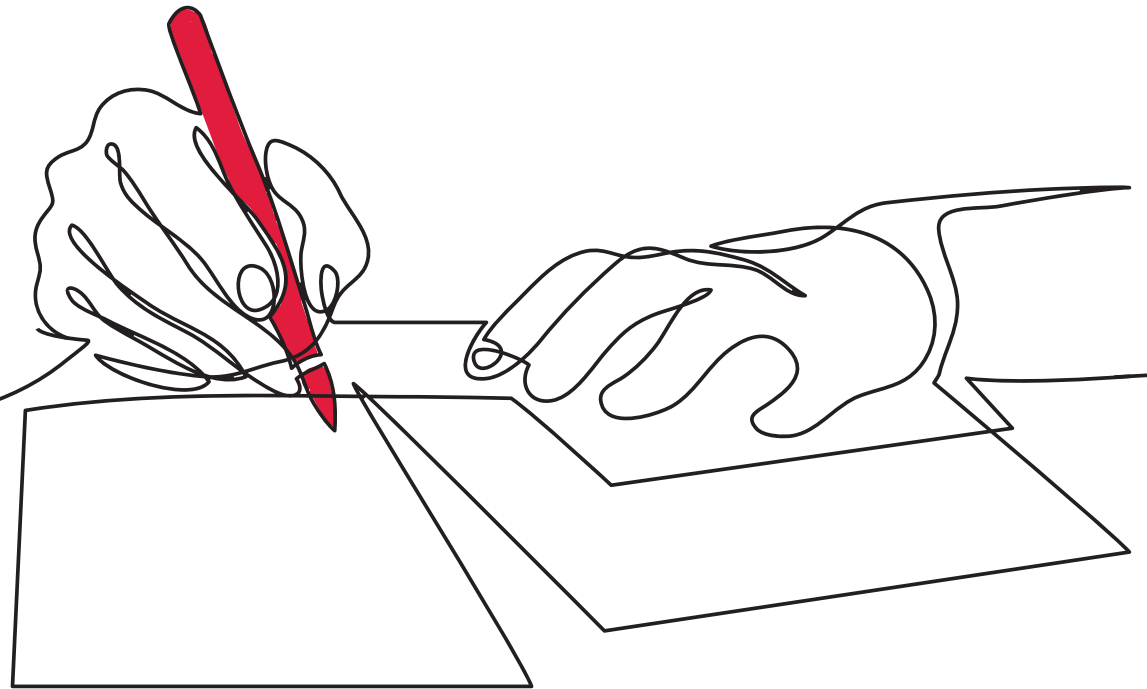




Commercial Agents Regulations



The Commercial Agents (Council Directive) Regulations 1993 (the "Regulations") govern the relationship between an agent and their principal when goods are being sold (as opposed to services which are not captured under the scope of the Regulations).



Under the Regulations, an agent is defined as a self-employed intermediary who has a continuing authority to negotiate the sale or purchase of goods on behalf of another person, the principal.

The Regulations include mandatory obligations and rights of both the agent and principal, in connection with pay; commission; restraint of trade; notice of termination; and termination payments.

Mandatory rights and obligations

Both the agent and the principal are subject to mandatory obligations and are entitled to some mandatory rights.

The principal must:

- Act dutifully and in good faith.
- Provide documentation relating to the goods concerned.
- Notify the agent where there will be a reduction in goods from the volume expected.
- Inform the agent of the status of any transactions procured.

The agent must:

- Look after the interests of the principal.
- Act dutifully and in good faith.
- Make a proper effort to negotiate and, where appropriate, conclude transactions.
- Communicate all necessary information to the principal.
- Comply with reasonable instructions given by the principal.

Pay

Pay is usually dealt with under the terms of an agency agreement however the Regulations impose default provisions for the calculation of remuneration where these have not been expressly agreed.

Commission

An agent is entitled to commission during the agency contract, and under certain circumstances, after the contract is concluded.

Let us Introduce Ourselves



Email: contact@ouryclark.com

Oury Clark London:
10 John Street, London WC1N 2EB

Tel: +44 (0) 20 7067 4300

Oury Clark Slough:
Herschel House, 58 Herschel Street
Slough SL1 1PG

Tel: +44 (0) 1753 551111



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Agents are also entitled to information relating to the calculation of their commission, such as relevant accounts of the principal.

Restraint of trade

A restraint of trade clause limits the agent's activities during a certain period following termination of the agency contract. To be effective, the restriction imposed needs to be reasonable in scope of territory, customers and time.

Notice of termination

Where an agency contract is concluded without a breach of contract, notice is required to be given. The Regulations provide minimum notice periods relating to the length of service, as follows:

- 1 month's notice during the first year of the contract;
- 2 months' notice during the second year; and
- 3 months' notice for the third and any subsequent years. These notice periods cannot be shortened, but can be extended.

Termination payment

On termination of an agency agreement, the agent is typically entitled to either compensation or an indemnity. The Regulations state that unless mentioned to the contrary, an agent is entitled to be compensated rather than indemnified.

Neither Indemnity nor compensation are payable where the principal terminated the agency contract because of a default of the agent which justified an immediate termination of their agreement. Likewise, where an agent terminates the contract, it will not receive compensation or indemnification, unless the termination can be justified on grounds attributable to the principal. An exception is where the agent terminates the agreement due to age, infirmity or illness, which retains an entitlement to compensation.

If a claim for an indemnity or compensation is not made within one year of the termination, the agent will lose its entitlement to the payment.