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STATUTORY INSTRUMENTS

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**2012 No. 3038**

The Greenhouse Gas Emissions  
Trading Scheme Regulations 2012

PART 5

Enforcement etc.

**Power to determine reportable emissions**

**44.**—(1) A power of the regulator to make a conservative estimate of emissions in accordance with Article 70 of the Monitoring and Reporting Regulation (a “determination of emissions”) may also be exercised where—

- (a) an operator fails to comply with the requirement to submit—
  - (i) a surrender report in accordance with paragraph 4(1)(a) and (b) of Schedule 4; or
  - (ii) a revocation report in accordance with paragraph 5(1)(a) and (b) of Schedule 4;
- (b) an operator has failed to satisfy the regulator as required pursuant to paragraph 2(3)(c) of Schedule 4 or paragraph 3(8)(c) of Schedule 5;
- (c) a request has been made under regulation 54(5)(b); or
- (d) the regulator considers that such a determination is necessary for the purpose of imposing, or considering whether to impose, a penalty under Part 7.

(2) In the case referred to in paragraph (1)(b), in making the determination the regulator may substitute an emissions factor of greater than zero for the factor reported in respect of the bioliquids concerned.

- (3) The regulator may make a determination of emissions where—
  - (a) the operator has failed to submit a report as required pursuant to paragraph 3(8)(b) of Schedule 5; or
  - (b) the regulator has reason to believe that the report submitted is incorrect.
- (4) A determination of emissions—
  - (a) must be notified to the operator or UK aircraft operator concerned; and
  - (b) is to be treated as determining all of the reportable emissions from the installation (or of the UK aircraft operator) for the period to which the determination relates.
- (5) A notice under paragraph (4)—
  - (a) except where it relates to an excluded installation, must be served on the registry administrator (and is in that case to be regarded as an instruction to the registry administrator for the purposes of Article 32(6) of the Registries Regulation 2011); and
  - (b) must, where required by Article 70(2) of the Monitoring and Reporting Regulation, specify the corrections that are required to the verified report mentioned in regulation 35(3) or in paragraph 2(3)(b) of Schedule 4.

(6) A regulator who makes a determination of emissions under the Monitoring and Reporting Regulation, or by virtue of this regulation, may recover the cost of doing so from the operator or UK aircraft operator concerned.