

## Examiner's report

### CTSI Professional Competency Framework

#### Stage 1: Unit 2 Business and Consumer Legal Framework Examiner's Report May 2022

##### General

30 students attempted the examination only 2 of which failed to gain the required pass mark. A huge well done to all of those who passed. Marks ranged from 26 to 83

It was very pleasing to note, that probably for the first time, students attempted every question that they were allowed to attempt: 3 from section A and 2 from section B. Another first was the fact that no-one attempted more questions than they should have done.

Almost everyone attempted each part of the question and marked them accordingly, apart from a select few. Examinees please mark each part of the question clearly, so the examiner knows what you are answering.

In section A, question 3 was the most popular by far, as all students attempted it with a range of marks between 3-9. Question 6 proved the most unpopular with only 2 attempts.

In section B questions 7,8 and 9 attracted almost the same number of attempts, however, question 10 on better regulation was as popular as mumps, attracting only 3 attempts.

All in all answers were very mixed although amongst them were some excellent answers one student gaining, full marks for question 7 on Primary Authority.

##### Section A

**Q1** Some students failed to distinguish between primary and secondary legislation, thankfully they were few in number and most managed to state what they were and their purpose. Range of marks from 3-9.

- a) 'Primary legislation' is the term used to describe the main laws passed by the legislative bodies of the UK e.g. Acts of the UK Parliament, Scottish Parliament, Welsh Parliament and Northern Ireland Assembly.

These types of legislation are sometimes referred to as 'statutes' and the term 'the statute book' refers to the whole of the statute law currently in force. Certain legislative instruments made by the Crown and the Privy Council under the royal prerogative (called 'Prerogative Orders') are also referred to as Primary Legislation

'Secondary legislation' (also called 'subordinate legislation') is delegated legislation made by a person or body under authority contained in primary legislation. Typically, powers to make secondary legislation may be conferred on Ministers, on the Crown, or on public bodies. For example, the Office of Communications (OFCOM) is given such powers by the Communications Act 2003.

The main types of secondary legislation are Statutory Instruments, Regulations, Statutory Rules and Orders & local authority byelaws.

- b) Many managed to highlight that an Act of Parliament creates a new law or changes an existing law. An Act is a Bill that has been approved by both the House of Commons and the House of Lords and been given Royal Assent by the Monarch.

Secondary legislation, or subordinate legislation is delegated. In the case of Statutory Instruments this power is delegated to a Secretary of State. The legislation is laid before both houses of parliament and if no-one objects, or “prays against”, the instrument then it becomes law after 40 days.

The Act lays down a framework of the law, it gives powers to ministers to enact regulations (secondary legislation). In effect we can look to the Act as giving a framework, or skeleton, whereas the Regulations, or secondary legislation, puts meat on the bones and gives the detail. Changes to Regs can be made in a short period of time, allowing for flexibility and changes to technical information or updating. Hence the Road Traffic Act could be the parent Act and the Construction and Use Regulations would be secondary.

I allowed many differing examples of Acts and Regs, easy marks, providing that examples were given.

**Q2** Founded in 1881 as Institute of Weights and Measures Inspectors. It consists of personnel within the Trading Standards environment and the Business Members Group, BMG, made up of TSI members whose work is not inside local authorities. It represents Trading Standards professionals - in local authorities, business and consumer sectors and central government.

It supports members, Lobbies and informs central, local, UK and EU Government, agencies, businesses and consumers

- Educates the Profession (qualification) and the consumer, through running events such as: National Consumer Week,
- Hosts the annual Symposium/Conference & Exhibition.
- Publishes TS Journal, both online and hard copies, to keep practitioners and students up-to-date.
- Offers training courses by attendance and by internet also CPD courses.
- Responds to Consultation papers (pub. on CTSI website)
- Has the responsibility for Consumer Code Approval Scheme
- Advice to retailers via Business Companion
- College of Fellows is effectively a charitable arm of CTSI which sponsors research in to TS functions and assists members and dependents of members who have died in service or fallen on difficult times.
- The College also commissions debate & sponsors research and higher education for members.

**Q3** As stated earlier the most popular question in the exam with marks ranging again from 3-9. A couple of students went off on a tangent, describing cases they had been involved in but with no relevance back to the question asked.

- a) Businesses may break the law because they are unaware that certain legislation exists, this can happen with start-up businesses where insufficient research has been done on what the business entails. A business may be unaware of changes that have recently taken place. Brexit was an example where a number of changes were enacted particularly with respect to import and export of goods and services. Small and medium sized businesses may not have the capacity to understand the complexity of the law and make mistakes inadvertently. Insufficient training of staff to help them understand why they carry out checks record the results and notify the correct personnel of what has happened, so that remedial action can be taken. Insufficient or non-existent testing of products from suppliers resulting in labelling and ingredients that are incorrect. Changes in key personnel can mean that systems are not maintained within businesses.

- b) Simple advice can be given; signposting to websites such as Business Companion; some local authorities can offer training courses. Notices can be left advising of the problem and that remediation must be carried out within a specific time. Fixed penalty notices can be issued if it is felt that would be more effective. Warning letters or a simple caution can be issued. Compliance notices issued, licences reviewed, are just some of the areas that can be adopted to put matters right before moving to prosecution.

Q4 Businesses can take steps to put in place diligence procedures, so that products can be checked at every stage in their production to ensure that they meet safety and legislative standards. This can involve setting up procedures to ensure that checks are carried out and then recorded. Warnings are also put in place so that if any aspect of the procedure moves away from set standards then an action is carried out to correct it. Staff also need to be trained in the procedures and updated, as and when necessary, especially when legislation changes or new equipment and manufacturing procedures are adopted. These checks need to take in to consideration any complaints and any suggestions from the shop floor that highlights any specific problems. Such procedures can be put in place for any retail or manufacturing industry to ensure compliance. Businesses can also seek advice from their local TS dept. free, where it is available, or by using Primary Authority.

They can also join associations of similar businesses where compliance information and possibly PA information is shared amongst members. Within these Associations, they provide ADR for members, which assists in disputes with Consumers and provides greater consumer confidence. Associations can form coordinated PA partnerships thus gaining specialist advice for their sector. There are many associations and also groups, such as Spar and Nisa, which, as well as helping with branding and purchasing, can also offer benefits of being part of a group.

Business Companion is a website where any business that has to comply with TS legislation can research the relevant legislation and find out what they need to do to comply.

Many consultants also hold themselves out as experts in specific legislative areas and can be paid to provide advice on compliance.

Q5 As an answer to this question I was not looking for a reiteration of the 6 principles of the code but an ability to apply the code to everyday working situations. Marks varied from 3-9. Examples from working life could include:

By carrying out inspections, or following up complaints, or responding to requests for advice. TS can detect any number of problems; this can range from pricing errors in a store, improper labelling of ingredients, missing ear tags off cattle, weighing or measuring equipment that is incorrect.

There are any number of examples that can be used. Through advice and guidance the law can be explained. Simple advice and/or training will save time and money by correcting errors. By understanding their business better and managing it, not only to correct problems, but to put in measures to prevent them from occurring. Checking suppliers, auditing their own or supplier businesses to ensure they get items or services that correspond to contract terms.

Having clamp downs on rogue traders can help honest businesses get more work and prevent loss to consumers. Prevention of counterfeit again benefits honest businesses and maintains employment. There is a wide scope here for students to use any relevant examples of their work. Those who did scored well.

Q6 Only two people answered this question and yet I would have thought easy marks on offer and a stated part of the syllabus.

BEIS is one of the senior ministries within central government and has responsibility for the introduction for the bulk of TS legislation, examples of which are Metrology, fair trading and market surveillance. A relatively recent example of law would be the Consumer Rights Act 2015. The Secretary of State for BEIS, Kwasi Kwarteng, is directly responsible for Industrial strategy and policy within the UK; he also has the power to make secondary legislation, such as statutory instruments and regulations. They dictate policy on climate change and the green agenda and also legislative aspects of fighting Coronavirus aspects of which are enforced by TS.

One of the main agencies within BEIS is OPSS who have responsibility for Product safety, which includes recalls and advice to TSS on products. They hold the register for Primary Authority and, amongst other things, provide a database for the holding of inspection plans, etc. & operate the dispute resolution scheme. They dictate policy on weighing and measuring, Test various weighing and measuring equipment for suitability for use for trade and provide Patterns of approval for W&M equipment. Maintain Secondary & Tertiary Standards of weight and measure and provide Tertiary Standards for comparison against Local Standards held by TS departments.

They also provide the funding for National Trading Standards; with all of the functions they provide to support TSS. Within BEIS is also Minister for Small Business, Consumers and Labour Markets, who is responsible for small business, enterprise and access to finance, promoting Net Zero with SMEs, COVID business support, internal market implementation and trade, subsidy control, consumer and competition, Office for Product Safety and Standards (already mentioned), retail, consumer goods, personal care, hospitality, weddings, nightclubs and pubs and legislation connected to those areas, most of which have some element of TS control within them. Also recently suggested by Government is the possible reintroduction of Imperial weights and measures. Should this happened, it would be fronted by BEIS.

## Section B

**Q7** Generally well answered whilst marks ranged between 10-35 many achieved well above average for this question.

I expected the students to realise that this is a presentation and state how they would go about this, perhaps using a power point presentation, they must bear in mind that this is for local businesses and regulatory partners, so marks were awarded for this aspect.

Primary Authority is based on a statutory partnership between businesses and individual local authorities a means for businesses to receive assured and tailored advice on meeting regulations, such as environmental health, trading standards or fire safety through a single point of contact. This ensures start-ups get it right at the outset and enables all businesses to invest with confidence in products, practices and procedures, knowing that the resources they devote to compliance are well spent. Partnerships are available to any type of business, whether starting out or established, as well as other types of organisations such as trade associations. Regulators operating as primary authorities include county, district and unitary councils, and fire and rescue authorities.

A business can form its own direct partnership. It then receives Primary Authority Advice tailored to its specific needs from its primary authority (i.e. its chosen local authority).

Co-ordinated partnerships: a business can belong to a trade association (or other type of 'regulated group') to benefit from a co-ordinated primary authority partnership. In this case, the Primary Authority Advice is still provided by the primary authority, but is shared via the trade association, and tailored to the general needs of its members. A business can choose the type of partnership best suited to its needs. A business that has a direct primary authority partnership in relation to one area of regulation may also, by being a member of one or more 'regulated groups', have one or more co-ordinated primary authorities in relation to the same or different areas of regulation. The business can decide which Primary Authority Advice is most appropriate to its circumstances and it can then choose to follow that advice.

A business can choose one authority to provide all of its advice or choose a number of authorities which will provide advice on specific legislative areas.

The PA can devise inspection plans for the business that all other authorities can follow, saving time for the local authorities and passing on vital information to the PA. All complaints and enquiries can be directed to the PA which will provide a single point of contact for the business to ensure good relationships and continuity of advice. Any local authority who wishes to take action against a business with a PA agreement must first go through the PA. If they disagree with the action taken they can use the OPSS PA dispute procedure. A business cannot be prosecuted if it has followed the advice provided by the PA. They get early access to legislation, advice and guidance on specific legislation covered by the agreement, which can include training and advice on new product development and labelling.

It is paid for information, hence a PA needs to be a specialist and knowledgeable of the relevant laws, this can provide an income stream for the PA. Many local authorities have specialist teams attracting businesses to their network. It can be difficult for a small LA to provide specialist advice due to a small staff compliment, or not having anyone with specialist information in the requisite subjects and therefore cannot take advantage of being paid for such advice. Many Small businesses and SMEs cannot afford to enter in to PA agreements and so miss out especially where authorities will only provide 30 minutes, or a one hour free consultation.

If small businesses join an association they could get access to PA through a coordinated partnership. However, for a start-up this too could be beyond their means.

**Q8** This question it was reasonably well answered by many. Marks ranged from 11-29.

Many students were able to identify: telephone, online and in person scams looking at each area. I expected them to mention the approach that is taken by various types of Scammers and how 'in person' rogue traders can often readily ID the old or infirm, perhaps because of the state of the garden, outside handrails, shabby paintwork, net curtains, etc. They are traders who call uninvited to your home to sell goods and services but have no regard for the law. They generally target more vulnerable people. Doorstep selling is a preferred approach of many rogue traders. Rogue traders target their victims and provide poor quality, unfinished and often unnecessary work. They will knock on doors in an attempt to sell a service, often pretending to be from a legitimate company, or the council or a gas/water/electricity worker. Some rogue traders will not take no for an answer and may try to stay in your home until you sign a contract. It is also often linked with distraction burglary, where a resident is drawn out of the house, for example to look at their roofing and while they are occupied another person enters the home and steals valuables.

Examples of the type of services rogue traders may offer include:

Driveways and paving, Garden Maintenance, Home or roofing and gutter repairs including cleaning tiles, Disability equipment and aids, Security alarms and products.

Students may mention that many scams take place over the telephone or internet, attempting to get the target to part with financial information or card details. Pretending to sell pension or investments, or that there is a delivery waiting from the Royal mail or other delivery services, information required by HMRC and so on, the list of scams continues to increase, as do many of the old ones. For example being contacted by an overseas solicitor to state that a distant relative has died and they wish to provide the "sucker" with an alleged inheritance of millions, all they need is bank account details. Anything that a vulnerable person and many non-vulnerable, may believe to be true. There are postal scams relating to quizzes or stating that the person has won a prize and needs to send money to claim it. Romance scams aimed at vulnerable, often lonely, women and men.

Scammers often pretend to be contacting you on behalf of the government. They might use Social Security, the HMRC, or make up a name that sounds official. Some pretend to be from a business you know, like a utility company, a tech company, or even a charity asking for donations.

They use technology to change the phone number that appears on your caller ID. So the name and number you see might not be real.

Scammers often state there's a problem for example, *"There's a virus on your computer!"* Some scammers say there's a problem with one of your accounts and that you need to verify some information. Others will lie and say you won money in a lottery or sweepstakes but have to pay a fee to get it. Scammers want you to act before you have time to think. If you're on the phone, they might tell you not to hang up so you can't check out their story. They might threaten to arrest you, sue you, take away your driver or business license, or deport you. They might say your computer is about to be corrupted. They often insist that you pay by sending money through a money transfer company or by putting money on a gift card and then giving them the number on the back.

- b) Trading standards can give advice, or install Call Blockers to Block unwanted calls and to filter unwanted text messages.

Don't give out personal or financial information in response to a request that you didn't expect. Legitimate organisations won't call, email, or text to ask for your personal information, like your Social Security, bank account, or credit card numbers.

If you get an email or text message from a company you do business with and you think it's real, it's still best not to click on any links. Instead, contact them using a website you know is trustworthy. Look up their phone number. Don't call a number they give you, or the number from your caller ID. Resist the pressure to act immediately. Legitimate businesses will give you time to make a decision. Anyone who pressures you to pay or give them your personal information is a scammer.

Many TSS will have their own criteria and give information on how to deal with different types of scams. Some give talks in community centres, others have funded professional actors to show how easily it is to be scammed and the measures people can put in place to prevent them. Do not allow cold callers to do any work.

Setting up no cold calling zones, giving advice to pensioner groups or groups linked through social services, churches or community centres.

Many local TS areas have a banking/building society strategy so that if they suspect a vulnerable person is taking out a large sum of money and it is uncharacteristic of them to do so. They will ask what it is for and contact their local TSS who often have rapid response set up for these situations. Some local TS work with theatre groups and social services to present plays on how rogue traders/scammers operate and how to avoid falling victim.

**Q9** In the main some very good and informed answers mark ranged from 8-30.

- a) You can interrogate the various databases that are at your disposal, this could be the local authority, CACS, IDB, etc. Are there any complaints reported that match?

Contact the local police; do they have any reports of anti-social behaviour involving alcohol? Contact schools, social services, community groups for information regarding an increase in, or problems related to drinking or smoking, or discarded packaging within or just outside the school gates. Have Environmental Health any information on possible unbranded goods that officers may have seen; children hanging about outside shops smoking/drinking. Have any of these groups noticed discarded packaging of cigarettes or alcohol which is unusual, or does not conform to standard cigarette packaging? Equally can they be briefed what to look out for in future inspections. If there are specific areas or premises pointed out by any of these groups, can officers look in bins or on the floors, adjacent to any reported shops, to see if they see unbranded or incorrect packaging? If Councillors are worried will they allow you to speak to street sweepers and those who empty public bins by briefing them on what to look out for and to retain and hand over

such packaging, stating where it was found? Leaflets could be prepared to hand out to Schools, community centres, etc. on what to look out for and contact details of whom to report to in TS to coordinate responses.

- b) When various premises have been identified, if it is alcohol being sold, then do they have a local authority licence?

Checks may need to be made with the licensing authority. Have the businesses been visited by TS, has any advice been given to them? If so, when? If it was recent then you may consider other enforcement strategies.

If this is a wide ranging problem there may be an initial strategy of visiting these businesses to offer compliance advice and or training. Giving advice on Challenge 25/21 and due diligence advice. Where to place the alcohol and cigarettes within the store to best keep an eye on what is happening; advice on proxy sales, notices, till prompts, CCTV, refusals register, staff training. Try to get voluntary surrender of non-compliant articles. Try to discover where they were purchased from, any invoices etc. van registration, descriptions.

If the premises have had recent visits and advice then look at interventions such as test purchasing, state what is involved and how it would be carried out.

- c) There could be a range of agencies or groups involved. I expected the students to name them and why they would be used.

Police: working with them for enforcement purposes, but also for liaison and information. HMRC for counterfeit or non-duty paid or grey market goods. The ACG and brand owners to identify counterfeits, Licensing Authority to determine if the businesses have a licence, if it needs to be amended or withdrawn and who are the licence holders. Social services: to advise them on the problem and what to look out for in the future. Working with Schools to create good contacts for the receipt and dissemination of information, also possibly speaking to relevant age groups within schools. Environmental Health they are working in food premises on a regular basis and could be advised to look out for specific types of goods or problem areas.

Community groups to advise on the problems and set up contacts for them to get in touch in the future.

- Q10 Only three students attempted this question scores ranged from 10-21.

Students could well link this in to their own Enforcement and therefore answers could vary but take in to consideration the following areas:

#### Proportionality

Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed and costs identified and minimised. Policy solutions must be proportionate to the perceived problem or risk and justify the compliance costs imposed – don't use a sledgehammer to crack a nut (simple). All the options for achieving enforcement policy objectives must be considered – not just prescriptive regulation. Alternatives may be more effective and cheaper to apply. "Think small first" – Regulation can have a disproportionate impact on small businesses.

#### Accountability

Regulators must be able to justify their decisions and be subject to public scrutiny to promote complete fairness. The Regulator's proposals should be published and all those affected consulted by the Regulator before decisions are taken. Regulators should clearly explain how and why final decisions have been reached. Regulators and enforcers should establish clear standards and criteria against which they can be judged and there should be well-publicised, accessible, fair and effective complaints and appeals procedures.

The Government Better Regulation goes on to say Regulators and enforcers should have clear lines of accountability to councils, Parliaments and the public.

#### Consistency

Regulators must adopt a common sense approach, such that rules and standards must be joined up and implemented fairly. Regulators should be consistent with each other and work together in a joined-up way. New regulations should take account of other existing or proposed regulations, whether of domestic, EU or international origin. Regulation should be predictable in order to give stability and certainty to those being regulated. Enforcement agencies should apply regulations consistently across the country.

#### Targeting

Regulators should adopt a risk based approach. This will focus resources where they are most needed and target those businesses that are higher risk. Regulators should be focused on the problem and minimise side effects. Where appropriate, regulators should adopt a “goals-based” approach, with enforcers and those being regulated given flexibility in deciding how to meet clear, unambiguous targets. Guidance and support should be adapted to the needs of different groups. Enforcers should focus primarily on those whose activities give rise to the most serious risks. Businesses should be systematically reviewed, following each visit, if they were initially infringing and have mended their ways this can be recognised in “earned recognition” reducing categories from high to medium and so on.

#### Transparency

Regulators should be open and keep regulations simple and user- friendly having on-line links, such as Business Companion. Enforcement policy objectives should be clearly defined and effectively communicated to all interested parties. It is important that effective consultation takes place before proposals are developed, to ensure that stakeholders’ views and expertise are taken into account and stakeholders should be given sufficient information, to respond to consultations. Regulations should be clear and simple guidance, in plain language, should be issued in a reasonable timescale before the regulations take effect and those being regulated should be made aware of their obligations, with law and best practice clearly distinguished. Also they should also be given the time and support to comply. It may be helpful to supply examples of methods of compliance and importantly the consequences of non-compliance should be made clear. In respect of local TSS then they should publish an enforcement policy. That should be available on the local authority web page. It should inform businesses of how they can feedback to the council and how to effect a complaint. Criteria will also be explained on the staged approach councils will take in respect of breaches of the law.