
STATUTORY INSTRUMENTS

2015 No. 542

CONSUMER PROTECTION

**The Alternative Dispute Resolution for Consumer Disputes
(Competent Authorities and Information) Regulations 2015**

<i>Made</i>	- - - -	<i>16th March 2015</i>
<i>Laid before Parliament</i>		<i>17th March 2015</i>
<i>Coming into force</i>		
<i>for the purposes of Parts 1 to 3</i>		<i>7th April 2015</i>
<i>for the purposes of Parts 4 & 5</i>		<i>9th July 2015</i>

The Secretary of State, as 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⁾, makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.

(2) Parts 1 to 3 come into force on 7th April 2015.

(3) Parts 4 and 5 come into force on 9th July 2015.

Review

2.—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations,

(b) set out the conclusions of the review in a report, and

(1) 1972 c.68.

(2) Article 2 of, and the Schedule to, The European Communities (Designation) (No. 3) Order 1993 (S.I. 1993/2661).

(c) publish the report.

(2) In carrying out the review, the Secretary of State must, so far as is reasonable, have regard to how Directive 2013/11/EU of the European Parliament and of the Council of 21st May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC⁽³⁾ is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations,
- (b) assess the extent to which those objectives have been achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a way that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which Parts 1 to 3 of these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

“Consumer” and “trader”

3. In these Regulations—

“consumer” means an individual acting for purposes which are wholly or mainly outside that individual’s trade, business, craft or profession;

“trader” means a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf.

“ADR entity”

4. In these Regulations “ADR entity” means a body whose name appears on a list maintained in accordance with regulation 10.

Other definitions

5. In these Regulations—

“ADR applicant” means a body who wishes to become an ADR entity;

“ADR official” means an individual employed, contracted or appointed by an ADR entity to oversee its alternative dispute resolution procedure, whether as a case-handler or in a management capacity;

“competent authority” means the Secretary of State or a body specified in the first column of Part 1 or Part 2 of Schedule 1;

“cross-border dispute” means a dispute concerning contractual obligations arising from a sales contract or a service contract where, at the time the consumer orders the goods or services, the trader is established in the United Kingdom and the consumer is resident in another member State;

“domestic dispute” means a dispute concerning contractual obligations arising from a sales contract or a service contract where, at the time the consumer orders the goods or services, the consumer is resident, and the trader is established, in the United Kingdom;

“durable medium” means paper or email, or any other medium that—

(3) OJ No L 165 18.6.2013, p63.

- (a) allows information to be addressed personally to the recipient,
- (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information, and
- (c) allows the unchanged reproduction of the information stored;

“sales contract” means a contract under which a trader transfers or agrees to transfer the ownership of goods to a consumer, and the consumer pays or agrees to pay the price, including any contract that has both goods and services as its object;

“service contract” means a contract, other than a sales contract, under which a trader supplies, or agrees to supply a service to a consumer and the consumer pays, or agrees to pay, the price;

“single point of contact” means the person designated in regulation 17.

Interpretation

6. In regulation 5 a trader is “established”—

- (a) if the trader is an individual, where the trader has his or her place of business;
- (b) if the trader is a company or other legal person or an association of persons, where it has its statutory seat, central administration or place of business, including a branch, agency or any other establishment.

Contracts to which these Regulations do not apply

7. These Regulations do not apply to a contract to the extent that it is for health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices (and “health professionals” has the meaning given by Article 3(f) of Directive 2011/24/EU of the European Parliament and of the Council on the application of patients’ rights in cross-border healthcare)(4).

PART 2

Competent Authorities and ADR Entities

Functions and designation of competent authorities

8.—(1) A competent authority must perform the functions set out in this Part.

(2) Each body specified in the first column of Part 1 of Schedule 1 is—

- (a) a competent authority for the purposes of these Regulations, and
- (b) the relevant competent authority in relation to alternative dispute resolution services offered by the body specified alongside it in the second column of Part 1 of Schedule 1.

(3) Subject to paragraph (2), each body specified in Part 2 of Schedule 1 is—

- (a) a competent authority for the purposes of these Regulations in relation to the area for which it has regulatory responsibility or any area for which it has oversight under any enactment, and
- (b) the relevant competent authority in relation to an ADR entity or ADR applicant which offers alternative dispute resolution services in that area.

(4) The Secretary of State is the relevant competent authority in relation to—

(4) OJ L 88, 4.4.2011, p. 45.

- (a) alternative dispute resolution services offered by the Pensions Ombudsman, and
- (b) an ADR entity or ADR applicant which offers alternative dispute resolution services in an area other than one referred to in paragraph (3).

Assessment of application to become an ADR entity

9.—(1) An ADR applicant may apply to the relevant competent authority to become an ADR entity.

(2) The ADR applicant must supply with an application—

- (a) the information in Schedule 2; and
- (b) such other information as the competent authority may require in order to assess whether the ADR applicant meets the requirements in Schedule 3.

(3) The information referred to in paragraph (2) must be provided in such form as the competent authority may require.

(4) The competent authority may only approve an application if it is satisfied that—

- (a) the ADR applicant is established in the United Kingdom; and
- (b) the requirements in Schedule 3—
 - (i) have been met by the ADR applicant, or
 - (ii) will be met by the ADR applicant within a reasonable period of time of the application being granted.

(5) Where—

- (a) an enactment contains the power for a competent authority to impose additional requirements which go beyond those set out in Schedule 3, and
- (b) such requirements, including issuing binding solutions on traders, are imposed for the purpose of ensuring a higher level of consumer protection,

such requirements shall be deemed to be included in Schedule 3 for the purposes of this regulation, regulations 12 and 13(1) and (2) and paragraph (i) of Schedule 2.

(6) Where an application is approved, the competent authority must as soon as is reasonably practicable give written notice to the ADR applicant.

(7) Where an application is rejected, the competent authority must as soon as is reasonably practicable give written notice of this fact to the ADR applicant, which must include the grounds on which it has rejected the application.

(8) For the purposes of paragraph (4)(a) an ADR applicant is “established”—

- (a) if the ADR applicant is operated by an individual, at the place where it carries out the dispute resolution;
- (b) if the ADR applicant is operated by a legal person, or association of persons, at the place where that legal person or association of persons carries out the dispute resolution or has its statutory seat;
- (c) if the ADR applicant is operated by a public authority or other public body, at the place where that public authority or other public body has its statutory seat.

Listing of ADR entities

10.—(1) A competent authority must maintain a list of the ADR applicants which have been approved by it to become an ADR entity under regulation 9(4) and that list must include the information in Schedule 4 in respect of each ADR applicant.

(2) A competent authority must, without undue delay following compilation of a list, send the list to the single point of contact.

(3) If under regulation 11(1) a competent authority receives notification from an ADR entity containing information which differs from the information included in relation to that ADR entity in the list maintained under paragraph (1), the competent authority must—

- (a) amend the list to reflect the change in that information, and
- (b) without undue delay, send the amended list to the single point of contact.

Ongoing information obligations of an ADR entity

11.—(1) In the event of a change to the information which an ADR entity has supplied under regulation 9(1), the ADR entity must, without undue delay, provide written notification of the change to the competent authority.

(2) An ADR entity must, within a month of the first anniversary of the approval date and within a month of each subsequent anniversary, publish on its website a report (“an annual activity report”) relating to the preceding year which contains the information in Schedule 5.

(3) The ADR entity must, within a month of the second anniversary of the approval date and within a month of the expiry of each successive period of two years, supply the relevant competent authority with the information in Schedule 6 relating to the preceding two year period.

(4) The annual activity report and information to be provided under paragraph (3) must be in such form as the competent authority may require.

(5) In this regulation “approval date” means the date of the written notice granting approval to the ADR entity under regulation 9(6).

Ongoing assessment of an ADR entity

12. Following receipt of the information received under regulation 11(3) the competent authority must review the information and assess whether the ADR entity still meets the requirements in Schedule 3.

Removal of approval

13.—(1) A competent authority must provide notice in writing to an ADR entity approved by it under regulation 9(4) if the competent authority has reason to believe that—

- (a) the ADR entity no longer meets a requirement in Schedule 3; and
- (b) the reason the ADR entity no longer meets the requirement is within its control.

(2) The written notice must—

- (a) identify the requirement in Schedule 3 which is no longer met; and
- (b) require the ADR entity to meet the requirement promptly or in any event within 3 months of the date of the notice.

(3) If the ADR entity fails to meet the requirement notified to it on or before the expiry of the period specified in paragraph (2), and the competent authority considers that the failure to meet the requirement is sufficiently serious, the competent authority must—

- (a) send notice in writing to the ADR entity of the withdrawal of its approval, and
- (b) without undue delay, remove the ADR entity from the list maintained by it under regulation 10(1).

(4) If a competent authority removes an ADR entity from the list under paragraph (3) it must, without undue delay, send the revised list to the single point of contact.

Notification of the consolidated ADR entity list

14. A competent authority must make the consolidated list of ADR entities published by the European Commission—

- (a) publicly available on its website by means of a link to the relevant European Commission website; and
- (b) available on request by a member of the public on a durable medium.

Fees

15.—(1) Where the competent authority is the Secretary of State, the competent authority may charge—

- (a) an ADR applicant a fee in respect of the costs incurred by or on behalf of the Secretary of State in evaluating an application made under regulation 9, and
- (b) an ADR entity a periodic fee, in respect of costs incurred by or on behalf of the Secretary of State in carrying out the functions of the Secretary of State under regulations 10 to 14.

(2) The fees referred to above shall not exceed the amount of all reasonable costs and expenses incurred by or on behalf of the Secretary of State in evaluating an application and carrying out the other functions referred to above, which shall include a sum calculated at the rate of £750 for every day, (based upon an eight hour day) spent by each person in carrying out the relevant function (which shall be pro-rated in respect of any period less than a day spent by any person).

(3) The fees are payable on invoice, to the Secretary of State, or such person as the Secretary of State may direct, and any unpaid fee may be recovered by the Secretary of State as a civil debt.

(4) The Secretary of State is not required to approve an application under Regulation 9(4) if there is a fee outstanding under this regulation in relation to that application.

Consequential amendments

16. Schedule 7 makes amendments that are consequential on these Regulations.

PART 3

Single point of contact

Designation of single point of contact

17. The Secretary of State is the single point of contact for the purposes of these Regulations.

Functions of single point of contact

18.—(1) The single point of contact must—

- (a) compile a consolidated list of ADR entities from the lists which it receives from time to time from each competent authority under regulations 10 and 13(4), and
- (b) without undue delay, send the consolidated list to the European Commission.

(2) On or before 9th July 2018, and within each successive period of four years after that date, the single point of contact must—

- (a) publish on its website a report on the development and functioning of ADR entities; and
- (b) send a copy of that report to the European Commission.

(3) The report must, in particular—

- (a) identify best practices of ADR entities,
- (b) identify the shortcomings (if any), supported by statistics or any other data, that hinder the functioning of ADR entities in relation to domestic or cross-border disputes, and
- (c) where appropriate, make recommendations on how to improve the effective and efficient functioning of ADR entities.

(4) The single point of contact may, for the purpose of enabling it to prepare the report, require a competent authority to provide such information as it may require relating to the development and functioning of an ADR entity for which it is the relevant competent authority.

(5) A competent authority must, if requested by the single point of contact under paragraph (4), provide the requested information in such form and within such period as may be required by the single point of contact.

PART 4

Trader information requirements

Consumer information by traders

19.—(1) Where a trader is obliged to use alternative dispute resolution services provided by an ADR entity under—

- (a) an enactment; or
- (b) the rules of a trade association to which the trader belongs,

the trader must provide the name and website address of the ADR entity—

- (c) on the trader's website, if the trader has a website; and
- (d) in the general terms and conditions of sales or service contracts between the trader and a consumer.

(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 which would be competent to deal with the complaint, should the consumer wish to use alternative dispute resolution; and
- (c) whether the trader is obliged, or prepared, to submit to an alternative dispute resolution procedure operated by that ADR entity.

(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.

PART 5

Enterprise Act 2002

Amendment to Schedule 13 to the Enterprise Act 2002

20.—(1) In Schedule 13 to the Enterprise Act 2002⁽⁵⁾ (listed Directives and Regulations), after paragraph 12⁽⁶⁾ insert—

“**13.** Article 13 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) 2006/2004 and Directive 2009/22/EC.”.

(2) The law in the United Kingdom set out in Schedule 8 to these Regulations is specified for the purposes of section 212 of the Enterprise Act 2002 to the extent that it gives effect to the listed Directive set out in that Schedule.

Jo Swinson

Parliamentary Under Secretary of State for
Employment Relations and Consumer Affairs
Department for Business, Innovation and Skills

16th March 2015

⁽⁵⁾ 2002 c.40.

⁽⁶⁾ Paragraph 12 was inserted by reg. 16(b) of the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (S.I. 2011/1208).

SCHEDULE 1

Regulation 8

Competent Authorities

PART 1

<i>Column 1</i>	<i>Column 2</i>
Financial Conduct Authority	Financial Ombudsman Service
Legal Services Board	Office for Legal Complaints

PART 2

Civil Aviation Authority

Gambling Commission

Gas and Electricity Markets Authority

Office of Communications

The lead enforcement authority for the purposes of the Estate Agents Act 1979(7)

SCHEDULE 2

Regulation 9(2)

Information that an ADR applicant must supply

- a) the ADR applicant's name, contact details and website address;
- b) information regarding the structure and funding of the ADR applicant, including such information as the competent authority may require regarding its ADR officials, their remuneration, term of office and by whom they are employed;
- c) the rules of the alternative dispute resolution procedure to be operated by the ADR applicant;
- d) any fees to be charged by the ADR applicant;
- e) where the ADR applicant already operates an alternative dispute resolution procedure, the average length of the alternative dispute resolution procedure;
- f) the language in which the ADR applicant is prepared to receive initial complaint submissions and conduct the alternative dispute resolution procedure;
- g) a statement as to the types of disputes covered by the alternative dispute resolution procedure operated by the ADR applicant;
- h) the grounds, if any, on which the ADR applicant may refuse to deal with a dispute;
- i) a reasoned statement which sets out how the ADR applicant complies, or proposes to comply, with the requirements set out in Schedule 3.

(7) 1979 c.38.

SCHEDULE 3

Regulation 9(4)

Requirements that a competent authority must be satisfied that the body meets

Alternative dispute resolution services offered by the body

1. The body—
 - (a) offers alternative dispute resolution services in relation to a domestic dispute or cross-border dispute brought by a consumer against a trader;
 - (b) is not formed for the purpose of dealing only with one particular domestic dispute or cross-border dispute;
 - (c) does not offer alternative dispute resolution services in relation to a domestic or cross-border dispute in circumstances where an ADR official responsible for the dispute is either employed or remunerated directly by a trader who is a party to the dispute.

Access to the ADR entity

2. The body—
 - (a) maintains an up-to-date website which provides the parties to a domestic dispute or cross-border dispute with information regarding the alternative dispute resolution procedure operated by the body;
 - (b) provides the information referred to in sub-paragraph (a) to a party on a durable medium, if a party requests it;
 - (c) ensures that its website enables a consumer to file an initial complaint submission and any necessary supporting documents online;
 - (d) permits the consumer to file an initial complaint submission by post, if the consumer wishes;
 - (e) enables the exchange of information between the parties via electronic means or, if a party wishes, by post;
 - (f) accepts disputes covered by Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes⁽⁸⁾.

Expertise, Independence and Impartiality

3. The body—
 - (a) ensures that an ADR official possesses a general understanding of the law and the necessary knowledge and skills relating to the out-of-court or judicial resolution of consumer disputes, to be able to carry out his or her functions competently;
 - (b) appoints each ADR official for a term of office of sufficient duration to ensure the independence of that person's actions and provides that no ADR official can be relieved of his or her duties without just cause;
 - (c) ensures that no ADR official discharges his or her duties in a way that is biased as regards a party to a dispute, or the representative of a party;
 - (d) remunerates an ADR official in a way that is not linked to the outcome of the alternative dispute resolution procedure;
 - (e) where it appoints more than one ADR official, ensures that an ADR official, without undue delay, discloses to the body a circumstance that may, or may be seen to—

(8) OJ No L 165 18.6.2013 p1.

- (i) affect the ADR official's independence or impartiality; or
 - (ii) give rise to a conflict of interest with a party to the dispute which the ADR official is asked to resolve;
- (f) ensures that the obligation to disclose a conflict of interest is a continuing obligation throughout the alternative dispute resolution procedure;
- (g) ensures that in circumstances where its ADR officials are employed or remunerated exclusively by a professional organisation or business association, the body has a ring-fenced budget at its disposal which is sufficient to enable it to carry out its functions as an ADR entity;
- (h) ensures that where the operating model of its alternative dispute resolution procedure is to have a collegial body of representatives of both professional organisations or business associations, and consumer organisations, its ADR officials comprise an equal number of representatives of consumer interests and trader interests.

Conflict of interests procedure

4. The body has in place the following procedure in the event that an ADR official declares or is discovered to have a conflict of interest in relation to a domestic dispute or cross-border dispute—

- (a) where possible, the ADR official is replaced by another ADR official to handle the particular dispute;
- (b) if the ADR official cannot be replaced by another ADR official—
 - (i) the ADR official must refrain from conducting the alternative dispute resolution procedure, and
 - (ii) the body must, where possible, propose to the parties that they submit the dispute to another ADR entity which is competent to deal with it;
- (c) if the dispute cannot be transferred to another ADR entity, the body—
 - (i) must inform the parties to the dispute of the circumstances of the conflict of interest,
 - (ii) must inform the parties to the dispute that they have the right to object to the conflicted person continuing to handle the dispute, and
 - (iii) can only continue to deal with the dispute if no party to the dispute objects.

Transparency

5. The body makes the following information publicly available on its website in a clear and easily understandable manner, and provides, on request, this information to any person on a durable medium—

- (a) its contact details, including postal address and e-mail address;
- (b) a statement that it has been approved as an ADR entity by the relevant competent authority once this approval has been granted;
- (c) its ADR officials, the method of their appointment and the duration of their appointment;
- (d) the name of any network of bodies which facilitates cross-border alternative dispute resolution of which it is a member;
- (e) the type of domestic disputes and cross-border disputes which it is competent to deal with, including any financial thresholds which apply;
- (f) the procedural rules of the alternative dispute resolution procedure operated by it and the grounds on which it can refuse to deal with a given dispute in accordance with paragraph 13;

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- (g) the language in which it is prepared to receive an initial complaint submission;
- (h) the language in which its alternative dispute resolution procedure can be conducted;
- (i) the principles the body applies, and the main considerations the body takes into account, when seeking to resolve a dispute;
- (j) the preliminary requirements, if any, that a party to a dispute needs to have met before the alternative dispute resolution procedure can commence;
- (k) a statement as to whether or not a party to the dispute can withdraw from the alternative dispute resolution procedure once it has commenced;
- (l) the costs, if any, to be borne by a party, including the rules, if any, on costs awarded by the body at the end of the alternative dispute resolution procedure;
- (m) the average length of each alternative dispute resolution procedure handled by the body;
- (n) the legal effect of the outcome of the dispute resolution process, including whether the outcome is enforceable and the penalties for non-compliance with the outcome, if any;
- (o) a statement as to whether or not alternative dispute resolution procedures operated by it can be conducted by oral or written means (or both);
- (p) the annual activity report required to be prepared under regulation 11(2).

Effectiveness

6. The body—

- (a) ensures that its alternative dispute resolution procedure is available and easily accessible to both parties irrespective of where they are located including by electronic means and non-electronic means;
- (b) ensures that—
 - (i) the parties to a dispute are not obliged to obtain independent advice or be represented or assisted by a third party although they may choose to do so;
 - (ii) the alternative dispute resolution is available free of charge or at a nominal fee for consumers;
- (c) notifies the parties to a dispute as soon as it has received all the documents containing the relevant information relating to the dispute constituting the complete complaint file;
- (d) notifies the parties of the outcome of the alternative dispute resolution procedure within a period of 90 days from the date on which the body has received the complete complaint file except that, in the case of a highly complex dispute, the body may extend this period but must inform the parties of this extension and the expected length of time that it will need to conclude the alternative dispute resolution procedure.

Fairness

7. The body—

- (a) ensures that during the alternative dispute resolution procedure the parties may, within a reasonable period of time, express their points of view;
- (b) provides a party to a dispute within a reasonable period of time, upon request, with the arguments, evidence, documents and facts put forward by the other party to the dispute, including a statement made, or opinion given, by an expert;
- (c) ensures that the parties may, within a reasonable period of time, comment on the information and documents provided under paragraph (b);

- (d) informs the parties that they are not obliged to retain a legal advisor, but that they may seek independent advice or be represented or assisted by a third party at any stage of the alternative dispute resolution procedure;
 - (e) notifies the parties of the outcome of the alternative dispute resolution procedure on a durable medium and gives the parties a statement of the grounds on which the outcome is based.
- 8.** Subject to paragraphs 9 and 10, in relation to an alternative dispute resolution procedure which aims at resolving a dispute by proposing a solution, the body ensures that the parties—
- (a) have the possibility of withdrawing from the alternative dispute resolution procedure at any stage if they are dissatisfied with the performance or operation of the alternative dispute resolution procedure;
 - (b) before the alternative dispute resolution procedure commences, are informed of their right to withdraw from the alternative dispute resolution procedure at any stage;
 - (c) are informed, before agreeing to or following the proposed solution—
 - (i) that they have a choice as to whether or not to agree to, or follow, the proposed solution;
 - (ii) that their participation in the alternative dispute resolution procedure does not preclude the possibility of them seeking redress through court proceedings;
 - (iii) that the proposed solution may be different from an outcome determined by a court applying legal rules; and
 - (iv) of the legal effect of agreeing to, or following the proposed solution;
 - (d) before expressing their consent to a proposed solution or amicable agreement, are allowed a reasonable period of time to reflect.
- 9.** Paragraphs 8(a) and 8(b) do not apply to the body in respect of a party who is—
- (a) a trader; and
 - (b) obliged, under an enactment or under the rules of a trade association to which the trader may belong, to participate in an alternative dispute resolution procedure.
- 10.** Paragraph 8 does not apply to the body in respect of a party who is—
- (a) a trader; and
 - (b) obliged, under an enactment or under the rules of a trade association to which the trader may belong, to accept the solution proposed by the body if the consumer accepts the solution.

Legality

- 11.** In relation to an alternative dispute resolution procedure which aims at resolving a dispute by imposing a solution on the consumer, the body ensures that—
- (a) in a situation where there is no conflict of laws, the solution imposed by the body does not result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by agreement by virtue of any enactment;
 - (b) in a situation involving a conflict of laws—
 - (i) where the law applicable to the sales contract or service contract is determined in accordance with Article 6(1) and (2) of Regulation (EC) No 593/2008 on the law applicable to contractual obligations⁽⁹⁾ the solution imposed by the body does not

(9) OJ No L 177 4.7.2008 p6.

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result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by virtue of the law of the member State in which the consumer is habitually resident;

- (ii) where the law applicable to the sales contract or service contract is determined in accordance with Article 5(1) to (3) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations⁽¹⁰⁾ the solution imposed by the body does not result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by virtue of the mandatory rules of the law of the member State in which the consumer is habitually resident.

12. For the purposes of paragraph 11 “habitual residence” is determined in accordance with Regulation (EC) No 593/2008⁽¹¹⁾.

Grounds to refuse to deal with a dispute

13. The body may only refuse to deal with a domestic dispute or a cross-border dispute which it is competent to deal with on one of the following grounds—

- (a) prior to submitting the complaint to the body, the consumer has not attempted to contact the trader concerned in order to discuss the consumer’s complaint and sought, as a first step, to resolve the matter directly with the trader;
- (b) the dispute is frivolous or vexatious;
- (c) the dispute is being, or has been previously, considered by another ADR entity or by a court;
- (d) the value of the claim falls below or above the monetary thresholds set by the body;
- (e) the consumer has not submitted the complaint to the body within the time period specified by the body, provided that such time period is not less than 12 months from the date upon which the trader has given notice to the consumer that the trader is unable to resolve the complaint with the consumer;
- (f) dealing with such a type of dispute would seriously impair the effective operation of the body.

14. The body ensures that its policy regarding when it will refuse to deal with a dispute, including in relation to the level of any monetary threshold it sets, does not significantly impair consumers’ access to its alternative dispute resolution procedures.

15. Subject to paragraph 16, where a body refuses to deal with a dispute, it must, within three weeks of the date upon which it received the complaint file, inform both parties and provide a reasoned explanation of the grounds for not considering the dispute.

16. Where following the expiry of the period referred to in paragraph 15, it appears to the body that one of the parties has sought to mislead the body as regards the existence or non-existence of one of the grounds for it to decline to deal with a dispute, the body may immediately decline to deal further with the dispute.

SCHEDULE 4

Regulation 10(1)

Information to be included in the list maintained by a competent authority

- a) the name, contact details and website address of the ADR entity;

⁽¹⁰⁾ OJ No L 266 9.10.1980 p1.

⁽¹¹⁾ OJ No L 177 4.7.2008 p6.

- b) the fees, if any, charged by the ADR entity;
- c) the language in which complaints can be submitted to the ADR entity and in which the ADR entity can conduct alternative dispute resolution procedures;
- d) the types of domestic dispute and cross-border dispute covered by the alternative dispute resolution services provided by the ADR entity;
- e) the sectors and categories of domestic disputes and cross-border disputes covered by the ADR entity;
- f) whether or not the alternative dispute resolution procedure is or can be conducted as an oral or a written procedure;
- g) whether the outcome of the alternative dispute resolution procedure is binding;
- h) the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with paragraph 13 of Schedule 3.

SCHEDULE 5

Regulation 11(2)

Information to be included in an ADR entity's annual activity report

- a) the number of domestic disputes and cross-border disputes the ADR entity has received;
- b) the types of complaints to which the domestic disputes and cross-border disputes relate;
- c) a description of any systematic or significant problems that occur frequently and lead to disputes between consumers and traders of which the ADR entity has become aware due to its operations as an ADR entity;
- d) any recommendations the ADR entity may have as to how the problems referred to in paragraph (c) could be avoided or resolved in future, in order to raise traders' standards and to facilitate the exchange of information and best practices;
- e) the number of disputes which the ADR entity has refused to deal with, and percentage share of the grounds set out in paragraph 13 of Schedule 3 on which the ADR entity has declined to consider such disputes;
- f) the percentage of alternative dispute resolution procedures which were discontinued for operational reasons and, if known, the reasons for the discontinuation;
- g) the average time taken to resolve domestic disputes and cross-border disputes;
- h) the rate of compliance, if known, with the outcomes of the alternative dispute resolution procedures;
- i) the co-operation, if any, of the ADR entity within any network of ADR entities which facilitates the resolution of cross-border disputes.

SCHEDULE 6

Regulation 11(3)

Information which an ADR entity must communicate to the relevant competent authority every two years

- a) the number of disputes received by the ADR entity and the types of complaints to which the disputes related;
- b) the percentage share of alternative dispute resolution procedures which were discontinued before an outcome was reached;

Status: This is the original version (as it was originally made).

- c) the average time taken to resolve the disputes which the ADR entity has received;
- d) the rate of compliance, if known, with the outcomes of its alternative dispute resolution procedures;
- e) any recommendations the ADR entity may have as to how any systematic or significant problems that occur frequently and lead to disputes between consumers and traders could be avoided or resolved in future;
- f) where the ADR entity is a member of any network of ADR entities which facilitates the resolution of cross-border disputes, an assessment of the effectiveness of its co-operation in that network;
- g) where the ADR entity provides training to its ADR officials, details of the training it provides;
- h) an assessment of the effectiveness of an alternative dispute resolution procedure offered by the ADR entity and of possible ways of improving its performance.

SCHEDULE 7

Regulation 16

Consequential amendments

Financial Services and Markets Act 2000

- 1.—(1) The Financial Services and Markets Act 2000⁽¹²⁾ is amended as follows.
- (2) In section 404B (complaints to the ombudsman scheme)⁽¹³⁾—
- (a) after subsection (1) insert—
 - “(1A) Subsection (1) does not apply if the consumer and the relevant firm agree that it should not apply.”;
 - (b) after subsection (2) insert—
 - “(2A) The way in which a complaint mentioned in subsection (2) is to be determined by the ombudsman is to be as mentioned in subsection (4).
 - (2B) Subsection (2A) does not apply if the consumer and the relevant firm agree that it should not apply.”; and
 - (c) for subsection (3) substitute—
 - “(3) In the following provisions of this section “relevant complaint” means—
 - (a) a complaint mentioned in subsection (1) other than one in relation to which subsection (1A) applies, or
 - (b) a complaint mentioned in subsection (2) other than one in relation to which subsection (2B) applies.”.
- (3) In Schedule 17 (the ombudsman scheme)⁽¹⁴⁾—
- (a) in paragraph 1 after “In this Schedule—” insert—

⁽¹²⁾ 2000 c. 8.

⁽¹³⁾ Sections 404-404G were substituted for the original section 404 by the Financial Services Act 2012, section 14(1).

⁽¹⁴⁾ Schedule 17 was amended by the Financial Services Act 2012, section 39 and Schedule 11, paragraphs 13-30; the Consumer Credit Act 2006, sections 59(2), 61(10) and Schedule 2; the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013, S.I. 2013/1881; the Electronic Money Regulations 2011, S.I. 2011/99; the Payment Services Regulations 2009, S.I. 2009/209; the Crime and County Courts Act 2013, section 17 and Schedule 9; the Tribunals, Courts and Enforcement Act 2007, section 62(3) and Schedule 13.

““ADR Directive” means 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(15);

“ADR entity” means any entity which is listed by a member State in accordance with Article 20(2) of the ADR Directive;”;

(b) in paragraph 2—

(i) renumber the existing paragraph as sub-paragraph (1); and

(ii) at the end of sub-paragraph (1) insert—

“(2) The FCA must exercise any function falling within sub-paragraph (3) in a way which is consistent with enabling the scheme operator, at all times, to qualify as an ADR entity and to meet the quality requirements in Chapter II of the ADR Directive.

(3) The following functions of the FCA fall within this sub-paragraph—

(a) making rules for the purposes of section 226;

(b) approving rules made for the purposes of section 227;

(c) specifying an amount under section 229(4);

(d) approving rules made under section 230;

(e) taking steps under sub-paragraph (1);

(f) appointing or removing members of the board under paragraph 3(2);

(g) taking steps under paragraph 3A(1);

(h) making rules under paragraph 7(3);

(i) making rules under paragraph 13;

(j) consenting to scheme rules under paragraph 14(7), other than rules relating to fees;

(k) approving the fixing, variation, addition or removal of standard terms under paragraph 18, other than terms relating to the making of payments to the scheme operator; and

(l) approving arrangements under paragraph 19(3).”;

(c) in the heading immediately preceding paragraph 13, omit “procedural”;

(d) in paragraph 13, in sub-paragraph (1)—

(i) after “unless” insert “— (a)”, and

(ii) at the end of paragraph (a) insert

“, or

(b) in the case of a complaint other than a relevant complaint within the meaning of section 404B, the respondent agrees that the complaint should be entertained despite the complainant having referred it under the ombudsman scheme after the applicable time limit has expired.”; and

(e) in paragraph 14 after sub-paragraph (3) insert—

“(3A) The scheme operator must exercise the function of making scheme rules in a way which is consistent with enabling the scheme operator to qualify as an ADR entity and to meet the quality requirements in Chapter II of the ADR Directive.”.

(15) OJ No L 164, 18.6.2013, p63.

SCHEDULE 8

Regulation 20(2)

LISTED DIRECTIVE

<i>Provisions of Directive</i>	<i>Specified UK Law</i>
Article 13 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) 2006/2004 and Directive 2009/22/EC(16)	Regulation 19(1) and (2) of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015(17)

EXPLANATORY NOTE*(This note is not part of the Regulations)*

These Regulations implement most provisions of Directive 2013/11/EU of the European Parliament and of the Council of 21st May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165 18.6.2013, p.63) (the “Directive”). The remaining provisions of the Directive will be implemented in future regulations. A Transposition Note detailing how these Regulations implement the Directive in the UK is available from the BIS website at www.gov.uk/bis.

Regulation 2 contains an obligation on the Secretary of State to review the Regulations. Regulations 3 to 7 set out the definitions used in the Regulations and provides that the Regulations do not apply to contracts for health services.

Regulation 8 and Schedule 1 make provision as to the persons which are a competent authority for the purposes of these Regulations, and the bodies or areas in respect of which a competent authority exercises its functions.

Regulation 9 requires a body seeking to be an approved provider of ADR services to provide certain information, specified in Schedule 2, to the relevant competent authority. The competent authority may only grant approval to an applicant ADR entity if it is satisfied that it meets the requirements specified in Schedule 3, and in certain cases additional requirements, as provided in paragraph (5).

Regulation 10 requires a competent authority to maintain a list, containing the information specified in Schedule 4, in relation to all the ADR entities which it approves.

Regulation 11 requires an ADR entity to produce an annual activity report which contains the information specified in Schedule 5 and to publish it on its website. Every two years, the ADR entity must provide the competent authority which approved it with the information set out in Schedule 6, and Regulation 12 places an obligation on the competent authority to assess whether the ADR entity still meets the requirements for approval set out in Schedule 3 when it receives that information.

Regulation 13(1) requires a competent authority to notify an ADR entity if the competent authority has reason to believe that the body no longer meets any of the requirements set out in Schedule 3

(17) S.I. 2015/542.

(16) OJ No L 165, 18.6.2013, p. 63.

for a reason which is within the control of the ADR entity. Paragraph (3) provides that where the ADR entity has failed to meet the requirements within 3 months of receiving notification from the competent authority, the competent authority must withdraw its approval from the ADR entity, if it believes the failure is sufficiently serious.

Regulation 14 sets out the notification requirements of a competent authority.

Regulation 15 provides that the Secretary of State may charge a fee in relation to work carried out in evaluating an application for approval made by an applicant under regulation 9 and for work carried out in pursuance of functions conferred under regulations 10 to 14. These fees must not exceed the reasonable costs and expenses incurred, (including a sum equal to the number of days per person spent in carrying out the functions calculated at the rate of £750 per day).

Regulation 16 and Schedule 7 make consequential amendments to the Financial Services and Markets Act 2000.

Regulation 17 designates the Secretary of State as the single point of contact.

Regulation 18 requires the single point of contact to prepare a consolidated list of approved ADR entities notified to it by each competent authority and to forward this list to the European Commission. The single point of contact must also publish a report, on or before 9th July 2018 and every successive period of four years, on the development and functioning of ADR entities and must send the report to the European Commission.

Regulation 19(1) requires those traders who are obliged to use alternative dispute resolution to provide information regarding the ADR entity they use on their websites and in their general terms and conditions. Regulation 19(2) requires every trader to provide a consumer with information regarding the availability of alternative dispute resolution when the trader has exhausted its internal complaint handling process in relation to a complaint brought by that consumer

Part 5 of the Regulations amends Schedule 13 to the Enterprise Act 2002 and Schedule 5 identifies those parts of the Regulations which are specified for the purposes of section 212 of that Act.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector will be published alongside the second set of regulations implementing the Directive to be laid before Parliament in the summer of 2015.

An Explanatory Memorandum (together with a transposition note) is available alongside the instrument on www.legislation.gov.uk.