



TECHNOLOGY

New Legal Requirements for Online Sales to Consumers from January 2016

by **lk-shields**

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Businesses established in the EU that sell goods or services to consumers online will have to implement some changes to their websites and consumer contracts to comply with new laws by 9 January 2016.

What's new?

These changes have been introduced by an EU Regulation, 524/2013, on online dispute resolution for consumer disputes (the "EU ODR Regulation"); and related Irish ODR Regulations, the European Union (Online Dispute Resolution for Consumer Disputes) Regulations 2015 (the "Irish ODR Regulation").

How will I know if my company is affected by the requirements?

This legislation applies to all privately owned and publicly owned traders established in the EU which sell goods and/or services to consumers online or through a website. The definitions of 'consumer' and 'trader' are fairly broadly crafted, so these new laws will apply to a large number of online operators. A 'consumer' is any natural person "who is acting for purposes which are outside his trade, business, craft or profession"; a 'trader' is any entity "who is acting... for purposes relating to his trade, business, craft or profession", including through an agent.

What will the new rules mean for us, as a consumer facing website?

Under the ODR Regulation the EU is setting up an online dispute resolution platform, intended to facilitate resolution of consumer disputes across the EU (the "ODR Platform"). The ODR Platform is not currently available to view. The EU plans that it will be accessible to consumers and traders on 15 February 2016.

Traders engaging in online sales or service contracts with consumers must provide consumers with an accessible electronic link to the ODR Platform on their websites. They must also include their email addresses on their websites. If an offer in relation to a consumer sales or service contract is made by a trader in an email, then traders must provide an electronic link to the ODR Platform in that email too. Traders must also provide relevant information, where it is applicable, in the general terms and conditions applicable to the website operator's online sales and service contracts.

So standard sales and contract materials that are currently being used for online sales, will have to be updated.

What happens if our online business does not comply?

The Irish ODR Regulations tie the new rules into the framework of the Consumer Protection Act 2007 (the "CPA"), giving the new obligations teeth by providing that various remedies in the CPA are available to consumers, the

Competition and Consumer Protection Commission and competitors should a trader fail to comply with the new laws. In some cases, directors and other corporate officers can be found to be personally liable for failure to comply with the new rules.

The Irish ODR Regulations make it an offence for online traders, doing business with consumers, to fail to provide consumers with the links to the ODR Platform on their websites, or to omit their email addresses from their websites. It is also an offence to fail to inform consumers about the existence of the ODR Platform and the possibility of using the ODR Platform for resolving their disputes.

Traders found guilty of any offence under the Irish ODR Regulations will be liable on summary conviction to a fine or may be sentenced to imprisonment for a term not exceeding twelve months, or both.

Alternative Dispute Resolution for Consumer Disputes

Earlier in 2015 requirements for traders to inform consumers about alternative dispute resolution (ADR) mechanisms were introduced through the European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015 (Irish ADR Regulations). These Regulations implement Directive 2013/11/EU on alternative dispute resolution for consumer disputes.

The Irish ADR Regulations apply to online traders that have committed to, or are obliged to use, one or more ADR entities to resolve disputes with consumers. ADR entities are responsible for trying to achieve an amicable, out-of-court, resolution of domestic and cross-border disputes concerning sales or service contracts between traders established in the EU and consumers who reside in the EU. The Competition and Consumer Protection Commission appoints and supervises ADR entities in Ireland and six have already been appointed: the Arbitration Scheme for Tour Operators; the Advertising Standards Authority of Ireland (ASAI); the Financial Services Ombudsman's Bureau; the Office of the Pensions Ombudsman; Net Neutrals EU and The Direct Selling Association of Ireland.

New offences in relation to the use of alternative dispute resolution methods in resolving consumer disputes were also introduced by the Irish ADR Regulations. The Irish ODR Regulations supplement the Irish ADR Regulations, creating a new offence if a trader fails to inform a complainant of the possibility of contacting an online dispute resolution adviser for general information on other types in certain ADR related scenarios. Traders found guilty of any offence under the Irish ODR Regulations or the Irish ADR Regulations will be liable on summary conviction to fines or may be sentenced to imprisonment for a term not exceeding 12 months, or suffer both.

What should you do now?

You should review the ODR and ADR legislation to see if it applies to your website or online business. If it does apply, then it will be necessary to make changes to your website and contractual documentation, to include information about the new processes and to insert the relevant links and content. Failure to comply with some of these legal requirements will constitute an offence, so it's best to act in timely way and not to be complacent.

These new legal requirements, aimed at encouraging consumers to engage with the ODR Platform, are likely to generate queries from consumers about the ODR Platform and/or ADR and traders could be required to manage some disputes through the ODR Platform. Businesses that are selling online should become familiar with the ODR Platform.

About the Author