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WELSH STATUTORY INSTRUMENTS

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**2010 No. 2288**

The Materials and Articles in Contact  
with Food (Wales) Regulations 2010

**PART 5**

General

**General defences**

**18.**—(1) In any proceedings for an offence under these Regulations it is, subject to paragraph (5), a defence to prove that the person accused (“the accused”) took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by the accused or by a person under the control of the accused.

(2) Without prejudice to the generality of paragraph (1), a person accused of an offence under regulation 4, 6(a) to (f) or 13(1)(a) who did not—

- (a) prepare the material or article in respect of which the offence is alleged to have been committed; nor
- (b) import it into the United Kingdom,

is to be taken to have established the defence provided by paragraph (1) if the requirements of paragraphs (3) or (4) are satisfied.

(3) The requirements of this paragraph are satisfied if it is proved that—

- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reliance on information supplied by such a person;
- (b) either—
  - (i) the accused carried out all such checks of the material or article in question as were reasonable in all the circumstances, or
  - (ii) it was reasonable in all the circumstances for the accused to rely on checks carried out by the person who supplied the accused with that material or article; and
- (c) the accused did not know and had no reason to suspect at the time the offence was committed that the act or omission would amount to an offence under these Regulations.

(4) The requirements of this paragraph are satisfied if the offence is one of sale and it is proved that—

- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reliance on information supplied by such a person;
- (b) the sale of which the offence consisted was not a sale under the name or mark of the accused; and

(c) the accused did not know and could not reasonably be expected to know at the time the offence was committed that the act or omission would amount to an offence under these Regulations.

(5) If in any case the defence provided by this regulation involves the allegation that the commission of the offence was due to the act or default of another person, or to reliance on information supplied by another person, the accused is not without leave of the court to be entitled to rely on that defence unless—

(a) at least seven clear days before the hearing; and

(b) where he or she has previously appeared before the court in connection with the alleged offence, within one month of his or her first such appearance,

the accused has served on the prosecutor a written notice giving such information identifying or assisting in the identification of that other person as was then in the possession of the accused.