



Fair Trading Act 1973

1973 CHAPTER 41

PART XI

PYRAMID SELLING AND SIMILAR TRADING SCHEMES

[^{F1}118 Trading schemes to which Part XI applies.

- (1) This Part of this Act applies to any trading scheme if—
 - (a) the prospect is held out to participants of receiving payments or other benefits in respect of any of the matters specified in subsection (2) of this section; and
 - (b) (subject to subsection (7) of this section) either or both of the conditions in subsections (3) and (4) of this section are fulfilled in relation to the scheme.
- (2) The matters referred to in paragraph (a) of subsection (1) of this section are—
 - (a) the introduction by any person of other persons who become participants in a trading scheme;
 - (b) the continued participation of participants in a trading scheme;
 - (c) the promotion, transfer or other change of status of participants within a trading scheme;
 - (d) the supply of goods or services by any person to or for other persons;
 - (e) the acquisition of goods or services by any person.
- (3) The condition in this subsection is that—
 - (a) goods or services, or both, are to be provided by the person promoting the scheme (in this Part of this Act referred to as “the promoter”) or, in the case of a scheme promoted by two or more persons acting in concert (in this Part of this Act referred to as “the promoters”), by one or more of those persons; and
 - (b) the goods or services so provided—
 - (i) are to be supplied to or for other persons under transactions effected by participants (whether in the capacity of agents of the promoter or of one of the promoters or in any other capacity), or
 - (ii) are to be used for the purposes of the supply of goods or services to or for other persons under such transactions.

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- (4) The condition in this subsection is that goods or services, or both, are to be supplied by the promoter or any of the promoters to or for persons introduced to him or any of the other promoters (or an employee or agent of his or theirs) by participants.
- (5) For the purposes of this Part of this Act a prospect of a kind mentioned in paragraph (a) of subsection (1) of this section shall be treated as being held out to a participant whether it is held out so as to confer on him a legally enforceable right or not.
- (6) This Part of this Act does not apply to any trading scheme—
- ^{F2}(a) [under which the promoter or any of the promoters or participants is to carry on, or to purport to carry on, a relevant regulated activity;]
 - (b) which otherwise falls within a description prescribed by regulations made by the Secretary of State by statutory instrument.
- ^{F3}(6A) [For the purposes of subsection (6)(a), “relevant regulated activity” means—
- (a) dealing in investments as principal or agent;
 - (b) arranging deals in investments;
 - ^{F4}(ba) [operating a multilateral trading facility;]
 - (c) managing investments;
 - (d) safeguarding and administering investments;
 - (e) sending dematerialised instructions;
 - (f) establishing etc. a collective investment scheme;
 - (g) advising on investments,
- and paragraphs (a) to (g) must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section, and Schedule 2 to that Act.]
- (7) The Secretary of State may by order made by statutory instrument—
- (a) disapply paragraph (b) of subsection (1) of this section in relation to a trading scheme of a kind specified in the order; or
 - (b) amend or repeal paragraph (a) of subsection (6) of this section;
- and no such order, and no order varying or revoking any such order, shall be made under this subsection unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (8) In this Part of this Act—
- “goods” includes property of any description and a right to, or interest in, property;
 - “participant” means, in relation to a trading scheme, a person (other than the promoter or any of the promoters) participating in the scheme;
 - “trading scheme” includes any arrangements made in connection with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not;
- and any reference to the provision or supply of goods shall be construed as including a reference to the grant or transfer of a right or interest.
- (9) In this section any reference to the provision or supply of goods or services by a person shall be construed as including a reference to the provision or supply of goods or services under arrangements to which that person is a party.]

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Textual Amendments

- F1** S. 118 substituted (6.2.1997) by 1996 c. 32, s. 1; S.I. 1997/29, art. 2
- F2** S. 118(6)(a) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 284(2)
- F3** S. 118(6A) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 284(3)
- F4** S. 118(6A)(ba) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), 31

119 Regulations relating to such trading schemes.

- (1) Regulations made by the Secretary of State by statutory instrument may make provision with respect to the issue, circulation or distribution of [^{F5}any form of advertisement, prospectus, circular or notice which contains any information]calculated to lead directly or indirectly to persons becoming participants in such a trading scheme, and may prohibit any such [^{F5}advertisement, prospectus, circular or notice] from being issued, circulated or distributed unless it complies with such requirements as to the matters to be included or not included in it as may be prescribed by the regulations.
- (2) Regulations made by the Secretary of State by statutory instrument may prohibit the promoter or any of the promoters of, or any participant in, a trading scheme to which this Part of this Act applies from—
 - (a) supplying any goods to a participant in the trading scheme, or
 - (b) supplying any training facilities or other services for such a participant, or
 - (c) providing any goods or services under a transaction effected by such a participant, or
 - (d) being a party to any arrangements under which goods or services are supplied or provided as mentioned in any of the preceding paragraphs, or
 - (e) accepting from any such participant any payment, or any undertaking to make a payment, in respect of any goods or services supplied or provided as mentioned in any of paragraphs (a) to (d) of this subsection or in respect of any goods or services to be so supplied or provided,unless (in any such case) such requirements as are prescribed by the regulations are complied with.
- (3) Any requirements prescribed by regulations under subsection (2) of this section shall be such as the Secretary of State considers necessary or expedient for the purpose of preventing participants in trading schemes to which this Part of this Act applies from being unfairly treated; and, without prejudice to the generality of this subsection, any such requirements may include provisions—
 - (a) requiring the rights and obligations of every participant under such a trading scheme to be set out in full in an agreement in writing made between the participant and the promoter or (if more than one) each of the promoters;
 - (b) specifying rights required to be conferred on every such participant, and obligations required to be assumed by the promoter or promoters, under any such trading scheme; or
 - (c) imposing restrictions on the liabilities to be incurred by such a participant in respect of any of the matters mentioned in paragraphs (a) to (e) of subsection (2) of this section.
- (4) Regulations made under subsection (2) of this section—

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- (a) may include provision for enabling a person who has made a payment as a participant in a trading scheme to which this Part of this Act applies, in circumstances where any of the requirements prescribed by the regulations were not complied with, to recover the whole or part of that payment from any person to whom or for whose benefit it was paid, and
 - (b) subject to any provision made in accordance with the preceding paragraph, may prescribe the degree to which anything done in contravention of the regulations is to be treated as valid or invalid for the purposes of any civil proceedings.
- (5) The power to make regulations under this section may be exercised so as to make different provision—
- (a) in relation to different descriptions of trading schemes to which this Part of this Act applies, or
 - (b) in relation to trading schemes which are or were in operation on a date specified in the regulations and trading schemes which are or were not in operation on that date,
- or in relation to different descriptions of participants in such trading schemes.

Textual Amendments

F5 Words in s. 119(1) substituted (6.2.1997) by 1997 c. 32, s. 2(1)(a)(b); S.I. 1997/29, art. 2

120 Offences under Part XI.

- (1) Subject to the next following section, any person who issues, circulates or distributes, or causes another person to issue, circulate or distribute, an [^{F6}advertisement, prospectus, circular or notice]in contravention of any regulations made under subsection (1) of section 119 of this Act shall be guilty of an offence.
- (2) Any person who contravenes any regulations made under subsection (2) of that section shall be guilty of an offence.
- (3) If any person who is a participant in a trading scheme to which this Part of this Act applies, or has applied or been invited to become a participant in such a trading scheme,
 - (a) makes any payment to or for the benefit of the promoter or (if there is more than one) any of the promoters, or to or for the benefit of a participant in the trading scheme, and
 - (b) is induced to make that payment by reason that the prospect is held out to him of receiving payments or other benefits in respect of the introduction of other persons who become participants in the trading scheme,
 any person to whom or for whose benefit that payment is made shall be guilty of an offence.
- (4) If the promoter or any of the promoters of a trading scheme to which this Part of this Act applies, or any other person acting in accordance with such a trading scheme, by holding out to any person such a prospect as is mentioned in subsection (3)(b) of this section, attempts to induce him—

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- (a) if he is already a participant in the trading scheme, to make any payment to or for the benefit of the promoter or any of the promoters or to or for the benefit of a participant in the trading scheme, or
 - (b) if he is not already a participant in the trading scheme, to become such a participant and to make any such payment as is mentioned in the preceding paragraph,
- the person attempting to induce him to make that payment shall be guilty of an offence.
- (5) In determining, for the purposes of subsection (3) or subsection (4) of this section, whether an inducement or attempt to induce is made by holding out such a prospect as is therein mentioned, it shall be sufficient if such a prospect constitutes or would constitute a substantial part of the inducement.
- (6) Where the person by whom an offence is committed under subsection (3) or subsection (4) of this section is not the sole promoter of the trading scheme in question, any other person who is the promoter or (as the case may be) one of the promoters of the trading scheme shall, subject to the next following section, also be guilty of that offence.
- (7) Nothing in subsections (3) to (6) of this section shall be construed as limiting the circumstances in which the commission of any act may constitute an offence under subsection (1) or subsection (2) of this section.
- (8) In this section any reference to the making of a payment to or for the benefit of a person shall be construed as including the making of a payment partly to or for the benefit of that person and partly to or for the benefit of one or more other persons.

Textual Amendments

F6 Words in s. 120(1) substituted (6.2.1997) by 1996 c. 32, s. 2(2); S.I. 1997/29, art. 2

121 Defences in certain proceedings under Part XI.

- (1) Where a person is charged with an offence under subsection (1) of section 120 of this Act in respect of an advertisement, it shall be a defence for him to prove that he is a person whose business it is to publish or arrange for the publication of advertisements, and that he received the advertisement for publication in the ordinary course of business and did not know, and had no reason to suspect, that its publication would amount to an offence under that subsection.
- (2) Where a person is charged with an offence by virtue of subsection (6) of section 120 of this Act, it shall be a defence for him to prove—
- (a) that the trading scheme to which the charge relates was in operation before the commencement of this Act, and
 - (b) that the act constituting the offence was committed without his consent or connivance.

122 Penalties for offences under Part XI.

A person guilty of an offence under this Part of this Act shall be liable—

- (a) on summary conviction, to a fine not exceeding £400 or to imprisonment for a term not exceeding three months or to both;

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- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

123 Enforcement provisions.

- (1) The provisions of sections 29 to 32 of this Act shall have effect for the purposes of this Part of this Act as if in those provisions—
 - (a) references to a weights and measures authority or a duly authorised officer of such an authority were omitted, and
 - (b) any reference to an offence under section 23 of this Act were a reference to an offence under this Part of this Act.
- (2) For the purposes of the application to Northern Ireland of those provisions as applied by the preceding subsection—
 - (a) any reference to the Secretary of State shall be construed as a reference to [^{F7}the Department of Commerce for Northern Ireland], and
 - (b) paragraphs (c) and(d) of section 33(2) of this Act shall have effect as they have effect for the purposes of the application of Part II of this Act to Northern Ireland.

Textual Amendments

F7 Words substituted by virtue of [Northern Ireland Constitution Act 1973 \(c. 36\)](#), [Sch. 5 para. 8\(1\)](#)

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