

Consumer Protection (Amendment) (EU Exit) Regulations 2018

Department for Business, Energy and Industrial Strategy

RPC rating: fit for purpose

Description of proposal

In light of the Government's commitment to withdraw from the EU, specific changes in consumer protection legislation must be made to ensure that the existing regime continues to be operable at the point of exiting the EU. The UK regulatory landscape for consumer protection and enforcement is tightly linked to a range of EU legislation and makes references to European institutions or to EU member states, which need to be removed. The proposals amend seven pieces of UK consumer protection legislation as follows:

- 1) Part 1 and 2 of the Consumer Rights Act 2015.
- 2) The Consumer Protection from Unfair Trading Regulations 2008.
- 3) The Consumer Rights (Payment Surcharges) Regulations 2012.
- 4) The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.
- 5) The Crystal Glass (Descriptions) Regulation 1973.
- 6) The Footwear (Indication of Composition) Labelling Regulation 1995.
- 7) The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulation 2015.

On proposals 1-5, the changes are minor, such as replacing references to the European Economic Area (EEA) with the United Kingdom and references to European currency with the Pound sterling.

On proposal 6, removing references to the EU means that some UK businesses will have to meet the legal obligations of the 'responsible person' in relation to footwear products. The responsible person is the manufacturer/agent established in the EEA, or the person who first makes the footwear available in the EEA. This obligation will, mostly, have an impact on retailers that sell footwear imported from an EEA-based business.

On proposal 7, the existing regulations provide an alternative method of settling a dispute between a consumer and a business, more quickly and cheaply than using the courts. The proposal replaces the requirement for competent authorities to make available a list of alternative dispute resolution (ADR) bodies published by the

European Commission with a requirement for the Chartered Trading Standards Institute to provide a list of ADR bodies issued by the Secretary of State for Business, Energy and Industrial Strategy. The complementary online dispute resolution (ODR) platform, an online case management tool, will become unworkable because the platform is maintained by the European Commission. The proposal will, therefore, also revoke EU regulation on ODR.

Impacts of proposal

Proposals 1-5

The Department explains, as noted above, why these changes are minor and do not involve changes to the rights and obligations of business and consumers. They are, therefore, expected to result in negligible costs.

Proposal 6

The Department explains that, when the UK leaves the EU, this proposal could have an impact on UK businesses that may find themselves responsible for meeting the legal obligations of the responsible person. However, the Department explains in detail why this is also expected, in practice, to involve negligible costs to business. This is because under cross-cutting consumer law, such as the Consumer Rights Act 2015, businesses are required to ensure that they do not mislead consumers and that the goods they import conform to contract. As a result, businesses already have an obligation to ensure that the products they receive from their suppliers are compliant with what they had ordered as part of existing regulations. Amending the regulations in this context will not impact cross-cutting consumer law and, therefore, will have no practical impact on business.

Proposal 7

This proposal will have an impact on business in two ways: the costs of familiarisation and of removing the link to the ODR platform. These costs are one-off only; the Department explains that there are not expected to be ongoing costs, because the remaining requirements introduced by the ADR regulations will remain the same and will not be affected by this amendment.

Number of businesses affected

Using data from both the Department and the Office for National Statistics and the 2015 ADR impact assessment (IA), the Department estimates that amendment of the ADR regulations will affect 879,670 businesses.

Familiarisation costs

The Department estimates, using data from the 2015 ADR IA and 2017 *Business Population Estimates* in the UK, that 810,700 micro businesses and 68,970 larger businesses are in scope of these amendments. The IA estimates that in micro businesses, one supervisor would need to be trained for approximately half an hour to be familiar with the new regulation. Using the 2017 Annual Survey of Hours and Earnings (ASHE) and an adjustment for non-wage labour costs, the hourly cost of a supervisor is estimated at £17.10. The overall familiarisation cost for micro businesses is, therefore, estimated at £6.9 million.

For larger firms (ten or more employees) the IA assumes that one person at management level and 20 frontline staff would need to be trained, and the training time required for managers is 30 minutes and 15 minutes, respectively. Using 2017 ASHE data, the Department estimates that the familiarisation cost to larger firms is £4.8 million. The total familiarisation costs to businesses are, therefore, estimated at £11.7 million. The assumptions used are in line with those used in the 2015 ADR IA.

Cost of removing the link to ODR platform

The IA uses research on the digital capabilities of small and medium-sized enterprises undertaken by the Department in 2015. The research estimates that the proportion of businesses with an online presence are as follows: 59 per cent of businesses with no employees; 78 per cent of micro businesses; 86 per cent of small businesses; and 94 per cent of medium-sized businesses. The research does not estimate the proportion of large companies with a website, but the Department assumes this to be 100 per cent. Using these ratios and the number of businesses in scope for this proposal, the Department estimates that around 600,000 businesses will have to remove the link to the ODR platform from their website. The Department uses the 2015 ADR IA in support of its assumption that it will take an IT programmer half an hour to remove the link. Using data from the 2017 ASHE, the IA estimates that the hourly labour cost of an IT programmer is £25.18. The total cost to business of removing the ODR web-link is, therefore, estimated at £7.6 million.

The proposals are not expected to result in significant benefits to business, although the IA notes that any future new businesses trading online would not have to provide a link to the platform on their website, thereby potentially reducing the regulatory burdens on future UK online traders. The business net present value is, therefore, estimated at -£19.3 million. This translates into an equivalent annual net direct cost to business (EANDCB) of £1.9 million (2016 prices, 2017 base year for discounting).

Wider impacts

The Department provides a discussion of the potential impacts on consumers of the removal of the ODR platform. Although it is not possible to monetise these impacts, the IA does use EU-wide data to indicate the impact of the ODR on solving consumer issues, is very limited. This suggests that the removal of the ODR will not create a significant detriment to consumers.

Quality of submission

The Department has used relevant and current data to provide a clear and detailed impact assessment, including the impact on small and micro businesses. The business impacts have been assessed against a *status quo* baseline, which is appropriate for business impact target accounting purposes and in line with government guidance on appraisal of EU exit measures. The IA has monetised the significant direct impacts of the proposal and provided qualitative assessment when monetisation is not possible or proportionate. The RPC is able to validate the EANDCB. The Department has also provided a reasonable and proportionate assessment of impacts on consumers. The RPC welcomes the Department's voluntary submission of an IA for measures and demonstrated they are below the *de minimis* threshold of £5 million positive or negative impact on business.

The IA notes that there is likely to be a proportionately higher cost to small and micro businesses from the amendment, as smaller firms may not have the appropriately-skilled resources to remove the ODR link, which could cause delays in their compliance. The Department explains that exemption of small and micro businesses is not possible because it would put the UK at risk of having an ineffective legal framework for consumer protection. The Department does, however, set out its approach to mitigating impacts on small businesses, in particular by updating the existing guidance for companies, to explain the changes resulting from this amendment. The small and micro business assessment is sufficient.

The IA would benefit from addressing the following points:

- *Use of 2015 ADR IA assumptions.* Explaining why it does not use data on the actual impact of these regulations, for example because a post-implementation review has not yet been undertaken, or because monitoring data are not yet sufficiently robust. The RPC accepts that using the assumptions from the 2015 IA, adjusted to take account of the scale of the present proposed changes, is proportionate in this case, but the Department's justification for this could be strengthened. The Department's assessment

would benefit from further consideration of the risks and uncertainties in the 2015 IA and how far these apply to the current IA.

- *Monetise the costs to consumers of removing the ODR platform.* The Department acknowledges that the report published by the European Commission considered the performance of the ODR platform only across the EU. The IA would be improved by availability of UK-specific data on the proportion of complaints that were successfully resolved through the ODR platform and the resultant benefits to consumers. Further, the UK-specific data might help the Department to assess any potential increase in transactional costs to consumers from the loss of the ODR platform, where complaints appear to have been more-automatically transmitted to the provider. Although the RPC accepts that the Department's assessment appears proportionate in this case.
- *Monitoring and evaluation plan.* The IA would benefit from a brief consideration of how the effectiveness of the measures will be monitored and evaluated, or by explaining why this will not be necessary. For example, a monitoring and evaluation plan could discuss how the Department will monitor business compliance with the amended regulations and evaluate the effectiveness of the resulting consumer protection regime.
- *Risk and uncertainty.* The IA would benefit from including a short discussion addressing the risk of non-compliance from businesses in training their staff members on the amended regulation and the removal of the ODR link from their websites.
- *A confirmation of "no change" to consumers.* In relation to proposal 6, the IA could be improved by including a statement providing explicit assurance to consumers that the information contained in the standard labelling format will not be altered besides the removal of references to the EU.
- *Impact on the public sector.* The IA would benefit from further consideration of the potential impacts of proposal 7 on the public sector. Although the Chartered Trading Standards Institute will 'own' the list of ADR bodies, the first point of contact for businesses and consumers in such situations is likely to be the local authority-based trading standards office and the IA would benefit from consideration of the resource implications for these bodies.

Departmental assessment

Classification	Non-qualifying provision (EU withdrawal)
Equivalent annual net direct cost to business (EANDCB)	£1.9 million
Business net present value	-£19.3 million
Societal net present value	-£19.3 million

RPC assessment

Classification	Non-qualifying regulatory provision (EU withdrawal and <i>de minimis</i>)
Small and micro business assessment	Sufficient

Regulatory Policy Committee