

New Information Obligations on EU Businesses Selling to Consumers

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United Kingdom businesses selling goods or services to consumers need to be aware of some [new consumer protection legislation](#) that is now in force. The legislation requires these businesses to give certain information to their customers and to revise their complaints handling procedures. The legislation originates from the EU meaning that businesses established in other EU member states will be subject to the same obligations.

The [ADR Directive](#) and the [ODR Regulation](#) were originally [proposed by the European Commission](#). The Commission was concerned that growth in the EU was being restricted by a lack of consumer confidence in traders. The Commission believed that consumers were reluctant to buy goods and services because of fears that any problems with the goods or services would not be adequately resolved. Legal action would not be an option for most consumers because of the high costs usually involved. The ADR Directive and the ODR Regulation are attempts to address this. The legislation aims to encourage traders and consumers to use Alternative Dispute Resolution (ADR) procedures to resolve disputes and to view ADR as a realistic, cheaper and quicker alternative to legal action in the courts. The Commission believes that the availability of ADR will encourage consumers to purchase goods and services more freely, leading to growth in the EU.

The legislation makes ADR more readily available in a number of ways. Most importantly, the ODR Regulation requires an 'ODR Platform' to be set up by the European Commission (ODR being 'Online Dispute Resolution'). This platform is an interactive website, available in all of the official languages of the EU and free of charge to access. Via this platform, ADR is available to consumers and traders. In essence, a dispute between a trader and consumer can be submitted to the platform – the complainant simply completes an automated complaint form. Then, the ADR procedures kick in. The form is submitted to the respondent and the parties are pointed in the direction of an appropriate ADR entity (a recognised body) that is able to help resolve the dispute by mediation or arbitration. The ADR Directive, which has been implemented in the UK by [The Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015](#) sets out how ADR entities come into being, including which organisations can apply to be an ADR entity, who they should apply to and what criteria they will need to satisfy to be successfully appointed. Details of all ADR entities will be held on the ODR Platform.

ADR, via the ODR Platform, will be available for all contractual disputes between traders and

consumers concerning the sale of goods and services online or offline, domestically or cross-border. It is for the trader and consumer to decide if they want to use ADR to resolve a dispute or resort to more traditional legal action in the courts.

The legislation provides that where a trader is in dispute with a consumer but has exhausted its internal complaints handling procedures without resolving it, the trader must (1) tell the consumer that the trader cannot settle the complaint with the consumer (2) give the consumer the name and address of an ADR entity that would be competent to deal with the complaint and (3) confirm if they are obliged or prepared to use ADR and the named ADR entity. This requirement became law on 15 October 2015. Traders must revise their complaints handling processes to factor in this new information requirement. It is noteworthy that, unless the trader is obliged to use ADR (for which see below), neither the trader nor consumer has to use ADR. Similarly, if the parties do choose to use ADR, they do not have to use any of the ADR entities listed on the ODR platform. If the parties do agree to use an ADR entity, the consumer has 12 months to submit a complaint, otherwise the entity may refuse to deal with it.

In addition, from 15 February 2016, all online traders are required to include [a link](#) to the ODR Platform on their website, together with their own email address. Online marketplaces are also required to link to the ODR Platform. There are additional information obligations on traders who are obliged by law, contract or membership of a trade association to use ADR to resolve disputes with their customers.

Trading Standards are empowered to apply for an enforcement order in respect of any trader not complying with these requirements.

This latest development comes hot on the heels of other significant changes to consumer protection legislation which have happened over the last couple of years. Consumer facing businesses should, however, take heart from the fact that this latest legislation requires only relatively minor changes to websites and complaints procedures and, of itself, does not oblige businesses to use ADR to deal with consumer disputes.

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