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STATUTORY INSTRUMENTS

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**1993 No. 3053**

**The Commercial Agents (Council Directive) Regulations 1993**

**PART IV**

**CONCLUSION AND TERMINATION OF THE AGENCY CONTRACT**

**Right to signed written statement of terms of agency contract**

**13.**—(1) The commercial agent and principal shall each be entitled to receive from the other, on request, a signed written document setting out the terms of the agency contract including any terms subsequently agreed.

(2) Any purported waiver of the right referred to in paragraph (1) above shall be void.

**Conversion of agency contract after expiry of fixed period**

**14.** An agency contract for a fixed period which continues to be performed by both parties after that period has expired shall be deemed to be converted into an agency contract for an indefinite period.

**Minimum periods of notice for termination of agency contract**

**15.**—(1) Where an agency contract is concluded for an indefinite period either party may terminate it by notice.

(2) The period of notice shall be—

- (a) 1 month for the first year of the contract;
- (b) 2 months for the second year commenced;
- (c) 3 months for the third year commenced and for the subsequent years;

and the parties may not agree on any shorter periods of notice.

(3) If the parties agree on longer periods than those laid down in paragraph (2) above, the period of notice to be observed by the principal must not be shorter than that to be observed by the commercial agent.

(4) Unless otherwise agreed by the parties, the end of the period of notice must coincide with the end of a calendar month.

(5) The provisions of this regulation shall also apply to an agency contract for a fixed period where it is converted under regulation 14 above into an agency contract for an indefinite period subject to the proviso that the earlier fixed period must be taken into account in the calculation of the period of notice.

**Savings with regard to immediate termination**

**16.** These Regulations shall not affect the application of any enactment or rule of law which provides for the immediate termination of the agency contract—

- (a) because of the failure of one party to carry out all or part of his obligations under that contract; or
- (b) where exceptional circumstances arise.

**Entitlement of commercial agent to indemnity or compensation on termination of agency contract**

17.—(1) This regulation has effect for the purpose of ensuring that the commercial agent is, after termination of the agency contract, indemnified in accordance with paragraphs (3) to (5) below or compensated for damage in accordance with paragraphs (6) and (7) below.

(2) Except where the agency contract otherwise provides, the commercial agent shall be entitled to be compensated rather than indemnified.

(3) Subject to paragraph (9) and to regulation 18 below, the commercial agent shall be entitled to an indemnity if and to the extent that—

- (a) he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers; and
- (b) the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers.

(4) The amount of the indemnity shall not exceed a figure equivalent to an indemnity for one year calculated from the commercial agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question.

(5) The grant of an indemnity as mentioned above shall not prevent the commercial agent from seeking damages.

(6) Subject to paragraph (9) and to regulation 18 below, the commercial agent shall be entitled to compensation for the damage he suffers as a result of the termination of his relations with his principal.

(7) For the purpose of these Regulations such damage shall be deemed to occur particularly when the termination takes place in either or both of the following circumstances, namely circumstances which—

- (a) deprive the commercial agent of the commission which proper performance of the agency contract would have procured for him whilst providing his principal with substantial benefits linked to the activities of the commercial agent; or
- (b) have not enabled the commercial agent to amortize the costs and expenses that he had incurred in the performance of the agency contract on the advice of his principal.

(8) Entitlement to the indemnity or compensation for damage as provided for under paragraphs (2) to (7) above shall also arise where the agency contract is terminated as a result of the death of the commercial agent.

(9) The commercial agent shall lose his entitlement to the indemnity or compensation for damage in the instances provided for in paragraphs (2) to (8) above if within one year following termination of his agency contract he has not notified his principal that he intends pursuing his entitlement.

**Grounds for excluding payment of indemnity or compensation under regulation 17**

18. The compensation referred to in regulation 17 above shall not be payable to the commercial agent where—

- (a) the principal has terminated the agency contract because of default attributable to the commercial agent which would justify immediate termination of the agency contract pursuant to regulation 16 above; or
- (b) the commercial agent has himself terminated the agency contract, unless such termination is justified—
  - (i) by circumstances attributable to the principal, or
  - (ii) on grounds of the age, infirmity or illness of the commercial agent in consequence of which he cannot reasonably be required to continue his activities; or
- (c) the commercial agent, with the agreement of his principal, assigns his rights and duties under the agency contract to another person.

### **Prohibition on derogation from regulations 17 and 18**

**19.** The parties may not derogate from regulations 17 and 18 to the detriment of the commercial agent before the agency contract expires.

### **Restraint of trade clauses**

**20.—(1)** A restraint of trade clause shall be valid only if and to the extent that—

- (a) it is concluded in writing; and
- (b) it relates to the geographical area or the group of customers and the geographical area entrusted to the commercial agent and to the kind of goods covered by his agency under the contract.

(2) A restraint of trade clause shall be valid for not more than two years after termination of the agency contract.

(3) Nothing in this regulation shall affect any enactment or rule of law which imposes other restrictions on the validity or enforceability of restraint of trade clauses or which enables a court to reduce the obligations on the parties resulting from such clauses.