

# **Pyramid Selling and Similar Trading Schemes**

**Research Paper 96/20**

**31 January 1996**



As part of its Deregulation Initiative, the Government published a consultation document in March 1995 to consider amendments to Part XI of the *Fair Trading Act 1973*, covering "pyramid selling and similar trading schemes", and to replace the current regulations under that part of the Act. This paper examines the existing legislation and the proposals made in the consultation document to widen the scope of the present controls. It also considers the provisions of Sir Nicholas Scott's Bill on trading schemes which has been welcomed by the Consumer Affairs Minister, Mr John Taylor. The Second Reading of the *Trading Schemes Bill* [Bill 22 of 1995/96] will be on 2 February 1996.

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## I What are trading schemes?

Many people in the UK belong to schemes in which they earn income by selling the scheme's goods or services from home. This is known as "direct selling". These direct selling schemes are variously described as pyramid selling, multi-level marketing, or network marketing; they are collectively referred to as 'trading schemes' throughout this paper.

The Department of Trade and Industry (DTI) has described trading schemes as a way of selling goods or services through a scheme which operates on more than one level<sup>1</sup>. People who join such a scheme (called "participants") buy goods or services from the person or company running the scheme (called "promoters") or from other participants and then sell them to the general public usually in their homes. Apart from the profit they make on selling, participants may also be offered other rewards which they can earn in several ways. These may include bonuses for recruiting new participants and commission on sales made by other participants.

As new participants are themselves encouraged to recruit new members, (as well as selling to consumers), a widening network of sellers is created, with the company at the apex of this pyramid, and the newest recruits at the base. The Government has estimated that annual sales from trading schemes are around £200 million.<sup>2</sup>

Trading schemes are legitimate commercial practices provided that they comply with Part XI of the *Fair Trading Act 1973*, The Pyramid Selling Schemes Regulations 1989 and the *Pyramid Selling Schemes (Amendment) Regulations 1990*.

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<sup>1</sup> DTI, *Pyramid Selling And Similar Trading Schemes: a consultation document*, March 1995

<sup>2</sup> Ibid

## II Regulation of trading schemes

### A. Background

The underlying problem with some trading schemes is that they can be used by unscrupulous promoters to make money at the expense of participants in the scheme, rather than by the legitimate method of selling goods or services to consumers.

This type of unfair scheme became prevalent in the late 1960s. The abuses current at that time included:

- a demand that participants pay for the right to participate in the scheme, coupled with the promise of bonuses when participants recruited other people into the scheme;
- the absence of any written contract setting out a participant's rights;
- the absence of any cooling-off period for new recruits or any right for participants to claim refunds for unsold goods on withdrawal from the scheme;
- inadequate or misleading information about the nature of the scheme and the rewards available to participants.<sup>3</sup>

The law offered sanctions, both civil and criminal, if a scheme was fraudulent but these sanctions took considerable time to take effect.

Controls over pyramid selling and similar trading schemes were first introduced in 1973, as part of the *Fair Trading Act 1973* ['the Act']; specifically, Part XI of the Act which came into force on 15 November 1973 and the *Pyramid Selling Regulations 1973*<sup>4</sup> ['the 1973 Regulations'], made under Section 119 of the Act.

The main aim of Part XI of the Act and the 1973 Regulations was to ban the taking of certain types of payment by scheme promoters, in particular:

- participation fees paid on the promise of bonuses for recruiting new participants;
- payments for training;
- non-returnable deposits;
- payments of more than £25 for goods during the first seven days of participation in a scheme.

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<sup>3</sup> DTI, *Review of Legislation on Pyramid Selling: a consultation document*, December 1986

<sup>4</sup> SI No. 1740

The 1973 Regulations laid down strict and detailed requirements as to the information which could be given in advertisements and circulars inviting people to join a scheme. Most importantly, the Regulations required that all participants should be given a written agreement on joining, which included rights to refunds for returnable goods on withdrawal from a scheme.

However, as both pyramid and direct selling schemes became more widespread, so did complaints about their exploitation of participants. In 1986, the DTI decided to review the legislation, and in December of that year published a consultation document entitled, "*Review of Legislation on Pyramid Selling*". This document outlined proposals to introduce new primary legislation to amend Part XI of the Act, aimed at restricting more effectively the amount of money that promoters could obtain from participants in pyramid selling schemes. The proposed legislation "would ban the soliciting or taking of payments for stocks or goods unless these are required for display or demonstration purposes or to satisfy orders which participants have previously received from consumers. The taking of payments such as joining and renewal fees, payment for training and deposits for future purchases of goods would continue to be banned as at present."<sup>5</sup> Interested parties were invited to comment on the proposals and to provide estimates of the costs and benefits to the industry if the proposals were put into effect.

Though comments received on the review indicated a broad measure of support, there was criticism of the methods proposed. It was argued that to introduce rigorous controls on stock levels by requiring written evidence of orders previously received would place costly and unjustified new burdens on bona fide multi-level selling operations. The DTI accepted this argument, and revised proposals were published on 29 April 1988.<sup>6</sup>

The *Pyramid Selling Schemes Regulations 1989* (SI No.2195) came into operation on 1 March 1990. The *Pyramid Selling Schemes (Amendment) Regulations 1990* (SI No.150) corrected certain errors in the earlier Statutory Instrument and came into force on the same day. The aim of these Regulations was to strengthen the existing law by ensuring that would-be participants in multi-level marketing schemes are fully informed about the risks involved before they sign up to join a scheme and order goods. The Regulations also removed the more detailed rules governing advertisements and circulars, thereby making it easier for the DTI to enforce the Regulations.

Mr Eric Forth, MP, then Consumer Affairs Minister, explained the new Regulations in a written answer to a PQ asked by Mr Oppenheim, MP:

"The new Regulations are designed to ensure that no one will be able to participate in a pyramid selling, or multi-level marketing scheme, without having first signed a contract which sets out their rights and includes a statutory warning about such schemes.

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<sup>5</sup> DTI press notice, *Review of legislation of pyramid selling*, 17 December 1986

<sup>6</sup> DTI letter, *Pyramid Selling/Multi-level Marketing*, House of Commons deposited paper NS 3914, 29 April 1988

The promoters of the scheme will be required to set out in the contract details of when the scheme started in the United Kingdom and where it is operated from as well as descriptions of the goods or services on offer. They will also have to specify in the contract that the participant may withdraw from the scheme without penalty within 14 days of first signing and set out the participant's rights should he subsequently wish to withdraw.

The Regulations also prohibit promoters from accepting more than £75 from participants within the first seven days. They set an upper limit of £30 as payment for participants recruiting others. There are also provisions relating to payments for training facilities and deposits.

In making these Regulations I have focused on enabling a prospective participant to make an informed choice when considering whether to join the scheme.

These Regulations do not cover the content of advertisements, notices, prospectuses and circulars which do not state the financial benefits of joining a scheme, or which may appear in the press or as handouts. These remain, quite properly, subject to the Advertising Standards Authority's code of practice."<sup>7</sup>

### **B. The Current legislation**

At present, the controls embodied in Part XI of the *Fair Trading Act 1973* apply only to trading schemes that have certain features specified in the Act. Specifically, section 118(1) & (2) of the Act states:

"118.-(1) This Part of this Act applies to any trading scheme which includes the following elements, that is to say-

(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 the Act referred to as "the promoters"), are to be provided by one or more of those persons;

(b) the goods or services so provided are to be supplied to or for other persons under transactions effected by persons (other than the promoter or any of the promoters) who participate in the scheme (each of whom is in this Part of this Act referred to as a participant");

(c) those transactions, or most of them, are to be effected elsewhere than at premises at which the promoter or any of the promoters or the participant effecting the transaction carries on business; and

(d) the prospect is held out to participants of receiving payments or other benefits in respect of any one or more of the matters specified in the next following subsection.

(2) The matters referred to in paragraph (d) of subsection (1) of this section are-

(a) the introduction of other persons who become participants;

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<sup>7</sup> HC Deb 30 November 1989 cc348-349W

- (b) the promotion, transfer or other change of status of participants within the trading scheme;
- (c) the supply of goods to other participants;
- (d) the supply of training facilities or other services for other participants;
- (e) transactions effected by other participants under which goods are to be supplied to , or services are to be supplied for, other persons."

Only those trading schemes with all the above characteristics are subject to the Act's controls.

If a trading scheme is caught by the legislation, then it is controlled under the Act by a combination of the deterrent of criminal offences and the application of Regulations.

### **1. Criminal Offences**

Under section 120 of Part XI of the Act, a promoter of a trading scheme has to be wary of committing four criminal offences. Two are 'recruitment offences' and entail:

- receiving payment from a participant or potential participant who was persuaded by the prospect of benefits from introducing others to the scheme; or
- using the prospect of benefits from introducing others to the scheme to try to persuade someone to make a payment.

The recruitment offences focus on the use of persuasion whether by the promoter or participant. These offences are effective controls in so far as they apply as soon as recruitment starts and continue as long as payments are taken or sought.

The other two offences are for breaches of the Regulations relating to promotional material and contracts between promoters and participants. The maximum penalty on summary conviction is a fine not exceeding the statutory maximum (currently £5,000) and/or three months imprisonment. Offences may also be tried on indictment.

The DTI is the enforcement authority for Part XI of the Act. Trading Standards Departments refer cases to the DTI. At present, a prosecution must be brought within 12 months of discovery of the offence.

### **2. Regulations**

As mentioned above, the relevant Regulations are the *Pyramid Selling Schemes Regulations 1989* as amended by the *Pyramid Selling Schemes (Amendment) Regulations 1990*. However, contracts between promoters and participants made before 1 March 1990 are covered by Regulations 5 and 6 and paragraphs 1, 2 and 3 of Regulation 10 of the 1973 Regulations.

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All controlled trading schemes must comply with the Regulations. They regulate the written agreement between the promoter and participants, the form of documents used, and promotional material. A brief summary of some of the principal regulations are set out below:

### **The written agreement**

The current Regulations require there to be a written agreement, signed by both the participant and the promoter, before the promoter accepts any payment or undertaking to make a payment from a potential participant. Participation in a scheme cannot start before this agreement is in place and the participant has been given a copy of the signed agreement.

Under the present Regulations, the written agreement must include the following information:

- the commencement date of the scheme in the UK;
- the identity and address of the promoter;
- the goods or services supplied through the scheme;
- the role of participants;
- the rights of participants in connection with termination of the contract; and
- a statutory warning.

In addition, the present Regulations require that the written contract includes a provision that if the promoter terminates the contract then he will buy back any goods sold to that participant with the promoter having to bear the expense of delivery. The buy back price must be that paid unless the participant has damaged the goods, in which case the amount due is proportionate to the reduction in the value of the goods.

They also stipulate that the contract between a promoter and a participant must include a provision that a participant terminating the contract has the right to require the promoter to buy back any goods returned in original condition at a price that is not less than 90 per cent of the price paid.

A contract between a promoter and a participant must also include a provision that the participant has the right to terminate without penalty by giving 14 days written notice of termination to the promoter.

The Regulations also require the contract between a promoter and a participant to include provisions that give additional rights to new participants who wish to cancel the contract. They must have a cooling off period: during the 14 days after signing the contract, the participant must have a right to require the promoter to repay any money paid in connection with participation in the scheme. This right to repayment covers both joining fees and

payments for any goods returned to the promoter (subject to a deduction only in so far as the participant is responsible for any deterioration in the condition of the goods).

The present Regulations prohibit a promoter from accepting any payment from a new participant that exceeds a £75 limit.

Finally, promoters and participants are prohibited from taking security for goods.

### **Promotional Material**

The issue, circulation or distribution of documents which are advertisements, prospectuses, circulars and notices for controlled schemes are regulated if they contain either an invitation to join or any information intended to result in someone joining a controlled scheme.

### **Exemptions**

Under the *Fair Trading Act 1973*, two types of trading schemes are exempt from **all** the requirements of the Regulations:

- (i) schemes with only one UK participant; and
- (ii) schemes where the financial benefits are no more than £30 in respect of the introduction of other participants.

The first exemption means that the Regulations do not apply to those franchise schemes that only have one UK operator. The second exemption excludes 'single level' trading schemes in which participants mainly make sales direct to the public. In single level schemes, participants may also recruit others but do not benefit from their recruits' activities. This second exemption does not mean that no offence is committed provided the payment for each introduction is under £30: the offence relates to the **total** benefits that might result from recruitment of others (ie they must not exceed £30 in total).

All other trading schemes caught by the Act are subject to all the requirements of the Regulations.

### III Review of current legislation

The Government recognises that the principle underlying trading schemes is open to abuse. This is likely if participants' earnings mostly derive from the recruitment of other participants. There is also scope for abuse if participants' earnings come from sales either to other participants or by other participants.

A general criticism of the *Fair Trading Act 1973* is that it is no longer adequate to control the different types of trading schemes now operating in the UK. The Act's controls apply to schemes that have certain features specified in the Act that were typical of pyramid selling twenty years ago. Since then there has been a proliferation of schemes that do not have all the features specified in section 118 of the Act. Consequently, these schemes avoid, sometimes deliberately, being subject to the controls embodied in Part XI of the Act. As a result, there is the anomaly that only some trading schemes are subject to the Act's controls.

In June 1993 the DTI announced that it was reviewing the existing rules covering pyramid selling;<sup>8</sup> although this was an informal review which did not then lead to any proposals being drawn up.

However, in an exchange in the House of Lords in November 1994, it was confirmed that consultation over reforming the legislation would occur in the relatively near future.<sup>9</sup>

A consultation document, entitled *Pyramid Selling and Similar Trading Schemes*, was finally published by the DTI on 16 March 1995 as part of the Government's Deregulation Initiative. This document proposed amending Part XI of the Act and replacing the *Pyramid Selling Schemes Regulations 1989* and the *Pyramid Selling Schemes (Amendment) Regulations 1990* with new Trading Schemes Regulations. The main effect would be to widen the scope of the controls and increase the effectiveness of the protection for participants while reducing the compliance costs for promoters.

Announcing this consultation document Earl Ferrers, Minister for Consumer Affairs, said:

"I have published a consultation document to seek views on proposals for changes to the Fair Trading Act 1973. Since it was introduced over 20 years ago, there has been a proliferation of pyramid selling schemes which are outside the Act's controls. At present, there is little protection for those who join these schemes. We are proposing to up-date the Act and to overhaul the Regulations which cover pyramid selling.

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<sup>8</sup> HC Deb 10 June 1993 c.299W

<sup>9</sup> HL Deb 23 November 1994 c.271

There are a number of entirely legitimate schemes which provide thousands of individuals with opportunities to become entrepreneurs. These businesses are being harmed by the practices of a few rogue operators.

Unscrupulous promoters appear to devise schemes deliberately to avoid being subject to the Fair Trading Act's controls. Some schemes appear to be fraudulent but, under the present law, it is often difficult to prosecute the promoters until the pattern of trading has been established over a period. The result is that unsuspecting people, who have joined such schemes, have lost considerable sums of money.

For example, some schemes advertise opportunities for members to become 'financially independent' through getting money by recruiting new members. The vast majority of those who join, sometimes more than 80 per cent, lose all the money which they pay into the scheme. This is because these schemes are constructed on a pyramid basis, with the redistribution of the monthly subscriptions of most members being passed up through a number of levels to the much smaller numbers who joined earlier. These schemes collapse when no new investor can be found to join. Examination then usually reveals that much of the income has found its way to the original promoters.

The Government proposes to remove loopholes in the Fair Trading Act and to overhaul the Regulations for trading schemes. The proposals are designed to protect not only those who might consider joining any sort of trading scheme but also those who already belong to any such scheme.

We are not only seeking views from organisations who represent business and consumers, but we also want to hear from members of the public, particularly those who belong to trading schemes. For the first time, we are issuing a Comments Booklet which will make it easier for the public to understand the complex issues and to make their views known."<sup>10</sup>

This consultation period ended on 31 May 1995.

The most important proposed amendment to the *Fair Trading Act* contained in the consultation document would make all trading schemes whose participants recruit others subject to the Act's controls. These controls make some practices unlawful and regulate the promotion and operation of schemes. Other proposed amendments would:

- make it a new criminal offence to operate or to promote a "money circulation scheme", that is a scheme in which payments to any participant derive from payments made by other participants;

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<sup>10</sup> DTI press notice, *Overhaul Of Pyramid Selling Legislation Proposed*, 16 March 1995

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- give Trading Standards Officers enforcement powers and lengthen the period for bringing a prosecution from 12 months to three years;
- exempt from the Regulations those trading schemes whose participants' earnings come only from their own sales and their own recruitment; all trading schemes would be subject to the Regulations controlling promotional material directed at potential participants.
- ensure that before someone participates in a scheme and before the promoter accepts any payment or undertaking to make a payment from a potential participant, the promoter and participant have signed a written agreement which contains all the terms relating to his participation and which complies with the Regulation that specifies contract terms.

The consultation document specified a number of new contractual terms which it suggested should be incorporated into any written contract between a promoter and a participant. In particular, it suggested that every participant must have a contract with the promoter that specifies:

- the name and address of the promoter;
- a description of what is sold through the scheme;
- the role of the scheme's participants;
- details of how to cancel the contract and how to recover any money already paid;
- details of how to terminate the contract; and
- a statutory warning with useful information.

The consultation document suggested that it should be a term of the written agreement that if a promoter terminates a contract with a participant, the participant can require the promoter to buy back goods, returned at the promoter's expense, at the tax-inclusive price originally paid (adjusted if goods have deteriorated through the fault of the participant). Similarly, participants should be able to terminate without penalty on giving written notice to the promoter.

The consultation document also suggested that there should be an invoice for any sale to a participant for which an order form has not been completed. All order forms and invoices must include a statutory warning against buying excessive stock.

It is also proposed changing the cooling-off periods in which a new participant could cancel his contract with the promoter and reclaim any joining fee to either 7, 14 or 30 days. For recovering payments on returned goods, the consultation document suggested that the cooling-

off period could be changed to either 14, 30 or even 90 days. [Under current legislation, the cooling-off period is 14 days for all payments by new participants and thereafter, on terminating a contract, a right to a 90% refund on returned goods].

Other proposals made in this consultation document include the proposal that participants have a free choice whether or not to purchase any good or service through the scheme.

Others concerned regulating publicity material used by trading schemes. The document suggested that regulations should apply to **any form** of publicity material directed at potential participants except that which:

- does not indicate the financial benefits from participation in the scheme; or
- is subject to the British code of Advertising Practice.

Furthermore, publicity material containing an invitation to join a trading scheme should include:

- the name and address of the promoter;
- a description of the goods or services supplied through the scheme ; and
- a statutory warning.

However, the consultation document proposed that any other publicity material directed at potential participants should only include:

- the name of the promoter; and
- a description of the goods or services supplied through the scheme.

Finally, anyone making a claim about potential financial benefits from participation in any publicity material directed at potential participants would have to be able to substantiate the claim.

## IV The Trading Schemes Bill [Bill 22 of 1995/96]

Sir Nicholas Scott's Private Member's Bill on trading schemes was introduced in the House of Commons on 13 December 1995. It is to have its Second Reading on 2 February 1996.

The Bill amends the scope of the definition of trading schemes under Part XI of the *Fair Trading Act 1973* to apply controls to a wider range of schemes. The purpose is to protect vulnerable people from financial loss by ensuring that all trading schemes whose members recruit others, (excepting only those subject to control under the *Financial Services Act 1986*), are subject to the controls under Part XI of the *Fair Trading Act 1973*.

In describing this Bill, Sir Nicholas Scott has said:

"My Bill is designed to close a loophole in the law through which the promoters of a wide range of 'get rich quick' schemes have managed to avoid prosecution. It is estimated that over the past two years investors, in particular those looking for a good way to invest their redundancy payments, have lost over £30 million.

The most worrying schemes are strikingly similar to the widely reported pyramid selling scams in Romania and Russia, whereby participants are persuaded to make regular payments to the promoter and to encourage others to do the same. They do so with the promise that they will, after a period of time, receive a huge return not only on their own investment but also on the investments made by others they have introduced to the scheme. To gain credibility some of the promoters have made payments to a few of the original participants, but usually within a year many of the promoters have absconded or managed to transfer the accumulated funds to off-shore bank accounts.

This type of scheme appears to be devised to escape the controls of the Fair Trading Act and the Financial Services Act. The most effective solution is to widen the scope of the controls over pyramid selling and similar trading schemes in Part XI of the Fair Trading Act. These controls outlaw recruitment based on the promise of rewards for recruiting others.

The purpose of my Bill is to up-date Part XI of the *Fair Trading Act* so that it applies to all trading schemes whose members recruit others. It is not my intention to impose bureaucratic restraint on the direct selling industry. The legitimate direct selling industry, which meets the requirements of the Fair Trading Act's controls, now accounts for £1 billion of the retail trade sector and offers very useful part-time employment to thousands of would-be entrepreneurs. The industry deserves encouragement and its sales force deserve the protection of the law. With the growing number of people seeking ways

of supplementing the family income, I want to make sure that this protection covers all those who wish to take up any such opportunity".<sup>11</sup>

As mentioned above [on page 8], section 118 of the *Fair Trading Act 1973* defines the trading schemes to which Part XI of the *Fair Trading Act 1973* applies. Sir Nicholas Scott's Bill introduces two new clauses. Clause 1 proposes to substitute section 118 with a new clause designed to widen the definition of trading schemes caught by the Act. Specifically, clause 1 of his Bill states:

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

118.- (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 subsection (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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<sup>11</sup> *Trading Schemes Bill* [Bill 22 of 1995/96], explanatory note from Sir Nicholas Scott's office, January 1996

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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."

Under clause 1 of this Bill, for Part XI to apply to a trading scheme, the scheme must meet two criteria: first, participants must expect to benefit from their participation in the scheme in respect of any of the specified matters; and second, goods or services either have to be provided by the promoter to the participants for them to supply to someone else (or to use for the purposes of such a supply) or have to be supplied by the promoter to third parties introduced to him by participants. [However, this second criterion may be disapplied by an order made by the Secretary of State].

Clause 2 of the Bill extends the scope of the regulation-making power in section 119(1) of the Act to include any form of advertisement, prospectus, circular or notice directed at potential participants in a trading scheme to which Part XI of that Act applies. In effect, clause 2 is a positive response to developments in marketing; it extends the existing Regulations on promotional material to cover non-documentary forms, such as videos.

## V The Government's View

On 19 December 1995, the Consumer Affairs Minister, Mr John Taylor, welcomed Sir Nicholas Scott's Bill. He said:

"The legislation governing pyramid and similar trading schemes is over twenty years old. These controls provide essential protection to members of such schemes. While many trading schemes provide legitimate opportunities for thousands of individuals to become entrepreneurs, there has been a proliferation of schemes outside the controls. Because of the risks to members of such schemes the Government published a consultation document earlier this year.

Sir Nicholas Scott's Bill, which would implement the main proposal of the Government's consultation document would bring protection to thousands of small entrepreneurs. It will aim to widen existing controls making them apply to all trading schemes whose members recruit others."<sup>12</sup>

The Government acknowledged that the *Fair Trading Act 1973* controls do not apply to all trading schemes but only to those who had characteristics typical of schemes 20 years ago. In particular, they do not apply to schemes where essentially all that is sold is membership of the scheme. The Government has stated its support of this Bill because it is intended to close this loophole.

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<sup>12</sup> DTI press notice, *Trading Schemes - A New Bill*, 19 December 1995

## VI Other calls for reform

In 1994 the DTI received a number of representations calling for reform, in particular from Amway UK Ltd, which is a particularly successful network marketing company. It has lobbied for some time that the existing controls are insufficient to protect those who join network marketing schemes. Quite recently the company published a leaflet listing its proposals which it issued to many of its members.<sup>13</sup> Amway's principal concern is that "pyramid selling" has come to be thought of as a purely criminal activity, even though the Government regards the title as interchangeable with others.<sup>14</sup> Amway proposed that "pyramid selling" only be used to refer to individuals breaking the law; and that "direct selling" become the correct term to describe this type of business. The company's other major recommendations, as set out in its leaflet, were:

- Protection for participants in direct selling schemes should be extended to all travelling salesmen who sell their company's products away from company premises, and whose salary is part determined by a commission on sales.

[It is not quite clear in Amway's leaflet quite what they mean by this, given that many aspects of the relationship between a promoter and a participant are unique to direct marketing, and do not bear direct comparison to the relationship between a company and its sales force.]

- Participants should have the right to return any goods, and get a full refund, for whatever reason, within ninety days of joining a direct selling scheme.
- Promoters should be banned from demanding payment solely for registration rights, if this is not connected with the supply of goods or services.
- Trading Standards Officers should be made responsible for enforcing the legislation, rather than the Secretary of State.
- At present, promoters cannot accept more than £75 from any participant within seven days of the participant joining the scheme. The seven day limit is insufficient and, as an alternative control, promoters should be banned from selling stock to a participant if it comes to over 70% of that participant's guaranteed orders.

In April 1994, whilst the Government conceded that it needed to review the existing rules covering pyramid selling and other similar trading schemes, it stated that it did not consider all the recommendations made by Amway UK Ltd to be appropriate.<sup>15</sup>

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<sup>13</sup> "Now What Was That I Had To Do Again?", *Amway UK Ltd*, 1994

<sup>14</sup> HC Deb 14 July 1992 c.664W

<sup>15</sup> HC Deb 27 April 1994 c.167W

This eventually led to the DTI's consultation document published on 16 March 1995 to seek views on updating the *Fair Trading Act 1973* and overhauling the regulations which cover pyramid selling and similar trading schemes.<sup>16</sup>

One other recent development in this area has been the action taken by the DTI to move against schemes where promises of rewards for recruiting others are the main method of operation. Several companies operating such schemes have recently been wound-up by the Courts. These included Alchemy UK plc, 3T Publications Ltd (trading as FPW), and Global Pioneers Ltd.<sup>17</sup>

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<sup>16</sup> DTI, *Pyramid Selling and Similar Trading Schemes: a consultation document*, March 1995

<sup>17</sup> DTI press notice, *Trading Schemes - A New Bill*, 19 December 1995

## **VII Further Reading:**

1. DTI, *Review of Legislation on Pyramid Selling: a consultation document*, House of Commons Library deposited paper NS 2653, December 1986.
2. DTI, *Pyramid selling/multi-level marketing*, House of Commons Library deposited paper NS 3914, 29 April 1988.
3. DTI, *Pyramid Selling and Similar Trading Schemes: a consultation document*, March 1995.
4. *The Trading Schemes Bill* [Bill 22 of 1995/96].