STATUTORY RULES OF NORTHERN IRELAND

2013 No 208

ELECTRICITY
GAS

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

Made - - - -	*2nd August 2013*
Coming into operation	*31st August 2013*

The Department of Enterprise, Trade and Investment is designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to energy and energy sources.

The Department of Enterprise, Trade and Investment makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

F1 S.I. 2010/761.

F2 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 Unity (Amendment) Act 2008 (c.7)

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations (Northern Ireland) 2013 and come into operation on 31st August 2013.

Interpretation

2.—(1) In these Regulations—

"the Authority" means the Northern Ireland Authority for Utility Regulation;

"chief executive" in relation to a body corporate, means an employee of that body who, alone or jointly with one or more others, is responsible under the immediate authority of the directors, for the conduct of the whole of the business of that body;

"Department" means the Department of Enterprise, Trade and Investment;

"director" in relation to a body corporate, includes—

(a) a person occupying in relation to it, the position of a director (by whatever name called); and

(b) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act;

"documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form, or in a form from which it can readily be produced in visible and legible form;

"investigation" means an investigation conducted in accordance with regulation 10;

"premises" has the same meaning as in Article 25 of the Police and Criminal Evidence (Northern Ireland) Order 1989 [F3];

"regulated person" has the meaning given in regulation 3;

[[F4]"REMIT" means—

(a) in relation to anything done before IP completion day, Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency, as it applied immediately before IP completion day;

(b) in relation to anything done on or after IP completion day, that Regulation as it applies in the law of Northern Ireland on or after IP completion day by virtue of section 3 of the European Union (Withdrawal) Act 2018.**]**

"REMIT requirement" has the meaning given in regulation 4;

"the Tribunal" means the Upper Tribunal [F5];

"Tribunal Procedure Rules" means rules provided for in section 22 of the Tribunals, Courts and Enforcement Act 2007";

"wholesale energy market" has the same meaning as in REMIT.

(2) The Interpretation Act (Northern Ireland) 1954 [F6] applies to these Regulations as it applies to an Act of the Assembly.

F3 S.I. 1989/1341(N.I.12)
F4 Words in reg. 2(1) substituted (31.12.2020) by S.I. 2019/534, reg. 5(2) (as substituted by The Electricity and Gas etc. (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1016), regs. 1(2), **7(4)**)
F5 2007 Section 3 of the Tribunals, Courts and Enforcement Act 2007. c.15
F6 1954 c.33(N.I.)

Regulated person

3.—(1) "Regulated person" means any person who is—

(a) a market participant; or

(b) a person subject to an obligation imposed by Article 15 of REMIT.

(2) In this regulation "market participant" has the same meaning as in REMIT.

REMIT requirement

4. "REMIT requirement" means a requirement imposed by any of the following Articles of REMIT—

(a) Article 3(1) and (5) (prohibition of insider trading);

(b) Article 4(1), (2) and (3) (obligation to publish inside information);

(c) Article 5 (prohibition of market manipulation);

(d) Article 15 (obligations of persons professionally arranging transactions).

Application to the Crown etc

5. Schedule 1 (application to the Crown etc) has effect.

Service of Notices

6. Schedule 2 (service of notices) has effect.

PART 2

Functions of the Authority

Authority's general functions

7. It shall be the duty of the Authority, where either it considers it expedient or it is requested by the Department to do so, to give information, advice and assistance to the Department with respect to any matter in respect of which any of the Authority's functions under REMIT or these Regulations is exercisable.

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 they cannot ensure is recorded, or

(b) if they 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 [F7] (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 [F8] (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 [F9] (reading references in that section to B as references to RP).

F7 2000 c.8.
F8 Section 421 was amended by paragraph 212 of Schedule 1 to the Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948).
F9 Section 422 was amended by Schedule 3 to the Financial Services and Markets Act 2000 (Controllers) Regulations 2009 (S.I. 2009/534).

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; [F10]...

(c) may be guilty of an offence under regulation 20.

[[F11]or

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

[[F12](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.**]**

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

F10 Word in reg. 10(1)(b) omitted (13.4.2015) by virtue of The Electricity and Gas (Market Integrity and Transparency) (Criminal Sanctions) Regulations 2015 (S.I. 2015/979), regs. 1, **6(2)**