
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Open-Ended Investment Companies Regulations 2001 (S.I. 2001/1228) ("the principal Regulations") to make transfers of shares in open-ended investment companies ("OEICs") possible by electronic communication.

Regulation 2(4) inserts paragraphs 4A to 4C into, and makes other consequential amendments to, Schedule 4 to the principal Regulations. New paragraph 4A(1) applies section 136 of the Law of Property Act 1925 (c.20) to an assignment of shares by electronic communication, with modifications. That section provides that an absolute assignment by writing signed by the assignor of a debt or other legal thing in action is effectual in law to transfer the legal right to that debt or thing in action, provided the debtor, trustee or other person from whom the assignor would have been entitled to claim the debt or thing in action is given express notice in writing. A share in an open-ended investment company is a legal thing in action.

The modifications made by new paragraph 4A(1) are that the assignment must be by electronic communication made by the assignor or by his agent authorised in writing, and the express notice must be given to the company by electronic communication. "Electronic communication" has the same meaning as in the Electronic Communications Act 2000 (c.8).

New paragraph 4A(2) provides that the application of section 136 by new paragraph 4A(1) is of no effect in a particular case if the company refuses to register the transfer of shares in that case.

New paragraph 4A(1) does not affect any transfer or assignment which would otherwise be effectual in law (see new paragraph 4A(3)).

New paragraph 4B disapplies section 1(2)(a)(ii) of the Requirements of Writing (Scotland) Act 1995 (c.7) (which requires gratuitous unilateral obligations (gifts) to be in writing) to gifts of OEIC shares by electronic communication. The company may require evidence of the right of the transferor to make the gift. However, the disapplication is of no effect if the company refuses to register the transfer (new paragraph 4B(3)).

New paragraph 4C requires the company to take reasonable steps to ensure that an electronic communication purporting to be made by a transferor is in fact made by that transferor; but failure to take such steps does not make the transfer void or otherwise affect its validity.

New paragraph 5(3A) specifies the meaning of the phrase "transfer documents" which are required in relation to a transfer made by electronic communication. A company may not register a transfer unless the transfer documents have been delivered to it (paragraph 5(3) of the principal Regulations).

New paragraph 6(2) gives open-ended investment companies a right to refuse to register any transfer of shares made 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 alongside the instrument on the OPSI website (www.opsi.gov.uk).