

**2015 No. 862**

**ELECTRICITY**

**GAS**

**The Electricity and Gas (Market Integrity and Transparency)  
(Enforcement etc.) (Amendment) Regulations 2015**

<i>Made</i> - - - -	<i>23rd March 2015</i>
<i>Laid before Parliament</i>	<i>25th March 2015</i>
<i>Coming into force</i> - -	<i>1st July 2015</i>

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.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

**PART 1**

**General**

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) (Amendment) Regulations 2015 and come into force on 1st July 2015.

(2) These Regulations do not extend to Northern Ireland.

**Interpretation**

**2.** In these Regulations, “the REMIT Regulations” means the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013<sup>(c)</sup>.

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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, as amended by S.I. 2015/783.

## PART 2

### Amendments to the Utilities Act 2000

3. The Utilities Act 2000(a) is amended as follows.

#### Annual and other reports of Authority

4. In section 5(2)—

(a) at the end of paragraph (c) omit “and”;

(b) after paragraph (c) insert—

“(ca) a summary of final notices given by the Authority under the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013; and”.

#### General restrictions on disclosure of information

5. In section 105(b)—

(a) in subsection (3)(a), after “Energy Act 2013” insert “, the REMIT Regulations”;

(b) in subsection (4), after paragraph (g) (but before the “or” immediately following it) insert—

“(ga) in connection with the investigation of any failure to comply with a REMIT requirement or for the purposes of any proceedings brought under or by virtue of REMIT;”;

(c) in subsection (5), for paragraphs (f) and (g) substitute the following paragraph—

“(f) the Northern Ireland Authority for Utility Regulation;”;

(d) in subsection (6), after paragraph (x) insert the following paragraph—

“(y) the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations (Northern Ireland) 2013(e).”;

(e) after subsection (6) insert the following subsection—

“(6A) If the Authority is making a decision whether to disclose information to another national regulatory authority under subsection (4)(ga), the Authority must have regard in particular to whether there are arrangements in place for the provision of mutual assistance in relation to the disclosure of information.”;

(f) in subsection (10)—

(i) after the definition of “licence holder” insert—

““national regulatory authority” has the same meaning as in REMIT;”;

(ii) after the definition of “relevant activities” insert the following definitions—

““REMIT” means Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency(d);

“the REMIT Regulations” means the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013(e);

“REMIT requirement” has the same meaning as in the REMIT Regulations.”.

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(a) 2000 c. 27.

(b) Section 105 was amended by section 52(b) of the Energy Act 2013 (c. 32) and section 76(4) of, and paragraph 11 of Schedule 9 to, the Civil Aviation Act 2012 (c. 19). Other amendments have been made that are not relevant for these purposes.

(c) S.R. (NI) 2013 No 208.

(d) OJ No L326, 08.12.2011, p1.

(e) S.I. 2013/1389, as amended by S.I. 2015/783.

## PART 3

### Amendments to the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013

6. The REMIT Regulations are amended as follows.

#### **Interpretation**

7. In regulation 2, after the definition of “regulated person” insert the following definition—

““regulation 39 requirement” means a prohibition against publication imposed by regulation 39 on any person to whom the Authority has given or copied a warning or decision notice;”.

#### **REMIT requirement**

8. After regulation 4(c) insert the following sub-paragraphs—

“(ca) Article 8(1) and (5) (data collection);

(cb) Article 9(1), (4) and (5) (registration of market participants);”.

#### **Authority’s general functions**

9. Before regulation 7 (but after the heading “Authority’s general functions”) insert the following regulation—

“6A. The Authority must, so far as it appears to the Authority to be appropriate, monitor the integrity and transparency of the wholesale energy market.”.

#### **Power of Authority to investigate**

10. In regulation 10(1), for sub-paragraph (b) substitute—

“(b) may have failed to comply with—

(i) a requirement imposed by or under regulation 8; or

(ii) a regulation 39 requirement;”.

#### **General restrictions on disclosure of information**

11. After regulation 20 insert the following regulations—

“General restrictions on disclosure of information

##### **General restrictions on disclosure of information**

**20A.**—(1) Section 105 of the Utilities Act 2000 (general restrictions on disclosure of information), apart from subsections (7) and (12), applies in relation to information obtained under or by virtue of the provisions of REMIT or these Regulations as it applies in relation to information obtained under or by virtue of the provisions of the Utilities Act 2000.

(2) Paragraph (1) does not apply to information to which Article 17 of REMIT applies.

**20B.**—(1) A person who fails to comply with Article 17 of REMIT is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable—

(a) on summary conviction—

(i) in England and Wales, to a fine; and

- (ii) in Scotland, to a fine not exceeding £5,000; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.”.

### **Injunctions**

**12.**—(1) After regulation 21(2) insert the following paragraph—

“(2A) Paragraph (3) also applies if, on the application of the Authority, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will fail to comply with a regulation 39 requirement; or
- (b) that any person is failing or has failed to comply with a regulation 39 requirement.”.

(2) In regulation 21(5)(a)—

- (a) at the end of paragraph (i) omit “or”;
- (b) at the end of paragraph (ii), for “, and” substitute “; or”;
- (c) after paragraph (ii) insert the following paragraph—  
“(iii) a regulation 39 requirement, and”.

### **Power of Authority to impose penalty**

**13.**—(1) In regulation 26(1)—

- (a) at the end of sub-paragraph (a) omit “or”;
- (b) at the end of sub-paragraph (b), for “,” substitute “; or”;
- (c) after sub-paragraph (b) insert the following sub-paragraph—  
“(c) has failed to comply with a regulation 39 requirement,”.

(2) In regulation 26(2), for “or a requirement imposed by or under regulation 8” substitute “, a requirement imposed by or under regulation 8 or a regulation 39 requirement”.

### **Statement of policy**

**14.**—(1) In paragraphs (ii) and (iii) of regulation 27(2)(b), for “regulation 26(1)(a) or (b)” substitute “regulation 26(1)(a), (b) or (c)”.

(2) In sub-paragraphs (a) and (b) of regulation 27(3), for “or a requirement imposed by or under regulation 8” substitute “, a requirement imposed by or under regulation 8 or a regulation 39 requirement”.

23rd March 2015

*Matthew Hancock*  
Minister of State  
Department of Energy and Climate Change

### **EXPLANATORY NOTE**

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

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”) 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.

REMIT requires that member States put in place investigatory and enforcement powers, rules on penalties and appeal rights: Articles 13, 18 and 14 of REMIT respectively. The Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013 (S.I. 2013/1389) (“REMIT Regulations”) gave effect to Articles 13, 14 and 18 of REMIT, and made related provision, so far as obligations and prohibitions in REMIT applied in June 2013 – namely in respect of Articles 3, 4, 5 and 15 of REMIT.

These Regulations give effect to Articles 13, 14 and 18 of REMIT in respect of the remainder of REMIT – Articles 8 and 9 of REMIT. Article 8 (data collection) and Article 9 (registration of market participants) apply only after the European Commission adopts implementing acts under Article 8. The European Commission has adopted such implementing acts by Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (OJ No L 363, 18.12.2014, p121). Regulation 8 of these Regulations amends the definition of “REMIT requirement” in regulation 4 of the REMIT Regulations, to add reference to Articles 8 and 9. This extended meaning of REMIT requirement has the effect of, for example, enabling the investigation of a failure to comply and the imposition of penalties: regulation 10(1)(a) and regulation 26(1)(a) of the REMIT Regulations respectively.

Article 7 of REMIT requires “ACER”, the body established by Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ No L 211, 14.08.2009, p1), to monitor trading in wholesale energy products to detect and prevent trading based on inside information and market manipulation. Article 8 of REMIT – once it applies – enables ACER to collect data to enable it to assess and monitor wholesale energy markets. Article 7 also permits monitoring by “national regulatory authorities”; for Great Britain that is the Gas and Electricity Markets Authority (“the Authority”). Regulation 9 inserts a new regulation 6A into the REMIT Regulations, to require the Authority to monitor the wholesale energy market, so far as it appears to the Authority to be appropriate.

Article 17 of REMIT imposes restrictions on the disclosure of confidential information received from an authority of another Member State or from ACER under REMIT. Regulation 11 of these Regulations inserts a new regulation 20B into the REMIT Regulations, to create a criminal offence for failure to comply with those restrictions. This offence echoes the offence for breach of restrictions on disclosure of information that apply in relation to certain information obtained under or by virtue of the principal legislation relating to gas and electricity (e.g. the Utilities Act 2000 (c. 27) and Part I of the Gas Act 1986 (c. 44)): section 105 of the Utilities Act 2000.

Regulation 11 of these Regulations also inserts a new regulation 20A into the REMIT Regulations, to impose restrictions on the disclosure of any information obtained under or by virtue of REMIT or the REMIT Regulations that is not covered by the Article 17 restriction. The new regulation 20A applies the restrictions, exceptions and penalties in section 105 of the Utilities Act 2000.

Regulation 5 of these Regulations makes amendments to section 105 of the Utilities Act 2000 to ensure that potentially relevant information can be shared for REMIT purposes. The amendments to section 105 apply to information covered directly by that section and to information to which the section indirectly applies by virtue of new regulation 20A. The amendments make clear, for example, that information can be shared for investigatory or enforcement purposes in other member States. Where the Authority is deciding whether to share information with other national regulatory authorities for such purposes, the Authority must consider whether reciprocal arrangements are in place: new subsection (6A) of section 105. The amendments also tidy up references to the gas and electricity authority for Northern Ireland.

Part 6 of the REMIT Regulations provides detail on the notices that must be given by the Authority when exercising certain of its enforcement powers. Amongst other things, regulation 39(1)(a), (b), (2) and (3) imposes prohibitions on the publication of certain information relating to those notices. These Regulations put in place an enforcement mechanism for breaches of those prohibitions. Certain breaches will be punishable under the new regulation 20A of the REMIT

Regulations. More generally, these Regulations enable the Authority to investigate and to seek an injunction or impose a penalty for breach of the prohibitions by any person to whom the Authority has given or copied a notice: regulations 7, 10, 12, 13 and 14 of these Regulations.

Regulation 4 of these Regulations amends section 5 of the Utilities Act 2000 to provide that the Authority's annual report must include a summary of final notices given by the Authority under Part 6 of the REMIT Regulations.

A full regulatory impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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