



# Trading Schemes Act 1996

## 1996 CHAPTER 32

An Act to make provision in respect of certain trading schemes; and for connected purposes. [4th July 1996]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Extension of Part XI of the Fair Trading Act 1973**

For section 118 of the Fair Trading Act 1973 (trading schemes to which Part XI applies) there is substituted—

#### **“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—

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*Status: This is the original version (as it was originally enacted).*

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- (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.
- (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—
- (a) under which the promoter or any of the promoters or participants is to carry on, or to purport to carry on, investment business in the United Kingdom (within the meaning of section 1 of the Financial Services Act 1986); or
  - (b) which otherwise falls within a description prescribed by regulations made by the Secretary of State by statutory instrument.
- (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.”

## **2 Distribution of advertisements etc**

- (1) In section 119 of the Fair Trading Act 1973 (regulations relating to trading schemes to which Part XI applies), in subsection (1)—
- (a) for the words from “documents” to “information” there is substituted “any form of advertisement, prospectus, circular or notice which contains any information”, and
  - (b) for “document” there is substituted “advertisement, prospectus, circular or notice”.
- (2) In section 120 of that Act (offences under Part XI), in subsection (1), for “document” there is substituted “advertisement, prospectus, circular or notice”.

## **3 Transitional provision**

Where a person is charged with an offence by virtue of subsection (6) of section 120 of the Fair Trading Act 1973, it is a defence for him to prove that—

- (a) the trading scheme to which the charge relates was in operation before the commencement of this Act,
- (b) Part XI of the Fair Trading Act 1973 did not apply to that trading scheme at any time before that commencement, and
- (c) the act constituting the offence was committed without his consent or connivance.

## **4 Financial provision**

There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under the Fair Trading Act 1973.

## **5 Short title, commencement and extent**

- (1) This Act may be cited as the Trading Schemes Act 1996.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) This Act extends to Northern Ireland.