



THE TRADING SCHEMES GUIDE

Information on your rights and possible pitfalls when joining or participating in trading schemes

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We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

The Trading Schemes Guide

Has someone invited you to earn money by joining a scheme selling goods and services, often from home or a 'Business Opportunity' which involves you in recruiting other people?

Are you considering joining such a scheme?

Have you already joined?

If so, you should read this booklet. It gives you information you need on your rights and possible pitfalls, before you spend any money.

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Many schemes are entirely legitimate, giving people opportunity to run their own small businesses. However some schemes have taken advantage of their participants and have taken their money without giving anything by the way of an honest business opportunity.

This has led to legislation which makes illegal the way in which some kinds of schemes operate.

The legislation also sets out rules which govern the arrangements between the promoters and participants, so that the schemes are legally operated. These rules give participants clear rights.

When you join a trading scheme, you take on responsibilities and risks. Make sure you understand the risks and know your rights and obligations. You can get further copies of this booklet from:

DTI Publications Orderline
0845 015 0010
publications@dti.gsi.gov.uk

This booklet is only a simple guide and should not be relied on as a statement of the law. To understand your rights and obligations fully, study the relevant law: Part XI of the Fair Trading Act 1973 as amended by the Trading Schemes Act 1996; the Trading Schemes Regulations 1997; Trading Schemes (Exclusion) Regulations 1997; Trading Schemes (Exclusion) (Amendment) Regulations 1997 and the Financial Services Act (Restriction of Scope Act and Meaning of Collective Investment Scheme) Order 1997. Available from the Stationery Office.

What are Trading Schemes?

Trading schemes may be called direct selling schemes, network marketing, multi-level marketing, multi-level franchising or other names.

Participants are self-employed and earn money by selling the scheme's goods or services, often in a small way and from home. In some schemes participants may earn additional commission by recruiting others and from the sales of their recruits.

Trading schemes must comply with legislation in the Fair Trading Act 1973 as amended by the Trading Schemes Act 1996 and the Trading Schemes Regulations 1997.

The Law

Illegal Activity

The law makes it a criminal offence to persuade someone to make a payment to a scheme by promising benefits from getting other people to join a trading scheme. (Fair Trading Act 1973 section 120(3)). This does not make recruitment rewards unlawful. It does make it unlawful to persuade someone that **the main motive** for joining is to profit from recruiting others or to take money from someone on the basis of such a motive.

The law also makes it a criminal offence to run a scheme which does not meet the rules described below. (The Trading Schemes Regulations 1997).

**The law is there to help you protect yourself.
Don't join schemes which appear to break the law.**

The rules deal with:

- Advertisements
- Information you must be given when you are invited to join a scheme
- Your contract
- The rights and obligations of participants in the scheme
- Illegal demands for payments.

What are the Rules?

Advertisements

Advertisements in newspapers, magazines, directories, radio and television must be legal, decent, honest and truthful. If an advertisement causes you concern you should write giving details to the appropriate body listed at the end of this booklet.

Advertisements in handouts, brochures, audio and videotapes and similar promotional material which invite you to join the scheme must show:

- The name and address of the promoter
- The products or services covered by the scheme
- The following warning:

It is illegal for a promoter or participant in a trading scheme to persuade anyone to make a payment by promising benefits from getting other people to join a trading scheme.

Do not be misled by claims that high earnings can be easily achieved.

If there is a claim about earnings, the above warning must appear by the claim.

Your Contract

Before you participate in the scheme the promoter, or recruiting participant, must give you a written contract which sets out all your rights and obligations as a participant in the scheme. The contract only binds you when you have signed it. The promoter must not accept money from you before you have signed a contract.

The contract must include:

- The name and address of the promoter of the scheme
- A description of the products covered by the scheme
- A description of your role in the scheme
- Your rights to cancel or terminate the contract, related rights on returning goods and the information you need to exercise these rights
- Any payments you have to make in the first year
- Your right to have at least 60 days warning of any change in future payments
- Your rights if the promoter seeks to recover commission.

The scheme's organisers cannot make you do or pay anything unless it is set out in the contract you have signed. Make sure you are happy with everything in the contract before you sign and keep it safely.

Your rights during the first 14 days after you have signed the contract:

- In the first 7 days after you have signed the contract, the scheme can legally bill you for no more than £200 in total. This is to help you to avoid getting in too deep before you have tested the market. Post-dated cheques, standing orders etc. do not get round this limit
- If you regret joining a scheme, you have the right to cancel your contract in the first 14 days after you have signed the contract. (Some promoters may give you a longer cancellation period.)
- You have the right to return to the promoter anything that the scheme has provided to you, to cancel any service to which you have subscribed and to claim a full refund, provided you have not let the goods deteriorate. The promoter must pay for the cost of returning the goods. You cannot expect a refund on things you have partially used up or damaged
- Your contract must tell you an address in the United Kingdom to which you return the goods.

Your right to terminate the contract after the first 14 days and get refunds for goods you return:

- You can terminate your contract at any time by giving 14 days written notice to the promoter
- Your contract must tell you where to send your notice of termination
- Giving this notice releases you from all obligations to the promoter which are set out in your contract, with one possible exception. This exception allows the promoter to protect his business by keeping in force any clause in the contract which stops you competing with the promoter

- e.g. by setting up or participating in a rival scheme
- If either you or the promoter terminates the contract you can return any goods you have bought during the preceding 90 days to the promoter and claim back the money you paid for them
 - If you have let the goods deteriorate so that they are no longer of satisfactory quality, you cannot expect a refund
 - If you terminate, you pay the cost of returning the goods and possibly a handling charge for repacking opened goods (unless your contract says otherwise)
 - If the promoter terminates, the promoter pays the cost of returning the goods
 - Always retain invoices and/or receipts for your purchases so that you know what you have a right to send back.

These rights to return goods are in addition to rights you have under the Sale of Goods Act to reject goods which are not of satisfactory quality.

Commissions

If there is provision in the contract to do so, the promoter can reclaim commissions from participants if they have not been earned according to the provisions of the contract. However, on termination of contract, only commissions which have been paid less than 120 days previously can be reclaimed.

Participants who have participants below them in the network

You have the rights and obligations of participants but also have the obligations described above of promoters when you deal with participants in your network.

Think – Then Think Again

Consider the following before joining a scheme:

- Do I understand what is being offered to me?
- Do I know what I will have to pay?
- Do I understand that this is a self-employment opportunity and earnings will depend on the market and on my efforts?
- Is there a demand for the products of the scheme and can I honestly recommend them to others?
- While I have a legal right to a contract, if it goes wrong, it will be up to me to try to enforce my rights
- Am I prepared to take the risk?
- Should I seek independent advice before joining? It is very important for potential participants to understand that compliance with the legislation does not automatically mean that schemes are commercially viable. They should therefore seek independent and impartial business and legal advice to help assess the pitfalls and potential of starting the business venture, prior to any agreement. A useful starting point for business information and advice is provided later in this guide under “Useful addresses and contacts for further information.”
- Schemes which concentrate on recruiting others rather than selling are illegal and most people lose their money.

What to do if things go wrong

Look at your contract again and point out your rights to a promoter. Consult a solicitor or Citizens Advice Bureau advisor or a relevant Trade Association.

Where to report possibly illegal trading schemes

If you are invited to join a scheme which, after reading this booklet, you believe is acting illegally you should write with any supporting evidence to:

Consumer and Competition Policy Directorate
The Department of Trade and Industry
1 Victoria Street
London SW1H 0ET

The Department cannot give advice on individual schemes nor can we intervene in civil or contractual disputes, but we can take law enforcement action against promoters who break the law.

Chain Letters, Gifting Schemes and Snowball Schemes

Get rich quick schemes, which appear too good to be true, usually are.

Those which ask you to send money to people on a list then add your own name to the list then send out more copies of the letter could be found to be illegal lotteries by a court of law, as they are a distribution of money by chance for commercial gain. This is the responsibility of the Department for Culture, Media and Sport.

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For more details or to report a suspected chain letter, gifting or snowball scheme, contact the Department for Culture, Media and Sport at the address given at the back of this booklet.

There are other home working opportunities to avoid. The golden rule is avoid any scheme that asks you for money **before** the promoter will give you information on what the scheme involves.

Additional Guidance for Promoters

The Fair Trading Act defines “trading scheme” as including 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.

In establishing which arrangements are caught by Part XI, it is necessary to consider who is and who is not a participant in the business i.e. the scheme. We consider participants as including only those who are envisaged by the promoter as forming part of the pyramidal structure of his/her sales operations. The key test as to who is not a participant is their independence from the business operation of the promoter. Participants in trading schemes are separate businesses in one sense but in another sense they are not independent in that they form part of the structure of the scheme.

Examples of arrangements which the Department considers fall outside of the natural meaning of trading schemes are those where service providers provide services to the promoter in the ordinary course of their own business and not as part of the promoter’s business, or those customers of the promoter whose business is carried on separately and independently from that of the promoter.

What types of Schemes are not subject to the controls?

Schemes which are subject to control under the Financial Services Act are excluded. There are separate controls for collective investment schemes. For further information about these controls you should contact the Financial Services Authority. Their address is at the end of this booklet.

The Trading Schemes (Exclusion) Regulations 1997, as amended, provide exclusions for the following:

- Networks in which all UK participants are registered for VAT. This removes from the controls schemes in which, given the level of business turnover, all the participants should have business experience or be aware of the need to take expert advice on their business arrangements.
- Schemes which have only the promoter, or in the case of a foreign based operation a single UK participant at one level, and all other participants operate at one level below ('single tier' schemes). The latter participants may receive a benefit for introducing a recruit limited to the value of £50.
- The proceeds from the sale of a business that is registered for VAT at the time of sale, shared expenses or a share in the annual profit produced by the scheme are disregarded for the purpose of establishing a benefit.
- Networks whose members operate independently of each other apart from benefiting from sharing expenses such as advertising or from distribution of profits.
- Chain letters without a central organiser or promoter - see page 9

What types of Scheme are subject to these controls?

The controls apply to trading schemes in which the participants benefit from:

- Introducing others who become participants
- The participation of others
- Change of status of other participants in the scheme
- The supply of goods or services
- The acquisition of goods or services.

And in which goods or services are provided by the promoter.

Goods include the rights to property of any kind. This means that schemes which do little more than circulate money between the members of the scheme are subject to the controls.

Compliance with the Regulations

The Trading Schemes Regulations set minimum standards of good business practice. They are basic requirements.

Promoters may offer more favourable terms to their participants. The contract – a fundamental of good practice – ensures both parties are aware of their rights and obligations.

In a legitimate trading scheme, payments are linked essentially to genuine selling of goods or services to end-users. It is illegal to base rewards for participants on the simple continued participation of other participants. This regulation complements the offence related to promising rewards based on recruitment. Rewards based on the sales of other participants are not illegal.

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It is also generally illegal to accept from a participant securities or guarantees as payment or promise of payment. This includes mortgages, pledges, indemnities, debentures, guarantees and so on.

The controls on advertisements

Advertisements in newspapers and magazines or on the radio or television are covered by the various self-regulatory codes. You should ensure that you are familiar with these if you intend to place an advertisement in the media.

Other promotional material including handouts, brochures, video and audio presentations and recruitment literature must show clearly the name and address of the promoter and what is sold through the scheme. It is not acceptable to provide only a PO Box address.

Advertisements must include the warning specified in the Regulations. Advertisements should not mislead prospective participants. In particular, claims about rewards from participation in the scheme should be realistic. Exaggerated or unsubstantiated claims could be challenged under the Misleading Advertisements Regulations 1988 or under the Trade Descriptions Act 1968.

Promotional stickers and other material which are only interest generators do not need to include the information specified in the Regulations. They should not however be constructed to mislead in any way.

The Contract

Role of the Participant

The contract need only make clear in the simplest way the participant's role in the scheme. If you provide the participant with other documents which describe his/her activities or other rules of the scheme the contract should refer to these and you must provide them with the contract.

Description of Products

The contract need only simply state what is bought and sold by participants in the scheme. If you refer to other documents in which the products are described in more detail you must provide these with the contract.

Participant's rights to refunds on cancellation and termination of the contract.

Where a participant cancels the contract during the 14 day cooling off period he/she is entitled to a refund of all money paid in connection with his/her participation within the scheme. This includes his/her joining and/or membership fee and he/she may return all goods supplied, including any sales aids, for a full refund. Of course, if he/she has sold any of the goods supplied, he/she is not entitled to a refund for them.

Refunds on goods returned to the Promoter

Participants may also return goods to the promoter on termination of the contract. Either party may terminate the

contract. In these circumstances, participants have a right to claim a refund on goods bought during their final 90 days of participation which they return to the promoter.

You must provide in the contract an address in the UK to which participants can return goods. When such goods are returned and full refund made, Customs & Excise will accept that the return of those goods can be treated as cancelling the original supply where the proper accounting document is issued: either formal cancellation of the invoice or the issue of an accounting credit note for the full amount including VAT.

How much do I refund?

Participants are entitled to a full refund on goods returned in their original condition. If the participant has damaged the goods or caused them to deteriorate, you may deduct an appropriate amount from the refund. You may also deduct a reasonable handling charge.

What is a reasonable handling charge?

Where goods have been supplied in multiple packs and the outer wrappings have been broken, for example when the participant inspected the goods on delivery, you may deduct a handling charge to cover the cost of repackaging returned goods for resale. Any charge must be reasonable and must relate to the actual costs incurred in handling or repackaging the goods.

You must not refuse to accept wholesale packs which are incomplete or have been opened for inspection.

Can I recover commission already paid to a participant on goods which are later returned?

Yes, but only if you made it clear to the participant in his/her contract the circumstances in which commission could be recovered. When a contract has been terminated, you can only reclaim commission if it was paid within the previous 120 days.

Can I prevent former participants from poaching members of my network?

On termination of the contract the participant is freed from any continuing obligation to the promoter. This does not, however, stop promoters enforcing a non-competition clause in the contract, which requires terminating participants not to compete with the promoter's business. However, any such ban must be made clear in the contract.

This guidance should not be taken as an authoritative statement of the law. Of necessity some matters have been oversimplified. If after reading this advice, you are unsure about whether your scheme complies with the law you should read the relevant legislation and seek independent advice.

Useful addresses and contacts for further information

If an advertisement gives you cause for concern write to one of the following. For advertisements:

In newspapers and magazines

The Advertising Standards Authority

Mid City Place

71 High Holborn

London WC1V 6QT

Tel: 020 7492 2222

website: www.asa.org.uk

On television & radio

Office of Communications

Riverside House

2a Southwark Bridge Road

London SE1 9HA

Tel: 020 7981 3040 or 0845 456 3000

website: www.ofcom.org.uk

You may also find the following organisations helpful:

DTI Publications Order Line

Admail 528

London SW1W 8YT

Tel: 0845 015 0010

Email: publications@dti.gsi.gov.uk

for a booklet on “Franchising your business” (URN 01/1160)

Financial Services Authority

Consumer Help Section

25 The North Colonnade

Canary Wharf

London E14 5HS

Tel: 0845 606 1234

website: www.fsa.gov.uk

for advice on authorised investment business

Department for Culture, Media and Sport

2-4 Cockspur Street

London

SW1Y 5DH

Tel: 020 7211 6200

Website: www.culture.gov.uk

Business Link (England)

Tel: 0845 600 9 006

Website: www.businesslink.gov.uk

Business Eye (Wales)

Tel: 08457 969 798

Website: www.busesseye.org.uk

Or www.llygadbusnes.org.uk

Business Gateway – Lowland Scotland

Tel: 0845 609 6611

Website: www.bgateway.com

Highlands and Islands Enterprise – Scotland

Tel: 01463 234171

Website: www.hie.co.uk

Invest Northern Ireland

Tel: 028 9023 9090

Website: www.investni.com

