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STATUTORY INSTRUMENTS

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**2016 No. 1091**

**The Electromagnetic Compatibility Regulations 2016**

**PART 5**

**Enforcement and market surveillance**

**Defence of due diligence**

**63.**—(1) Subject to paragraph (2), (4) and (6), in proceedings for an offence under regulation 61 (offences), it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—

- (a) served a notice in accordance with paragraph (3); or
- (b) obtained the leave of the court.

(3) The notice must—

- (a) give any information in P’s possession which identifies or assists in identifying the person who—
  - (i) committed the act or default; or
  - (ii) supplied the information on which P relied; and
- (b) be served on the person bringing the proceedings not less than 7 clear days before—
  - (i) in England, Wales and Northern Ireland, the hearing of the proceedings;
  - (ii) in Scotland, the trial diet.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied upon the information, having regard in particular—

- (a) to the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether P had any reason to disbelieve the information.

(5) In this regulation, “third party allegation” means an allegation that the commission of the offence was due—

- (a) to the act or default of another person; or
- (b) to reliance on information supplied by another person.