1993 No. 483

COMMERCIAL AGENTS

Commercial Agents (Council Directive) Regulations (Northern Ireland) 1993

Made . . . . . *17th December 1993*
Coming into operation . . *13th January 1994*

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The Department of Economic Development, being a Department designated by the European Communities (Designation) Order 1989(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to relations between commercial agents and their principals, in the exercise of the powers conferred on it by that section, hereby makes the following Regulations:—

PART I

GENERAL

Citation, commencement and applicable law

1.—(1) These Regulations may be cited as the Commercial Agents (Council Directive) Regulations (Northern Ireland) 1993 and shall come into operation on 13th January 1994.

(2) These Regulations govern the relations between commercial agents and their principals and, subject to paragraph (3), apply in relation to the activities of commercial agents in Northern Ireland.

(3) Regulations 3 to 22 do not apply where the parties have agreed that the agency contract is to be governed by the law of a member State of the European Communities other than the United Kingdom.

(a) S.I. 1989/1327
(b) 1972 c. 68

Interpretation and application

2.—(1) The Interpretation Act (Northern Ireland) 1954(a) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these Regulations—

"commercial agent" means a self-employed intermediary who has continuing authority to negotiate the sale or purchase of goods on behalf of another person (the "principal"), or to negotiate and conclude the sale or purchase of goods on behalf of and in the name of that principal; but shall be understood as not including in particular:

(i) a person who, in his capacity as an officer of a company or association, is empowered to enter into commitments binding on that company or association;

(ii) a partner who is lawfully authorised to enter into commitments binding on his partners;

(iii) a person who acts as an insolvency practitioner (as that expression is defined in Article 3 of the Insolvency (Northern Ireland) Order 1989(b)) or the equivalent in any other jurisdiction;

"commission" means any part of the remuneration of a commercial agent which varies with the number or value of business transactions;

"restraint of trade clause" means an agreement restricting the business activities of a commercial agent following termination of the agency contract.

(3) These Regulations do not apply to—

(*a*) commercial agents whose activities are unpaid;

(*b*) commercial agents when they operate on commodity exchanges or in the commodity market;

(*c*) the Crown Agents for Overseas Governments and Administrations, as set up under the Crown Agents Act 1979(c), or its subsidiaries.

(4) The provisions of the Schedule have effect for the purpose of determining the persons whose activities as commercial agents are to be considered secondary.

(5) These Regulations shall not apply to the persons referred to in paragraph (4).

(6) Regulations 7 to 12 shall not apply where a commercial agent is not remunerated wholly or partly by commission.

(a) 1954 c. 33 (N.I.)
(b) S.I. 1989/2405 (N.I. 19)
(c) 1979 c. 43

PART II

RIGHTS AND OBLIGATIONS

Duties of a commercial agent to his principal

3.—(1) In performing his activities a commercial agent shall look after the interests of his principal and act dutifully and in good faith.

(2) Without prejudice to the generality of paragraph (1), a commercial agent shall in particular—

(*a*) make proper efforts to negotiate and, where appropriate, conclude the transactions he is instructed to take care of;

(*b*) communicate to his principal all the necessary information available to him;

(*c*) comply with reasonable instructions given by his principal.

Duties of a principal to his commercial agent

4.—(1) In his relations with his commercial agent a principal shall act dutifully and in good faith.

(2) Without prejudice to the generality of paragraph (1), a principal shall in particular—

(*a*) provide his commercial agent with the necessary documentation relating to the goods concerned;

(*b*) obtain for his commercial agent the information necessary for the performance of the agency contract, and in particular notify his commercial agent within a reasonable period once he anticipates that the volume of commercial transactions will be significantly lower than that which the commercial agent could normally have expected.

(3) A principal shall, in addition, inform his commercial agent within a reasonable period of his acceptance or refusal of, and of any non-execution by him of, a commercial transaction which the commercial agent has procured for him.

Prohibition on derogation from regulations 3 and 4 and consequence of breach

5.—(1) The parties may not derogate from regulations 3 and 4.

(2) The law applicable to the contract shall govern the consequences of breach of the rights and obligations under regulations 3 and 4.

PART III

REMUNERATION

Form and amount of remuneration in absence of agreement

6.—(1) In the absence of any agreement as to remuneration between the parties, a commercial agent shall be entitled to the remuneration that commercial agents appointed for the goods forming the subject of his agency

contract are customarily allowed in the place where he carries on his activities and, if there is no such customary practice, a commercial agent shall be entitled to reasonable remuneration taking into account all the aspects of the transaction.

(2) This regulation is without prejudice to the application of any enactment or rule of law concerning the level of remuneration.

Entitlement to commission on transactions concluded during agency contract

7.—(1) A commercial agent shall be entitled to commission on commercial transactions concluded during the period covered by the agency contract—

(*a*) where the transaction has been concluded as a result of his action; or

(*b*) where the transaction is concluded with a third party whom he has previously acquired as a customer for transactions of the same kind.

(2) A commercial agent shall also be entitled to commission on transactions concluded during the period covered by the agency contract where he has an exclusive right to a specific geographical area or to a specific group of customers and where the transaction has been entered into with a customer belonging to that area or group.

Entitlement to commission on transactions concluded after agency contract has terminated

8. Subject to regulation 9, a commercial agent shall be entitled to commission on commercial transactions concluded after the agency contract has terminated if—

(*a*) the transaction is mainly attributable to his efforts during the period covered by the agency contract and if the transaction was entered into within a reasonable period after that contract terminated; or

(*b*) in accordance with the conditions mentioned in regulation 7, the order of the third party reached the principal or the commercial agent before the agency contract terminated.

Apportionment of commission between new and previous commercial agents

9.—(1) A commercial agent shall not be entitled to the commission referred to in regulation 7 if that commission is payable, by virtue of regulation 8, to the previous commercial agent, unless it is equitable because of the circumstances for the commission to be shared between the commercial agents.

(2) The principal shall be liable for any sum due under paragraph (1) to the person entitled to it in accordance with that paragraph, and any sum which the other commercial agent receives to which he is not entitled shall be refunded to the principal.

When commission due and date for payment

10.—(1) Commission shall become due as soon as, and to the extent that, one of the following circumstances occurs: