

TRANSPOSITION NOTE

Directive 2013/11/EU on alternative dispute resolution for consumer disputes and certain provisions of Regulation (EU) 524/2013 on online dispute resolution for consumer disputes

1. This note describes the implementation in the United Kingdom of the remaining provisions of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (the “Directive”) and certain provisions of Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (the “ODR Regulation”). The majority of the provisions of the Directive were implemented by means of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (the “ADR C&I Regulations”), which were made on 16th March 2015.
2. The purpose of the Directive is to ensure that Member States have in place a regime whereby any contractual dispute which a consumer has with a trader in relation to a contract for the sale of goods or provision of services can be submitted to a body which offers alternative dispute resolution (“ADR”) which meets certain standards set out in the Directive. The purpose of the ODR Regulation is to establish an electronic platform which can facilitate communication between the parties to a consumer dispute and a certified ADR provider.
3. The Department for Business, Innovation and Skills has lead responsibility for implementation of the Directive and ODR Regulation.
4. In order to ensure that the UK is in compliance with its obligation to have in place an ADR regime by the implementation deadline of 9th July 2015, the Department decided to implement the Directive in two tranches. The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (S.I. 2015/542) (the “ADR C&I Regulations”) implemented the first tranche of the Directive’s provisions. The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (the “Amendment Regulations”) implement the second tranche of the Directive’s provisions, and those provisions of the ODR Regulations that require express transposition into UK law.
5. Those provisions of the Amendment Regulations which implement the second tranche of the Directive come into force on 9th July 2015. Those provisions of the Amendment Regulations which implement provisions of the ODR Regulation come into force on 9th January 2016.
6. In order to ensure the smooth introduction of the trader information requirements, the Amendment Regulations also amend regulation 1(3) of the ADR C&I Regulations so that the trader information requirements only commence on 1 October 2015.

7. The transposition approach has been to use the “copy-out” approach as far as possible.
8. The table below describes the main substantive provisions of the legislation implementing the entire Directive. The provisions were implemented by means of the ADR C&I Regulations, unless it is stated that they were implemented by means of the Amendment Regulations.

Directive Article	Objective	ADR C&I Regs Cross-reference Or Other enactment Cross-reference	Comment on implementation
1	High level objectives of the Directive	-	No implementation required in national legislation
2(1)	Statement of which disputes are within the scope of the Directive	Regs.5 and 9(4) and Sch 3 para1	
2(2)	Statement of which dispute resolution procedures, and sectors are outside the scope of the Directive	Reg. 7 and Sch 3 para 1(c)	Art 2(2)(a) is transposed in ADR C&I Regs, Sch 3 para 1(c). Paragraphs (b) to (g) and (i) fall outside the scope of the Directive because such dispute resolution procedures do not fall within the provisions set out in Article 2(1), and therefore these paragraphs have not been expressly transposed. Art 2(2)(h) is transposed in ADR C&I Regs reg 7.
2(3)	Member States may maintain or introduce higher standards provided those rules are in order to ensure a higher level of consumer protection	Reg. 9(5)	With the exception of the provision found in ADR C&I Regs Sch3, para 13(e), the Regulations do not themselves set any higher requirements, but ADR C&I Regs reg 9(5) recognizes that a competent authority may impose additional requirements if it has the power under another enactment to do so.
2(4)	Member States may decide whether ADR bodies which have the power to produce binding outcomes can become certified		The provisions of the ADR C&I Regulations are drafted to cover the possibility that an ADR entity may produce binding outcomes.

	ADR entities		
3(1) and (2)	Relationship of the Directive with other EU legislation	-	No express implementation required.
3(3)	Trader information requirements in this Directive apply in addition to any other trader information requirements regarding out of court redress	Reg.19(3)	
4	Definitions of key terms	Regs 3 to 6	
5(1)	Member State obligation to facilitate access by consumers to ADR procedures and ensure that disputes relating to consumer contracts involving a trader established in that Member State can be submitted to an approved ADR entity.	-	No express implementation required in national legislation as the effect of the implementation of the other requirements of the Directive is that this obligation is complied with.
5(2)(a) to (e)	Basic obligations of ADR entities	Reg. 9(4) and Sch3 para2	
5(2)(f)	Compliance with Directive 95/46/EC as regards processing of personal data	-	No implementation required in these Regulations, as the ADR entities are already required to comply with the Data Protection Act 1998 which implements Directive 95/46/EC
5(3)	Existence of a residual ADR entity	-	No implementation required in national legislation
5(4) and (5)	Permitted grounds for an ADR entity to refuse to deal with a dispute	Reg 9(4) and Sch3 paras 13 to 16	We are transposing Art 5(4)(e) in ADR C&I Regs Sch 3 para 13(e) by referencing the 12 month minimum period to the date on which the trader informs the consumer that the trader is unable to resolve the complaint, rather than by reference to the date on which the consumer first submitted the complaint to the trader, to ensure that a consumer is not time barred from

			<p>accessing an ADR Entity due to protracted negotiations with the trader.</p> <p>In ADR C&I Regs Sch 3 para 13A (introduced by Amendment Regulations reg 2(15(f)) we provide a savings provision for where a trader has notified the consumer of a deadline before the ADR provider became a certified ADR entity.</p>
5(6)	Member State need not ensure that a consumer may submit a claim to another ADR Entity where a dispute has been rejected on an Art 5(4) ground by an ADR Entity	-	No implementation required in national legislation.
5(7)	Provision for disputes involving a trader who does not belong to a particular trade association	-	No implementation required in national legislation.
6(1)	Requirements for expertise, independence and impartiality of the persons in charge of alternative dispute resolution procedures	Reg. 9(4) and Sch 3 para 3(a) to (f)	We have transposed Art 6(1)(c) in ADR C&I Regs Sch 3(3)(c) by referring to an ADR official discharging his or her duties in a way that is “biased”, rather than not being “subject to any instructions from either party”, because there are times when a party may legitimately instruct the ADR official to act in a particular way (eg release documents to the other side). It is clear from the context of Art 6(1)(c) that the Directive is trying to prevent an ADR official from acting in a way that is biased.
6(2)	Conflicts of interest procedures for the persons in charge of the dispute resolution procedure	Reg. 9(4) and Sch 3 para 4	
6(3)	Additional requirements where the dispute resolution procedure is run by an individual remunerated	-	No implementation as the Government has decided not to exercise the option set out in Article 2(2)(a).

	exclusively by the trader		
6(4)	A requirement for the ringfencing of the ADR entity's budget in certain circumstances	Reg. 9(4) and Sch 3 para 3(g)	
6(5)	A requirement for equal representation of consumer organisations and business organisations where the ADR officials form part of a collegial body	Reg 9(4) and Sch 3 para 3(h)	
6(6)	Training requirements for individuals in charge of ADR	-	No implementation required in national legislation as the first sentence of Art 6(6) does not oblige Member States to require ADR entities to provide training for its ADR officials. The second sentence is implemented via the requirement to prepare a report every two years under regulation 11(3) and Schedule 6, para(g) of ADR C&I Regs.
7(1)	Information an ADR entity must have on its website and on a durable medium if requested	Reg.9(4) and Sch 3 para 5	The requirement in Art 7(1)(d) has not been implemented as this relates to the member state option in Art 2(2)(a) which the UK has not exercised.
7(2)	Obligation on an ADR entity to compile an Annual Activity Report and make it available on the ADR's website and on a durable medium if requested	Reg 11(2), Sch 5 and Sch 3 para 5(p)	Art 7(2)(d) has not been implemented as this relates to the member state option in Art 2(2)(a) which the UK has not exercised.
8	Accessibility of ADR procedures for the parties to a dispute and time limits regarding the outcome of the dispute resolution procedure	Reg 9(4) and Sch 3 para 6	

9	Right of parties to receive documentation and Information which the ADR entity must give to the parties	Reg 9(4) Sch 3 para7 to 10	
10	Non-binding nature of a pre-agreement to use ADR and notification of the binding nature of the ADR procedure	Reg 14B and 14C	ADR C&I regs 14B and 14C were introduced by reg 2(8) of the Amendment Regulations
11	Maintenance of the consumer's statutory consumer protection levels	Reg 9(4) and Sch 3 paras 11 and 12	
12	Limitation and prescription periods not to prevent a party from bringing a case to court in certain circumstances	s. 14, 1973 c.52; s. 12, s33B, 1980 c.58; s.1, s1B 1984 c.16; s.118, s140AA 2010 c.15 art 51B 1989/1339 (N.I.11)	Reg 3 of the Amendment Regulations amends s 14 of the Prescription and Limitation (Scotland) Act 1973; Reg 4 of the Amendment Regulations amends s12 of, and inserts a s33B into, the Limitation Act 1980; Reg 5 of the Amendment Regulations amends s1 of, and inserts s1B into, the Foreign Limitation Periods Act 1984; Reg 7 of the Amendment Regulations amends s118 of, and inserts s140AA into, the Equality Act 2010; and Reg 8 of the Amendment Regulations inserts article 51B into the Limitation (Northern Ireland) Order 1989.
13	Trader information requirements	19	Reg 19 of the ADR C&I Regs was substituted by means of reg 2(12) of the Amendment Regulations.
14	Assistance for consumers to be provided by the European Consumer Centres	-	Implemented by means of a Service Level Agreement with Trading Standards Institute.
15	General information requirements	14(2)	Reg 14(2) of the ADR C&I Regs was inserted by means of reg 2(7)(b) of the Amendment Regulations. This Article is further implemented by means of a Service Level Agreement with Trading Standards Institute.

16	Cooperation and exchanges of experience between ADR Entities	14A(1)	Reg 14A of the ADR C&I Regs was inserted by means of reg 2(8) of the Amendment Regulations.
17	Cooperation between ADR entities and national enforcement authorities	14A(2)	Reg 14A of the ADR C&I Regs was inserted by means of reg 2(8) of the Amendment Regulations.
18	Designation of competent authorities	Reg 8 and Sch 1	
19(1)	Information to be supplied by applicant ADR entity to its competent authority	Reg 9(1) and Sch 2	
19(2)	Additional information requirement where the dispute resolution procedure is run by an individual remunerated exclusively by the trader	-	Art 19(2) has not been implemented as this relates to the member state option in Art 2(2)(a) which the UK has not exercised.
19(3)	Information to be supplied by the ADR entity to its competent authority every two years	Reg 11(3) and Sch 6	
20(1)	Competent authority assessment of applicant body to see if it is fit to be approved as an "ADR entity"	Regs 9(4) and (5)	
20(2) and (3)	Competent authority required to list approved ADR entities and to notify the single point of contact, who is required to notify the Commission.	Regs 10, 13, 18(1) and Sch 4	In ADR C&I Regs reg 13(1) we have added the concept that the competent authority can only commence the removal of approval process if it considers that the breach on the part of the ADR entity is in relation to something which is within the ADR entity's control, as these are the only matters which the ADR entity can be

	Competent authority required to remove an ADR entity from the list if it no longer complies with the requirements of the Directive		expected to rectify. In ADR C&I Regs reg 13(2) we have added the concept that the competent authority can only withdraw its approval from the ADR entity if it believes that the ADR entity's failure is sufficiently serious: breach of certain of the provisions in Sch 3 would have no impact on consumer protection.
20(4)	European Commission's list of ADR entities	-	No implementation required as the provision contains no obligation upon a member State.
20(5)	Competent authority to make consolidated list of ADR entities publicly available	Reg 14	
20(6) and (7)	Four yearly report by single point of contact on the ADR sector	Reg 18(2) and (3)	
21	Penalties for non-compliance	<i>To</i> 9.1.2016 Sch 13 to 2002 c.40 and Reg 20(2) and Sch 8 <i>From</i> 9.1.2016 Sch 13 to 2002 c.40 and Sch to S.I 2003/1374	ADR C&I reg 20 and Sch 8 make breach of the trader information requirements in ADR C&I Regs regulation 19 a "community infringement" for the purposes of Part 8 of the Enterprise Act 2002. Rather than being specified as a "community infringement" in the ADR C&I Regs themselves (Art 20(2) and Sch 8), as of 9 January 2016 breach of Art 13 of the Directive will be specified in the Schedule to the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003. This is effected by means of reg 2(14) and reg 9 of the Amendment Regulations.
22	Amendment to Regulation (EC) No 2006/2004	-	No implementation required in national legislation
23	Amendment to Directive 2009/22/EC	-	No implementation required in national legislation
24	Notification by member States to the European Commission	-	No implementation required in national legislation

	regarding approved ADR entities and competent authorities		
25	Transposition	-	No implementation required in national legislation
26	Report by European Commission	-	No implementation required in national legislation
27	Entry into force	-	No implementation required in national legislation
28	Addressees	-	No implementation required in national legislation

9. EU Regulations usually require no express transposition into domestic law as they are directly applicable. However, 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 instrument implements those provisions of the Regulation which contain obligations on traders and ADR entities and sets out the penalties for breach of these obligations.

Regulation Article	Objective	ADR C&I Regs Cross-reference	Comment on Implementation
9(7)	ADR entity has to make notifications to the parties	17 18(a), (b)	ADR C&I reg 17 and 18(a), (b) are inserted by reg 2(15)(j) of the Amendment Regulations.
10(a)	ADR entity has to conclude the ADR procedure within a deadline	Sch 3 para6(d)	The obligation already exists under the ADR C&I Regulations.
10(b)	Physical presence of the parties not required	18(c)	ADR C&I reg 18(c) is inserted by reg 2(15)(j) of the Amendment Regulations.
10(c)	Information that must be transmitted to the ODR Platform	18(d)	ADR C&I reg 18(d) is inserted by reg 2(15)(j) of the Amendment Regulations.
14(1) to (3)	Information requirements on online traders and	19A	ADR C&I reg 19A is inserted by reg 2(13) of the Amendment Regulations.

	online marketplaces		
18	Penalties for non-compliance	Sch 13 to 2002 c.40 and Sch to S.I 2003/1374	<p>Schedule 13 to the Enterprise Act 2002 is amended by reg 6 of the Amendment Regulations.</p> <p>The Schedule to the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003 is amended by reg 9 of the Amendment Regulations.</p>