



Alternative Dispute Resolution for disputes initiated by consumers

Executive Summary

Consumers sometimes have difficulty getting redress for unsatisfactory goods or services, particularly when they buy online. ADR should enable disputes to be settled in an informal way, more quickly and cheaply than going to court.

The Directive on consumer Alternative Dispute Resolution (**ADR Directive**) came into force in stages between 7 April and 1 October 2015. The Regulation on consumer Online Dispute Resolution (ODR Regulations) will come into force in the UK on 9 January 2016. Together, the two measures will introduce provisions related to the provision of Alternative Dispute Resolution (**ADR**) in disputes involving consumers.

The key provisions of the new regulations are:

- an obligation on the UK Government to make ADR available in all sectors (including those where the use of ADR is currently voluntary) through at least one certified ADR provider;
- no obligation to utilise ADR where a businesses is not already subject to obligations to utilise ADR (e.g. as part of regulatory requirements);
- information requirements for **all** business relating to ADR;
- establishing an online platform (administered by the European Commission (**EC**)) to facilitate communication between consumers across the EU and ADR providers in each sector in each Member State; and
- information requirements for **all** business relating to the EC's online platform.

The ADR Directive

The date for implementing the ADR Directive was 9 July 2015 across all Member States but the UK decided to adopt a staged approach. By 9 July the UK had in force provisions that designated the competent authorities who can vet ADR providers who want to be certified and set out the criteria ADR providers have to meet in order to receive certification. Certified providers of ADR will be subject to on-going monitoring

to assess that they continue to meet the requirements for certification. However, obligations on traders to give consumers information about the availability of ADR was delayed til 1 October 2015 to give them time to prepare.

Implementation of the ADR Directive has been by two SIs, the **Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015** and the **Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (ADR Regulations)**.

In certain sectors, such as financial services, ADR is mandatory and overseen by a single body. In others, such as telecoms, ADR is overseen by multiple private bodies with a choice for participants, while in certain sectors subscription to an ADR service (often provided by trade organisations or ombudsmen) is entirely voluntary.

The ADR Regulations will introduce changes that will primarily affect the latter two categories.

The ADR Regulations

Certified ADR Providers

Under the ADR Regulations, ADR must be made available to businesses and consumers if they wish to use it. Further, provision of ADR must also be available from a certified ADR body complying with the requirements of **Schedule 3** of the ADR Regulations (although non-certified bodies will still be able to operate). Existing ADR providers that do not comply with the ADR Regulations will either have the choice to change their operational rules to comply with the requirements of the ADR Directive and become certified, or face competition from a (new) certified provider or providers.

To meet the requirements of the ADR Directive, a number of ADR Approved Bodies have been certified for sectors that do not require compulsory provision of ADR but experience a high volume of consumer complaints.

These new ADR Approved Bodies include:

- Home Improvement Ombudsman (HIO) and Furniture Ombudsman under the umbrella Dispute Resolution Ombudsman Limited (dealing with disputes involving furniture, home improvements, floor coverings and other general retail goods and services).

- Motor Codes (dealing with vehicle warranty products, new car service and repair).
- The Retail Ombudsman (dealing with complaints relating to returning goods, faulty goods, missing parts, delivery, customer service, pricing, misrepresentation and product description).

Use of ADR

Although there will be a requirement to make ADR available in all sectors, there will be no right under the ADR Regulations for a consumer to force a business to use ADR (where it is not compulsory) or any rights for a consumer to force a business to use a particular ADR provider. In cases where the provision of ADR is not compulsory, it will remain for the business to decide whether or not to use ADR and if so, which ADR provider to use.

Information requirements for all business (with effect from 1 October 2015)

The ADR Regulations will introduce new information requirements:

- where a business uses ADR (either because provision of ADR is compulsory or because a business has voluntarily signed up to use an ADR provider), details of the ADR provider will need to be provided on the businesses' website and as part of their terms of business or sale; and
- if a dispute with a consumer is unresolved, all businesses (whether or not utilising ADR) must provide information about a certified ADR provider to the consumer and advise whether or not they will use ADR to attempt to settle the unresolved dispute.

The ODR Regulations

The ODR Regulations are primarily focused at the European Commission establishing a central online platform for the EU to facilitate communication between consumers and a certified ADR provider in the different EU Member States. This will be relevant where there is a cross-border dispute between a consumer and a business. The ODR Platform will simply

operate as a conduit for communications between consumers, business and the relevant certified ADR provider; the dispute itself will, where relevant, still be resolved as part of the ADR process operated in the relevant sector. The UK Government will meet its obligations under the ODR Regulations (including establishing an ODR contact point to assist consumers with disputes submitted via the Commission's ODR platform) but will not extend the ODR requirements beyond these.

Information requirements for all business under the ODR Regulations (with effect from 9 January 2016)

All business that sell goods or services online must provide a link to the ODR platform. If a business uses ADR (either because provision of ADR is compulsory or because a business has voluntarily signed up to use an ADR provider), further information about the ODR platform must be provided.

Consequential amendments

The Government will amend the Limitation Act to extend the standard six year limitation period for bringing court proceedings (in disputes covered by the Directive) by a period of eight weeks in cases where ADR is ongoing at the expiry of the six year period.

Contacts

For more information, please contact:



Helen Scott-Lawler
Partner

+44 (0) 117 939 2240
helen.scott-lawler@burges-salmon.com



Timothy Deacon
Associate

+44 (0) 117 902 6680
timothy.deacon@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

www.burges-salmon.com

Burges Salmon LLP is a limited liability partnership registered in England and Wales (LLP number OC307212), and is authorised and regulated by the Solicitors Regulation Authority. It is also regulated by the Law Society of Scotland. Its registered office is at One Glass Wharf, Bristol BS2 0ZX. A list of the members may be inspected at its registered office. Further information about Burges Salmon entities, including details of their regulators, is set out in the 'Who we are' section of the Burges Salmon website at www.burges-salmon.com.

© Burges Salmon LLP 2015. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.