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STATUTORY INSTRUMENTS

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**1999 No. 3232**

**The Ionising Radiations Regulations 1999**

**PART VII**

**DUTIES OF EMPLOYEES AND MISCELLANEOUS**

**Defence on contravention**

**36.**—(1) In any proceedings against an employer for an offence under regulation 6(2), it shall be a defence for that employer to prove that—

- (a) he neither knew nor had reasonable cause to believe that he had carried out or might be required to carry out work subject to notification under that paragraph; and
- (b) in a case where he discovered that he had carried out or was carrying out work subject to notification under that paragraph, he had forthwith notified the Executive of the information required by that paragraph.

(2) In any proceedings against an employer for an offence under regulation 7, it shall be a defence for that employer to prove that—

- (a) he neither knew nor had reasonable cause to believe that he had commenced a new activity involving work with ionising radiation; and
- (b) in a case where he had discovered that he had commenced a new activity involving work with ionising radiation, he had as soon as practicable made an assessment as required by the said regulation 7.

(3) In any proceedings against an employer for an offence under regulation 27(2) it shall be a defence for that employer to prove that—

- (a) he had received and reasonably relied on a written undertaking from the supplier of the article concerned that it complied with the requirements of that paragraph; and
- (b) he had complied with the requirements of paragraph (3) of that regulation.

(4) In any proceedings against an employer of an outside worker for a breach of a duty under these Regulations it shall be a defence for that employer to show that—

- (a) he had entered into a contract in writing with the employer who had designated an area as a controlled area and in which the outside worker was working or was to work for that employer to perform that duty on his behalf; and
- (b) the breach of duty was a result of the failure of the employer referred to in subparagraph (a) above to fulfil that contract.

(5) In any proceedings against any employer who has designated a controlled area in which any outside worker is working or is to work for a breach of a duty under these Regulations it shall be a defence for that employer to show that—

- (a) he had entered into a contract in writing with the employer of an outside worker for that employer to perform that duty on his behalf; and

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(b) the breach of duty was a result of the failure of the employer referred to in subparagraph (a) above to fulfil that contract.

(6) The person charged shall not, without leave of the court, be entitled to rely on the defence referred to in paragraph (4) or (5) unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing that he intends to rely on the defence and this notice shall be accompanied by a copy of the contract on which he intends to rely and, if that contract is not in English, an accurate translation of that contract into English.

(7) For the purposes of enabling the other party to be charged with and convicted of an offence by virtue of section 36 of the Health and Safety at Work etc. Act 1974, a person who establishes a defence under this regulation shall nevertheless be treated for the purposes of that section as having committed the offence.

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**Commencement Information**

**II** Reg. 36 in force at 1.1.2000, see [reg. 1\(a\)](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Regulations modified by [S.I. 2016/1154 Sch. 23 Pt. 5 para. 7\(1\)](#)
- Regulations revoked by [S.I. 2017/1075 reg. 42\(2\)](#)
- reg. 36(1)(b) words substituted by [S.I. 2014/469 Sch. 3 para. 100](#)
- reg. 36(7) deleted by [S.I. 2001/2975 Sch. 11 para. 6](#)
- reg. 36(7) substituted by [S.I. 2001/2975 Sch. 11 para. 6](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 para. 1A inserted by [S.I. 2013/755 Sch. 4 para. 113\(3\)](#)
- reg. 4(4) inserted by [S.I. 2014/3248 Sch. 5 para. 10\(b\)](#)
- reg. 5(8) inserted by [S.I. 2014/469 Sch. 3 para. 101\(3\)](#)
- reg. 6(10) inserted by [S.I. 2014/469 Sch. 3 para. 102\(3\)](#)
- reg. 14(a)(b) modified by [S.I. 2005/2686 reg. 19](#)
- reg. 22(9) inserted by [S.I. 2014/469 Sch. 3 para. 103\(3\)](#)
- reg. 25(4) inserted by [S.I. 2014/469 Sch. 3 para. 104\(3\)](#)
- reg. 35A inserted by [S.I. 2001/2975 Sch. 11 para. 5](#)