



0052/2010

To: The Management Authorities of Second Level Schools

Business Syllabus – Leaving Certificate –Updating of Legislation which will be examinable from 2012 onwards

Page 32 of the Draft Guidelines for Leaving Certificate Business state: “*This appendix (of draft legislation) may be updated from time to time. Schools will be notified a full two years in advance of any changes to be made.*” This circular gives formal notice that the updated legislation identified below will be examinable from 2012 onwards.

1. Reference to the Data Protection Act in the Appendix to the Guidelines should now be taken as applying to the Data Protection Acts 1988 and 2003. This will be examinable in the June 2012 examinations and thereafter.
2. Reference to the Unfair Dismissals Act in the Appendix to the Guidelines should now be taken as applying to the Unfair Dismissals Acts 1977 to 2007. This will be examinable in the June 2012 and thereafter.
3. Reference to the Consumer Information Act 1978 in the Appendix should now be taken as applying to the Consumer Protection Act 2007. This will be examinable in the June 2012 examinations and thereafter.

Please bring this Circular letter to the attention of teachers of Leaving Certificate Business. The information set out overleaf is also of relevance to teachers teaching consumer protection issues within Junior Certificate Business Studies, Junior and Leaving Certificate Home Economics and the Leaving Certificate Applied programme.

General

Please provide a copy of this circular to the appropriate representatives of parents and teachers for transmission to individual parents and teachers. This circular may also be accessed at www.education.ie.

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Additional Information

1 Data Protection Acts 1988 and 2003

The Data Protection (Amendment) Act 2003 extends the provisions of the Data Protection Act 1988. The 2003 legislation broadens the scope of data protection to include:

- The right of individuals not to be subjected to automated decision making: to have human input in the making of important decisions relating to you
- Rights under Data Protection and Privacy in Telecommunications Regulations to prevent your data from being used for direct marketing purposes. This is put into effect by writing to the Data Controller and directing him/her to cease using your information for this purpose. He/she must comply within 40 days.

In order to access data held on you, you must make a written request to the organisation involved.

Previously, data protection law only applied to files in electronic form. The Act of 2003 extends data protection to include manual files.

2 Unfair Dismissals Acts 1977 to 2007

The provisions of the Unfair Dismissal Act 1977 have been extended. The scope of the legislation has been broadened to include:

- the application of its terms to part-time workers who work less than eight hours per week
- the one year continuous service criterion does not apply where dismissal results from certain types of leave including maternity, adoptive, parental or carers leave and/or trade union membership or to rights under the Minimum Wage Act 2000
- dismissal on the grounds of age, other than being under 16 or reaching the normal retiring age for that particular employment, is deemed to be unfair

3.1 Consumer Protection Act 2007

1. The Consumer Information Act 1978 has been replaced by the Consumer Protection Act 2007. Two of the main elements of the Consumer Protection Act 2007 are: It establishes the National Consumer Agency on a statutory basis
2. Updates and modernises consumer law

3.2 National Consumer Agency

The National Consumer Agency replaces the Office of the Director of Consumer Affairs. The main functions of the National Consumer Agency (NCA) are:

- To promote and protect the interests and welfare of consumers
- To enforce the relevant consumer law

- To encourage compliance with the relevant law
- To investigate suspected offences under any of the relevant laws
- To refer cases to the Director of Public Prosecutions where appropriate
- To advise and make recommendations on any legislation or policy which concerns or is likely to impact on consumer protection and welfare and to make proposals for new legislation

3.3 *Consumer Protection*

This Act deals with unfair business-to-consumer commercial practices, (it does not apply to dealings between businesses). It sets out, among other things, various rules that apply to claims made about goods and services.

In particular this Act:

- protects the consumer from misleading advertisements; and
- requires that the information in advertisements is fair and accurate
- Under the Act, it is illegal for an advertiser or business to make false or misleading claims about goods, services or prices.
- All types of communications that promote goods or services are covered by the Act, including:
 - advertisements;
 - a notice in a shop; or
 - a claim made by a sales assistant about a product or service.

3.4 **Misleading Practices** prohibited by the Act

Misleading advertising, misleading information and withholding material information are considered misleading practices. The main characteristics of a misleading action are false or inaccurate information on:

- the existence or nature of the product/service,
- the main characteristics, including its availability at a particular time, place, or at a particular price,
- usage and prior history,
- the price of the product/service, the manner in which the price was calculated or the existence and nature of a specific price advantage,
- and the legal right of a consumer (whether contractual or otherwise) or matters relating to when and how or in what circumstances those rights may be exercised.

In assessing what is misleading in the context of price advantage, consideration must be given as to whether a product being advertised as having been previously offered at a different price, that the trader had made it clear that this was done openly and at the same location and for a reasonable period of time.

3.5 The Act prohibits traders from engaging in **aggressive practices** such as;

- a. harassment;
- b. coercion, which means forcing someone to do something; or
- c. exercising undue influence, which means putting on unfair pressure.

Threatening or abusive language or behaviour by the trader, and taking advantage of a consumer's misfortune or circumstances when the trader knows the consumer's judgement is impaired, are aggressive practices which are prohibited under the Act

3.6 Among **practices prohibited** by the Act are;

- a. making false claims for cures for illnesses;
- b. offering free prizes when it costs money to claim the prizes;
- c. running promotions or competitions when the top prize is not available;
- d. persistently cold calling, having been asked to leave or stop;
- e. demanding payment for unsolicited goods
- f. pyramid schemes. A pyramid scheme is defined as one where a person pays money, but their primary benefit derives from the introduction of other persons into the scheme, rather than the supply of a product.

3.7 *Other areas of Consumer Protection*

3.7.1 *Price display regulations*

The Consumer Protection Act 2007 gives the Minister the power to make Regulations requiring that the prices of certain products be displayed in a specific manner. For example, they could provide that prices of certain products must be displayed inclusive of charges, fees and taxes.

3.7.2 *Price controls*

Price controls can only be introduced in emergency situations and must be by decision of the government and not just the Minister for Enterprise, Trade and Employment.

3.7.3 *Codes of practice*

The Consumer Protection Act 2007 provides for the recognition of codes of practice drawn up by traders or groups of traders and for the NCA to approve such codes. It also provides that the NCA may issue guidelines to traders about consumer protection and welfare, commercial practices, quality assurance schemes and codes of practice.

3.8 *Enforcement*

The Consumer Protection Act 2007 provides for the following enforcement mechanisms to be available to the NCA:-

1. The NCA can accept a written undertaking from the trader that a prohibited practice will cease. The undertaking may contain whatever terms and conditions the NCA thinks are appropriate e.g. refrain from the activity, compensate consumers, publish a corrective statement etc
2. The NCA can apply for a prohibition order from the Circuit/High Court
3. The NCA can serve a compliance notice on a trader whom it considers to have engaged in a prohibited activity. The trader has 14 days in which to appeal the notice. If the trader fails to comply, the NCA may take criminal proceedings.
4. on-the-spot penalties for offences relating to the display of prices

5. publication of a Consumer Protection List; a list of traders convicted of criminal offences, subject to court orders, bound by an undertaking, served with a compliance notice, or subject to a fixed payment notice.

3.9 Redress

1. The Consumer Protection Act allows consumers to apply to the courts for damages if they suffer loss due to misleading practices by a business.
2. The National Consumer Agency may also apply to the court for an order that requires a business to pay compensation for any loss or damage to the consumer resulting from an offence

4 Amalgamation of Agencies.

The Government announced in the budget of October 2008 that the Consumer Protection Agency and the Competition Authority are to be amalgamated into a single body as part of a rationalisation of State Agencies.