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## STATUTORY INSTRUMENTS

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# 2010 No. 2960

## The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010

### PART 7

#### OFFENCES: PENALTIES ETC

##### Penalties for offences

27. A person guilty of an offence under the preceding provisions of these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine.

##### Offences committed by bodies of persons

28.—(1) Paragraph (2) applies where an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the officer's part.

(2) The officer (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In paragraphs (1) and (2) each reference to an officer of the body corporate includes a reference to—

- (a) a director, manager, secretary or other similar officer;
- (b) a person purporting to act as a director, manager, secretary or other similar officer;
- (c) in a case where the affairs of the body are managed by its members, a member.

(4) Paragraph (5) applies where an offence under these Regulations committed by a Scottish partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on that partner's part.

(5) The partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) In paragraphs (4) and (5) each reference to a partner includes a reference to a person purporting to act as a partner.

##### Offences due to the default of another person

29.—(1) This regulation applies where a person (“X”)—

- (a) commits an offence under the preceding provisions of these Regulations, or

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(b) would have committed such an offence but for a defence under regulations 30 (due diligence) or 31 (innocent publication of advertisement), and the commission of the offence, or what would have been an offence but for the defence under regulations 30 or 31, is due to the act or default of another person (“Y”).

(2) Y is guilty of the offence (subject to regulations 30 and 31), whether or not Y is a trader.

(3) Y may be charged with and convicted of the offence by virtue of paragraph (2), whether or not proceedings are taken against X.

### **Due diligence defence**

**30.**—(1) In proceedings against a person for an offence under the preceding provisions of these Regulations it is a defence for the person to show that all reasonable steps were taken and all due diligence exercised to avoid committing the offence.

(2) This is subject to the following provisions of this regulation.

(3) Paragraph (4) applies where, in proceedings against any person (“the defendant”) for such an offence, the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another, or
- (b) reliance on information given by another.

(4) The defendant is not, without the leave of the court, entitled to rely on the defence unless the defendant has served a notice under paragraph (5) on the person bringing the proceedings no later than the day which is 8 days before—

- (a) the hearing of the proceedings or,
- (b) in Scotland, the diet of the trial.

(5) A notice under this paragraph must give such information identifying or assisting in the identification of the person who committed the act or default, or gave the information, as is in the possession of the defendant at the time the notice is served.

(6) A person is not entitled to rely on the defence provided by paragraph (1) by reason of reliance on information supplied by another, unless the person shows that it was reasonable, in all the circumstances to have relied on the information having regard in particular to—

- (a) the steps which the person took, and those which might reasonably have been taken, for the purpose of verifying the information, and
- (b) whether the person had any reason not to believe the information.

### **Innocent publication of advertisement defence**

**31.**—(1) In proceedings against a person for an offence under regulation 14(5) committed by the publication of an advertisement it shall be a defence for the person to show that—

- (a) it is the person's business to publish or to arrange for the publication of advertisements,
- (b) the person received the advertisement for publication in the ordinary course of business, and
- (c) the person did not know and had no reason to suspect that its publication would amount to an offence under regulation 14(5).

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