

EXPLANATORY MEMORANDUM TO
THE ALTERNATIVE DISPUTE RESOLUTION FOR CONSUMER DISPUTES
(AMENDMENT) (NO.2) REGULATIONS 2015

2015 No. 1972

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument implements a provision of Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes (“the ODR Regulation”) to provide that a competent authority and an ADR applicant and ADR entity must provide a link to the online dispute resolution platform on its website. This provision requires specific transposition into domestic law in order to make the obligation it contains enforceable. The instrument adds the provision to the Alternative Dispute Resolution for Consumer Dispute (Competent Authority and Information) Regulations 2015 (S.I. 2015/542) (the “ADR C&I Regulations”) which implement EU Directive (2013/11/EU) on alternative dispute resolution for consumer disputes (“the Directive”) and certain other provisions of the ODR Regulation.
- 2.2 The instrument also makes amendment to the ADR C&I Regulations to correct the following minor errors introduced by the Alternative Dispute Resolution for Consumer Dispute Resolution (Amendment) Regulations 2015/1392 (“ADR (Amendment) Regulations”):
- 2.3 Regulations 2 to 6 make amendments to four acts and one statutory instrument to omit the definition of “ADR official” as the definition is redundant; and
- 2.4 Regulation 7(3) corrects a cross-reference in regulation 15(1)(b) of the ADR Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Free issue procedure

This instrument corrects minor errors introduced by the ADR (Amendment) Regulations. The Department has decided to apply the free issue procedure in relation to this instrument, for recipients of the ADR (Amendment) Regulations.

3.2 Implementation of certain provisions of the Regulation

Although EU Regulations are directly applicable, and therefore, as a rule do not require further transposition into domestic law, there are circumstances when transposition is required. One of these circumstances is when further transposition is required in order to make the provisions enforceable in UK law. Because the ODR Regulation leaves it open to Member States to lay down the rules on penalties applicable to infringements, this instruments implements a provision of the ODR

Regulation which contains an obligation on traders and sets out the penalties for breach of these obligations.

Other matters of interest to the House of Commons

- 3.3 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument is being made to implement a remaining provision of the ODR Regulation which requires transposition. Other provisions of the ODR Regulation have already been implemented in the ADR C&I Regulations. A transposition note was published alongside the two sets of implementing regulations: the Alternative Dispute Resolution for Consumer Disputes Regulations 2015 (S.I. 2015/542) and the Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (S.I. 2015/1392)
- 4.2 The ODR Regulation was cleared by the House of Commons European Scrutiny Committee on 12 December 2012, (published in 32nd Report, Session 12/13).
- 4.3 The ODR Regulation was considered and cleared by the House of Lords' Select Committee on the European Union on 27 March 2013 (Sift 1498, Session 12/13).

5. Extent and Territorial Application

- 5.1 This instrument extends to all of the United Kingdom.
- 5.2 This instrument applies throughout the United Kingdom.
- 5.3 Although the Directive and relevant provisions of the ODR Regulation could have been separately implemented in Northern Ireland, as consumer protection policy is within the competence of the Northern Ireland Assembly, the Northern Ireland Departments concerned have agreed that implementation of the Directive and ODR Regulation can be carried forward on a UK basis.

6. European Convention on Human Rights

- 6.1 This instrument is subject to the negative resolution procedure, but does make consequential amendments to primary legislation. The Acts it amends are: the Prescription and Limitation (Scotland) Act 1973 (1973 c. 52), the Limitation Act 1980 (1980 c. 58), the Foreign Limitation Periods Act 1984 (1984 c.16) and the Equality Act 2010 (2006 c. 3).
- 6.2 The Minister of State for Skills has made the following statement regarding Human Rights:
- “In my view the provisions of The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 are compatible with the convention rights.”

7. Policy background

What the ODR Regulation requires

- 7.1 The ODR Regulation obliges the European Commission to create an electronic platform (the “ODR Platform”) to enable consumers and, if a member State so

permits, traders, to submit an initial dispute submission to a certified ADR provider online. Most provisions of the ODR Regulation are therefore concerned with the functions of the ODR Platform and require no express implementation into domestic UK law. The ODR Regulation does, however, have a few provisions relating to how a certified ADR provider must interact with the ODR Platform, and the ODR Regulation also has a provision requiring online traders to notify consumers about the existence of the ODR platform.

The Department's approach to implementation of the ODR Regulation

- 7.2 Regulations are directly applicable in a member State and therefore usually require no further implementation into domestic law. However, since the ODR Regulation requires a member State to lay down the rules on penalties applicable to infringements of the Regulation, the Department feels it is necessary to expressly implement those provisions of the ODR Regulation that put obligations on certified ADR providers, and on online traders, so that corresponding enforcement provisions can also be provided for.
- 7.3 The provisions of the ODR Regulation enter into force on 9th January 2016.

The contents of this instrument

- 7.4 This instrument:
- (a) implements an article of the ODR Regulations that requires implementation; and
 - (b) makes certain corrections to the ADR C&I Regulations.

8. Consultation outcome

- 8.1 As well as on going consultation across business and consumer groups, two formal consultations have been conducted. The first, in December 2011, gathered views on the European Commission's proposal for a Directive on ADR. This informed the UK Government's views throughout negotiations to ensure that the Directive agreed provided a fair and effective framework for business while maintaining high levels of consumer protection. In June 2014 BIS ran a further consultation seeking views on the best approach to implementing the Directive, including how best to fulfil our obligation to have ADR available for every consumer dispute. We also sought views on the feasibility of a broader simplification of the ADR landscape. Eighty-seven responses were received.
- 8.2 In addition, a number of stakeholder meetings were held to discuss implementation of the Directive, including several roundtables for ADR providers on the process and implications for becoming approved ADR entities.
- 8.3 The Government is very grateful to everyone who has taken the time to contribute. The information and comments received have been used to amend and finalise this instrument. The Government's response to the comments received is available at <https://www.gov.uk/government/consultations/alternative-dispute-resolution-for-consumers>

9. Guidance

- 9.1 Specific guidance for competent authorities and entities wishing to get approval as a certified ADR provider has been published by the Chartered Trading Standards

Institute and is available at:

<http://www.tradingstandards.uk/advice/AlternativeDisputeResolution.cfm>

- 9.2 The Government has issued guidance for business on their responsibilities under the ADR C&I Regulations. This guidance also includes a section outlining business responsibilities under the ODR Regulations and is available at:
<http://www.businesscompanion.info/en/quick-guides/consumer-contracts/alternative-dispute-resolution>

10. Impact

- 10.1 The impact on business is expected to be small. There will be no impact on charities or voluntary bodies.
- 10.2 The impact on the public sector is expected to be small.
- 10.3 An Impact Assessment (IA) for this measure was validated as fit for purpose and assessed as out of scope of One In Two Out by the Regulatory Policy Committee on 15th September 2014. This IA was published alongside ADR (Amendment) Regulations on 18th June 2015.
- 10.4 The impact of the additional requirements imposed by this instrument is expected to be small. The additional provision only requires a competent authority, currently FCA, Ofcom, Ofgem, Legal Services Board, the Gambling Commission, the lead enforcement authority for the purposes of the Estate Agents Act 1979 and the Chartered Trading Standards Institute plus approved ADR entities to provide a link to the ODR platform on their websites.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. However the amendments made by these Regulations will not impact on small businesses.

12. Monitoring & review

- 12.1 Since the instrument merely amends other Statutory Instruments it does not contain a review provision. Regulation 2 of the ADR C&I Regulations obliges the Secretary of State to carry out a review of how the Directive and ODR Regulation have been implemented every five years, so the substance of the provisions of this instrument will be reviewed as part of the review made under regulation 2 of the ADR C&I Regulations.

13. Contact

- 13.1 Robert Scott at the Department for Business, Innovation and Skills Telephone: 0207 215 4522 or email: robert.scott@bis.gsi.gov.uk can answer any queries regarding the instrument.