
EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the application of section 53(1)(c) of the Law of Property Act 1925 (c.20) (“the 1925 Act”) to dispositions of units in unit trust schemes, so as to make transfers of such units possible by electronic communication. It also modifies the application of section 1(2)(a)(ii) of the Requirements of Writing (Scotland) Act 1995 (c.7) (“the 1995 Act”) to gifts of such units, so as to make them possible by electronic communication. Finally, it modifies the application of section VI of the Statute of Frauds (Ireland) 1695 (c.12 (Ir)) (“the 1695 Act”) to the grant or assignment of such units so as to make them possible by electronic communication.

Section 53(1)(c) of the 1925 Act requires a disposition of an equitable interest or trust to be in writing signed by the person disposing of it, or by his agent authorised in writing or by will. Article 3 of this Order provides that section 53(1)(c) does not apply to a disposition by means of an electronic communication, where that communication is made by the person disposing of the units or his agent authorised in writing or by will. “Electronic communication” has the same meaning as in the Electronic Communications Act 2000 (c.8). A further condition for article 3 to operate is that any evidence that the person responsible for the register of the scheme may require (to prove that the person disposing of the units has the right to do so) has been provided. Article 3(3) gives the person responsible for the register of the scheme (the trustee or manager) a right to refuse a transfer by electronic communication. If he does so in a particular case, article 3 shall be of no effect in that case.

Section 1(2)(a)(ii) of the 1995 Act provides that a written document is required for a gratuitous unilateral obligation (a gift) except if undertaken in the course of business. Article 4 of this Order provides that section 1(2)(a)(ii) does not apply to an obligation by means of an electronic communication made by the debtor. There is a similar condition that any evidence required by the person responsible for the register of the scheme must be provided and a similar right to refuse to register a transfer by electronic communication.

Section VI of the 1695 Act requires a grant or assignment of any trust or confidence to be in writing signed by the party granting or assigning it or effected by will. Article 5 of this Order provides that section VI does not apply to a grant or assignment where the grant or assignment is by means of electronic communication. There is a similar condition as in articles 3 and 4 that any evidence required by the person responsible for the register of the scheme must be provided and a similar right to refuse to register a transfer by electronic communication.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available on HM Treasury’s website (www.hm-treasury.gov.uk) or from Savings and Investment Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum which is available with the instrument on the OPSI website (www.opsi.gov.uk).