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STATUTORY INSTRUMENTS

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**1991 No. 762**

**The Food Safety(Northern Ireland) Order 1991**

**PART II**

**GENERAL PROVISIONS AS TO FOOD**

*Defences, etc.*

**Offences due to fault of another person**

**19.** Where the commission by any person of an offence under any of the preceding provisions of this Part is due to an act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this Article whether or not proceedings are taken against the first-mentioned person.

**Defence of due diligence**

**20.**—(1) In any proceedings for an offence under any of the preceding provisions of this Part, it shall, subject to paragraph (5), be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) Without prejudice to the generality of paragraph (1), a person charged with an offence under Article 7, 13 or 14 who neither—

- (a) prepared the food in respect of which the offence is alleged to have been committed; nor
- (b) imported it into Northern Ireland,

shall be taken to have established the defence provided by that paragraph if he satisfies the requirements of paragraph (3) or (4).

(3) A person satisfies the requirements of this paragraph if he proves—

- (a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person;
- (b) that he carried out all such checks of the food in question as were reasonable in all the circumstances, or that it was reasonable in all the circumstances for him to rely on checks carried out by the person who supplied the food to him; and
- (c) that he did not know and had no reason to suspect at the time of the commission of the alleged offence that his act or omission would amount to an offence under the relevant provision.

(4) A person satisfies the requirements of this paragraph if he proves—

- (a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person;
- (b) that the sale or intended sale of which the alleged offence consisted was not a sale or intended sale under his name or mark; and

- (c) that he did not know, and could not reasonably have been expected to know, at the time of the commission of the alleged offence that his act or omission would amount to an offence under the relevant provision.

(5) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless—

- (a) at least 7 clear days before the hearing; and
- (b) where he has previously appeared before a court in connection with the alleged offence, before the expiration of one month from his first such appearance,

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

(6) In paragraph (5) any reference to appearing before a court shall be construed as including a reference to being brought before a court.

#### **Defence of publication in the course of business**

**21.** In proceedings for an offence under any of the preceding provisions of this Part consisting of the advertisement for sale of any food, it shall be a defence for the person charged to prove—

- (a) that he is a person whose business it is to publish or arrange for the publication of advertisements; and
- (b) that he received the advertisement in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under that provision.