

“trust deed” has the meaning given in that part of its definition in the Glossary contained in the 2001 instrument^(a) which relates to an authorised unit trust scheme;

“trustee” has the meaning given in section 237(2) of the Act;

“unit” has the meaning given in that part of its definition in the Glossary contained in the 2001 instrument which relates to an authorised unit trust scheme; and

“unitholder” has the meaning given in that part of its definition in the Glossary contained in the 2001 instrument ^(b).

Dispositions of units in authorised unit trust schemes by electronic communication

3.—(1) This article extends to England and Wales only.

(2) Subject to paragraph (4), section 53(1)(c) of the Law of Property Act 1925^(c) (which imposes requirements for certain dispositions to be in writing) shall not apply (if it would otherwise do so) to any disposition of units in an authorised unit trust scheme where—

- (a) the disposition is by means of electronic communication;
- (b) the electronic communication is made by the person disposing of the units or by his agent authorised in writing or by will; and
- (c) such evidence (if any) as the trustee or manager of the scheme, being the person responsible for the register of unitholders in accordance with the trust deed, may require to prove the right of the person referred to in sub-paragraph (b) to dispose of the units is provided to the trustee or manager.

(3) The trustee or manager mentioned in paragraph (2)(c) may refuse to register a transfer of units by means of electronic communication.

(4) This article shall be of no effect in a particular case if the trustee or manager mentioned in paragraph (2)(c) refuses to register the transfer of units which would, apart from paragraph (3), be made by the disposition in that case.

Gratuitous unilateral obligations relating to units in authorised unit trust schemes

4.—(1) This article extends to Scotland only.

(2) Subject to paragraph (5), section 1(2)(a)(ii) of the Requirements of Writing (Scotland) Act 1995^(d) (which requires certain gratuitous unilateral obligations to be in writing) shall not apply (if it would otherwise do so) to any gratuitous unilateral obligation relating to units in an authorised unit trust scheme where—

- (a) the obligation is created by means of electronic communication;
- (b) the electronic communication is made by the debtor in the obligation; and
- (c) such evidence (if any) as the trustee or manager of the scheme, being the person responsible for the register of unitholders in accordance with the trust deed, may require to prove the right of the person referred to in sub-paragraph (b) to create the obligation is provided to the trustee or manager.

(3) Where section 1(2)(a)(ii) of that Act does not apply by virtue of paragraph (2), the obligation shall not be considered an obligation mentioned in subsection (2)(a) of that section for the purposes of subsection (3).

(4) The trustee or manager mentioned in paragraph (2)(c) may refuse to register a transfer of units by means of electronic communication.

(a) The definition of “trust deed” in the 2001 instrument was amended by the Collective Investment Schemes Sourcebook (Consequential Amendments) Instrument (2004/34), which is available on the Authority’s website (www.fsa.gov.uk).

(b) The definition of “unitholder” in the 2001 instrument was amended by the Collective Investment Schemes Sourcebook (Consequential Amendments) Instrument (2004/34).

(c) 1925 c. 20.

(d) 1995 c. 7.

(5) This article shall be of no effect in a particular case if the trustee or manager mentioned in paragraph (2)(c) refuses to register the transfer of units which would, apart from paragraph (4), be made by the creation of the obligation in that case.

Grants or assignments of any trust or confidence

5.—(1) This article extends to Northern Ireland only.

(2) Subject to paragraph (4), section 6 of the Statute of Frauds (Ireland) 1695(a) (which requires all grants and assignments of any trust or confidence to be in writing) shall not apply (if it would otherwise do so) to any grant or assignment of units in an authorised unit trust scheme where—

- (a) the grant or assignment is by means of electronic communication;
- (b) the electronic communication is made by the person granting or assigning the units; and
- (c) such evidence (if any) as the trustee or manager of the scheme, being the person responsible for the register of unitholders in accordance with the trust deed, may require to prove the right of the person referred to in sub-paragraph (b) to grant or assign the units is provided to the trustee or manager.

(3) The trustee or manager mentioned in paragraph (2)(c) may refuse to register a transfer of units by means of electronic communication.

(4) This article shall be of no effect in a particular case if the trustee or manager mentioned in paragraph (2)(c) refuses to register the transfer of units which would, apart from paragraph (3), be made by the grant or assignment in that case.

Name

Name

Date

Two of the Lords Commissioners of Her Majesty's Treasury

(a) 1695 c.12 (Ir)

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).

© Crown copyright 2008

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£4.00