

THE SCHEDULE

Regulation 2(3).

1. The activities of a person as a commercial agent are to be considered secondary where it may reasonably be taken that the primary purpose of the arrangement with his principal is other than as set out in paragraph 2 below.

2. An arrangement falls within this paragraph if—

- (a) the business of the principal is the sale, or as the case may be purchase, of goods of a particular kind; and
- (b) the goods concerned are such that—
 - (i) transactions are normally individually negotiated and concluded on a commercial basis, and
 - (ii) procuring a transaction on one occasion is likely to lead to further transactions in those goods with that customer on future occasions, or to transactions in those goods with other customers in the same geographical area or among the same group of customers, and

that accordingly it is in the commercial interests of the principal in developing the market in those goods to appoint a representative to such customers with a view to the representative devoting effort, skill and expenditure from his own resources to that end.

3. The following are indications that an arrangement falls within paragraph 2 above, and the absence of any of them is an indication to the contrary—

- (a) the principal is the manufacturer, importer or distributor of the goods;
- (b) the goods are specifically identified with the principal in the market in question rather than, or to a greater extent than, with any other person;
- (c) the agent devotes substantially the whole of his time to representative activities (whether for one principal or for a number of principals whose interests are not conflicting);
- (d) the goods are not normally available in the market in question other than by means of the agent;
- (e) the arrangement is described as one of commercial agency.

4. The following are indications that an arrangement does not fall within paragraph 2 above—

- (a) promotional material is supplied direct to potential customers;
- (b) persons are granted agencies without reference to existing agents in a particular area or in relation to a particular group;
- (c) customers normally select the goods for themselves and merely place their orders through the agent.

5. The activities of the following categories of persons are presumed, unless the contrary is established, not to fall within paragraph 2 above—
Mail order catalogue agents for consumer goods.
Consumer credit agents.