

## Government publishes its proposals for the UK implementation of the EU Alternative Dispute Resolution (“ADR”) Directive

### Summary

The Government Department for Business, Innovation & Skills (“BIS”) has set out its proposals for the UK’s implementation of the European Directive on Alternative Dispute Resolution (the “Directive”). As a result of the Directive, the use of ADR by consumers to resolve their disputes with businesses is set to become significantly more widespread within the next few years. This will have a significant knock-on effect on businesses and the manner in which they handle consumers’ claims.

Two sets of UK regulations implementing these proposals are due in the first quarter of 2015. A process of certification of ADR bodies will begin in 2015, prior to formal implementation of the Directive in July. The new obligations requiring businesses to provide information about ADR to consumers will be set out in a separate set of legislation which will contain sanctions for failing to provide the stipulated information about ADR to consumers. What these sanctions will be is not yet clear.

Businesses affected are all those dealing directly with consumers as well as online businesses which act as a platform to businesses to sell their products to consumers. These businesses should:

- By July 2015, ensure that they publish all appropriate information to consumers online as well as in their terms and conditions of sales/services contracts about appropriate certified ADR provider/s, and (where not obliged by law or via membership of a trade association or has not voluntarily committed to using ADR) whether or not they plan to use it to settle disputes
- By January 2016, where a business trades online (or provides a platform for businesses to trade online), it must also provide a link to the Online Dispute Resolution (“ODR”) platform on its website along with further information (if obliged/committed to using ADR)

### The Directive

The Directive came into force in July 2013 and the UK has until 9 July 2015 to adopt it into national law. The aim of it is to offer ADR as an efficient, low-cost form of dispute resolution between consumers and traders across the EU and encourage consumers to shop across borders. The Directive applies exclusively to *consumer complaints* against businesses in both domestic and cross-border disputes. Disputes such as discrimination claims and those between businesses fall outside its scope. It does not make ADR compulsory but its aim is to ensure that ADR is available in all consumer/business disputes. It does not give a consumer the right to force a business to use ADR, or to use a particular ADR provider.

### BIS’ proposals:

BIS’ March 2014 consultation paper received several responses. The most controversial topics included whether to establish multiple or a single residual ADR scheme/s, the requirements on businesses to publish information about ADR and issues surrounding the setting up of a complaints helpdesk. BIS published its response to its consultation on 18 November 2014.

Please [click here](#) for the full text of its response, setting out its proposals and next steps in detail.

In summary, BIS’ proposals are:

- To create a residual ADR scheme, available to businesses that are not obliged or committed to using another ADR scheme. Use of this scheme will not be compulsory
- To work with the Citizens Advice Bureau to create a consumer complaints helpdesk to provide assistance and advice to consumers attempting to resolve a dispute with a trader. This is to be centrally funded and accessible both online and via telephone

- To appoint the Trading Standards Institute (TSI) to act as the UK’s competent authority covering ADR schemes in the non-regulated sectors. The Government will fund the start-up costs
- To appoint sector regulators as competent authorities for their sectors where appropriate
- To establish an ODR contact point to help consumers with cross-border disputes submitted via the European Commission’s ODR platform
- The Government will work with the Trading Standards Institute (TSI) to produce appropriate guidance for business, to help traders meet the new information requirements informing consumers about the availability of ADR
- Allow certified ADR providers to use the full set of criteria in Article 5(4) of the Directive as grounds on which they can refuse to deal with inappropriate disputes
- Allow certified ADR providers to make decisions that are binding
- Apply an eight-week extension to the six-year window an individual has to initiate litigation, should an ADR process be on-going at the time the six year window expires
- The Government will not categorise in-house mediation as an appropriate ADR process when implementing the Directive
- The Government will continue to consult stakeholders on the detail and merit of further simplification of ADR in the UK and assess the costs and benefits of making structural changes, such as an umbrella body sitting above a number of sector-specific ADR schemes

### **Implications of the proposals for existing ADR providers**

Although not obliged to become certified, if existing ADR providers are not certified, they will probably find that an alternative certified provider will be available for disputes in that sector and that businesses and consumers will be directed towards the certified (rather than the uncertified) ADR provider.

ADR providers in particular sectors will answer to their relevant “competent authority” which will assess whether bodies wishing to qualify as certified ADR providers meet the requirements of the Directive and monitor their performance. For financial services, this will be the Financial Conduct Authority, for aviation, the Civil Aviation Authority, for energy, Ofgem, for estate agents, Powys Council. It is proposed that the ADR providers in the gambling, pensions, postal, telecoms and regulated legal services sectors will be the Gambling Commission, the Department for Work and Pensions, Ofcom (for both postal and telecoms ADR providers) and the Legal Services Board respectively. The Government is still considering the appropriate competent authority for transport sectors (which already have independent complaint handling bodies) and Scottish ADR bodies.

For ADR providers not covered by a sector-specific competent authority, their functioning will be monitored and regulated by the TSI, which will also act as a single liaison point with the European Commission. The TSI will assess whether an ADR provider respects the quality requirements and will divide providers into bands which will pay annual fees based on the size of the organisation.

### **Implications of the proposals for businesses**

Businesses most affected by the reforms will be those which do not currently have recourse to a fixed ADR process. However, all businesses should be aware that the changes are likely to lead to:

- An increase in the number of complaints and commencement of ADR proceedings in turn placing increased pressure on businesses’ resources i.e. personnel time and cost of dealing with these complaints. Many consumers unwilling or unable to pursue court litigation may, after these changes, be more inclined to pursue a complaint through ADR. This is because of the increased information about ADR which will raise consumer awareness of the availability of this method of dispute resolution. The new consumer complaints helpdesk will help consumers communicate with the business with which they have the dispute, find an appropriate ADR provider and reduce the need for consumers to explain their dispute to different ADR providers as the helpdesk will develop a system for referring disputes directly to ADR providers. The time period in which to bring a complaint is also to be extended by 8 weeks after expiry of the 6 year limitation period. All of these changes are likely to increase the number of consumer disputes brought to ADR

- The new residual ADR provider will work with trade associations for businesses not already obliged to use or committed to using ADR, to obtain their agreement to use the residual ADR scheme, so, although not compulsory, businesses can expect to come under increased pressure to offer ADR. Certain types of businesses are to be targeted first. These are: (i) home maintenance, improvements and installation services; (ii) retail businesses; (iii) second hand car suppliers; and (iv) car repair and servicing businesses
- Increased costs, as all businesses become obliged from July 2015, to change their websites and terms and conditions to include the required information about the availability of ADR. Any business obliged by law or via membership of a trade association to use a particular ADR provider, or which has voluntarily committed to using a certified ADR provider to resolve disputes, must provide information about that certified provider on their website and terms and conditions of sales/services contracts. Further, all businesses, in the event of an unresolved dispute (whether or not obliged to use/committed to using ADR) must provide information about an appropriate certified ADR provider/s to the consumer and advise whether or not they will use ADR to try to settle the dispute. All businesses who sell their goods or services online must provide a link to the ODR platform on their website. Further information must be provided about the ODR platform if the online business is obliged or committed to using ADR. NB: All websites which act as a *platform* for businesses to sell their goods and/or services must also provide a link to the ODR platform
- From now until after implementation of the Directive, businesses will need to allocate key personnel time to fully understand the new requirements brought about by the Directive i.e. the relevant information requirements and the ADR process itself

### **BIS' next steps**

The above proposals still leave some other areas to be ironed out:

- BIS has not yet appointed the proposed "residual ADR provider" and will publish an invitation to bid for this role shortly
- BIS to work with Citizens Advice to create the consumer complaints helpdesk
- BIS to conduct an ODR contact point procurement exercise to appoint a supplier for this role
- Regarding competent authorities, BIS to consider the appropriate authority for the transport sectors and Scottish ADR bodies
- Regarding the new information requirements, BIS to work with the TSI to produce appropriate guidance on these requirements and intends to set these out (and related sanctions) through secondary legislation
- In relation to its proposal to further simplify the provision of ADR to consumers in the UK, BIS to consult further with stakeholders and carry out further work to assess costs, benefits and impacts to inform any decisions on future simplification e.g. by appointing an umbrella body to act as a single point of entry for ADR and sit above sector-specific ADR schemes
- Finally, further guidance on interpreting some of the Directive's requirements is to be issued to ADR providers during 2015

### **Further information**

If you would like further information on any issue raised in this overview please contact:

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