



# Leaving Certificate Business

Updated Syllabus Guidelines: Legislation in the Business syllabus



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# Overview

The business syllabus is not a law syllabus. However, students will be expected to identify and explain the broad effects of the specified legislation on business practice, when completing the relevant syllabus outcomes.

## Appendix from the Leaving Cert Business – Guidelines for Teachers 1997

### *“Important Legislation*

*This is a business syllabus and not a law syllabus. Students will be expected to identify and explain the broad effects of the specified legislation on business practice.*

*1. Sale Of Goods And Supply Of Services Act 1980 2. Consumer Information Act 1978 3. Industrial Relations Act 1990 4. Employment Equality Act 1977 5. Unfair Dismissals Act 1977 6. Data Protection Act 1988 7. Companies Act 1990 (as it relates to Private Limited company formation only).*

*This appendix may be updated from time to time. Schools will be notified a full 2 years in advance of any changes to be made.*

*The stated pieces of legislation will be examined at both Higher and Ordinary Level with the emphasis on the application of the legislation.*

*Summaries of the legislation and its application in business will be the focus as opposed to a detailed knowledge of the actual text of the legislation. “*

### **PLEASE NOTE**

**Circulars will no longer be issued in relation to relevant changes in legislation.** As the Business syllabus is dynamic it is the responsibility of the teacher to ensure that students have knowledge of the most recent developments, to inform learning and to ensure that students experience information as it relates to current business practice.

Legislation will continue to be examined in the state examination. Students will be required to demonstrate a knowledge and understanding of the most recent and relevant legislation in the examination and apply their learning to familiar or unfamiliar contexts presented in the examination. From 2020 onwards students will be required to reference the current relevant legislation and institutions in their responses. Reference to outdated legislation and institutions may result in students losing marks in the examination. Where the relevant legislation has changed during the two

years immediately prior to the examination, questions will be framed in such a way that students can engage with them on the basis of the older or newer legislative position, without penalty.

# Updated legislation

## **Introduction to consumer law**

A contract is a formal agreement between two or more people that is enforceable by law. When you buy goods or services you enter into a contract with the seller. Certain elements must be present for a contract to be legally binding. Contracts are made up of terms; some of which can be implied terms. Contracts may be written or oral. It is easier to know what the terms are in a written contract but an oral contract is also enforceable in law. Terms in consumer contracts must always be fair and clear to the consumer.

Consumers are entitled to have their rights and interests protected by law. Irish consumer protection law, which is based on Irish and European legislation, is a distinct area of law that addresses the general protection and promotion of consumer rights and interests.

### **1. Sale of Goods and Supply of Services Act 1980**

Consumer law aims to ensure that consumers have enough information about prices and quality of products and services to make suitable choices on what to buy. Consumer law also aims to ensure that goods are safe and are manufactured to an acceptable standard. Consumer contracts are protected by the Sale of Goods and Supply of Services Act, 1980.

Under this Act the consumer has a number of rights including:

- Goods must be of merchantable quality
- Goods must be fit for their purpose
- Goods must be as described.

When you buy goods in a sale you have the same rights as when you pay full price for the goods.

If you have a contract with a supplier of a service you can expect that:

- The supplier has the necessary skill to provide the service
- The service will be provided with proper care and diligence
- The materials used will be sound and that goods supplied with the service will be of merchantable quality.

The Competition and Consumer Protection Commission (CCPC) is the statutory office with responsibility for providing advice and information to consumers on their rights. The CCPC is

responsible for the enforcement of a wide range of consumer protection laws. The CCPC does not intervene or become involved in individual issues or disputes between consumers and sellers of goods or services providers. The CCPC can advise you if you have a particular consumer problem (see Competition and Consumer Protection Act 2014 for more information).

## **2. Consumer Protection Act 2007**

The Consumer Protection Act 2007 provides protection to the consumer through a variety of measures. The Act protects consumers from misleading, aggressive or prohibited practices. A misleading practice involves providing false, misleading and deceptive information. Misleading practices are banned if they would be likely to impair the average consumer's ability to make an informed choice in relation to a product and would cause the average consumer to make a decision about a transaction that they would not otherwise make.

Under the Act it is a criminal offence for any retailer to make a false or misleading claim about goods, services and prices. It is also an offence to sell goods which bear a false or misleading description. Misleading advertising, misleading information and withholding material information are considered misleading practices.

The Act provides that prices of certain products must be displayed inclusive of charges, fees and taxes.

The Act prohibits traders from engaging in aggressive practices such as harassment, coercion, or exercising undue influence. Examples of harassment are pressurising, intimidating and taking advantage of vulnerable consumers.

The Act is enforced through the Competition and Consumer Protection Commission (CCPC). The Central Bank of Ireland has a role in enforcing the provisions of the Consumer Protection Act 2007 in the financial services area.

## **3. Competition and Consumer Protection Act 2014**

The Competition and Consumer Protection Act 2014 provided for the establishment of the Competition and Consumer Protection Commission. This agency replaced, and took over the functions of, the National Consumer Agency and the Competition Authority. It has a general function of promoting consumer welfare and is responsible for investigating, enforcing and encouraging compliance with consumer law.

The CCPC has a dual competition and consumer protection mandate. **For the purposes of Leaving Certificate Business, its functions only in relation to consumer protection are relevant.** The statutory functions of the CCPC in relation to consumer law include:

- Promoting and protecting the interests and welfare of consumers
- Carrying out investigations into suspected breaches of consumer protection law
- Enforcing consumer protection law
- Encouraging compliance with consumer protection law.

#### **4. Workplace Relations Act 2015**

The Workplace Relations Act 2015 came into effect on 1st October 2015. It saw the existing five employment rights bodies merged into two bodies:

- The Workplace Relations Commission will deal with all cases at first instance
- The Labour Court will deal with all cases on appeal

The Act provides for the establishment of the Workplace Relations Commission (WRC) with a full range of functions formerly carried out by

- Labour Relations Commission (LRC), including Rights Commissioner Service,
- Equality Tribunal,
- Employment Appeals Tribunal
- National Employment Rights Authority (NERA).

The WRC is the body to which all industrial relations disputes and all disputes and complaints about employment law is presented.

The Labour Court, is now the single appeal body for all workplace relations appeals against decisions of WRC Adjudication Officers. Labour court decisions can be appealed to the High Court but only on a point of law.

The Workplace Relations Commission provides information on industrial relations and rights and obligations under Irish employment and equality legislation.

The Workplace Relations Commission (WRC) has responsibility for, among other functions:

- promoting the improvement of workplace relations, and maintenance of good workplace relations,
- promoting and encouraging compliance with relevant enactments,
- providing information to members of the public in relation to employment.

The establishment of the Workplace Relations Act 2015 has resulted in amendments to the Industrial Relations Act 1990, the Employment Equality Act 1998 – 2015 and the Unfair Dismissals Act 1977-2015. Most appeals under the Industrial Relations Act 1990, Employment Equality Acts 1998-2015 and Unfair Dismissals Acts 1977-2015 are adjudicated by the Workplace Relations Commission in the first instance. All appeals are adjudicated by the Labour Court.

Complaints in relation to contraventions of employment, equality and equal status legislation may be presented/referred to the Workplace Relations Commission.

### **The WRC provides the following services:**

#### **Advisory Service**

The Workplace Relations Commission's Advisory Service promotes good practice in the workplace by assisting and advising organisations in all aspects of industrial relations in the workplace. It engages with employers, employees and their representatives to help them to develop effective industrial relations practices, procedures and structures. Such assistance could include reviewing or developing effective workplace procedures in areas such as grievance, discipline, communications and consultation.

#### **Conciliation**

Conciliation is a voluntary process in which the parties to a dispute agree to avail of a neutral and impartial third party to assist them in resolving their industrial relations differences. The Workplace Relations Commission provides a conciliation service by making available Industrial Relations Officers (IRO or Conciliation Officer) of the Commission to chair 'conciliation conferences'. Conciliation conferences are basically an extension of the process of direct negotiations, with an independent chairperson present to steer the discussions and explore possible avenues of settlement in a non-prejudicial fashion. Participation in the conciliation process is voluntary, and so too are the outcomes. Solutions are reached only by consensus, whether by negotiation and agreements facilitated between the parties themselves, or by the parties agreeing to settlement terms proposed by the Conciliation Officer.

The conciliation process is informal in its practice. The parties are free to represent themselves or be represented by trade unions or by employer organisations. The Commission does not believe that the nature of the process requires legal representation of either party at conciliation meetings.

#### **Mediation**

Mediation seeks to arrive at a solution through an agreement between the parties, rather than through an investigation or hearing or formal decision. The WRC offers a mediation service in certain

cases to facilitate the resolution of complaints/disputes where possible at an early stage and without recourse to adjudication.

The Mediation Officer empowers the parties to negotiate their own agreement on a clear and informed basis. The process is voluntary and either party may terminate it at any stage.

Where an attempt at mediation has been successful, the mediation officer will record the terms of the agreement in writing. If each of the parties are satisfied that the record accurately represents the terms of the resolution, they will sign the record.

Where an attempt at mediation has proven unsuccessful, the mediation officer will notify the Director General of the WRC and each of the parties in writing of that fact. The complaint or dispute will be referred for adjudication by an Adjudication Officer.

### **Adjudication**

Adjudication Officers of the Workplace Relations Commission (WRC) are statutorily independent in their decision making duties. The Adjudication Officer's role is to hold a hearing where both parties are given an opportunity to be heard by the Adjudication Officer and to present any evidence relevant to the complaint. The Adjudication Officer will not attempt to mediate or conciliate the case. Parties may be accompanied and represented at hearings by a trade union official, a practicing barrister or practicing solicitor for example.

The Adjudication Officer will then decide the matter and give a written decision in relation to the complaint. The decision may:

- declare whether the complainant's complaint was or was not well founded,
- require the employer to comply with the relevant provision(s),
- require the employer to make such redress as is just and equitable in the circumstances including the award of compensation.

A party to a complaint may appeal to the Labour Court from a decision of an Adjudication Officer.

### **Compliance/Inspection Service**

Inspectors visit places of employment and carry out investigations on behalf of the WRC in order to ensure compliance with equality and employment-related legislation. Such investigations involve examining books, records and documents related to the employment, and conducting interviews with current and former employees and employers. Where breaches of legislation have been found, an Inspector may issue either a Compliance Notice or a Fixed Payment Notice to an employer.

## **Enforcement of Decisions**

If an Employer fails to carry out a decision of an Adjudication Officer of the Workplace Relations Commission, or a decision of the Labour Court arising from an appeal of an Adjudication Officer's decision, within the prescribed time, an application may be made to the District Court for an order directing the Employer to carry out the decision. The application can be made by the following:

- The Employee/Complainant (or legal representative on their behalf)
- A Trade Union, with consent of employee, or
- An excepted body of which the employee/complainant is a member.

In the case of an Adjudication Officer's decision, the application to the District Court can be made after a period of 56 days has elapsed from the date the decision was issued to the parties. A period of 42 days must have elapsed from the date the Labour Court decision was issued to the parties before the application can be made in respect of that decision.

## **5. Industrial Relations Act 1990**

Most of the law on trade disputes and industrial action is contained in the Industrial Relations Act 1990. A trade dispute "means any dispute between employers and workers which is connected with the employment or non-employment, or the terms or conditions of or affecting the employment, of any person." An industrial action is any action which may affect the terms of a contract which is taken by workers acting together to compel their employer "to accept or not to accept terms or conditions of or affecting employment." Examples of industrial action include a work to rule, a picket, an overtime ban or a strike. (Section 8; Industrial Relations Act 1990, [irishstatutebook.ie](http://irishstatutebook.ie)).

Employees have a constitutional right to join a trade union. It can be made a condition of employment that you must join a particular union upon accepting a job offer and remain in that union while you remain an employee in that job. There is a view that this may not be constitutional, but this has not been tested in the courts yet. If you are already in the job without being a union member and are at a later stage required to join a union by your employer, you can refuse, as such a requirement is unconstitutional.

Complaints of dismissal or victimisation due to membership of a union are heard by the Workplace Relations Commission.

## **6. Employment Equality Act 1998-2015**

These Acts replace the Employment Equality Act 1977. The Employment Equality Acts 1998–2015 outlaw discrimination in a wide range of employment and employment-related areas. These include

recruitment and promotion; equal pay; working conditions; training or experience; dismissal and harassment including sexual harassment. The legislation defines discrimination as treating one person in a less favourable way than another person has been, or would be, treated in a comparable situation on the nine grounds. Complaints under this Act are heard by the Workplace Relations Commission.

## **7. Unfair Dismissals Acts 1977- 2015**

These Acts supplement the rules governing dismissals in the Unfair Dismissals Act 1977. They outline the circumstances in which unfair dismissal can occur. Complaints under this Act are heard by the Workplace Relations Commission.

## **8. Data Protection Acts 1988 and 2003**

The Data Protection Act 1988 has been supplemented by the Data Protection Act 2003. Anyone has the right to find out

- (i) If an organisation holds personal data about them and, if they do,
- (ii) To apply for a copy of their personal data.

The Data Protection Commissioner aims to make sure that an individual's rights are being upheld and that data controllers respect data protection rules.

From 25<sup>th</sup> May 2018 the General Data Protection Regulation (GDPR) replaces current data protection laws in the European Union.

The new law gives individuals greater control over their data by setting out additional and more clearly defined rights for individuals whose personal data is collected and processed by organisations. The GDPR also imposes greater obligations on organisations that collect this data.

Personal data is any information that can identify an individual person. This includes a name, an ID number, location data (for example, location data collected by a mobile phone) or a postal address, online browsing history, images or anything relating to the physical, physiological, genetic, mental, economic, cultural or social identity of a person.

The GDPR is based on the core principles of data protection which exist under the current law. These principles require organisations and businesses to:

- collect no more data than is necessary from an individual for the purpose for which it will be used
- obtain personal data fairly from the individual by giving them notice of the collection and its specific purpose

- retain the data for no longer than is necessary for that specified purpose
- to keep data safe and secure, and
- provide an individual with a copy of his or her personal data if they request it.

Under the GDPR individuals have the rights to:

- obtain details about how their data is processed by an organisation or business,
- obtain copies of personal data that an organisation holds on them,
- have incorrect or incomplete data corrected,
- have their data erased by an organisation, where, for example, the organisation has no legitimate reason for retaining the data,
- obtain their data from an organisation and to have that data transmitted to another organisation (Data Portability),
- object to the processing of their data by an organisation in certain circumstances.

Organisations and businesses collecting and processing personal data are required to meet a very high standard in how they collect, use and protect data. Very importantly, organisations must always be fully transparent to individuals about how they are using and safeguarding personal data, including by providing this information in easily accessible, concise, easy to understand and clear language.

For organisations and businesses who breach the law, the Data Protection Commissioner (DPC) is being given more robust powers to impose sanctions including the power to impose fines. Under the new law, the DPC will be able to fine organisations up to €20 million (or 4% of total global turnover) for the most serious infringements.

The GDPR will also permit individuals to seek compensation through the courts for breaches of their data privacy rights, including in circumstances where no material damage or financial loss has been suffered.

## **9. Companies Act 2014.**

The Companies Act 2014 came into effect on 1 June 2015. The comprehensive Act was one of the largest reforms of Irish company law. The Companies Act 2014 consolidates the existing 17 Companies Acts, which date from 1963 to 2013, into one Act and it also introduces a number of reforms, which are designed to make it easier to operate a company in Ireland. For the purposes of Leaving Certificate

Business, an understanding of the Acts is only relevant as it relates to private limited company formation.

The Act provides for the creation of two types of private limited company:

- a company limited by shares (Ltd) - these companies are expected to be the most widely utilised companies; and
- a designated activity company (DAC) - these most closely resemble current private limited companies

**Overview of Features:**

<b>Company Limited by Shares (Ltd)</b>	<b>Designated Activity Company (DAC)</b>
Must end in the suffix Limited or LTD	Must end in the suffix Designated Activity Company or DAC
Minimum of 1 director	Minimum of 2 directors
1 – 149 shareholders	1 – 149 shareholders
May dispense with holding the AGM	Cannot dispense with holding the AGM
No requirement for an authorised share capital: There is no limit on the number of shares it can issue.	Must have an authorised share capital
Articles of Association only: This document will have no objects clause so the company will not be restricted in what it can do.	Memorandum and Articles of Association: Capacity limited to the objects clause in the Memorandum

**Constitution:** A company limited by shares (Ltd.) has a one document constitution. This consists of the articles of association. This document sets out the conditions upon which the company is granted incorporation. It must contain provisions dealing with certain matters e.g. the name of the company. A designated activity company (DAC) has a two document constitution consisting of both a memorandum and articles of association.

**AGM:** Provisions relating to shareholder meetings have been greatly simplified with the requirement to hold an annual general meeting being optional for a Company Limited by Shares (Ltd) and the delivery of notice of general meeting by electronic means being permitted.

**Directors:** Private limited companies will be entitled to have a single director but all companies must retain the office of the company secretary. Designated activity companies must have at least two

directors. The existing common law duties of directors are codified into eight principle duties which will apply to all directors including shadow directors and de facto directors.

**Shareholders:** The maximum number of shareholders in both a private limited company and designated activity company is 149.

**Limited liability:** A company is a legal form of business organisation. It is a separate legal entity and, therefore, is separate and distinct from those who run it. The company (and not the individual shareholders) is the appropriate person to be sued in the event that debts are incurred by the company which remain unpaid, despite demand.

The shares in a company are owned by its shareholders. If the company is a limited liability company, the shareholders' liability, should the company fail, is limited to the amount, if any, remaining unpaid on the shares held by them.

**Registration:** Companies can be registered with the Companies Registration Office (CRO). The CRO is the central repository of public statutory information on Irish companies. It operates under the aegis of the Department of Jobs, Enterprise and Innovation (DJEI).

The Companies Act 2014 generally allows one or more persons to form a private company for any lawful purpose by subscribing to a constitution. A private company may have a maximum of 149 shareholders.

**Company names:** there are restrictions on the choice of company name. The CRO may have to refuse a name if:

- it is identical to or too similar to a name already appearing on the register of companies
- it is offensive
- it would suggest state sponsorship

# Relevant legislation by Unit

The legislation is indicated in the units where it is most relevant, however, the legislation may impinge on other units.

## **Acts relevant to Unit 1**

- Sale of Goods and Supply of Services Act 1980
- Consumer Protection Act 2007
- Competition and Consumer Protection Act 2014
- Workplace Relations Act 2015
- Industrial Relations Act 1990
- Employment Equality Act 1998 - 2015
- Unfair Dismissals Act 1977 – 2015
- Data Protection Acts 1988 and 2003
- General Data Protection Regulation 2018

## **Acts relevant to Unit 3**

- Data Protection Acts 1988 and 2003
- General Data Protection Regulation 2018

## **Acts relevant to Unit 4**

- Workplace Relations Act 2015
- Industrial Relations Act 1990

## **Acts relevant to Unit 5**

- Consumer Protection Act 2007
- Competition and Consumer Protection Act 2014

## **Acts relevant to Unit 6**

- Companies Act 2014

## Useful links and resources

This section provides links to some of the resources available at present for the teaching of the legislative elements of Business at Leaving Certificate. This list is by no means exhaustive or complete and is merely an attempt to provide some material suitable for use by teachers and by students.

- Citizens Information: [citizensinformation.ie](http://citizensinformation.ie)
- Companies Registration Office: [cro.ie](http://cro.ie)
- Competition and Consumer Protection Commission: [ccpc.ie](http://ccpc.ie)
- Data Protection Commissioner: [dataprotection.ie](http://dataprotection.ie)
- Irish Statute Book: [Irishstatutebook.ie](http://Irishstatutebook.ie)
- Professional Development Service for Teachers: [pdst.ie](http://pdst.ie)
- Workplace Relations Commission: [workplacerelations.ie](http://workplacerelations.ie)

