These notes refer to the Perpetuities and Accumulations Act 2009 (c.18) which received Royal Assent on 12 November 2009

PERPETUITIES AND ACCUMULATIONS ACT 2009

EXPLANATORY NOTES

SUMMARY

19. The Act simplifies and modernises the rule against perpetuities and the rule against excessive accumulations.

20. The Act applies the rule against perpetuities only to the estates, interests, rights or powers mentioned in the Act. The estates, interests, rights and powers which the Act deems to be within the application of the rule include—

- successive estates or interests, including an estate or interest which arises (in the case of land) under a right of reverter on the determination of a determinable fee simple, or (in the case of property other than land) under a resulting trust on the determination of a determinable interest in that property;
- an estate or interest subject to a condition precedent;
- where an estate or interest is subject to a condition subsequent, any right of re-entry in respect of land (or equivalent right for property other than land) if the condition is broken;
- successive interests under the doctrine of executory bequests;
- powers of appointment.

A fundamental characteristic of all but one of these categories of estates, interests, rights and powers is that they exist under a trust. The exceptional category comprises successive interests under the doctrine of executory bequests (see paragraph 34 below). The rule under the Act does not apply to future rights outside these categories, such as future easements, options to purchase, and rights of pre-emption.

21. The Act preserves the effect of the pre-Act exceptions from the rule only where they are relevant to the rule as applied by the Act. For example, the exception for gifts over from one charity to another, where a settlor specifies that a gift to one charity is to pass to another charity if a specified event occurs, is preserved by the Act (see paragraphs 39 and 40 below). Similarly, interests arising under relevant pension schemes continue to be exempt.

22. For most cases, the Act replaces the common law perpetuity period and the pre-Act statutory perpetuity periods with a single statutory perpetuity period of 125 years. Under the Act, the period starts from the date when the instrument creating the interest in question takes effect. However, and subject to two exceptions, if the instrument is created in the exercise of a special power of appointment, the perpetuity period is the same period (in terms of duration and commencement date) as that applicable to the instrument which created the power. The exceptions are: interests or rights arising under an instrument (a) nominating benefits under a relevant pension scheme, or (b) made

in the exercise of a power of advancement under such a scheme. In these cases, the perpetuity period starts when the member in question joined the scheme.

23. The Act preserves the effect of the reforms introduced in 1964 such as the wait and see principle and the class closing provision.

24. The Act repeals the rule against excessive accumulations and substitutes for it a much narrower statutory restriction on accumulations applying to instruments to the extent that they provide for property to be held on trust for charitable purposes. The maximum accumulation period is 21 years unless the trust instrument specifies that the duty or power to accumulate is to cease to have effect on the death of the settlor or, where there are multiple settlors, the death of one of them identified by name or by the order of their deaths. The Act's restrictions on accumulations do not apply in cases where the court or the Charity Commission has made specific provision.

25. The Act generally applies to instruments taking effect on or after the commencement day, but there are two classes of instrument to which the Act (other than section 12) does not apply even though they take effect on or after the commencement day. They are—

    - wills executed before, but taking effect on or after, the commencement day; and
    - instruments taking effect on or after the commencement day which are made in the exercise of a special power of appointment, where the special power was created by an instrument which took effect before that day.

26. Section 12 differs from the other provisions of the Act in that it applies to wills executed before the commencement day, whether or not the will in question took effect before commencement, and to instruments (other than wills) taking effect before commencement.

27. Section 12 gives trustees of pre-commencement trusts, where the perpetuity period is defined by reference to a life or lives and it is difficult or not reasonably practicable to ascertain whether the lives have ended (and therefore whether the perpetuity period has ended), a right to opt for a fixed period of 100 years.

28. It is possible to create trusts orally rather than in writing. The provisions of the Act apply equally to such trusts.