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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 517**

**The Plastic Materials and Articles in Contact  
with Food (Scotland) (No. 2) Regulations 2006**

**PART 3**

**Execution and Enforcement**

**General defences**

**16.**—(1) In any proceedings for an offence under these Regulations it shall, subject to paragraph (5), be a defence to prove that 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 accused's control.

(2) Without prejudice to the generality of paragraph (1), a person accused of an offence under these Regulations who did not—

- (a) prepare the plastic material or article or, as the case may be, the material or article in respect of which the offence is alleged to have been committed; nor
- (b) import it into the UK,

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

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

- (a) that 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) that either—
  - (i) the accused carried out all such checks of the plastic material or article or 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 the plastic material or article or the material or article in question; and
- (c) that the accused did not know and had no reason to suspect at the time the offence was committed that the accused's 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—

- (a) that 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 reasonable reliance on information supplied by such a person;
- (b) that the sale of which the alleged offence consisted was not a sale under the accused's name or mark; and

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(c) that the accused did not know and could not reasonably have been expected to know at the time the offence was committed that the accused's 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 shall not without leave of the court be entitled to rely on that defence unless at the earlier of—

- (a) a date 7 days before the trial diet (not being a notional trial diet); or
- (b) a date 28 days after the first appearance of the accused before a court in connection with the alleged offence,

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