
STATUTORY INSTRUMENTS

1997 No. 30

FAIR TRADING

The Trading Schemes Regulations 1997

Made - - - - *13th January 1997*
Laid before Parliament *14th January 1997*
Coming into force - - *6th February 1997*

The Secretary of State in exercise of his powers under section 119 of the Fair Trading Act 1973⁽¹⁾ hereby makes the following Regulations:—

Citation, commencement and application

1.—(1) These Regulations may be cited as the Trading Schemes Regulations 1997 and shall come into force on 6th February 1997.

(2) Subject to paragraph (3) below, these Regulations shall apply—

- (a) from the date of their coming into force to any trading scheme to which Part XI of the Fair Trading Act 1973 applies and which came into existence on or after the date of coming into force of these Regulations, and to any agreement made under such a trading scheme;
- (b) after a period of six months from the date of their coming into force to any trading scheme in existence prior to the coming into force of the Act and to which Part XI of the Fair Trading Act 1973 did not apply prior to that date.

(3) Where an agreement is made after the date of coming into force of these Regulations but prior to the expiry of a six months period after that date under a trading scheme to which Part XI of the Fair Trading Act 1973 applied prior to the coming into force of the Act such agreement shall comply either with the 1989 Regulations or these Regulations.

(4) Subject to paragraph (3) above the 1989 Regulations shall not apply to any trading scheme coming into operation after the date of the coming into force of these Regulations or to any agreement made after that date under any trading scheme to which Part XI of the Fair Trading Act 1973 applies.

Interpretation

2. In these Regulations:

“the Act” means the Trading Schemes Act 1996⁽²⁾;

(1) 1973 c. 41; Part XI was amended by the Trading Schemes Act 1996 c. 32.
(2) 1996 c. 32.

“advertisement” means any advertisement, document, prospectus, circular or notice, whether transmitted in electronic or any other form, which promotes a trading scheme;

“the 1989 Regulations” means the Pyramid Selling Schemes Regulations 1989⁽³⁾;

“the 1990 Regulations” means the Pyramid Selling Schemes (Amendment) Regulations 1990⁽⁴⁾;

“participant” has the same meaning as in Part XI of the Fair Trading Act 1973⁽⁵⁾;

“security” means a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right provided by the participant, or at his request (expressed or implied), to secure the carrying out of the obligations of the participant under an agreement referred to in regulation 4.

“trading scheme” has the same meaning as in Part XI of the Fair Trading Act 1973.

Contents of advertisements

3.—(1) Subject to paragraph (2) of this regulation, a promoter of, or a participant in, a trading scheme shall not issue, circulate or distribute any advertisement which contains information likely to lead directly or indirectly to persons becoming participants in a trading scheme by any means unless such advertisement

- (a) states the name and address of the promoter, or in the case of a scheme promoted by more than one person, the names and addresses of all of the promoters;
- (b) describes the goods or services acquired or supplied under the trading scheme; and
- (c) contains the words set out in Schedule 1 to these Regulations which must
 - (i) not appear at the beginning or the end of the advertisement;
 - (ii) insofar as the advertisement contains any information as to the sources of income for participants from participation in the trading scheme, appear together with such information and be given no less prominence than such information;
 - (iii) be easily legible or audible; and
 - (iv) be afforded no less prominence than that given to any other information in the advertisement apart from the heading of the advertisement.

(2) This regulation does not apply to any advertisement which—

- (a) forms part of a newspaper or magazine; or
- (b) is transmitted by way of a radio or television broadcast.

Pre-performance requirements

4.—(1) Save where the requirements set out in paragraph (2) below are satisfied, no promoter of, nor participant in, a trading scheme shall—

- (a) supply goods or services to a participant in the trading scheme;
- (b) provide any goods or services under a transaction effected by such a participant;
- (c) be a party to any arrangement under which goods or services are supplied or provided as aforesaid; or
- (d) accept from any such participant any payment or undertaking to make a payment in respect of any goods or services supplied or provided as mentioned in any of the preceding

(3) S.I.1989/2195, amended by S.I. 1990/150.

(4) S.I. 1990/150.

(5) 1973 c. 41; Part XI was amended by the Trading Schemes Act 1996 c. 32.

paragraphs (a) to (c) above or in respect of any goods or services to be so supplied or provided.

- (2) The requirements referred to in paragraph (1) above are that—
- (a) the arrangements with a participant do not include a statement or promise that the participant will receive a payment or benefit in respect of the continued participation of another person in the trading scheme to which such arrangements relate or in any other trading scheme;
 - (b) the promoter or a participant and the participant joining the trading scheme shall have signed a written agreement which contains all the terms under which the participant joining the trading scheme is participating in the trading scheme and which complies with regulation 5;
 - (c) a copy of that agreement shall have been furnished to the participant joining the trading scheme.

Contents of contracts

5. — The agreement referred to in regulation 4 shall include:—
- (a) the name and address of the promoter or, in the case of a scheme promoted by more than one person, the names and addresses of all the promoters;
 - (b) a description of the goods or services to be acquired by or supplied to the participant by the promoter or promoters, other participants or suppliers nominated by the promoter or promoters or any other person under the trading scheme;
 - (c) a statement describing the capacity in which the participant shall act for the purposes of any transaction which he may effect under the trading scheme;
 - (d) a statement describing the financial obligation of the participant during the period of twelve months from the commencement date of the agreement. The promoter shall give to the participant at least 60 days advance written notice of any subsequent changes in such financial obligation.
 - (e) a statement describing the right of the participant to cancel the agreement:—
 - (i) within 14 days of entering into the agreement without penalty and with the right to recover any monies which he had paid to or for the benefit of the promoter or any of the promoters or any other participant in connection with his participation in the trading scheme or paid to any other participant in accordance with the provisions of the trading scheme and the manner in which that cancellation and recovery shall be effected;
 - (ii) within 14 days of entering into the agreement the right to return to an address specified in the agreement which must be an address in the United Kingdom, any goods the participant has purchased within that period under the trading scheme and which remain unsold provided that such unsold goods remain in the condition in which they were in at the time of purchase, whether or not their external wrappings have been broken and to recover any monies paid in respect of such goods;
 - (iii) within 14 days of entering into the agreement the right to cancel any services ordered within that period under the trading scheme and to recover any monies paid in respect of such services not yet supplied to the participant;

and that the promoter or any other person who has supplied goods to the participant under the trading scheme shall not be entitled to make a handling charge in respect of goods returned under sub-paragraph (ii) above or services cancelled under sub-paragraph (iii) above;

- (f) a statement describing the rights of the participant to terminate the agreement at any time without penalty by giving 14 days written notice to the promoter or any of the promoters at an address which is specified in the agreement;
- (g) a statement describing the rights of the participant following termination of the agreement by the promoter or the participant as set out in these Regulations;
- (h) the written warnings in the form set out in Part I and Part II of Schedule 2 hereto which comply with the following:–
 - (i) the words are easily legible; and
 - (ii) the words in Part II are printed immediately above the space for the participant’s signature.
- (i) a statement setting out the conditions under which the participant shall be entitled to return goods to the promoter or any promoters or any other participant which shall include at least the rights conferred on the participant by regulation 6 below and which must include an address in the United Kingdom to which such goods can be returned.
- (j) a statement setting out the conditions when commission already paid by the promoter or another participant will be recoverable from the participant which shall include at least the rights conferred on the participant by regulation 9.
- (k) where the agreement comprises more than one document, a statement setting out all documents which form part of the contract between the parties and that those documents form the entire agreement between the parties.

Right to return goods to promoter on termination

6.—(1) The rights referred to in regulation 5(i) are, that if a participant or the promoter or any of the promoters terminates an agreement referred to in regulation 4 or any agreement entered into in consequence of such an agreement with a participant, the participant shall, subject to subsection (2) below, have the right to be released from all future contractual obligations and to return to the promoter or any of the promoters or any other participant any goods the participant has purchased within a period of 90 days prior to such termination under the scheme and which remain unsold and to recover from the promoter or such other participant who supplied the goods–

- (a) where the participant has terminated the agreement, the price (inclusive of Value Added Tax) which the participant paid for them less:
 - (i) in the case of any goods the condition of which has deteriorated due to an act or default on the part of the participant, an amount equal to the diminution in their value resulting from such deterioration; and
 - (ii) a reasonable handling charge;
- (b) where the promoter or any of the promoters or any other participant has terminated the agreement the price (inclusive of Value Added Tax) which the participant paid for them together with any costs incurred by the participant for returning the goods to the promoter or any other participant;
- (c) on terms whereby the purchase price is payable upon delivery of the goods or, if the goods are already held by the promoter or any of the promoters, forthwith, and
- (d) on terms whereby the goods not already held by the promoter or any of the promoters will be delivered within 21 days of such termination at the promoter’s expense to the address stated in the agreement.

(2) Where an agreement referred to in regulation 4 contains an obligation on the participant not to compete with the business of the promoter after termination of such agreement, such non-competition provision shall continue in force after the date of termination.

Securities and guarantees

7. A promoter of, or a participant in, a trading scheme shall not accept from a participant any guarantee or security in whatever form in respect of goods or services supplied or to be supplied or in respect of the payment of the price for goods or services supplied or to be supplied or an undertaking to provide such a guarantee or such security unless the creditor or a promoter or other supplier who is not a creditor has agreed in writing to refund the amount of that payment to the debtor upon his returning the relevant goods in an undamaged condition to the creditor or to any promoter or supplier.

Supply of goods and services

8. A promoter of, or a participant in, a trading scheme shall not make a supply of goods or services to the participant unless, in respect of every supply of goods or services under a trading scheme, such promoter or participant has provided the participant to whom the goods are supplied or to be supplied with an adequate record of the transaction in respect of which payment is due from that participant. For the purposes of this regulation an itemised order form, invoice or receipt shall constitute an adequate record.

Recovery of commission

9. The rights referred to in regulation 5(j) are the right to retain, after termination of an agreement referred to in regulation 4 or any agreement made thereunder, any commission paid to the participant under a trading scheme unless—

- (a) the commission was paid in respect of goods returned to the promoter or another participant who paid the commission;
- (b) the promoter has refunded all monies due to the participant under the agreement referred to in regulation 4 in respect of goods returned to him by the participant;
- (c) the commission payment is claimed within 120 days of the date of having been made; and
- (d) the promoter has entered into an agreement with the participant that complies with the requirements in regulation 5 and that agreement and any subsequent agreement contains a statement describing when commission becomes payable to the promoter and the terms upon which recovery of that payment may be made; and
- (e) the promoter recovers the commission payment in accordance with the terms referred to in paragraph (d) above.

£200 liability limit

10. A promoter of, or a participant in, a trading scheme shall not accept from a participant joining the trading scheme any payment or an undertaking to make a payment of any sum exceeding £200 unless 7 days have expired from the making of the agreement relating to goods or services supplied or to be supplied under that agreement to the participant by the promoter or any other participant under the trading scheme.

Civil consequences of contraventions

11.—(1) Where a participant makes a payment to or for the benefit of a promoter of, or to a participant in, a trading scheme and the acceptance of that payment involves a contravention of these Regulations, that contravention shall be actionable at the suit of the participant who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) No undertaking to make any payment given by a participant in a trading scheme involving a contravention of sub-paragraph (d) of paragraph (1) of regulation 4 or regulation 10 shall be enforceable against him in any civil proceedings or recoverable in any other way.

(3) A participant in a trading scheme shall be under no liability to pay for any goods or services as the case may be—

- (a) supplied to him in circumstances involving a contravention of regulations 4 to 10; or
- (b) unless it was clearly explained to him by a promoter or a participant supplying or seeking to supply goods or services under the trading scheme, before he purchased the goods or services, that he had a free choice whether or not to purchase those goods or services and the purchase price for those goods or services and his annual financial obligation under the agreement was clearly stated.

13th January 1997

John M Taylor
Parliamentary Under-Secretary of State for
Corporate and Consumer Affairs,
Department of Trade and Industry

SCHEDULE 1

regulation 3(1)(c)

Warning for use in advertisements—

1. It is illegal for a promoter or a participant in a trading scheme to persuade anyone to make a payment by promising benefits from getting others to join a scheme.
2. Do not be misled by claims that high earnings are easily achieved.

SCHEDULE 2

regulation 5

Warning for use in contracts—

Part I

1. It is illegal for a promoter or a participant in a trading scheme to persuade anyone to make a payment by promising benefits from getting others to join a scheme.
2. Do not be misled by claims that high earnings are easily achieved.

Part II

3. If you sign this contract, you have 14 days in which to cancel and get your money back.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply to any pyramid selling or similar trading scheme to which Part XI of the Fair Trading Act 1973 as amended by the Trading Schemes Act 1996 applies and which came into existence after the date of coming into force of these Regulations, and to any agreement made under such a trading scheme. The Pyramid Selling Schemes Regulations 1989 as amended by the Pyramid Selling Schemes (Amendment) Regulations 1990 are disapplied in respect of these trading schemes and agreements.

There is a six months transitional provision for trading schemes which were in existence prior to the date of coming into force of the Trading Schemes Act 1996 and which were until then not within Part XI of the Fair Trading Act 1973.

Where a trading scheme was subject to Part XI of the Fair Trading Act 1973 prior to the coming into force of the Trading Schemes Act 1996 then any agreement made under such a trading scheme within six months from the date of the coming into force of these Regulations can be made either under the 1989 Regulations or these Regulations. Any agreements made after the six months period will need to be made under these Regulations.

The Regulations follow the framework of the 1989 Regulations.

The control of the content of advertisements (regulation 3) has been updated since the 1989 Regulations. The controls no longer apply to any person but only to a promoter or a participant. Advertisements in all forms including electronic form are now covered unless they form part of a newspaper or magazine or are transmitted by radio or television broadcast. The date of actual or proposed first operation of the scheme in the UK and the status of the participant need no longer be included in the advertisement.

The statutory warning has been simplified.

The exemption for papers handed out in public places and for advertisements not indicating financial benefits has been removed.

There is no longer a requirement to substantiate financial benefits.

Promoters and participants have to meet certain pre-contractual requirements (regulation 4). Statements or promises of benefits for continued participation of others in a trading scheme are prohibited. Participants must be supplied with a written contract.

The provisions as to the content of the contract have been extended since the 1989 Regulations (regulation 5). The requirements now cover statements on rights such as cancellation, termination, return of goods and recovery of sums paid, financial obligations and commission.

Participants have the right to return goods to the promoter subject to certain basic conditions (regulation 6). Goods can be returned if purchased within 90 days prior to termination.

The taking of securities and guarantees is prohibited (regulation 7).

A participant must be given an itemised record of goods he purchased (regulation 8).

The promoter's right to recover commission on termination of a contract is limited and subject to conditions (regulation 9). No commission can be recovered after a period of 120 days has elapsed since its payment.

A promoter or a participant is prohibited from accepting any sum exceeding £200 from a new participant until 7 days have expired from the making of the contract (regulation 10). The previous limit was £75.

Civil rights and remedies for breach of the Regulations are provided for (regulation 11).