



Department  
for Business  
Innovation & Skills

**ALTERNATIVE DISPUTE  
RESOLUTION FOR CONSUMERS**

Implementing the Alternative  
Dispute Resolution Directive and  
Online Dispute Resolution  
Regulation

MARCH 2014

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## Alternative Dispute Resolution for Consumers

This consultation seeks views on Government proposals for transposing the provisions of the Directive on Alternative Dispute Resolution (ADR) (2013/11/EU) and Regulation on Online Dispute Resolution (ODR) (524/2013) into UK law. The Directive and Regulation were finalised in July 2013.

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Respond by: 3 June 2014

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This consultation is relevant to UK consumers, to all businesses selling to UK consumers and to bodies who provide alternative dispute resolution (ADR) for consumer disputes.

# 1. Foreword by Jenny Willott MP, Minister for Employment Relations and Consumer Affairs



Consumers need to have confidence in the fact that when something goes wrong with a purchase the problem will be resolved quickly and easily.

Confident consumers are more likely to shop around for better quality or service, driving competition which ultimately helps to build a stronger economy. Our Consumer Rights Bill currently going through Parliament will introduce the greatest reform of consumer rights for a generation. It will create a clear set of rights for consumers, develop a more effective and flexible enforcement regime and ensure consumer law keeps pace with changes in technology. In addition, our reforms of the consumer landscape will improve protection for consumers, giving greater clarity about where they can turn to for help and advice.

Even with better rights and protections for consumers, there will inevitably be instances when problems arise – when consumers find that the goods or services they have bought are not up to scratch or the seller has not done what is expected of them. Businesses are often keen to rectify any problems in order to protect their reputation, but this is not always possible. In some instances the circumstances surrounding the problem are disputed, and in others there is a reluctance to even consider the matter. It is in these instances where access to an effective alternative dispute resolution (ADR) mechanism can prove invaluable.

Consumers are often deterred from seeking redress by the prospect of navigating the legal system, and ADR provides a faster, cheaper and more straightforward means of obtaining redress. The greater availability of a simple, low cost means of resolving disputes will complement our other reforms, strengthen consumer protection and improve consumer confidence.

The UK currently has several established and well-regarded ADR schemes in regulated sectors including financial services, where the Financial Ombudsman Service deals with a huge volume of disputes. In other sectors, some businesses choose to belong to voluntary ADR schemes, but access to ADR remains patchy. The ADR Directive gives us the chance to examine the UK landscape and ensure we have a system which works for both consumers and business.

The ADR Directive means we have to fulfil certain requirements, like ensuring ADR is available for all contractual disputes between a consumer and a business and that ADR providers meet certain quality standards. However, I want to take this opportunity to look beyond the requirements of the Directive and consider whether further reforms are necessary to ensure we have the best possible system. I would welcome your comments on how to achieve this.

A handwritten signature in black ink that reads "Jenny Willott".

**Jenny Willott**  
**Minister for Employment Relations and Consumer Affairs**

## 2. Executive Summary

Alternative Dispute Resolution (ADR) refers to schemes that are available to help complainants resolve their dispute outside court. If the parties involved in a dispute are unable to settle their differences, ADR offers a quicker and cheaper means of resolving that dispute.

This consultation sets out our proposals for transposing the requirements of the European Directive on ADR into national law. The main objective of the Directive is to give European consumers greater access to redress should something go wrong with their purchase of goods or services. This should increase their confidence, which will in turn help drive competition and growth. The Government's aim is to maximise the benefits of ADR to consumers and businesses, while ensuring the cost of doing so is balanced against those benefits.

There is currently a mixed approach to ADR in the UK. There are some well established schemes in regulated sectors where the use of ADR is compulsory, such as the Financial Ombudsman Service. In many other sectors businesses can choose to use ADR, and this is often linked to membership of a trade association. Because of this mixed approach, access to ADR is not guaranteed.

The Directive imposes several requirements on Government, businesses and ADR providers, which we have summarised in this document. In a number of areas we can choose how to implement the Directive and we have set out our position on these and invited comments. We would welcome responses from all those with an interest, in particular ADR providers, businesses and consumer representatives, to help us further develop our proposals.

The main requirement of the Directive on which we are seeking views is how to ensure ADR is available for any dispute regarding contractual obligations that a consumer has with a business. Introducing a residual ADR scheme which would operate alongside existing schemes and deal with any dispute not currently covered would be the simplest way of fulfilling this objective. There are various issues we would have to address with this approach, and we are therefore seeking views on:

- Whether it would be better to have more than one ADR body operating as part of a residual ADR scheme.
- Whether a particular operating model would work best.
- How businesses could be encouraged to use a voluntary scheme.
- An appropriate fee structure and whether it would be feasible for business to access a residual ADR scheme on a case by case basis, and what an appropriate minimum and maximum claim value would be.
- Whether it would be beneficial to set up a complaints helpdesk to help consumers and businesses access ADR.

We would also like to use this consultation as a call for evidence for possible, much broader reform of the ADR landscape. We would therefore like views on whether a rationalisation of the ADR landscape is necessary and feasible, and further evidence to help us weigh up the costs

and benefits of doing so. The Government will return to look at this issue in more detail if the evidence gathered as a result of this consultation suggests it would be worthwhile.

After considering the responses to this consultation, the Government will publish a formal response to outline our plans and how we will implement the ADR Directive.

## 3. Devolution

Broadly speaking consumer protection policy is not devolved to Scotland or Wales and is transferred to Northern Ireland. However, implementing the ADR Directive has an impact on wider policy areas which have been devolved and the UK Government is liaising with the devolved administrations to ensure the Directive is implemented effectively. The Government's aim is to ensure consistency of consumer rights across the UK whilst respecting the devolution settlements.

## 4. Aim of this consultation

### Previous consultation 2011-12

In December 2011, the Government issued a call for evidence to gather stakeholder views on the potential impact of proposals for a Directive on ADR and Online Dispute Resolution (ODR) Regulation. The response to this call for evidence helped form the UK's position during negotiations, which was to ensure there were benefits to consumers while avoiding the prospect of disproportionate cost to business, ADR providers or public funds, and to ensure the proposals did not undermine our existing statutory ADR schemes. Overall we believe these objectives were met.

### What are we asking for in responses to this consultation?

There are several approaches we could take to ensure ADR is available for all consumer to business disputes, these include establishing a new scheme to fill the gaps in ADR provision that we know exist in certain sectors, and supplementing this with a complaints helpdesk. We could also use this exercise as an opportunity to explore the simplification of the ADR landscape to make it easier for consumers and businesses to navigate. Our options for implementing the ADR Directive are set out in more detail in section 10 of this consultation. We would particularly welcome views on how we could fulfil our obligation to have ADR available for all consumer disputes and ensure we have an ADR system that works for consumers and businesses, and on the feasibility of a broader simplification of the ADR landscape.

In addition, we would welcome comments and evidence to help inform, improve or correct the assumptions, costs and benefits as set out in the impact assessment accompanying this consultation. Quantitative (monetised) information and evidence on costs and benefits would be particularly welcome.

The ADR Directive imposes certain requirements on ADR providers and businesses where there is little flexibility for the UK Government in implementation and further detail on these is set out in sections 9 and 10 of this document. However, we welcome comments on any areas where clarification would be beneficial. Any such clarification would of course need to respect the meaning and intent of the Directive, and be aligned with the guidance which will be published by the European Commission on implementing the Directive.

## 5. What happens next?

This consultation will close on 3 June. We will then publish a Government Response by early September, setting out our planned approach in light of the responses received. The Response will be available on the Government website.

The ADR Directive has to be implemented by July 2015 and the Government plans to do this through secondary legislation (under Section 2(2) of the European Communities Act). The ODR Regulation will automatically come into force in January 2016.

Depending on the results of this consultation, the Government may consider further reforms of the ADR landscape over a longer timeframe. Further details will also be provided in the Government Response.

## 6. Consultation questions

### UK ADR landscape

Q1. Do you think there are any significant gaps in the provision of ADR in the UK? Please identify any sectors where you think the provision of ADR is insufficient.

### ADR for every consumer dispute:

#### *Do nothing*

Q2. Do you agree that the current provision of ADR in the UK is not enough to meet our obligation to have ADR available for all consumer disputes? If you disagree, can you advise which ADR schemes are suitable to handle all disputes, and whether there are limitations to the number of disputes or type of dispute that these schemes could handle? Would these schemes be able to process an increased volume of disputes within the 90 day deadline for concluding disputes set by the Directive?

### *Residual ADR*

Q3. Can we expect businesses not currently obliged to use an ADR scheme, to refer complaints to a voluntary residual ADR scheme? What steps could Government and others take to encourage businesses to use a voluntary ADR scheme?

Q4. What volume of enquiries and/or disputes could we expect a voluntary residual ADR scheme to receive?

Q5. Is there a specific operating model that a residual ADR scheme should adopt (e.g. mirror existing ombudsman models)?

Q6. Can you suggest what an appropriate maximum and minimum settlement value for a residual ADR scheme should be? How have you arrived at these figures?

Q7. What funding model would be appropriate for a residual ADR scheme? Can an ADR provider operate effectively if it is reliant on case fees rather than annual fees?

Q8. Should a standard case fee be adopted? What would be an appropriate level? If not, how should the amount charged for each dispute be determined?

Q9. Would it be better to have a single ADR body or several ADR bodies operating a residual ADR scheme? What would be the ideal number and what are the reasons for this?

### **Better signposting for consumers – a complaints “helpdesk”**

Q10. In light of the other requirements in the ADR Directive which are intended to assist consumers, would a consumer-facing complaints helpdesk be beneficial?

Q.11 Do you have any comments on the type of service it should provide and the extent to which it should examine the enquiries it receives?

Q12. Rather than attempt to create a new service, which existing service or body is best placed to provide this function?

Q13. How could a helpdesk be funded?

### **Appointing a competent authority**

Q14. Do you agree that regulators should act as competent authorities for the ADR schemes that operate in their sectors?

Q15. How should the fees paid by ADR providers to a competent authority be determined? Should the size of the fee depend on the size of the ADR provider (for example turnover or number of cases dealt with) or based on other factors?

### **Procedural rules for refusing disputes**

Q16. Do you agree that the Government should allow UK ADR providers to use all of the procedural rules listed in Article 5(4) of the ADR Directive to reject inappropriate disputes? If not, please explain your reasons.

### **Information requirements**

Q17. Would some suggested wording and guidance be useful in helping businesses meet these requirements? What kind of wording would be helpful?

### **Online Dispute Resolution Contact Point**

Q18. Do you agree that the ODR contact point should only be required to assist with cross border disputes involving a UK consumer or UK business?

Q19. Should the ODR contact point be allowed to assist with domestic complaints on a case-by-case basis?

### **Impact on limitation and prescription periods**

Q20. Do you agree that, where applicable, we should extend the six year time limit for bringing disputes to court by eight weeks, and mirror the amendment made to implement the Mediation Directive? If not, please explain why a different extension period is preferable.

Q21. Are you aware of any sector specific legislation which contains time limits for bringing cases to court which we may also have to amend?

### **Scope of ADR: in-house mediation**

Q22. Do you agree that in-house ADR should not form part of the UK's implementation of the ADR Directive? If you disagree can you please explain why?

### **Binding decisions**

Q23. Do you agree that the UK should allow certified ADR providers to make decisions that are binding? If you disagree can you please explain why?

### **Applying the ODR Regulation to disputes initiated by business**

Q24. Do you agree that the ODR Regulation should only apply to disputes initiated by a consumer, and should not apply to disputes initiated by a business? If not, can you please explain why?

### **Call for evidence on simplifying the provision of ADR**

Q25. Would the benefits of simplifying the ADR landscape over the longer-term outweigh the costs? Who would the costs and benefits fall to?

Q26. What evidence is there that a simplified system would make a major difference to consumers? Are there other ways to achieve the aim of greater awareness and take-up of ADR?

Q27. Would simplifying the landscape in the longer term be compatible with the introduction of a residual ADR scheme by July 2015? Are there specific ways in which the creation of a residual scheme would need to be undertaken to enable the possibility of later simplification?

Q28. What are your views on making the use of ADR a compulsory or voluntary requirement if the landscape is simplified?

### **Impact Assessment**

Q29. Do you have any views on the impacts of the options as laid out in the impact assessment?

Q30. Do you have any views on the key figures, assumptions and questions set out in Annex C?

### **General points**

Q31. Are there any other issues or areas on which you would like to comment? If so, we would welcome your views.

## 7. How to respond

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

The Consultation Response form is available electronically at <https://www.gov.uk/government/consultations/> (until the consultation closes) and at Annex D of this document.

The form can be submitted online at <https://www.connect.bis.gov.uk/consultations/adrforconsumers>

or by email or by letter or fax to:

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A list of those organisations and individuals consulted is in Annex A. We would welcome suggestions of others who may wish to be involved in this consultation process.

Other versions of the document in Braille, other languages or audio-cassette are available on request.

The consultation was published on **11 March 2014** and will run until **3 June 2104**.

### Consultation principles and complaints

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

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### **Confidentiality & Data Protection**

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

## 8. Alternative Dispute Resolution in the UK

### What is Alternative Dispute Resolution

1. Alternative Dispute Resolution (ADR) can offer a low-cost and fast alternative to resolving disputes which the parties involved in the dispute cannot resolve themselves. While ADR can be used in commercial and family disputes, the ADR Directive and this consultation are only concerned with disputes that a consumer has with a business, following the purchase of a good or a service.
2. Common forms of ADR are mediation, where an independent third party helps the disputing parties to come to a mutually acceptable outcome, and arbitration, where an independent third party considers the facts and takes a decision. Often this decision is binding on one or both parties. Ombudsman schemes are another widely recognised form of ADR.
3. ADR in the UK is privately funded, often through businesses paying membership fees, levies or case fees. Impartiality of the ADR bodies is ensured through appropriate governance and structural arrangements.

### Benefits of ADR

4. ADR offers a cheaper and quicker alternative to the courts, in the event that a consumer encounters a problem and is unable to resolve their complaint directly with the business from whom they made their purchase. ADR in the UK tends to be free for the consumer, and in response to our published call for evidence on the European Commission's ADR proposals in 2011<sup>1</sup>, estimates on the cost of ADR when compared to court costs ranged from 1/8th to 1/3rd. The European Commission have estimated that it only takes up to 90 days for most disputes referred to ADR to be resolved.
5. There are clearly a large number of consumer complaints which do not get resolved. A study carried out by Consumer Focus in 2012 estimated that out of 6.4 million consumer complaints made to business, two million were unresolved<sup>2</sup>. The court system can be a daunting and expensive prospect and so only a small fraction of these complaints actually reach the courts.
6. Feedback from consumers who have used ADR tends to be positive, and a European Commission survey indicates that 82% of businesses who have used ADR would use it again<sup>3</sup>.

### UK ADR landscape

7. At present there is a diverse approach to ADR in the UK, with several different models in operation. ADR is mandatory in certain sectors where there is a high potential for consumer

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<sup>1</sup> *Call for Evidence on EU proposals on Alternative Dispute Resolution* published by BIS in December 2011

<sup>2</sup> *Consumer Detriment 2012* available at: <http://www.consumerfocus.org.uk/publications/consumer-detriment-2012>

<sup>3</sup> *European Business Test Panel Survey – Alternative Dispute Resolution*. Available at [http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report\\_en.pdf](http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report_en.pdf)

detriment, with a single public body operating as an ombudsman in some of these sectors (e.g. financial services, legal services), or several private ADR bodies operating in others (e.g. telecommunications, energy and estate agents). In this latter category, businesses have to refer unresolved complaints to an ADR provider, but they have a choice of which ADR provider they sign up to use.

8. Voluntary schemes operate in some sectors which businesses can choose to join and these are often linked to trade associations. Sometimes there are several voluntary ADR schemes which operate in the same sector – for example, glazing installers can choose to join either the Glazing Ombudsman, the Double Glazing and Conservatory Ombudsman Scheme or become a member of the Glazing and Glass Federation, who will refer disputes involving their members to an independent ADR scheme. Of course, some glazing installers may choose not to belong to any of these available schemes, indicating only partial provision of ADR in these non-mandatory sectors.
9. In addition, there are several small independent bodies who offer mediation services, often at a local level, however, although these services are available to consumers they mainly focus on commercial or family disputes.
10. Annex B contains a list of current UK ADR schemes of various guises (not including the numerous small independent mediation services). Although over 70 schemes are listed, in reality the number of ADR bodies that will be registered as compliant with the ADR Directive is expected to be lower. In some instances the same independent bodies provide a range of different ADR schemes, and some of those bodies listed may not meet the requirements of the ADR Directive. Once the Directive is implemented, a list of UK ADR providers meeting the requirements of the Directive will need to be maintained by a competent authority.
11. In 2010 the Office of Fair Trading published a study which looked at the availability of ADR schemes<sup>4</sup>. This study mainly identified gaps in the provision of ADR in several retail sectors. In our 2011 Call for Evidence we asked respondents to identify any gaps in the provision of ADR in the UK. Specific sectors which were mentioned in response were passenger transport; water; construction; private parking; insolvency practices and vehicle repair. Our own recent assessment of the ADR landscape reached similar conclusions. Although voluntary schemes exist in some of these sectors (e.g. members of trade associations in various construction sectors must refer disputes to an independent ADR scheme), often only a small proportion of businesses in these sectors belong to a relevant trade association, so the provision of ADR is scant.

Q1. Do you think there are any significant gaps in the provision of ADR in the UK? Please identify any sectors where you think the provision of ADR is insufficient.

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<sup>4</sup> *Mapping UK consumer redress. A summary guide to dispute resolution systems* – available at [http://www.of.gov.uk/shared\\_of/general\\_policy/OFT1267.pdf](http://www.of.gov.uk/shared_of/general_policy/OFT1267.pdf)

## 9. Background to the ADR Directive and ODR Regulation

12. A Directive on consumer Alternative Dispute Resolution<sup>5</sup> and a Regulation on consumer Online Dispute Resolution<sup>6</sup> came into force in July 2013. The UK has to transpose the requirements of the ADR Directive into national law by 9 July 2015. The Online Dispute Resolution (ODR) Regulation will come into force automatically six months later on 9 January 2016, although the requirements relating to the creation of an ODR contact point will apply in advance, also on 9 July 2015.
13. The ADR Directive imposes requirements on the Government, certified ADR providers and business. This section provides a brief summary of those requirements. More detail on some of these provisions is also provided in section 10 of this document and a complete overview can be provided by reading the legislation itself.

### Making ADR available

14. The principal obligation on the UK Government under the Directive is to ensure that ADR provided by a certified ADR body is available for any dispute concerning contractual obligations between a consumer and a business. The Directive does not make the use of ADR mandatory – it does not require the UK to force businesses or consumers to use ADR, but the Government must ensure ADR is available if both parties agree to use it.
15. Business to business disputes are not covered by the Directive, nor are disputes initiated by a business against a consumer. Further exclusions apply to health services and public providers of education.
16. The Directive does not require the Government to force existing ADR providers to become certified ADR providers which comply with the requirements of the Directive. However, the Government has only discharged its obligation of ensuring comprehensive ADR coverage if ADR provided by a certified ADR provider or providers is available in all sectors. So if an ADR provider decides not to become certified, they will find that an alternative certified ADR provider will be available for disputes in that sector, and businesses and consumers will be signposted towards the certified ADR provider.
17. The Directive does not give a consumer the right to force a business to use ADR, or to use a particular ADR provider. There are however some sectors in the UK where the use of ADR is already mandatory (e.g. financial service providers must allow the Financial Ombudsman Service to handle any unresolved complaints). In contrast, in sectors where the use of ADR is not compulsory it is for the business to decide whether to use ADR for a particular dispute.

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<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>

<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>

## Requirements for ADR providers

18. The Government has to ensure that certified UK ADR providers follow specific operational rules. The main operational rules are:
- The ADR procedure must be free of charge or available at a nominal fee for consumers.
  - Disputes must be concluded within 90 days of receiving the complete complaint file. This timeframe can be extended in the case of highly complex disputes.
  - ADR providers have three weeks from receiving a complaint file in which to inform the parties concerned if they are refusing to deal with a case.
  - Individuals who oversee disputes must have the necessary expertise and be independent and impartial.
  - ADR providers must make available specific information about their organisation, methods and cases they deal with, and provide annual activity reports.
  - Consumers must have the option to submit a complaint (and supporting documentation) and to exchange information either online or offline.
19. The UK may permit certified ADR providers to follow certain procedural rules which will allow them to refuse to deal with unsuitable disputes. For example, in instances where the consumer has not attempted to resolve the complaint with the business first or where the complaint is frivolous or vexatious.
20. The Government sent a more detailed list of requirements to UK ADR providers in June 2013. The majority of respondents indicated that they either already conform with these requirements or would have little trouble in doing so.
21. The Directive covers only disputes concerning contractual obligations between a consumer and a business. Disputes such as discrimination claims and disputes between businesses fall outside the scope of the Directive. An ADR provider is free to consider disputes that are outside the scope of the Directive as well. In such cases the ADR provider does not need to follow the Directive's rules, although the Government would encourage providers to do so for reasons of consistency.

## The ODR Platform

22. The ODR Regulation obliges the Commission to establish an online platform (the ODR platform) to facilitate communication between the parties and a certified ADR provider, in the event of a contractual dispute arising from an online transaction. A translation service will be available on the platform to assist with disputes involving parties based in different EU member states.
23. The ODR platform will not seek to resolve the dispute itself; rather it will (if both parties agree) channel such disputes to a relevant ADR scheme. An electronic case management tool will be made available to ADR providers, should they choose to use it.

24. The UK has to designate an ODR contact point to assist with disputes submitted via the ODR platform. This contact point must host at least two ODR advisors who can provide information or help with documentation.

## **Information requirements for business**

25. Any business that is obliged by law or through membership of a particular trade association to use a particular ADR provider, or which has voluntarily committed to use a certified ADR provider to resolve disputes, must provide information about that certified ADR provider on their website and, if applicable, in the terms and conditions of any sales or service contracts.
26. 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. 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.
27. In the event of an unresolved dispute, all businesses (whether they are obliged by law or have voluntarily committed to use ADR, or not) must provide information about an appropriate certified ADR provider or providers to the consumer, and advise whether or not they will use ADR in an attempt to settle the dispute. This means that businesses which belong to sectors with mandatory ADR schemes will have to advise consumers that their dispute can be referred to the relevant ADR body. Businesses operating in sectors where the use of ADR is voluntary will have to advise consumers whether or not they are willing to refer the complaint to an appropriate ADR body.

## **Competent Authorities**

28. The UK must designate one or more competent authorities to maintain and monitor a list of certified ADR providers (i.e. those which meet the required standards of the ADR Directive). If a certified ADR provider is found to no longer comply with the requirements of the Directive, then the competent authority must give warning before removing that provider from the list and notifying the European Commission.

## 10. The proposals

29. Section 9 of this document gives a summary of the requirements of the ADR Directive and the ODR Regulation. The Directive obliges the UK Government to impose many of these requirements on ADR providers and businesses and the Government has limited flexibility in how this is done. Nevertheless, there are several issues the Government needs to address when implementing the ADR and ODR legislation which are at our discretion. This section outlines these issues, and it is primarily on these points that we would welcome your views.

30. The main issues we would like your views on are:

- How we ensure ADR is widely available;
- How a competent authority scheme will operate;
- Setting up an ODR contact point to assist with online disputes;
- Helping businesses comply with information requirements;
- How we ensure ADR providers meet their requirements under the Directive;
- Where the UK has the choice in how to implement the Directive (e.g. whether we should account for “in-house mediation”); and
- Whether a rationalisation of the ADR landscape is necessary.

These issues are covered in more detail below.

### ADR for every consumer dispute

31. The most important issue the UK Government must address when implementing the ADR Directive is to ensure that ADR is available for all disputes concerning contractual obligations between a consumer and a business.

32. There are a few different approaches we could take to fulfil this obligation. Certain approaches can be implemented as the Directive requires, by July 2015, and are set out below. Larger reforms would require greater structural changes and would necessitate more time, and these are discussed in more detail in section 11. When deciding how to implement the Directive by July 2015 we should take into account any proposed longer-term and larger reforms.

33. The costs of the approaches for implementing the Directive have been analysed in further detail in an initial impact assessment which accompanies this consultation.

### Do nothing

34. The starting point for implementing EU legislation is to assess whether existing UK provisions are enough to fulfil our obligations or whether any additional activity is necessary.

35. It is our view that existing coverage of ADR is not enough to ensure ADR is available for all consumer disputes. Although some UK ADR schemes exist which can consider disputes from a range of sectors, they would not have the capacity to deal with the expected increase in disputes across all sectors covered by the Directive and at the same time fulfil all of the requirements (e.g. timescales for concluding disputes).
36. We therefore believe that in order to comply with our obligations under the Directive we will need to take action to ensure comprehensive ADR coverage.

Q2. Do you agree that the current provision of ADR in the UK is not enough to meet our obligation to have ADR available for all consumer disputes? If you disagree, can you advise which ADR schemes are suitable to handle all disputes, and whether there are limitations to the number of disputes or type of dispute that these schemes could handle? Would these schemes be able to process an increased volume of disputes within the 90 day deadline for concluding disputes set by the Directive?

## Residual ADR

37. Introducing a residual ADR scheme would be the simplest way of addressing the gaps in the provision of ADR in the UK and ensure blanket coverage. The Government could set up a residual ADR scheme to operate alongside existing ADR schemes, which would be available to handle any dispute not already covered by an existing ADR scheme. A list of certified UK ADR providers meeting the requirements of the Directive will be maintained, and a business not committed to an existing ADR scheme, would be able to refer a dispute to the residual ADR scheme.
38. We believe this approach would fulfil our obligations under the ADR Directive and provide greater access to redress for consumers should something go wrong with their purchase, at the least overall cost.

## Single or multiple bodies

39. There are various ways in which a residual ADR scheme could be set up. A single certified ADR provider could be identified as the 'residual' ADR provider which can deal with any dispute which cannot be dealt with by another existing certified ADR provider (other than those disputes which the Directive allows to be refused). A single ADR provider dealing with all disputes otherwise not captured by existing schemes might make access more straightforward, as a business need only approach one body should they wish to engage the residual ADR scheme.
40. An alternative would be to appoint several certified ADR providers to operate within a residual ADR scheme. In this way businesses would have a choice as to which certified ADR provider to use (unless a business is bound to use a particular provider). This would be similar to some existing ADR schemes, such as the estate agent redress scheme, where estate agents must refer disputes to an approved ADR provider but have a choice of which ADR provider they use. Having a degree of competition between residual certified ADR providers is likely to keep down the fees they charge to business for use of their services. Given the range of sectors that a residual ADR scheme would have to cover and the potential number of disputes, there could be several ADR providers operating under a residual ADR scheme, with businesses and consumers signposted appropriately.

### ***Making ADR voluntary or compulsory***

41. The Directive does not oblige us to force businesses to use ADR so any attempt to introduce compulsory ADR would go beyond our minimum legal requirements to implement the Directive. A blanket compulsory requirement on businesses to use ADR for every dispute would come at considerable cost to business, who pay the cost of ADR through annual fees and/or case fees. We have estimated these costs to business would be in the region of £18m - £38.5m. This indicates that use of a residual ADR scheme should be voluntary, with businesses given the opportunity to refer complaints to a residual ADR scheme. At present, many businesses do not have this opportunity as an appropriate ADR scheme does not exist in their sector or they are not a member of a trade association that provides access to ADR.

### ***Operating model for a residual ADR scheme***

42. A residual certified ADR provider or providers would have to provide an appropriate form of ADR. Current statutory schemes operate an ombudsman model or similar. Case handlers attempt to resolve the dispute through mediation or conciliation but more difficult disputes or settlements which are contested can be referred to an adjudicator or ombudsman to reach a view. Usually if the consumer accepts the decision then this is binding on the business. As this system appears to work well, a similar model is envisaged for a residual ADR scheme, however, we are aware that existing ADR providers use a variety of different methods, and we are open to variants to this model if they can be demonstrated to be effective.

### ***Claim and settlement values***

43. Most ADR providers set a limit on the maximum value of a case they are prepared to consider (some also set a de minimis level): If a case involves a larger amount than the ADR provider is prepared to consider, then it is deemed more appropriate for that case to go to court. The level that is set varies greatly depending on the sector and the size of the scheme.
44. Since ADR providers set a maximum value of a case they are prepared to consider, they also have a maximum compensation amount that they can award against a business. For example, financial service providers can be required to pay up to £150,000 by the Financial Ombudsman Service, whereas the maximum amount payable by telecommunications companies under the Communications and Internet Services Adjudication Scheme (CISAS) is £10,000.
45. An appropriate de minimis and maximum claim value, and maximum financial penalty would have to be set for a residual ADR scheme, taking into account the broad range of sectors it would cover.

### ***Encouraging use of ADR***

46. A voluntary residual ADR scheme does present several challenges. The main challenge is encouraging businesses to use the scheme if they are not obliged to do so. There is evidence that businesses can see a commitment to using ADR as a selling point, with some organisations publicising their membership of voluntary ADR schemes and survey data indicates that businesses who have used ADR would do so again<sup>7</sup>. The information

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<sup>7</sup> European Business Test Panel Survey – Alternative Dispute Resolution. Available at [http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report\\_en.pdf](http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report_en.pdf)

requirements which businesses will have to comply with should also encourage greater use of ADR (see paragraphs 66 to 71). It would be useful to know if there are any other steps that could be taken to encourage businesses to use ADR if they are not compelled to do so.

### **Fees**

47. Developing an effective fee structure for a residual ADR scheme will be important. Various models currently exist with some ADR providers covering the majority of their costs through case fees and others charging a higher annual fee supplemented by a lower level of case fee. Some businesses may prefer accessing a residual ADR scheme on an ad-hoc basis. This would involve a business paying fees on a case-by-case basis, rather than signing up in advance to refer disputes to a residual ADR scheme. However, we recognise it might not be viable for an ADR scheme to operate if it is funded solely by case fees, particularly as it is difficult to predict how many cases a residual ADR scheme might have to deal with. Using a model where an annual fee is charged in addition to a case fee would make it easier to predict the number of cases and cover fixed costs. This appears to be the most feasible model for a residual ADR scheme.
48. A new residual scheme could be implemented by July 2015, our deadline for implementing the ADR Directive. This could be achieved by launching a procurement process once the responses to this consultation have been analysed, to appoint existing ADR bodies or other organisations that have the interest and capacity to fulfil this role.

Q3. Can we expect businesses not currently obliged to use an ADR scheme to refer complaints to a voluntary residual ADR scheme? What steps could Government and others take to encourage businesses to use a voluntary ADR scheme?

Q4. What volume of enquiries and/or disputes could we expect a voluntary residual ADR scheme to receive?

Q5. Is there a specific operating model that a residual ADR scheme should adopt (e.g. mirror existing ombudsman models)?

Q6. Can you suggest what an appropriate maximum and minimum settlement value for a residual ADR scheme should be? How have you arrived at these figures?

Q7. What funding model would be appropriate for a residual ADR scheme? Can an ADR provider operate effectively if it is reliant on case fees rather than annual fees?

Q8. Should a standard case fee be adopted? What would be an appropriate level? If not, how should the amount charged for each dispute be determined?

Q9. Would it be better to have a single ADR body or several ADR bodies operating a residual ADR scheme? What would be the ideal number and what are the reasons for this?

## **Better signposting for consumers – a complaints “helpdesk”**

49. If we introduce a residual ADR scheme then we will be left with a landscape in which there are numerous ADR schemes. The Government is concerned that this makes it difficult to navigate and could limit the use of ADR.
50. If we continue with a varied landscape in which several ADR schemes operate, it has been suggested that steps should be taken to provide assistance for consumers. One suggestion is for a contact point which could direct consumers (and businesses if necessary) to an appropriate ADR provider or providers, and could minimise the confusion created by a multitude of ADR schemes.
51. The Government is keen to do what it can to minimise confusion and encourage the use of ADR and is open to ideas on how to assist consumers and businesses. Any proposals will have to be considered in the context of other requirements which will come into force when the ADR Directive is implemented.
52. Under the Directive, all businesses will have to provide consumers with details of an appropriate ADR provider (or providers) if they have been unable to resolve a complaint, and advise the consumer whether they intend to refer the dispute to that ADR provider or not. Even though there may be numerous ADR schemes in operation, the onus is on the business to direct the consumer to an appropriate ADR body. This should minimise the inconvenience to the consumer of attempting to identify an appropriate ADR body but is reliant on businesses complying with this requirement. There will also be a publicly available list of ADR providers maintained by a UK competent authority and the ODR platform will direct all online consumers to an appropriate ADR provider, with an UK ODR contact point in place to assist with any queries.
53. Under these circumstances, the Government is exploring options for the creation of a consumer facing complaints helpdesk. The primary aim of this would be to help consumers navigate the ADR landscape – identifying the ADR schemes available to the business with which they have a complaint and determining whether ADR is a compulsory requirement in that sector. Another aim would be to help consumers understand how to use ADR appropriately – i.e. after the business’s internal complaints processes had been pursued. It could also be of assistance to businesses considering joining an ADR scheme. This would hopefully encourage greater use of ADR.

54. The helpdesk could be an online and telephone access point for consumers to seek information about how to pursue a complaint with a business and, if appropriate, provide assistance with registering a dispute. The way the helpdesk worked would need to take into account the fact that under the Directive, the choice of ADR provider lies with the business unless it is mandated by the Member State. In the UK, the ADR provider is currently mandated by Government in a limited number of regulated industries.

Q10. In light of the other requirements in the ADR Directive which are intended to assist consumers, would a consumer-facing complaints helpdesk be beneficial?

Q11. Do you have any comments on the type of service it should provide and the extent to which it should examine the enquiries it receives?

Q12. Rather than attempt to create a new service, which existing service or body is best placed to provide this function?

Q13. How could a helpdesk be funded?

## Appointing a competent authority

55. The ADR Directive requires the UK to appoint a competent authority or authorities. The function of the competent authority is to assess whether bodies wishing to qualify as a certified ADR provider meet the requirements of the Directive. The competent authority must then monitor and maintain a list of certified ADR providers and notify any changes to the list to the European Commission.

56. The Directive defines a competent authority as:

*“...any public authority designated by a Member State for the purposes of this Directive and established at national, regional or local level.”*

57. If a certified ADR provider is found to no longer comply with the requirements of the Directive, the competent authority must contact the certified ADR provider, state the requirements it is no longer fulfilling and ask it to rectify this. If the certified ADR provider fails to do so after a period of three months then the competent authority must remove it from the list of certified ADR providers. The UK would then have to ensure another certified ADR provider is able to handle any disputes the previous body used to deal with, as we must ensure ADR is available in every sector by a certified ADR provider. So in effect, an ADR

body which is struck off the list would immediately find that an alternative certified ADR provider has stepped in to cover the gap.

58. Each competent authority will have to provide a report to the European Commission every four years, outlining the activities of the certified ADR providers they monitor.
59. The Directive permits a Member State to appoint more than one competent authority, in which case, the Government must designate one of the competent authorities as a single point of contact for the Commission. This point of contact would then be responsible for relaying the list of certified ADR providers to the Commission and providing updates.
60. The Government asked respondents to indicate suitable candidates to act as competent authority in our Call for Evidence published in 2011. Several suggestions were put forward, including bodies such as the Administrative Justice and Tribunals Council and the Office of Fair Trading, which will not exist when we come to implement the Directive.
61. Following the responses to our Call for Evidence we have concluded that it would be preferable for the UK to have more than one competent authority. If the ADR landscape were to remain roughly the same as at present the Government envisages a scenario where a small number of current regulators who oversee regulated sectors with an ADR scheme, act as the competent authority for their sectors. For example, Ofcom would act as competent authority for the ADR providers which operate in the telecommunications sector and the Financial Conduct Authority would act as competent authority for the Financial Ombudsman Service. The regulators in these sectors already have a responsibility to oversee the relevant ADR schemes and this should avoid certified ADR providers having to send similar reporting information to more than one regulator/authority.
62. There will still be a need for a competent authority to monitor all other certified ADR providers not operating in regulated sectors, (including a residual ADR scheme if this is brought into existence), and to act as the single point of contact. The Government is currently finalising arrangements and an announcement will be made in due course.
63. The competent authority will have start-up and operational costs. It is envisaged that the Government would have to fund the start-up costs but that operational costs would have to be covered by fees charged to certified ADR providers so that the process becomes self-financing. The impact assessment estimates the start-up costs to be around £0.16m.

Q14. Do you agree that regulators should act as competent authorities for the ADR schemes that operate in their sectors?

Q15. How should the fees paid by ADR providers to a competent authority be determined? Should the size of the fee depend on the size of the ADR provider (for example turnover or number of cases dealt with) or based on other factors?

## Procedural rules for refusing disputes

64. Article 5(4) of the ADR Directive has a list of procedural rules which Member States can choose to permit certified ADR providers to apply. These procedural rules would allow certified ADR providers to refuse to deal with inappropriate disputes. The grounds for refusing to deal with disputes which can be applied are as follows:

- the consumer has made no attempt, in the first instance, to resolve the complaint directly with the business;
- the complaint is frivolous or vexatious;
- the dispute is being or has been considered by another certified ADR provider or a court;
- the value of the claim falls below or above a pre-specified limit (any monetary thresholds must not significantly impair access to ADR);
- the complaint is not submitted within a pre-specified time limit (which cannot be set at less than a year from when the complaint was first submitted to the business); and
- dealing with that type of dispute “would otherwise seriously impair the effective operation of the ADR entity”.

65. The Government’s view is that it should implement all of these provisions and thereby allow certified ADR providers in the UK to refuse to deal with disputes on these grounds. ADR providers do receive a significant amount of irrelevant queries and must be able to filter out any unsuitable requests if they are to function effectively. Once the Directive has been implemented, the competent authority appointed to monitor the list of certified ADR providers will be able to take action against any certified ADR provider which is refusing to deal with disputes on grounds other than those permitted by the Directive.

Q16. Do you agree that the Government should allow UK ADR providers to use all of the procedural rules listed in Article 5(4) to reject inappropriate disputes? If not, please explain your reasons.

## Information requirements

66. Both the ADR Directive and the ODR Regulation impose information requirements that businesses will have to comply with.

67. First of all, any business that is obliged by legislation or by membership of a trade association or has otherwise committed to use a certified ADR provider to resolve disputes, must provide information about that certified ADR provider on their website and, if applicable, in the terms and conditions of any sales or service contracts. The Government does not believe that this requirement will have a significant impact on business, as currently, businesses that belong to sectors which have statutory ADR schemes already have to provide similar information. The Provision of Services Regulations 2009 also impose similar

requirements on businesses who belong to trade associations or professional bodies who provide access to ADR.

68. Further information requirements will apply if a business is unable to resolve a consumer's complaint. At this point, all businesses, irrespective of whether they are obliged to or intend to use a certified ADR provider, must firstly provide information (including relevant website details), on paper or another durable medium, about an appropriate certified ADR provider or providers who could handle that dispute. Secondly they must advise whether or not they intend to use this certified ADR provider in an attempt to settle the dispute.
69. The Government accepts that it appears strange that a business is obliged at this point to inform a consumer of an appropriate certified ADR provider, even if the business has no intention of using that ADR provider to resolve the dispute in question. However, the aim behind this requirement in the Directive is to encourage more businesses to refer unresolved disputes to certified ADR providers by forcing them to consider in every case whether ADR is appropriate. Below is an example of how this will work in practice.

***Information requirements – a business committed to using ADR***

Mr Jones pays for double glazing to be installed at his home by Redress Glazing. As Redress Glazing is a member of the Glazing Ombudsman, they include details about the Ombudsman and its role in the sales contract that is given to Mr Jones to sign. Mr Jones is unhappy that the work took far longer than expected to complete and the window locks that were fitted did not match the description he was given. He would like compensation for the delays and the correct locks fitted. He complains to Redress Glazing but the company is adamant it has done nothing wrong and Mr Jones remains unsatisfied with the explanation that he is given. Mr Jones is then sent a document from the company advising him that he can refer his complaint to the Glazing Ombudsman, who will provide a fair and independent decision on the dispute, as well as information on how to contact the Ombudsman.

***Information requirements – a business which does not use ADR***

Mr Smith pays for double glazing to be installed at his home by Noredress Glazing. The company does not belong to any of the ADR schemes that operate in the glazing sector. Mr Smith is unhappy that the work took longer than expected to complete and the window locks that were fitted did not match the description he was given. He would like compensation for the delays and the correct locks fitted. He complains to Noredress Glazing but the company is adamant it has done nothing wrong and Mr Smith remains unsatisfied with the explanation that he is given. Mr Smith is then sent a document from the company providing details about the Glazing Ombudsman and the other ADR schemes that operate in the glazing sector, but the document also advises Mr Smith that Noredress Windows does not belong to any of these schemes and therefore ADR is unavailable to him. Mr Smith is left to consider whether he wishes to pursue the matter through the courts.

70. There are further information requirements with which online businesses have to comply. All businesses who sell goods or services online will have to provide a link to the ODR platform (for further details of the ODR platform see paragraphs 22 - 24). Online businesses that are obliged to or committed to using ADR will have to go further and inform consumers about the ODR platform, providing a link to the platform on their websites, in any e-mails in which offers are made and in any applicable terms and conditions. Furthermore, 'online marketplaces' which are used for the sale of goods and services will have to provide a link to the ODR platform on their websites.
71. In the impact assessment, the costs of these information requirements (including familiarisation costs) are estimated to be a one off cost of £25.3m-£38m and then £0.5m-£0.7m a year. The Government would like to know what assistance it can give businesses to help familiarise them with these information requirements and to minimise these costs. A possibility would be to publish some standard wording and guidance which businesses could use. It does not seem appropriate to require businesses to use a set form of words as each business is different and many will have their own preferences as to how to meet these requirements.

Q17. Would some suggested wording and guidance be useful in helping businesses meet these requirements? What kind of wording would be helpful?

## Online Dispute Resolution Contact Point

72. The UK is obliged to designate an ODR Contact Point to help, when requested, with disputes relating to goods and services bought online that are submitted through the ODR platform. The ODR Contact Point will have to host at least two ODR advisors who can help submit complaints and provide advice on:
- UK consumer rights;
  - the ODR platform;
  - the relevant certified ADR provider that is engaged in the dispute; and
  - (if necessary) alternative means of redress.
73. The ODR Contact Point need only provide this assistance if the dispute relates to a cross border complaint involving a UK consumer or business (e.g. where a UK consumer buys something online from a business in another EU country, or a UK business sells something online to a consumer from another EU country). However, under the Directive the UK can choose to extend these requirements so that the ODR Contact Point has to assist with disputes relating to domestic transactions between UK consumers and UK businesses.
74. The Government does not agree it should require the ODR Contact Point to assist with domestic online disputes as this could dramatically increase its workload. For example, the Financial Ombudsman Service dealt with over 2 million enquiries in 2012/13 which led to it investigating over 500,000 cases. Although this figure includes both online and offline

complaints, it gives an indication of the number of complaints that the ODR contact point could be required to consider if it assisted with domestic disputes. It would be difficult for the ODR contact point to assist with even a small number of these enquiries if it employs only a couple of staff. It would be more useful if the ODR Contact Point was allowed to focus its assistance on cross border disputes, where consumers are likely to need more support. However, the Government could give the ODR Contact Point the discretion to assist with online domestic disputes on a case-by-case basis where appropriate.

75. The ODR Regulation suggests that the role of ODR contact point could be fulfilled by the European Consumer Centres (ECCs). The UK ECC is hosted by the Trading Standards Institute. The Government is considering its options and will discuss with the UK ECC whether it is feasible for it to take on the role of ODR contact point for the whole of the UK.

Q18. Do you agree that the ODR contact point should only be required to assist with cross border disputes involving a UK consumer or UK business?

Q19. Should the ODR contact point be allowed to assist with domestic complaints on a case-by-case basis?

## Impact on limitation and prescription periods

76. Article 12 of the ADR Directive requires the UK to ensure that parties who are engaged in non-binding ADR processes are not prevented from initiating litigation just because the deadline for launching litigation has passed while the parties were still engaged in the ADR process. The current deadline for initiating litigation in the case of contractual disputes is set out in the Limitation Act 1980 and provides that, in the absence of fraud, concealment or mistake, a claimant has six years from the date of the breach of contract to bring a claim. The UK will need to extend this six year window where an ADR process has started, but is still ongoing when the six year time period terminates.
77. The Mediation Directive (which applies to cross border disputes) contains a similar provision to Article 12 of the ADR Directive. As a result of its implementation, in the case of certain cross-border disputes, if a mediation process has started within the six year window, but is still ongoing when the six year time period terminates, the window for bringing a claim is extended to eight weeks after the end of the mediation.
78. The Government believes that it would be appropriate to apply an eight week extension, an approach which is consistent with the Cross-Border Mediation (EU Directive) Regulations 2011 (which implement the Mediation Directive in England and Wales).
79. Equivalent amendments will need to be made to the legislation of Scotland and Northern Ireland and any sector specific legislation which set out time limits for bringing consumer complaints to court.

Q20. Do you agree that, where applicable, we should extend the six year time limit for bringing disputes to court by eight weeks, and mirror the amendment made to implement the Mediation Directive? If not, please explain why a different extension period is preferable.

Q21. Are you aware of any sector specific legislation which contains time limits for bringing cases to court which we may also have to amend?

## Scope of ADR: in-house mediation

80. The Directive does not apply to “in-house mediation” (where ADR is provided by the business against whom the complaint has been raised) unless specifically allowed by individual Member States. In these instances, further safeguards to ensure impartiality and independence apply, which can be found in Article 6(3) of the Directive.
81. Although one or two other Member States intend to allow for in-house ADR because of the systems that currently operate in those countries, the UK Government does not intend to categorise in-house mediation as an appropriate ADR process when implementing the ADR Directive. The Government strongly believes that businesses should do what they can to resolve complaints and have in place the appropriate in-house mechanisms to do so. It is important however, for consumers to have recourse to ADR provided by a separate and independent body to ensure they trust the process and have faith that any decisions that are made are impartial.
82. If the Government were to allow in-house mediation to fall within the scope of UK legislation, then consumers who had complaints with businesses that offered only in-house mediation would be denied access to other independent ADR schemes. To avoid consumers sending the same complaint to a range of ADR providers, certified ADR providers can refuse to deal with a dispute if the dispute has already been considered by another certified ADR provider. If a business’s in-house mediation scheme was recognised as a certified ADR provider and that business was unable to resolve a particular matter, then the consumer would find it difficult to find another ADR provider willing to consider that dispute.
83. During the course of negotiations the UK Government maintained the line that in-house mediation should not be included in the scope of the Directive. This approach was supported by UK stakeholders.

Q22. Do you agree that in-house ADR should not form part of the UK’s implementation of the ADR Directive? If you disagree can you please explain why?

## Binding decisions

84. Article 2(4) and Recital 20 of the ADR Directive allow Member States to determine whether or not to allow certified ADR providers to make decisions that are binding. Several UK ADR schemes operate a model whereby a decision is binding on one or both parties if the consumer accepts the decision. For example, if a consumer accepts a decision made by the Financial Ombudsman Service, then both parties are bound by that decision. Not all UK ADR providers have adopted this model, but it does appear to be appropriate and work well in the sectors that follow this approach. Therefore the UK intends to recognise ADR models that arrive at a binding decision for one or both of the parties as a valid model for the purposes of the ADR Directive. Certified UK ADR providers will be able to make decisions that are binding, if this model suits that particular sector.

Q23. Do you agree that the UK should allow certified ADR providers to make decisions that are binding? If you disagree can you please explain why?

## Applying the ODR Regulation to disputes initiated by businesses

85. Although the ADR Directive does not apply to disputes businesses initiate against consumers, Article 2(2) of the ODR Regulation gives scope for the UK to apply the Regulation to disputes generated by businesses. This would potentially allow complaints made by a business against a consumer to be submitted to an ADR provider via the ODR platform. We do not intend to apply the ODR Regulation to disputes initiated by businesses to ensure consistency with our implementation of the ADR Directive and avoid any confusion that a different approach could generate. It is our view that it would be better to have the whole system geared towards resolving consumer disputes, rather than have part of the system also helping resolve disputes generated by businesses.

Q24. Do you agree that the ODR Regulation should only apply to disputes initiated by a consumer, and should not apply to disputes initiated by a business? If not, can you please explain why?

## 11. Call for evidence on simplifying the provision of ADR

86. The Government is keen to see greater use of ADR by businesses and consumers – it represents an important part of the consumer protection landscape and can help increase consumer confidence. Confident consumers drive competitive behaviour between firms, as these consumers shop around for the best deals and best service. Strongly competitive markets give businesses the incentive to reduce prices, improve quality, service, and choice. They provide incentives for firms to become more efficient and to innovate – to compete for customers. In turn, greater choice helps to give consumers more power and more confidence.
87. The Consumer Rights Bill<sup>8</sup> currently going through Parliament will ensure consumers are better informed and better protected when they buy goods or services. An important aim of reforming the ADR system is to complement these improvements. Implementing the ADR Directive should significantly improve access to redress but there may be further gains which could be achieved. As well as obtaining views on measures needed to implement the ADR Directive, we also want to use this consultation to explore whether longer-term and broader reforms of the UK's ADR landscape are necessary and if so, when and how they would be achievable.
88. Given the current ADR landscape in the UK it would not be possible to achieve a major simplification by the deadline for implementation of the ADR Directive of July 2015. The Government does not currently have sufficient evidence and analysis about the benefits of simplification to consumers and business weighed up against the costs to business (which could potentially be passed onto consumers) and to taxpayers.
89. We are therefore calling for evidence on a broader simplification of the ADR landscape. The prospect of a broad reform of the ADR landscape brings some immediate issues to light. Seeking views on some of these issues now will allow us to consider whether such reforms are desirable and feasible, and whether to undertake a more detailed consultation on this issue at a later date.

### Case for change

90. There are currently over 70 different ADR schemes operated in the UK by a range of ADR providers (see Annex B). Some consumers find that their particular dispute may be covered by multiple ADR providers and it is not always clear to the consumer who to go to for help. For example a property dispute may have elements which are covered by different ADR schemes – the consumer would be faced with approaching either one of the ADR providers operating under the Estate Agent Redress Scheme or the Legal Ombudsman, or perhaps both.
91. Several stakeholders have suggested we should reform the institutional landscape for ADR in the UK. They consider that a simplified system would be easier for consumers to navigate

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<sup>8</sup> <http://services.parliament.uk/bills/2013-14/consumerrights.html>

and would prevent problems where it is difficult to determine who the most appropriate ADR provider is. This could be achieved by the creation of a single umbrella ADR body, as exists in some European countries, or by rationalising the number of schemes so that only one or a few ADR schemes exist, and a more uniform system is put in place. The aim of this would be to help increase awareness and overall uptake of ADR.

92. There would be several significant issues to address before any major reform could begin. Primary legislation would be needed and an appropriate level of funding would need to be secured. A large simplification exercise would also go beyond the requirements of the ADR Directive and have a significant impact on existing ADR providers, for whom we would need to provide an adequate lead-in time to prepare for reforms.

## Simplification and access to ADR

93. If a simplification was undertaken, a key issue to consider would be whether to attempt to make the use of ADR compulsory for business. A compulsory system would be the clearest system to operate, as both consumers and business would know that all unresolved complaints should go to ADR. However, this could come at a significant cost. For example, our impact assessment has estimated that the cost to business of having to belong to a new residual ADR scheme would be in the region of £18m-£38.5m. There would be difficulties with alternative approaches. Retaining a mixed approach whereby the requirement to use ADR remained compulsory in some sectors but not others, risks losing some of the benefits of simplification as it may confuse consumers as to their right to access ADR.
94. Under any approach to simplification, attempts would have to be made to increase uniformity and realise efficiencies and economies of scale, in order to achieve the maximum benefits.

Q25. Would the benefits of simplifying the ADR landscape over the longer-term outweigh the costs? Who would the costs and benefits fall to?

Q26. What evidence is there that a simplified system would make a major difference to consumers? Are there other ways to achieve the aim of greater awareness and take-up of ADR?

Q27. Would simplifying the landscape in the longer term be compatible with the introduction of a residual ADR scheme by July 2015? Are there specific ways in which the creation of a residual scheme would need to be undertaken to enable the possibility of later simplification?

Q28. What are your views on making the use of ADR a compulsory or voluntary requirement if the landscape is simplified?

## **Annex A: List of organisations consulted**

ADR Group

Association of Accounting Technicians

Antiquarian Booksellers Association

Advertising Standards Authority

Association of Manufacturers of Domestic Appliances

Association of British Insurers

Association of British Introduction Agencies

Association of British Travel Agents

Association of Chartered Certified Accountants

Association of Civil Enforcement Agencies

Association of Master Upholsterers and Soft Furnishers

Association of Plumbing and Heating Contractors

Association of Residential Letting Agents

Bar Standards Board

British Air Transport Association

British Antique Dealers' Association

British Association of Removers

British Banks Association

British Chamber of Commerce

British Healthcare Trades Association

British Retail Consortium

British Standards Institute

British Vehicle Rental and Leasing Association

Bus Appeals Body

Bususers UK Cymru

Care Quality Commission

Carpet Foundation  
Catalyst Mediation  
Confederation of British Industry  
Centre for Effective Dispute Resolution  
Centre for Socio-Legal Studies, University of Oxford  
Charter UK  
Chartered Institute of Arbitrators  
Chartered Institute of Arbitrators Scotland  
Chartered Institute of Architectural Technologists  
Chartered Institute of Plumbing and Heating Engineering  
Chartered Institute of Public Finance and Accountancy  
Citizens Advice  
Citizens Advice Northern Ireland  
Citizens Advice Scotland  
Civil Aviation Authority  
Civil Mediation Council  
Claims Management Regulator  
CMS Cameron McKenna  
Communications Consumer Panel  
Confederation of Roofing Contractors  
Consumer Code for Home Builders  
Consumer Council for Northern Ireland  
Consumer Council for Water  
Consumer Credit Association UK  
Consumer Credit Trade Association  
Consumer Futures  
Core Solutions Group  
Credit Services Association

Debt Managers Standards Association  
Dental Complaints Service  
Deposit Protection Service  
Direct Selling Association  
Domestic Appliances Services Association  
Double Glazing and Conservatory Ombudsman Scheme  
European Justice Forum  
Faculty of Advocates  
Financial Conduct Authority  
Federation of Master Builders  
Finance and Leasing Association  
Financial Ombudsman  
Federation of Small Businesses  
Glass and Glazing Federation  
Hamilton Fraser  
Home Insulation & Energy Systems Quality Assured Contractor Scheme  
Housing Ombudsman Service  
IMRG  
Independent Betting and Adjudication Service  
Independent Panel for Casino Arbitration  
Institute of Chartered Accountants  
Institute of Chartered Accountants of Scotland  
Institute of Directors  
Institute of Legal Executives  
Institute of Professional Willwriters  
Institution of Civil Engineers  
Internet Service Providers' Association (ISPA)  
Invigila

Kitchen Bathroom Bedroom Specialists Association  
Law Society  
Law Society of Northern Ireland  
Law Society of Scotland  
Legal Ombudsman  
Legal Services Consumer Panel  
Leisure and Outdoor Furniture Association  
Local Government Ombudsman  
London Travelwatch  
Modria Inc.  
Motor Codes Ltd  
MultiService Association (Society of Master Shoe Repairers)  
Mydeposits  
National Caravan Council  
National Federation of Roofing Contractors  
National Guild of Removers & Storers  
National House Building Council  
National Mediation Helpline  
Northern Ireland Authority for Utility Regulation (NIAUR)  
Ofcom  
Office of the Immigration Services Commissioner  
Office of the Independent Adjudicator  
Office of Rail Regulation  
Office of Fair Trading  
Ofgem  
Ofwat  
Ombudsman Association  
Ombudsman Services

Optical Consumer Complaints Service  
Painting and Decoration Association  
Parliamentary and Health Services Ombudsman  
Passenger Focus  
Peaceful Solutions  
Pensions Ombudsman  
Petrol Retailers Association  
PhonepayPlus  
Pre-Legal  
Queen Mary University of London  
Radio, Electrical and Television Retailers' Association  
Relationships Scotland  
Removals Industry Ombudsman Scheme  
Renewable Energy Association  
Resolver  
Resort Development Association  
Retail Motor Industry Federation  
Robert Bosch Ltd  
Royal Incorporation of Architects in Scotland  
Royal Institute of Chartered Surveyors  
Safebuy  
Scottish Agricultural Valuers and Arbiters Association  
Scottish and Northern Ireland Plumbing Employers' Federation  
Scottish Arbitration Centre  
Scottish Community Mediation Centre  
Scottish Council for Development and Industry  
Scottish Decorators Federation  
Scottish Legal Complaints Commission

Scottish Mediation Network

Scottish Motor Trade Association

The Society of Motor Manufacturers and Traders Limited

Technology Channels Association

Tenancy Deposit Scheme

Textile Services Association

The Furniture Ombudsman

The Gambling Commission

The Glazing Ombudsman

The Property Ombudsman

The Wales Social Partners Unit

Travel Trust Association

Trading Standards Institute

UK Cards Association

UK European Consumer Centre

University of Leicester

Vehicle Builders & Repairers Association Ltd

Which?

## Annex B: UK Alternative Dispute Resolution schemes

This list captures the numerous consumer ADR schemes which operate in the UK, along with an indication of the sectors in which they operate. In addition to the handful of statutory schemes in operation, in many instances access to ADR is provided through a trade association or another organisation, with disputes often referred to a separate independent body operating across several sectors. In some instances a trade association will provide a form of ADR themselves.

Upon implementation of the ADR Directive, all ADR providers who wish to be certified as complying with the Directive will have to register and feature on a list of certified UK ADR providers. A competent authority will be appointed to maintain and monitor this list, ensuring that certified ADR providers continue to meet the specified quality standards set out in the Directive.

<b>Sector (using standard industrial classifications)</b>	<b>Name of ADR provider or trade association/organisation providing access to ADR</b>
Water supply	Consumer Council for Water
	Waterwatch Scotland
Construction	Consumer Code for Home Builders
	National House Builders Council
Specialised construction activities	Double Glazing and Conservatory Ombudsman Scheme
	The Glazing Ombudsman
	Glass and Glazing Federation
	Renewable Energy Association
	Home Insulation and Energy Systems Assured Contractors Scheme
	Green Deal Ombudsman
	Chartered Institute of Plumbing and Heating Engineering
	Scottish and Northern Ireland Plumbing Employers Federation

Sector (using standard industrial classifications)	Name of ADR provider or trade association/organisation providing access to ADR
	Painting and Decorating Association
	Scottish Decorators Federation
	Association of Roofing Contractors
	National Federation of Roofing Contractors
	Trustmark Arbitration and Conciliation Schemes
Trade and repair of motor vehicles	Motor Codes Ltd
	Retail Motor Industry Federation
	Robert Bosch Ltd
	Scottish Motor Trade Association
	Vehicle Builders & Repairers Association Ltd (VBRA)
	National Caravan Council
Retail trade (non motor vehicles)	The Furniture Ombudsman
	Kitchen Bathroom Bedroom Specialists Association
	Direct Selling Association
	Safebuy
	Trusted Shops
	Radio, Electrical and Television Retailers Association
	Antiquarian Booksellers Association
	British Antique Dealers Association
	Carpet Foundation
	British Healthcare Trades Association

Sector (using standard industrial classifications)	Name of ADR provider or trade association/organisation providing access to ADR
	Petrol Retailers Association
Transportation	Bus Appeals Body
	Civil Aviation Authority
	Passenger Focus
	London Travel Watch
	Removals Industry Ombudsman Scheme
	British Association of Removers
Postal and courier activities	The Postal Redress Service (POSTRS)
Accommodation	Resort Development Organisation
Telecommunications activities	Communications and Internet Services Adjudication Scheme (CISAS)
	Ombudsman Services: Communications
Financial service activities, and insurance and pension funding	Financial Ombudsman Service (FOS also provide ADR in some of the other sectors classified here, such as rental and leasing activities)
	The Pensions Ombudsman
	Finance and Leasing Association
	Consumer Credit Association UK
	Consumer Credit Trade Association
	Debt Managers Standards Association
Real estate activities	The Property Ombudsman
	Ombudsman Services: Property
	Association of Residential Managing Agents (ARMA)

<b>Sector (using standard industrial classifications)</b>	<b>Name of ADR provider or trade association/organisation providing access to ADR</b>
	Tenancy Deposit Scheme
	Deposit Protection Service
	Capita Tenancy Deposit Protection
	Housing Ombudsman Scheme
Legal and accounting activities	Legal Ombudsman
	Scottish Legal Complaints Commission
	Law Society of Scotland
	Chartered Institute of Public Finance and Accountancy (CIPFA)
	Association of Accounting Technicians
	Institute of Chartered Accountants of England and Wales
	Institute of Chartered Accountants of Scotland
	Estate Planning Arbitration Scheme
Architectural and engineering activities	Chartered Institute of Architectural Technologists
Other professional, scientific and technical activities	Royal Institute of Chartered Surveyors (RICS)
Rental and leasing activities	Finance and Leasing Association
	British Vehicle Rental and Leasing Association
Travel agency, tour operator and other reservation services and related activity	ABTA arbitration and mediation schemes
	Travel Trust Association
Education	Office of the Independent Adjudicator

<b>Sector (using standard industrial classifications)</b>	<b>Name of ADR provider or trade association/organisation providing access to ADR</b>
Residential care activities	Local Government Ombudsman
Gambling	Independent Panel for Casino Arbitration
	Independent Betting and Adjudication Service
	Independent Panel for Bingo Arbitration
Sports activities and amusement and recreation activities	Independent Football Ombudsman
Repair of computers and personal and household goods	The Association of Master Upholsterers & Soft Furnishers
	Domestic Appliances Services Association
Other personal service activities (including hairdressing, funeral services, physical well-being activities)	Funeral Arbitration Scheme
	Textile Services Association

## Annex C: Impact assessment questions

An impact assessment has been published alongside the consultation document. We would welcome any comments you may have on our analysis, along with any supporting evidence, including quantified costs and benefits, you can provide us to underpin your comments. We would also welcome your comments on any unintended consequences or implications of our proposals that we have not identified.

Below we highlight some key figures, assumptions and questions. Any views on these would be welcomed.

### Costs of providing information to consumers

- Familiarisation costs to businesses of £17.0m (one-time cost) with familiarisation taking approximately 1 hour of a staff member's time.
- Costs of changing websites of £6.6m (one-time cost) with an IT programmer taking 1 hour to complete the change.
- Cost of changing terms and conditions at £85 for microbusinesses, £263 for small businesses, £494 for medium sized businesses and £2,578 for large businesses.

### Options for ensuring universal ADR coverage

#### *Do nothing*

- We have assumed that private firms/business will not act without government intervention.

#### *Minimal option*

- One-off cost to government to set up residual body of around £5.0m, based on previous experience of establishing similar bodies.
- 50,000 – 250,000 ADR enquiries would be made per year with 10% leading on to becoming ADR complaints.
- Cost per case from £180 to £385, based on existing schemes.
- A £78 administration cost to business based on the European Commission's Impact Assessment for the ADR Directive.
- 25% of extra ADR cases would mitigate the need for a court hearing.
- 75% of complaints are settled in the consumer's favour.
- An average financial detriment to consumers of £144 per problem as suggested by the Consumer Focus survey (2012).
- It will take a consumer an hour to provide a written complaint.

### ***Simplification of ADR landscape***

- Will start-up costs be similar to those of the residual body?
- If there are additional costs, what are these likely to be?

### **Equality impact**

- Whether groups with protected characteristics currently have difficulty gaining access to redress and whether these ADR proposals will particularly help these groups.

## Annex D: Alternative Dispute Resolution for Consumers response form

A copy of this consultation can be found at:

<https://www.gov.uk/government/consultations/>

You can complete your response online through

<https://www.connect.bis.gov.uk/consultations/adrforconsumers>

Alternatively, you can e-mail, post or fax this completed response form to:

Nick Mawhinney  
Consumer and Competition Policy  
Department for Business, Innovation and Skills  
1 Victoria Street  
LONDON SW1H 0ET

Tel: ++44 (0)20 7215 0382

Fax: ++44(0)20 7215 0480

e-mail: [ADR@bis.gsi.gov.uk](mailto:ADR@bis.gsi.gov.uk)

The closing date for this consultation is 3 June 2014

### Confidentiality and disclosure of responses

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses. If you wish your response to remain confidential you must provide a reason. Do you agree for your response to be published or disclosed if requested?

Yes

No

### Your details

Name:

Organisation (if applicable):

Job title (if applicable):

Address:

Telephone number:

Please tick the box below that best describe you as a respondent to this consultation.

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

### UK ADR landscape

**Q1: Do you think there are any significant gaps in the provision of ADR in the UK? Please identify any sectors where you think the provision of ADR is insufficient.**

Yes       No       Not sure

Comments:

### ADR for every consumer dispute:

*Do nothing*

**Q2. Do you agree that the current provision of ADR in the UK is not enough to meet our obligation to have ADR available for all consumer disputes? If you disagree, can you**

**advise which ADR schemes are suitable to handle all disputes, and whether there are limitations to the number of disputes or type of dispute that these schemes could handle? Would these schemes be able to process an increased volume of disputes within the 90 day deadline for concluding disputes set by the Directive?**

- Yes – I agree the current provision of ADR is not enough to meet our obligation
- No – the current provision of ADR is enough to meet our obligation
- Not sure

Comments:

### ***Residual ADR***

**Q3. Can we expect businesses not currently obliged to use an ADR scheme to refer complaints to a voluntary residual ADR scheme? What steps could Government and others take to encourage businesses to use a voluntary ADR scheme?**

- Yes – businesses would use a voluntary residual ADR scheme
- No – businesses would not use a voluntary residual ADR scheme
- Not sure

Comments:

**Q4. What volume of enquiries and/or disputes could we expect a voluntary residual ADR scheme to receive?**

Please explain your estimate:

**Q5. Is there a specific operating model that a residual ADR scheme should adopt (e.g. mirror existing ombudsman models)?**

Please comment:

**Q6. Can you suggest what an appropriate maximum and minimum settlement value for a residual ADR scheme should be? How have you arrived at these figures?**

Maximum settlement value:

- none
- up to £2000
- up to £10,000
- up to £25,000
- up to £50,000
- more than £50,000

Please explain your response:

Minimum settlement value:

- none
- up to £50
- up to £100
- up to £200
- more than £200

Please explain your response:

**Q7. What funding model would be appropriate for a residual ADR scheme? Can an ADR provider operate effectively if it is reliant on case fees rather than annual fees?**

- solely funded by case fees
- solely funded by annual fees

- mainly funded by case fees but with annual fees charged
- mainly funded by annual fees but with case fees also charged
- an even split between case fees and annual fees
- other

Please explain your response:

**Q8. Should a standard case fee be adopted? What would be an appropriate level? If not, how should the amount charged for each dispute be determined?**

Should a standard fee be charged:

- Yes
- No
- Not sure

If yes, what would be an appropriate level:

- up to £100
- up to £200
- up to £500
- more than £500

Please explain your response:

**Q9. Would it be better to have a single ADR body or several ADR bodies operating a residual ADR scheme? What would be the ideal number and what are the reasons for this?**

- single body
- more than one body

Please explain your response:

### Better signposting for consumers – a complaints “helpdesk”

**Q10. In light of the other requirements in the ADR Directive which are intended to assist consumers, would a consumer-facing complaints helpdesk be beneficial?**

Yes

No

Not sure

Comments:

**Q.11 Do you have any comments on the type of service it should provide and the extent to which it should examine the enquiries it receives?**

Please comment:

**Q12. Rather than attempt to create a new service, which existing service or body is best placed to provide this function?**

Please comment:

**Q13. How could a helpdesk be funded?**

Please comment:

### Appointing a competent authority

**Q14. Do you agree that regulators should act as competent authorities for the ADR schemes that operate in their sectors?**

Yes

No

Not sure

Comments:

**Q15. How should the fees paid by ADR providers to a competent authority be determined? Should the size of the fee depend on the size of the ADR provider (for example turnover or number of cases dealt with) or based on other factors?**

Please comment:

### Procedural rules for refusing disputes

**Q16. Do you agree that the Government should allow UK ADR providers to use all of the procedural rules listed in Article 5(4) of the ADR Directive to reject inappropriate disputes? If not, please explain your reasons.**

Yes

No

Not sure

Comments:

### Information requirements

**Q17. Would some suggested wording and guidance be useful in helping businesses meet these requirements? What kind of wording would be helpful?**

Yes

No

Not sure

Comments:

## Online Dispute Resolution Contact Point

**Q18. Do you agree that the ODR contact point should only be required to assist with cross border disputes involving a UK consumer or UK business?**

Yes

No

Not sure

Comments:

**Q19. Should the ODR contact point be allowed to assist with domestic complaints on a case-by-case basis?**

Yes

No

Not sure

Comments:

## Impact on limitation and prescription periods

**Q20. Do you agree that, where applicable, we should extend the six year time limit for bringing disputes to court by eight weeks, and mirror the amendment made to implement the Mediation Directive? If not, please explain why a different extension period is preferable.**

Yes

No

Not sure

Comments:

**Q21. Are you aware of any sector specific legislation which contains time limits for bringing cases to court which we may also have to amend?**

Please comment:

### Scope of ADR: in-house mediation

**Q22. Do you agree that in-house ADR should not form part of the UK's implementation of the ADR Directive? If you disagree can you please explain why?**

- Yes – in-house ADR should not form part of our implementation of the ADR Directive
- No – in-house ADR should be permitted
- Not sure

Comments:

### Binding decisions

**Q23. Do you agree that the UK should allow certified ADR providers to make decisions that are binding? If you disagree can you please explain why?**

- Yes                       No                       Not sure

Comments:

### Applying the ODR Regulation to disputes initiated by business

**Q24. Do you agree that the ODR Regulation should only apply to disputes initiated by a consumer, and should not apply to disputes initiated by a business? If not, can you please explain why?**

- Yes                       No                       Not sure

Comments:

### Call for evidence on simplifying the provision of ADR

**Q25. Would the benefits of simplifying the ADR landscape over the longer-term outweigh the costs? Who would the costs and benefits fall to?**

Please comment:

**Q26. What evidence is there that a simplified system would make a major difference to consumers? Are there other ways to achieve the aim of greater awareness and take-up of ADR?**

Please comment:

**Q27. Would simplifying the landscape in the longer term be compatible with the introduction of a residual ADR scheme by July 2015? Are there specific ways in which the creation of a residual scheme would need to be undertaken to enable the possibility of later simplification?**

Please comment:

**Q28. What are your views on making the use of ADR a compulsory or voluntary requirement if the landscape is simplified?**

Please comment:

### **Impact Assessment**

**Q29. Do you have any views on the impacts of the options as laid out in the impact assessment?**

Please comment:

**Q30. Do you have any views on the key figures, assumptions and questions set out in Annex C?**

Please comment:

**General points**

**Q31. Are there any other issues or areas on which you would like to comment? If so, we would welcome your views.**

Please use this space for any additional or general comments that you may have.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

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