
STATUTORY INSTRUMENTS

2017 No. 1075

The Ionising Radiations Regulations 2017

PART 7

DUTIES OF EMPLOYEES AND MISCELLANEOUS

Defence on contravention

37.—(1) In any proceedings against an employer for an offence under regulation 5(2) (notification), 6(3) (registration) or 7(2) (consent), it is a defence for that employer to prove that—

- (a) it neither knew nor had reasonable cause to believe that it had carried out or might be required to carry out work that required notification under regulation 5(2), registration under regulation 6(3) or consent under regulation 7(2) (as the case may be); and
- (b) in a case where it discovered that it had carried out or was carrying out such work, it had immediately notified, registered or applied for consent for such work (as the case may be) in accordance with those regulations.

(2) The defence in paragraph (1)—

- (a) in connection with an offence under regulation 6(3), does not apply in relation to the operation of a radiation generator; and
- (b) in connection with an offence under regulation 7(2), only applies in relation to a practice referred to in regulation 7(1)(g).

(3) In any proceedings against an employer for an offence under regulation 8, it is a defence for that employer to prove that—

- (a) it neither knew nor had reasonable cause to believe that it had commenced a new activity involving work with ionising radiation; and
- (b) in a case where it had discovered that it had commenced a new activity involving work with ionising radiation, it had as soon as practicable made an assessment as required by regulation 8.

(4) In any proceedings against an employer for an offence under regulation 28(2) it is a defence for that employer to prove that—

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

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

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

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

- (a) it had entered into a contract in writing with the employer of an outside worker for that employer to perform that duty on its behalf; and
- (b) the breach of duty was a result of the failure of the employer referred to in subparagraph (a) to fulfil that contract.

(7) A person charged is not, without the permission of the court, entitled to rely on the defence referred to in paragraph (5) or (6) unless, within a period ending 7 clear days before the hearing, that person has served on the prosecutor a notice in writing of that person's intention to rely on the defence and the notice must be accompanied by a copy of the contract on which that person intends to rely and, if that contract is not in English, an accurate translation of that contract into English.

(8) Where a contravention of these Regulations by any person is due to the act or default of some other person, that other person will be guilty of the offence which would, but for any defence under this regulation available to the first-mentioned person, be constituted by the act or default.

(9) In this regulation, "appropriate authority" means—

- (a) in connection with the application of this regulation in relation to, or in relation to any activity carried out on, any nuclear premises, the ONR;
- (b) otherwise, the Executive.