

EXPLANATORY MEMORANDUM TO

THE ALTERNATIVE DISPUTE RESOLUTION FOR CONSUMER DISPUTES (COMPETENT AUTHORITIES AND INFORMATION) REGULATIONS 2015

2015 No. 542

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

This instrument designates the Competent Authorities that will be responsible for vetting and monitoring certain entities (“ADR entities”) which provide alternative dispute resolution (“ADR”) services in compliance with the specified standards set out in EU Directive (2013/11/EU) on alternative dispute resolution for consumer disputes (“the Directive”). The instrument also places obligations on traders to provide certain information to consumers about accessing ADR.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The deadline for the implementation of the Directive is 9th July 2015. In order to meet this implementation deadline the UK must designate certain public authorities to be competent authorities sufficiently ahead of 9th July to enable the competent authorities to carry out the approval process on the providers of alternative dispute resolution. The Directive also requires traders to provide certain information regarding the availability of alternative dispute resolution to consumers and traders will need time to prepare for such an information requirement. Parts 1 to 3 of the Regulations relate to the designation of competent authorities and the approval process for the providers of alternative dispute resolution, and accordingly the Department wishes these Parts to come into force in good time. Parts 4 and 5 which contain provisions regarding the trader information requirements will come into force on 9th July 2015. These Regulations will overlay an existing landscape of disparate provision of alternative dispute resolution, and in preparing the Regulations the Department has had to resolve a number of complex issues with stakeholders inside and outside government, therefore it has not been possible to make the Regulations earlier.

3.2 Parts 1 to 3 of these Regulations will come into force on 7th April 2015. Whilst this provides a period of 21 days from the date on which the instrument was made, the Department expresses regret that the opportunity for parliamentary scrutiny is limited by part of the 21 day period falling after parliament has been prorogued.

4. Legislative Context

4.1 This instrument is being made to implement the core provisions of the Directive. The remaining provisions of the Directive will be implemented in another instrument which will be made following the forthcoming General Election.

4.2 The EU Directive is complemented by the EU Regulation on online dispute resolution for consumer disputes (EU No 524/2013), but no provisions of the EU Regulation are implemented in this instrument.

4.5 The attached transposition note explains the Department's approach to transposing this Directive.

4.6 The Directive was cleared by the House of Commons European Scrutiny Committee on 12 December 2012, (published in 32nd Report 32, Session 12/13).

4.7 The Directive 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. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 Although the Directive could have been implemented by 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 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 certain consequential amendments to primary legislation, namely the Enterprise Act 2002 and the Financial Services & Markets Act 2000.

6.2 The Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs has made the following statement regarding Human Rights: "In my view the provisions of The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 are compatible with the convention rights."

7. Policy background

- *What is being done and why*

7.1 Consumers are not always confident that if they experience problems when purchasing goods or services from a trader, that that problem will be resolved. Often the only option is to seek redress through the Courts, which can be an expensive, lengthy and daunting process which puts many consumers off pursuing redress. ADR provides a means for consumers to resolve their problems outside court. The aim of the Directive is to encourage growth and consumer confidence across the European Union by increasing access to ADR in relation to contractual disputes regarding the sale of goods or provision of services.

7.2 The Directive requires that Member States ensure that any dispute within its scope (which is most disputes concerning contractual obligations regarding the sale of goods or provision of services raised by a consumer against a trader) can be submitted to an ADR entity, which has been approved by a competent authority, if the trader so wishes (or if the trader is obliged by domestic legislation to use ADR).

7.3 The Directive also requires traders to notify consumers about what options for ADR are available in the event they are unable to resolve a dispute themselves. This notification requirement will increase awareness and uptake of ADR among traders.

7.4 The provisions contained in the ADR Directive are minimum harmonisation ensuring a minimum standard and quality of ADR is available across Europe with Member States given the option to introduce additional requirements in certain areas. The UK is not introducing additional requirements in this instrument, but this instrument recognises the power of designated competent authorities to require higher standards from applicant ADR entities if they have the power in another enactment to require of that ADR entity applicant, such higher standards.

7.5 The deadline for implementing the Directive is 9th July 2015; however, since the obligation under the Directive is that as of 9th July each Member State has in place certified ADR entities that can deal with any dispute within the scope of the Directive, the UK needs to implement the provisions regarding the designation of competent authorities and the standards that a certified ADR entity must meet ahead of the 9th July, so that the competent authorities can vet and approve ADR entity applicants ahead of the deadline. The remaining provisions of the Directive will be implemented in a separate instrument which will enter into force on 9th July 2015.

7.6 This instrument also places a requirement on a trader to provide certain information to a consumer regarding the availability of ADR in relation to the consumer's dispute.

Enforcement

7.7 The ADR Directive requires that Member States ensure "effective, proportionate and dissuasive penalties" for infringements of the provisions relating to the information obligations on traders. This is achieved by adding Article 13 of the Directive and Regulation 19 of this instrument to the Community infringements regime under Part 8 of the Enterprise Act 2002. An enforcer under the Enterprise Act 2002 can apply for an enforcement order from the court if the enforcer believes that a trader is not complying with its obligations under Regulation 19 of this instrument.

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 an ADR entity will be published once the instrument implementing the remaining provisions of the Directive has been made.

9.2 Specific guidance for business and consumers will be produced and published alongside the guidance on the broader consumer rights reforms being introduced through the Consumer Rights Bill, in spring 2015.

10. Impact

An Impact Assessment for this measure, which has been 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, will be published alongside the second set of implementing regulations to be laid before Parliament in the summer, 2015. This is due to the commercial sensitivities relating to a procurement process which will be carried out to implement the Directive. Early publication of the Impact Assessment and publication of estimated costs could pre-empt this process and may result in a less competitive and lower value for money bid.

11. Regulating small business

The legislation applies to small business. There is no flexibility to vary implementation of the Directive according to the size of firms. In line with the flexibility of the ADR Directive, this measure will not be making ADR compulsory for businesses in areas where it is not currently, so the majority of businesses will retain a choice as to whether to use ADR or not.

12. Monitoring & review

12.1 A review of the UK Regulations will be carried out five years after they come into force.

12.2 The Government response to its consultation includes a commitment to continue to consult stakeholders on the detail and merit of further simplification of the UK ADR landscape, and to assess the costs and benefits of making future, structural changes.

13. Contact

Peter Lovitt at the Department for Business, Innovation and Skills Tel: 020 7215 0189 or email: peter.lovitt@bis.gsi.gov.uk can answer any queries regarding the instrument.