

NEW ALTERNATIVE DISPUTE RESOLUTION (ADR) RULES FOR CONSUMER DISPUTES

As a result of new legislation¹, businesses who provide goods, services or digital content to consumers are now required to give its consumers specified information about Alternative Dispute Resolution and, from 15 February 2016², about a new Online Dispute Resolution Platform.

What is Alternative Dispute Resolution, or ADR?

It is an umbrella term for all out-of-court processes for the resolution of disputes, and so includes:

- direct negotiation between the parties to the dispute
- processes which facilitate the parties to the dispute coming to agreed outcome, often with the help of a neutral third party – for example mediation and conciliation
- processes where the outcome is decided by someone who is not a party to a dispute – for example adjudication, arbitration and ombudsman schemes.

ADR can be much cheaper and quicker than litigation, with normally high success rates of resolution.

What is the aim of the new legislation?

The EU wants to boost consumer confidence in buying goods, services or digital content both online and offline, and across Member State borders, by ensuring that consumers have knowledge about and easy access to high quality and effective ADR procedures, should they have any complaints.

Accordingly the legislation:

- sets up a system of approved ADR entities which have minimum standards and procedures
- requires traders to give information about an approved ADR entity to its consumers
- sets up a new EU-wide online dispute resolution (ODR) platform to be a single point of entry for resolving disputes relating to online consumer contracts
- requires (from 15 February 2016) traders who trade online to give information about the ODR platform to its consumers
- requires (from 15 February 2016) online marketplaces that provide a platform for online consumer contracts to give information about the ODR platform to consumers.

¹ The EU Directive on Consumer ADR, implemented in the UK by the Alternative Dispute Resolution for Disputes (Competent Authorities and Information) Regulations 2015 as amended by the Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015; and the EU Regulation on Consumer Online Dispute Resolution (Regulation (EU) No 524/2013)

² The date was originally to be 9 January 2015 but The Department for Business, Innovation and Skills has stated that the “go live” date for the ODR platform is now 15 February 2015 and that no enforcement action will be taken before this date.

Does the new legislation oblige traders to use ADR?

No, it does not. However some traders may already be obliged to use ADR because:

- ADR is compulsory in the business sector in which it operates and they must use a specified ADR entity – e.g. the Financial Ombudsman Service for financial services complaints;
- ADR is compulsory in the business sector in which it operates but they have some choice about what ADR entity they must join – e.g. estate agents and telecommunications businesses;
- they are members of a trade association which requires them to use ADR; or
- they commit to it in their terms and conditions (consumers cannot be obliged to use ADR).

What businesses are affected by the new ADR legislation?

All those businesses established in the EU which provide goods, services or digital content to consumers resident in the EU. Consumers are individuals who, in purchasing those items, are doing so for purposes wholly or mainly outside their trade, business, craft or profession. The legislation does not apply to health professionals, business to business or consumer to consumer transactions, public sector providers of services (unless the consumer is paying the public sector directly for those services), or contracts for the sale of property and tenancy agreements.

Information requirements for traders regarding approved ADR entities

Every trader must now, when it has exhausted its own internal complaint handling procedure when considering a complaint from a consumer relating to a sales contract³ or a service contract⁴, give the consumer on a durable medium (which can include email) the following required information:

- that it cannot settle the complaint with the consumer;
- of the name and website address of an approved ADR entity which would be competent to deal with the complaint, should the trader and the consumer wish to use ADR; and
- whether the trader agrees to use that ADR approved entity (if the trader is obliged to use that particular ADR entity then it will of course have to agree, but otherwise it does not have to).

If a trader is obliged to use an ADR entity then, in addition to the above requirements, the trader must also provide the name and website address of that ADR entity both on its website (if it has one), and in the general terms and conditions of sales contracts or service contracts it uses with consumers. The trader should check that the ADR entity it is obliged to use is an approved ADR entity in accordance with the legislation. It can do so by checking the ADR body's website - if it is an approved ADR entity then it must state so there. If it is not an approved ADR entity then the trader must, when its own internal complaint handling procedure is exhausted, provide both information on the ADR entity it is obliged to use, and also choose an approved ADR entity about which it must give the required information.

³ A “contract under which a trader transfers or agrees to transfer the ownership of goods to a consumer, and the consumer pays to or agrees to pay the price, including any contract that has both goods and services as its object”

⁴ A “contract, other than a sales contract, under which a trader supplies, or agrees to supply a service to a consumer and the consumer pays, or agrees to pay, the price”.

If a trader is not obliged to use an ADR entity, then it will need to choose an approved ADR entity about which to give the required information.

The Chartered Trading Standards Institute keeps a list of approved ADR entities on its website at its webpage: <http://www.tradingstandards.uk/advice/ADRApprovedBodies.cfm>. Traders can check an approved ADR entity's website for details of the ADR procedure it offers, as each approved ADR entity is legally obliged to have on its website certain information, including the following:

- a statement that it is an approved ADR body
- whether it is a member of any network of bodies which facilitates cross-border disputes and any applicable financial thresholds
- its procedural rules and the grounds on which it can refuse to deal with a dispute
- what language(s) it can deal with and whether the procedure can be conducted orally, written or both
- any costs payable by a party, including any rules on costs awarded at the end of the procedure
- the legal effect of the outcome of the ADR procedure, including whether the outcome is enforceable and the penalties for non-compliance with the outcome, if any.

Information requirements for online traders regarding the ODR platform

The ODR platform is an EU-wide interactive and multilingual website which will be a single point of entry to consumers and traders seeking to resolve out-of-court disputes concerning contractual obligations stemming from online sales and services contracts. The platform will operate in all EU official languages, it will offer a translation function and it will link all the national approved ADR entities. The ODR platform is operational from 15 February 2016 (delayed from the original launch date of 9 January 2016) and the webpage address is <http://ec.europa.eu/consumers/odr/>.

If a trader trades online, from 15 February 2016 it will have to ensure its website states the trader's email address and contains a link to the EU Commission's new ODR Platform. This is the case even if the trader does not currently trade with consumers in other countries in the EU. (Online marketplaces which provide a platform for online consumer contracts must also provide a link to the ODR platform on their websites.) **Some traders may not realise they are online traders for the purpose of these rules** – it includes traders who have offered goods or services on a website or by other electronic means, and the consumer has ordered them on that website or by other electronic means. Electronic means includes mediums such as social media, email, telephone, text messages and faxes, and so a trader who makes a consumer an offer via email and the consumer accepts that offer via email will be an online trader.

If an online trader is obliged to use an ADR entity then it must, from 15 February 2016, in addition to the above, provide information about the existence of the ODR Platform in its general terms and conditions applicable to its online sales contracts⁵ and online services contracts⁶.

⁵ Means "a sales contract where the trader, or the trader's intermediary, has offered goods on a website or by other electronic means and the consumer has ordered such goods on that website or by other electronic means".

⁶ Means "a service contract where the trader or the trader's intermediary, has offered services on a website or by other electronic means and the consumer has ordered such services on that website or by other electronic means".

Penalties

If a trader fails to comply with the information requirements above, trading standards services can apply for a court order requiring them to comply. If the order is not complied with, the maximum penalty is an unlimited fine and two years' imprisonment.

More information

The Department for Business, Innovation and Skills (BIS) has produced more detailed guidance on this area: Alternative Dispute Resolution Regulations 2015: Guidance for business, available from the government webpage <https://www.gov.uk/government/publications/alternative-dispute-resolution-for-consumers/alternative-dispute-resolution-for-consumers>. Further information may also be sought from Beverley Whittaker, Beverley Flynn or your usual Stevens & Bolton contact.

The information contained in this article is designed to provide a general introductory summary of the subject matters covered. It does not purport to be exhaustive or to provide legal advice, nor should it be used as a substitute for such advice.

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