STATUTORY INSTRUMENTS

2015 No. 1392

CONSUMER PROTECTION

The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015

Made - - - -	*18th June 2015*
Laid before Parliament	*18th June 2015*
Coming into force	
for the purpose of regulations 2(5)(c), (13), (14) and (15)(j), and 6 and 9	*9th January 2016*
Remainder	*9th July 2015*

The Secretary of State, is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(**1**), in relation to matters relating to consumer protection(**2**).

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 210(9) and 212(3) of the Enterprise Act 2002(**3**).

PART 1

General

Citation, commencement, transitional provision and extent

1.—(1) These Regulations may be cited as the Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015.

(2) Regulations 2(5)(c), 2(13), (14) and (15)(j), 6 and 9 come into force on 9th January 2016 and all other regulations come into force on 9th July 2015.

(3) Regulations 3, 4, 5, 7 and 8 apply only where the contract to which the dispute relates was entered into on or after 9th July 2015.

(**1**) 1972 c.68; section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by the Schedule to the European Union (Amendment) Act 2008 (c.7).
(**2**) S.I. 1993/2661.
(**3**) 2002 c.40; section 210 was amended by regulations 4 and 5 of S.I. 2006/3363 and article 4(1) of S.I. 2011/1043. Section 212 was amended by regulations 6 to 8 of S.I. 2006/3363 and regulation 2 of S.I. 2007/528.

(4) These Regulations have the same extent as the provisions that they amend.

PART 2

Amendments to the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

Amendments to the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

2.—(1) The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015(**4**) are amended as follows.

(2) For the word "body", in each place it occurs, substitute "person" except in paragraph 3(h) of Schedule 3.

(3) In regulation 1(3) (citation and commencement), for "9th July 2015" substitute "1st October 2015".

(4) In regulation 2 (review)—

(a) in paragraph (1)(a), after "Regulations" insert "and the amendments to legislation made by Parts 3 and 4 of the Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015";

(b) in paragraph (2), for "is implemented" substitute ", and 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 are implemented";

(c) in paragraph (3)(a), after "Regulations" insert "and the amendments to legislation made by Parts 3 and 4 of the Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015".

(5) In regulation 5 (other definitions)—

(a) for the definition of "ADR official" substitute—

> ""ADR official" means an individual who (solely or with other persons) is involved in the provision of alternative dispute resolution procedures offered by an ADR entity, or ADR applicant, whether as a case handler or in a management capacity;";

(b) insert at the appropriate place—

> ""complete complaint file" means all the relevant information relating to a dispute";
>
> ""EU listed body" means a person, other than an ADR entity, whose name appears on a list referred to in Article 20(2) 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;";

(c) insert at the appropriate place—

> ""ODR platform" means a European online dispute resolution platform established under Article 5 of Regulation (EU) No 524/2013 of the European

(**4**) S.I. 2015/542.

Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes;".

(6) In regulation 9 (assessment of application to become an ADR entity), omit paragraphs (4)(a) and (8).

(7) In regulation 14 (notification of the consolidated ADR entity list)—

(a) the existing provision becomes paragraph (1);

(b) after paragraph (1) insert—

"(2) An ADR entity must make the consolidated list of ADR entities published by the European Commission publicly available—

(a) on its website by means of a link to the relevant European Commission website; and

(b) wherever possible, at the ADR entity's premises on a durable medium.".

(8) After regulation 14 (notification of the consolidated ADR entity list) insert—

"**The ADR entity's duty to cooperate**

14A.—(1) The ADR entity must take reasonable steps to—

(a) cooperate with other ADR entities in the resolution of cross-border disputes; and

(b) conduct regular exchanges of best practices with other ADR entities regarding the settlement of both cross-border disputes and domestic disputes.

(2) The ADR entity must take such steps as it considers appropriate to cooperate with bodies or persons designated by the Secretary of State under Article 4(1) and 4(2) of Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws as amended by Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

(3) Cooperation under paragraph (2) includes, in particular, exchange of information on practices in specific business sectors about which consumers have repeatedly lodged complaints.

Agreement to submit disputes to an ADR entity

14B. An agreement between a consumer and a trader to submit a cross-border dispute or domestic dispute to an ADR entity is not binding on the consumer to the extent that the agreement—

(a) was concluded before the cross-border dispute or domestic dispute materialised; and

(b) has the effect of depriving the consumer of the right to bring judicial proceedings in relation to the cross-border dispute or domestic dispute.

Binding outcome requirements

14C.—(1) Where an ADR entity aims at resolving a dispute by imposing a solution, the solution will not be binding on a party to the dispute unless—

(a) the ADR entity notifies the party that the outcome will be binding; and

(b) the party specifically accepts that the outcome will be binding.

(2) The requirements under paragraph (1) must be met before the ADR entity notifies the party of the outcome of the alternative dispute resolution procedure.

(3) Paragraph (1)(b) does not apply in relation to a trader where an enactment, the rules of a trade association, or term of a contract, provides that the solution will be binding on the trader.".

(9) In regulation 15 (fees)—

(a) for the heading, substitute "Fees payable to the Secretary of State";

(b) in paragraph (4), for "Regulation" substitute "regulation".

(10) After regulation 15 (fees payable to the Secretary of State) insert—

"**Fees payable to the Financial Conduct Authority**

15A.—(1) The functions of the FCA under these Regulations are to be treated for the purposes of paragraph 23 of Schedule 1ZA to the 2000 Act (fees) as qualifying functions conferred on the FCA under that Act with the following modifications—

(a) rules made under paragraph 23 by virtue of this regulation may not provide for payment of fees by any person other than the scheme operator as defined in section 225(2) of the 2000 Act (the ombudsman scheme);

(b) rules made under paragraph 23 by virtue of this regulation are not to be treated as regulating provisions for the purposes of Chapter 4 of Part 9A of the 2000 Act (competition scrutiny);

(c) in relation to the first rules made under paragraph 23 by virtue of this regulation, section 1381 of the 2000 Act (consultation by the FCA) does not apply.

(2) In this regulation—

"the 2000 Act" means the Financial Services and Markets Act 2000;

"the FCA" means the Financial Conduct Authority as defined in section 1A of the 2000 Act (the regulators).".

(11) In regulation 18(1)(b) (functions of single point of contact), at the end insert "on the standardised electronic form provided by the European Commission.".

(12) For regulation 19 (consumer information by traders) substitute—

"**Consumer information by traders**

19.—(1) Where, under an enactment, rules of a trade association, or term of a contract, a trader is obliged to use an alternative dispute resolution procedure provided by an ADR entity or EU listed body the trader must provide the name and website address of the ADR entity or EU listed body—

(a) on the trader's website, if the trader has a website; and

(b) in the general terms and conditions of sales contracts or service contracts of the trader, where such general terms and conditions exist.

(2) Where a trader has exhausted its internal complaint handling procedure when considering a complaint from a consumer relating to a sales contract or a service contract, the trader must inform the consumer, on a durable medium—

(a) that the trader cannot settle the complaint with the consumer;

(b) of the name and website address of an ADR entity or EU listed body that would be competent to deal with the complaint; and

(c) whether the trader is obliged, or prepared, to submit to an alternative dispute resolution procedure operated by an ADR entity or EU listed body.

(3) The trader information requirements set out in paragraphs (1) and (2) apply in addition to any information requirements applicable to traders regarding out-of-court redress procedures contained in any other enactment.".

(13) After regulation 19 insert—

"**Consumer information by online traders and online marketplaces regarding the ODR platform**

19A.—(1) Where under an enactment, rules of a trade association, or term of a contract, an online trader is obliged to use an alternative dispute resolution procedure provided by an ADR entity or EU listed body, the trader must—

(a) provide a link to the ODR platform in any offer made to a consumer by email; and

(b) inform consumers of—

(i) the existence of the ODR platform; and

(ii) the possibility of using the ODR platform for resolving disputes.

(2) The information in (1)(b) must also be included in the general terms and conditions of online sales contracts and online service contracts of the trader, where such general terms and conditions exist.

(3) An online trader must on its website—

(i) provide a link to the ODR platform; and

(ii) state the online trader's email address.

(4) An online marketplace must provide a link to the ODR platform on its website.

(5) The online trader requirements set out in paragraphs (1) to (3) apply in addition to the trader information requirements set out in regulation 19.

(6) The online trader and online marketplace requirements in paragraphs (1) to (4) apply in addition to any information requirements regarding out-of-court redress procedures contained in any other enactment.

(7) In this regulation—

"online marketplace" has the meaning given in Article 4(f) of the 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;

"online sales contract" means a sales contract where the trader, or the trader's intermediary, has offered goods on a website or by other electronic means and the consumer has ordered such goods on that website or by other electronic means;

"online service contract" means a service contract where the trader, or the trader's intermediary, has offered services on a website or by other electronic means and the consumer has ordered such services on that website or by other electronic means;

"online trader" means a trader who intends to enter into online sales contracts or online service contracts with consumers."

(14) In regulation 20 (amendment to Schedule 13 to the Enterprise Act 2002), omit paragraph (2) and Schedule 8.

(15) In Schedule 3 (requirements that a competent authority must be satisfied that the person meets)—

(a) for paragraph 6(c) substitute—