

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4,231 of 14 January, 2016

LEGAL NOTICE NO. 8 OF 2016.

INTERPRETATION AND GENERAL CLAUSES ACT

**CONSUMER (ALTERNATIVE DISPUTE RESOLUTION)
(AMENDMENT) REGULATIONS 2016**

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act, and for the purposes of implementing, in part, Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), the Government has made the following Regulations-

Title.

1. These Regulations may be cited as the Consumer (Alternative Dispute Resolution) (Amendment) Regulations 2016.

Commencement.

2. These Regulations come into operation on 9 January 2016.

Amendment of the Consumer (Alternative Dispute Resolution) Regulations 2015.

3.(1) The Consumer (Alternative Dispute Resolution) Regulations 2015 (“the Regulations”) are amended in accordance with this regulation.

(2) In regulation 3 of the Regulations-

(a) after the definition of “competent authority” insert the following definition-

““complainant party” means the consumer who has submitted a complaint through the ODR platform;”

- (b) after the definition of “domestic dispute” insert the following definition-

““electronic means” means electronic equipment for the processing (including digital compression) and storage of data which is entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;”

- (c) after the definition of “ODR” insert the following definition-

““ODR platform” means the electronic program established under article 5 of the EU Regulation;”

- (d) after the definition of “Ombudsman for Public Services” insert the following definitions-

““online marketplace” means a service provider, as defined in point (b) of article 2 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (‘Directive on electronic commerce’), which allows consumers and traders to conclude online sales and service contracts on the online marketplace’s website;

““online sales or service contract” means a sales or service contract where the trader, or the trader’s intermediary, has offered goods or services on a website or by other electronic means and the consumer has ordered such goods or services on that website or by other electronic means;”.

- (3) In regulation 6 of the Regulations-
- (a) in subsection (2) after the second instance of “European Union” insert “, whether the contract was concluded online or otherwise”;
- (b) in subsection (3) after “together” insert “, with or without the use of the ODR platform,”;
- (c) after subsection (4) insert-

“(5) These Regulations are without prejudice to the EU Regulation.”.

(4) In regulation 7(b)(iv) delete “[Art. 3(2)]”.

(5) After regulation 9 insert the following subheading-

“*ADR entities*”.

(6) After regulation 16 insert the following subheading-

“*ADR entities - miscellaneous*”.

(7) In the title of regulation 24A after “discharged” insert “- **unable to consider a complaint**”.

(8) Insert the following title for regulation 24B “**Duty deemed to be discharged - able to consider a complaint**”.

(9) Insert the following regulations after regulation 24B of the Regulations-

“ *Online dispute resolution*

ODR network.

24C.(1) Subject to subregulation (2), the ODR contact must provide support to the resolution of disputes relating to complaints submitted through the ODR platform by fulfilling the following functions-

- (a) if requested, facilitating communication between the parties and competent ADR entity, which may include, in particular-
 - (i) assisting with the submission of the complaint and, where appropriate, relevant documentation;
 - (ii) providing the parties and the ADR entities with general information on consumer rights in relation to sales and service contracts which apply in Gibraltar;

- (iii) providing information on the functioning of the ODR platform;
 - (iv) providing the parties with explanations of the procedural rules applied by the ADR entities identified;
 - (v) informing the complainant party of other means of redress when a dispute cannot be resolved through the ODR platform;
- (b) submitting, based on the practical experience gained from the performance of their functions, every 2 years an activity report to the Commission and to the Member States.

(2) The ODR contact point must not perform the functions listed in subregulation (1) where the parties are habitually resident in Gibraltar.

Use of ODR platform.

24D.(1) Where an ADR entity receives a complaint through the ODR platform the ADR entity must without delay inform the parties whether it agrees or refuses to deal with the dispute in accordance with paragraph 7 of Schedule 2.

(2) Where an ADR entity agrees to deal with a complaint received through the ODR platform the ADR entity must inform the parties of its procedural rules and, if applicable, of the costs of the dispute resolution procedure concerned.

(3) Where the parties to the dispute fail to agree within 30 days of submission of the complaint form on an ADR entity or an ADR entity refuses to deal with the dispute, the complaint must not be processed further.

(4) Where the parties to the dispute fail to agree within 30 days of submission of the complaint form on an ADR entity or an ADR entity refuses to deal with the dispute in accordance with subregulation (3) the complainant party must be informed of the

possibility of contacting an ODR advisor for general information on other means of redress.

Resolution of ODR dispute.

24E. An ADR entity which has agreed to deal with a dispute received through the ODR platform must-

- (a) conclude the ADR procedure within the deadline referred to in subsubparagraph 4(1)(e) of Schedule 2 and subparagraph 4(2) of Schedule 2.
- (b) not require the physical presence of the parties or their representatives, unless its procedural rules provide for that possibility and the parties agree;
- (c) without delay transmit the following information to the ODR platform;
 - (i) the date of receipt of the complaint file;
 - (ii) the subject-matter of the dispute;
 - (iii) the date of conclusion of the ADR procedure;
 - (iv) the result of the ADR procedure;
- (d) not be required to conduct the ADR procedure through the ODR platform.

Consumer information.

24F.(1) Traders established in Gibraltar engaging in online sales or service contracts, and online marketplaces established within Gibraltar, must provide on their websites an electronic link to the ODR platform and state their email addresses.

(2) The electronic link referred to in subregulation (1) must be easily accessible for consumers.

(3) Traders established in Gibraltar engaging in online sales or service contracts, which are committed or obliged to use specific ADR entities to resolve disputes with consumers, must inform consumers about the existence of the ODR platform and the possibility of using the ODR platform for resolving their disputes.

(4) The traders referred to in subregulation (3) must inform consumers about the existence of the ODR platform and the possibility of using the ODR platform for resolving their disputes by including this information-

- (a) in an electronic link to the ODR platform on their website;
- (b) where applicable, in their general terms and conditions; and
- (c) where the offer is made by email, in that email.

(5) The trader information requirements set out in subregulations (1) to (4) are without prejudice to regulation 19 and the provisions on consumer information on out-of-court redress procedures required under any other enactment.

(6) The traders referred to in this regulation must try to, when obliged to provide information in accordance with subregulations (1) to (4) and with the provisions referred to in subregulation (5), provide the information together.

(7) The competent authority must ensure that the websites of the ADR entities, the ODR contact and of the competent authority itself provide an electronic link to the ODR platform.

(8) The competent authority must encourage consumer associations and business associations to provide an electronic link to the ODR platform.

Penalties.

24G.(1) The competent authority may impose a penalty equal to level 3 on the standard scale on a person who fails to comply with a requirement in subregulations 24F(1), (2), (3), (4) and (7).

(2) The competent authority must not impose a penalty on a person under subregulation (1) where there are reasonable grounds for him to be satisfied that the person took all reasonable steps to ensure the requirement would be complied with.

(3) Where the competent authority proposes to impose a penalty under this regulation, he must give the person written notice of-

- (a) his proposal to impose the penalty and the proposed amount;
- (b) the reasons for imposing the penalty; and
- (c) the right to make representations to him within a specified period (which may not be less than 14 days).

(4) The competent authority must then decide, within a reasonable period, whether to impose a penalty under this regulation and he must give the person written notice of-

- (a) his decision not to impose a penalty; or
- (b) the following matters-
 - (i) his decision to impose a penalty and the amount;
 - (ii) the reasons for his decision; and
 - (iii) the right to appeal under regulation 24H.

(5) A penalty imposed under this regulation is payable to the competent authority.

(6) In subregulation (1) “appropriate” means an effective, proportionate and dissuasive penalty.

Appeals.

24H.(1) A person may appeal from a decision by the competent authority under regulation 24G(4) to the Magistrates’ Court.”.

(2) The Magistrates' Court may make an order on such terms and conditions as it thinks fit, however the Magistrates' Court must not impose a higher penalty than the penalty provided for in regulation 24G(1)."

(10) After regulation 24H insert the following subheading-

"Amendments".

Dated 14th January, 2016.

N F COSTA,
Minister with responsibility for Consumer Affairs,
for the Government.

EXPLANATORY MEMORANDUM

These Regulations implement, in part, into the law of Gibraltar Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR).

GIBRALTAR GAZETTE, No 4,231, Thursday 14 January, 2016

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