", as defined in section 42(1) of the Marine and Coastal Access Act 2009(**10**), 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(**11**).

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

Commencement Information

I2 Reg. 2(1) in force at 13.4.2015, see **reg. 1**

Offences of insider dealing in relation to wholesale energy products

3.—(1) This regulation applies to a person—

(a) who possesses inside information(**12**) 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,

(**4**) S.I. (NI) 2013/208.
(**5**) 2000 c. 27.
(**6**) 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).
(**7**) 1998 c. 47.
(**8**) OJ No L 326, 08.12.2011, p1.
(**9**) 1998 c. 46.
(**10**) 2009 c. 23.
(**11**) 2006 c. 32.
(**12**) As defined in Article 2(1) of REMIT.

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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(**13**); and

(b) the Civil Contingencies Act 2004(**14**).

(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;

(**13**) 1976 c. 76.
(**14**) 2004 c. 36.

(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(**15**).

Commencement Information

I3 Reg. 3 in force at 13.4.2015, see **reg. 1**

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,

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.

(**15**) See Article 1(2) of REMIT.

(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(**16**).

Commencement Information

I4 Reg. 4 in force at 13.4.2015, see **reg. 1**

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) GEMA">the Authority has the powers conferred by regulations 11 to 19."

Commencement Information

I5 Reg. 5 in force at 13.4.2015, see **reg. 1**

(**16**) See Article 1(2) of REMIT.