

ALTERNATIVE DISPUTE RESOLUTION
DIRECTIVE AND ONLINE DISPUTE
RESOLUTION REGULATION:
WHAT YOU NEED TO KNOW

This note briefly summarises the main features of the Alternative Dispute Resolution (ADR) EU Directive and Online Dispute Resolution (ODR) Regulation, and their effect on all UK businesses who deal direct with consumers.

What do I need to know?

- ▶ The UK government has now published the principal legislation that will implement the ADR Directive and the ODR Regulation, both of which are both designed to promote the use of ADR schemes in order to resolve disputes across the EU (both domestic and cross border) between consumers and businesses.
- ▶ There is a concern that consumers are discouraged from purchasing cross-border goods and services in the EU due to worries over how disputes with non-domestic businesses can be resolved. This is largely due to the legal costs and time involved in pursuing a dispute, as well as a lack of consumer knowledge regarding existing ADR schemes in place for certain sectors.
- ▶ It is hoped that by providing consumers with quick, easily accessible and low cost ADR mechanisms via the ADR Directive and ODR Regulation, consumers will have greater confidence that any problems they encounter with businesses based abroad can be resolved. The aim is that this will lead to consumers being more willing to purchase goods and services from across the EU, driving competition and economic growth.

What does this mean for me?

- ▶ Nearly all UK businesses selling goods, services or digital content to consumers in the EU will need to ensure that they comply with the new requirements. This will mean involve reviewing terms & conditions, website content and complaints handling procedures before **1 October 2015**.
- ▶ The supply of healthcare services by healthcare professionals and the prescription or supply of medicinal products or devices are *excluded* from the requirements.
- ▶ From **1 October 2015**:
 - ▶ Businesses that are legally obliged (or have voluntarily committed) to use a certified ADR provider must provide information about that ADR provider on their website and in any contractual terms.
 - ▶ Any UK business (regardless of whether they are committed to using ADR or intend to use it) must, in the event of an unresolved consumer complaint, direct the consumer to an appropriate certified ADR provider and advise whether or not the business agrees (or is obliged) to use ADR in the dispute.
- ▶ From **9 January 2016**:
 - ▶ Businesses selling goods or services online must include on their website a link to the EU Commission's ODR Platform (as must all online marketplace websites).
 - ▶ Online traders who are committed to using ADR must provide information about the ODR Platform in their contractual terms with consumers. The ODR platform is an online platform which will facilitate communications between the parties and a certified ADR provider in the event of a dispute arising from an online transaction.

<p><i>What does this mean if I am a wholesaler?</i></p> <p>The new Regulations do not apply to B2B contracts – only domestic or cross border sales or services contracts in the EU between those acting for a trade / business / profession / craft and consumers.</p>	<p><i>What does this mean if I am a manufacturer?</i></p> <p>If you only supply B2B the new Regulations will not apply. If you supply B2C then the new Regulations will apply, unless you fall within the 'healthcare' exemption.</p>
<p><i>What does this mean if I am a retailer selling direct to consumers?</i></p> <p>The new Regulations will apply for domestic and cross border EU contractual disputes over sales or services, but not other non-contractual disputes, such as statutory or tortious claims.</p>	<p><i>What does this mean if I am a retailer selling to consumers via an agent?</i></p> <p>The definition of trader in the new Regulations includes those 'acting in the trader's name or on the trader's behalf'. However as the new Regulations are for <i>contractual</i> disputes only, they are unlikely to apply where there is no contract in place between a retailer and the end consumer.</p>

Where can I find out more?

- ▶ The ADR Directive has been in force since 8 July 2013, with the UK being required to enact the necessary legislation to bring the Directive into national law by 9 July 2015. The principal legislation has now been published by the Government. The legislation can be found at: <http://www.legislation.gov.uk/uksi/2015/542/contents/made>
- ▶ A number of ADR providers already operate in the UK, for example the FCA for financial sector disputes and Ofgem for energy sector disputes. The UK Government will create a residual ADR scheme to cover any sectors where ADR providers are not currently in existence. Those providers already in existence, such as the FCA and Ofgem, will remain in place.
- ▶ The Trading Standards Institute (TSI) will be the UK's principle competent authority to monitor ADR providers in non-regulated sectors.
- ▶ The UK Government will also:
 - ▶ set up a consumer complaints helpdesk to advise consumers on the appropriate ADR provider to contact regarding their complaint
 - ▶ amend the Limitation Act to extend the standard 6 year limitation period by 8 weeks in cases where ADR is ongoing at the expiry of the limitation period
 - ▶ ensure ADR Providers are subject to operational requirements in terms of experience, independence and impartiality and must provide the service for either no cost or a nominal cost. A list of current approved ADR providers can be found here: <http://www.tradingstandards.uk/advice/ADRApprovedBodies.cfm>
 - ▶ establish an ODR contact point which will assist consumers with disputes submitted via the ODR platform. The ODR contact point will only be obliged to assist in cross-border EU disputes, but will have discretion to assist in UK disputes where it considers it appropriate. The establishment of the ODR contact point by the Government precedes the other deadlines, and is required by **9 July 2015**.
- ▶ [The Department for Business Innovation and Skills has published guidance for UK businesses on the new ADR regime.](#)

What else do I need to know about?

- ▶ Existing consumer legislation is being consolidated in the new Consumer Rights 2015 and most provisions also come into force on **1 October 2015**.
- ▶ The new Act replaces historic consumer protection legislation, including the Supply of Goods Act 1979 and the Supply of Goods and Services Act 1982. It also clarifies consumer rights of refund, repair, replace for both goods and services and when T&Cs are to be considered unfair.

How can AG help?

- ▶ We can assist in preparing your business for implementation of the ADR Directive and ODR Regulation by:
 - ▶ drafting and reviewing your contractual terms to ensure they are compliant with the new legislation
 - ▶ advising on your legal obligations under the ADR Directive and/or ODR Regulation
 - ▶ advising on ADR procedures
 - ▶ training complaints handling staff on the new ADR regime

If you have any further queries on any of the information contained in this note, or if you would like our assistance with any matters involving ADR, please contact us.



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