*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

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes relate to the Perpetuities and Accumulations Act which received Royal Assent on 12 November 2009. They have been prepared by the Ministry of Justice in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So, where a section or part of a section does not seem to require any explanation or comment, none is given.

3. A glossary set out at the end of these Notes explains some of the terms used.

### SUMMARY AND BACKGROUND

4. The Act, subject to minor modifications, gives effect to the recommendations set out in the Law Commission's 1998 report *The Rules Against Perpetuities and Excessive Accumulations* (Law Com. 251) HC 579. The Act modifies the operation of two legal rules known as the rule against perpetuities and the rule against excessive accumulations. The rules are most commonly encountered in the context of trusts. The two rules are distinct but related.

### The rule against perpetuities

#### *The common law rule*

5. The rule against perpetuities was developed by the courts at the end of the seventeenth century. The rule restricts the time period within which future interests in property must vest. The perpetuity period is the length of a life or lives in being, plus 21 years. A life in being means a life in being at the time of the disposition. Lives in being may be expressly specified in the instrument by which the disposition is made (for example, by using a royal lives clause like "the lineal descendants of Queen Victoria living at the time of my death"). If no lives are specified, the lives in being will be the persons whose lives are connected with the date of vesting of the disposition. So, for example, in a gift to "the first of A's great-great-grandchildren to play chess with B", where no such great-great-grandchildren have been born at the time of the gift, B's is the measuring life – the life in being.

6. The application of this common law rule, which still applies without statutory modifications to dispositions made before 16 July 1964, can be demonstrated by an example. X makes a gift of property in a will to the first of A's children to attain the age of 21. On X's death the will takes effect. It purports to create a property interest for the first of A's children to meet the condition specified. The perpetuity period will begin to run on the date of X's death and will continue for the remainder of A's life plus 21 years. If one looks at the matter as at the date of X's death, it is certain that any child of A will attain 21 (if at all) within 21 years of A's death, since A cannot produce more children once dead. The gift therefore does not infringe the rule against perpetuities.

7. On the other hand, a gift in X's will to the first of A's children to become a doctor would be void at common law, assuming none of them is already a doctor. It is not certain, at the date of X's death, that any child of A will become a doctor (if at all) within 21 years of A's death. It is certainly possible that a child of A may become a doctor within that time. However, looked at from the date of X's death, it is possible that the first child of A to become a doctor may not do so until after the perpetuity period has expired. Hence the gift would be void at common law.

8. The rule against perpetuities was originally developed in the context of family settlements to curtail control by one generation of the use of property by future generations. However, the rule was later extended to other types of property rights such as future easements, options to purchase and some rights of pre-emption.

***Perpetuities and Accumulations Act 1964***

9. The Perpetuities and Accumulations Act 1964 ("the 1964 Act"), which came into force on 16 July 1964, modified the operation of the common law rule. The 1964 Act, which was based on the 1956 report of the Law Reform Committee (Fourth Report, *The rule against perpetuities* (1956) Cmnd 18), contained three key reforms to the common law rule. These reforms apply in relation to dispositions made on or after 16 July 1964.

10. First, it allowed settlors to specify a fixed perpetuity period of up to 80 years instead of having to rely on the common law period of a life in being plus 21 years.

11. Second, it introduced the principle of "wait and see". This means that, where an interest in property could possibly vest outside the perpetuity period and so would be void at common law, it is permissible to "wait and see" whether the property will in fact vest within the perpetuity period. Only when it becomes clear that the gift cannot so vest will the gift be void. So in the example above (at paragraph 7), the gift would be void only if no child became a doctor within 21 years of A's death.

12. Third, the 1964 Act introduced a number of other "gift-saving" devices. Class closing rules are one such device which allow a gift to be saved by the exclusion of a beneficiary whose inclusion would invalidate a gift. Another ensures that a gift will not be invalid automatically just because it follows a previous interest which violates the rule.

**The rule against excessive accumulations**

13. A settlor of a trust may direct trustees to convert income into capital, instead of paying it immediately to an income beneficiary. The effect of such a direction is to build up a larger fund for the ultimate benefit of those beneficiaries whom the settlor directs should be entitled to the capital in the future. For example, A may wish her grandson, B, who is currently 10 years old, to acquire a large fund that will enable him to buy a house as an adult. She may create a trust of £10,000 to vest in him after her death. Instead of designating a beneficiary who will be entitled to the income earned on this capital during her lifetime, or taking that income herself, A may instruct the trustees to accumulate it so that there will be a larger fund for B to draw upon once A dies.

14. Accumulation, however, should be contrasted with the administrative retention of income, which is the retention of income to build up reserves not intended for the benefit of the person entitled to the capital fund.

15. Unlike the rule against perpetuities, which originally developed as a common law rule, the rule against excessive accumulations is a statutory rule. It restricts the period during which income may be accumulated. The rule operates independently of, and in addition to, the rule against perpetuities. It came about as a direct response to the case of *Thellusson v Woodford* ((1799) 4 Ves 227, 338; 31 ER 117, 171; (1805) 11 Ves 112, 147; 32 ER 1030, 1044). In that case, the settlor's direction that the income on his substantial estate should be accumulated meant that none of his descendants living at his death could enjoy any benefit from the estate; this prompted much public criticism at the time. In addition, it was feared that the ability to accumulate income indefinitely could result in such a concentration of wealth in private hands that it might compromise the economic independence of the nation or even threaten the power of the Crown.

16. The pre-Act rule against excessive accumulations is set out in section 164 of the Law of Property Act 1925 ("the LPA 1925") and section 13 of the 1964 Act, which permit a settlor to select one of six specified periods, after which an accumulation of income had to cease. The periods under section 164 of the LPA 1925 are—

- the life of the grantor or settlor;
- a term of 21 years from the death of the grantor, settlor or testator;
- the duration of the minority or respective minorities of any person or persons living or en ventre sa mere (conceived) at the death of the grantor, settlor or testator;
- the minority or respective minorities of any person or persons who under the limitations of the instrument directing the accumulations would, for the time being, if of full age, be entitled to the income directed to be accumulated.

The periods under section 13 of the 1964 Act are—

- a term of 21 years from the date of the disposition;

- the duration of the minority or respective minorities of any person or persons in being at that date.

17. Where a period is chosen by a settlor that is not one of the statutory periods, the closest statutory period is applied. Where the settlor omits to specify a period, the court will apply one of the periods, based on what it considers the settlor would have intended.

18. The effect of the rule is to make any duty or power to accumulate have no effect to the extent that it exceeds the relevant statutory period. In these circumstances where a duty or power ceases to have effect, the income passes to the person who would have been entitled to it if no accumulation had been directed. The rule does not apply to settlements made by a corporate settlor.

**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.

## TERRITORIAL EXTENT AND APPLICATION

29. The Act extends to England and Wales. It does not affect the functions of the National Assembly for Wales.

## COMMENTARY ON SECTIONS

### Application of the rule against perpetuities

***Section 1: Application of the rule***

30. Section 1 defines the circumstances in which the rule against perpetuities applies. Only the estates, interests, powers and rights mentioned in section 1 are subject to the rule against perpetuities. As a result the scope of the rule is narrowed where the Act applies (see section 15). Under the Act the rule does not apply, for example, to most future easements, options and rights of pre-emption, which will fall outside these categories. Most of the pre-Act exceptions to the rule do not need to be replicated, as they do not fall within section 1.

31. *Subsection (2)* applies the rule against perpetuities to each of the successive estates and interests created by an instrument which limits property in trust. This means that, where property is given to be held on trust for A, then for B, and thereafter goes to C absolutely, the rule has to be applied to the interests of A, B and C separately. Any of the successive estates or interests may be subject to a contingency. For example, a trust is created where the terms are that A will be entitled to the income for life from A's $18^{th}$ birthday; then, subject to A's interest, the capital will pass to whichever of B and C survive A; or, if both survive, to B and C in equal shares; or, if neither survive, then to charity X. Here the interests of A, B, C and X are all subject to the rule under the Act. Subsection (7) provides that the following estates and interests are within the scope of subsection (2)—

- an estate or interest arising under a right of reverter on the termination of a determinable freehold interest in land. For example, Y grants land to trustees to be held on trust for a youth football club until the land ceases to be used as a football

pitch. If in fact the land ceases to be so used, it reverts to Y (or to Y's estate, if Y is deceased). The effect of the Act is that Y's interest under a right of reverter is treated as a successive interest arising on the determination of the determinable estate and is therefore subject to the rule against perpetuities;

- an estate or interest arising under a resulting trust on the determination of a prior determinable interest. For example, Y gives a painting to trustees to be held on trust for a specified museum until the painting ceases to be on display at the museum. If the painting ceases to be displayed, the interest of the museum ceases and the painting will be held on automatic resulting trust for Y or (if Y is deceased) for Y's estate. The Act subjects Y's interest under the automatic resulting trust to the rule against perpetuities.

32. *Subsection (3)* applies the rule against perpetuities to an estate or interest in property held on trust which is subject to a condition precedent but which is not one of successive estates or interests, that is, where it is the sole estate or interest created by the trust instrument. The condition precedent might be a condition to be fulfilled by a particular person, for example, a gift "to X provided he becomes a train driver". Or it might determine who should receive the property: for example, a gift "to the first person to land on Mars" or "to my first great-great-grandchild".

33. *Subsection (4)* provides that, where an instrument creates an estate or interest subject to a condition subsequent, the rule against perpetuities applies to the rights of the persons who will become entitled to the property if the condition is broken. For example, A transfers a piano to trustees to hold on trust for A's grandchildren in equal shares on condition that none of them becomes a solicitor by the age of 30. The trust instrument provides that if, in breach of the condition, one of A's grandchildren does become a solicitor by the age of 30, the piano will pass to charity B. The effect of subsection (4) is that the rule against perpetuities applies to the right of charity B to take the piano on breach of the condition. If none of A's grandchildren breaches the condition within the perpetuity period, charity B's interest will fail to take effect, and each grandchild's interest will become absolute.

34. Under the doctrine of executory bequests it is possible to create successive legal interests in personal property by will without using a trust. *Subsection (5)* applies the rule against perpetuities to each of the successive interests.

35. *Subsection (6)* applies the rule to powers of appointment, with the result that a power of appointment must become exercisable within the perpetuity period or it will be void (and, if it is a special power, may be exercised only within the perpetuity period – see section 7(3) to (6)). For example, C creates a trust with a special power of appointment exercisable by trustees once one or more of C's grandchildren has attained the age of 40. The power of appointment will be void if none of the grandchildren reaches the age of 40 within the perpetuity period. Powers of appointment are defined in sections 11 and 20.

36. *Subsection (8)* provides that section 1 has effect subject to the exceptions made by sections 2 and 3.

37. *Subsection (9)* repeals the second limb of section 4(3) of the Law of Property Act 1925 which provides that rights of entry affecting a legal freehold estate are confined to the perpetuity period. The repeal is with reference to instruments taking effect on or after the commencement day for the Act (section 15) and is made because section 1 defines when the rule applies for such instruments.

***Section 2: Exceptions to the rule's application***

38. Section 2 provides for certain general exceptions to the application of the rule against perpetuities (*subsection (1)*).

39. *Subsections (2) and (3)* replicate pre-Act exceptions to the rule against perpetuities. The subsections apply in certain circumstances where provision has been made for property to pass from one charity to another. *Subsection (2)* applies where a charity is granted an estate or interest in property with a gift over to another charity on the occurrence of a specified determining event. A "charity" is defined by section 1(1) of the Charities Act 2006 as "an institution which is established for charitable purposes only and falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities". In the 2006 Act, "institution" means "an institution whether incorporated or not, and includes a trust or undertaking" (section 78(5)). For example, land is given to be held on trust for charity A but, if charity A ceases to require the land for its charitable purposes, the land is to pass to charity B. The rule against perpetuities does not apply to charity B's estate or interest. The same result follows if the gift over is for charitable purposes rather than to a named charity.

40. *Subsection (3)* applies where property is given to one charity subject to a condition subsequent, with a provision that, if the condition is broken, the property shall pass to another charity. For example, a painting is granted on trust to charity A on condition that it is displayed to the public, but to charity B if charity A breaks the condition. Charity B's right to claim possession of the painting is not subject to the rule.

41. *Subsections (4) and (5)* together define the exception from the rule against perpetuities for interests and rights arising under relevant pension schemes as defined in sections 1 and 181 of the Pension Schemes Act 1993 (section 20(4) and (5)). The basic exception is described in subsection (4) as covering interests and rights arising under such pension schemes.

42. *Subsection (5)* removes from the ambit of subsection (4) interests and rights arising under two types of private trust created in respect of property subject to a pension scheme. These are defined as interests and rights arising under an instrument (a) nominating benefits under the pension scheme or (b) made in the exercise of a power of advancement arising under the scheme. By way of example of the first, a member may make a nomination binding on the pension scheme trustees for a trust to be created with certain pension benefits in favour of a nominated person (typically death in service benefits). The interests under the trust are subject to the rule. An example

of the second is that pension scheme trustees may exercise a power of advancement to make capital payments to trustees in favour of relatives of a member before any entitlement to a pension arises. This capital sum may be settled in such a way that it creates successive interests. These interests are also subject to the rule against perpetuities.

***Section 3: Power to specify exceptions***

43. Section 3 gives the Lord Chancellor power to make an order specifying further exceptions to the rule against perpetuities. The power is exercisable by statutory instrument, subject to affirmative resolution by each House.

44. The power avoids the need for further primary legislation to deal with unforeseen arrangements that might arise in the future. For example, a new form of financial instrument might be devised which has considerable advantages over existing trust instrument vehicles, but which would be unworkable if the rule against perpetuities were to apply.

***Section 4: Abolition of existing exceptions***

45. Section 4 provides that certain pre-Act exceptions to the rule against perpetuities cease to have effect. These exceptions are unnecessary in light of sections 1 and 2. However, they continue to be relevant to instruments which took effect before commencement, to wills that were executed before commencement, and to post-commencement instruments made in the exercise of a special power of appointment created by an instrument which took effect before commencement (section 15).

**Perpetuity period of 125 years**

***Section 5: Perpetuity period***

46. Section 5 defines the length of the perpetuity period governing instruments to which the Act applies (see sections 1, 2 and 15). The perpetuity period for such instruments is 125 years.

47. *Subsection (2)* provides that subsection (1) applies whether or not the instrument specifies a perpetuity period, and that specifying a perpetuity period will be ineffective.

**Perpetuities: miscellaneous**

***Section 6: Start of the perpetuity period***

48. Section 6 specifies when the 125-year perpetuity period will start. *Subsection (1)* sets out the general rule that the perpetuity period commences when the instrument creating the estate, interest, right or power referred to in section 1 takes effect. For this purpose a will takes effect on the death of the testator (section 20(6)). The general rule applies to instruments created in the exercise of a general power of appointment: the perpetuity period is 125 years beginning on the date on which the general power is exercised, not on the date on which the power was created.

49. *Subsection (2)* provides that the perpetuity period for an instrument created in the exercise of a special power of appointment (sections 11 and 20 define a special power of appointment) begins on the date on which the instrument creating the power took effect. The Act applies to such instruments only where the instrument which created the special power took effect on or after the commencement day (section 15(1)(b)).

50. *Subsections (3) and (4)* specify when the perpetuity period starts to run in the circumstances set out in section 2(5), that is, where the interests or rights arise under an instrument nominating benefits under a relevant pension scheme, or under an instrument made in the exercise of a power of advancement arising under such a scheme. In these cases the perpetuity period of 125 years (section 5(1)) runs from when the member joined the scheme.

***Section 7: Wait and see rule***

51. The operation of the rule against perpetuities was modified by the 1964 Act, which introduced the "wait and see" principle. The "wait and see" principle means that the rule against perpetuities does not affect an estate or interest in property unless and until it becomes certain that the estate or interest will not vest within the perpetuity period. Section 7 of the Act applies this principle of "wait and see" to instruments to which the Act applies.

52. The section asks in effect whether, within the terms of the instrument, the estate, interest, right or power in question might—

- vest (in the case of an estate or interest);
- be exercised (in the case of a right of re-entry or an equivalent right in property other than land exercisable if a condition subsequent is broken, or a special power of appointment); or
- become exercisable (in the case of a general power of appointment);

outside the perpetuity period applicable to it.

53. If the answer is "yes", then the principle of "wait and see" (set out in *subsections (2), (4) and (6)*) applies, and the estate, interest, right or power is valid if in fact it vests, is exercised or becomes exercisable within the perpetuity period. Only when it is clear that this will not happen, is the estate, interest, right or power void for perpetuity. In such a case, *subsections (2)(b) and (4)(b)* preserve the validity of things already done in relation to the estate or interest, or by way of exercise of the right or power, during the "wait and see" period.

***Section 8: Exclusion of class members to avoid remoteness***

54. At common law, where a gift was made in favour of a group of people (a class) the whole gift was void if all of the possible members of the class of beneficiaries were not ascertainable during the perpetuity period. This was because at common law a gift would fail even if only a part of it might vest outside the perpetuity period. Class closing prevents this result by artificially closing the class to prevent potential members (for example, those yet unborn) from being taken into consideration.

55. The 1964 Act applies the "wait and see" principle to the class closing rule, meaning that all of the members who qualify for the gift during the perpetuity period will benefit. If all of the potential beneficiaries do not qualify during the "wait and see" period, section 4(4) of the 1964 Act allows for the exclusion of any members who did not qualify during the perpetuity period.

56. Section 8 replicates the effect of section 4(4) of the 1964 Act. Section 8 applies if it becomes apparent — whether at the time the instrument takes effect or at some later stage — that the estate or interest would be void for perpetuity if certain members (whether alive or unborn) are included in the class. Under *subsection (2)*, once it is clear that an interest will be void for perpetuity if certain potential members are included in the class, they are excluded, provided their exclusion does not exhaust the class. *Subsection (3)* provides that, if the "wait and see" rule (section 7(1) and (2)) also applies, section 8 does not invalidate anything done during the "wait and see" period (section 7(2)) in relation to the estate or interest. *Subsection (4)* specifies who is to be treated as a member or potential member of a class.

***Section 9: Saving and acceleration of expectant interests***

57. Section 9 replicates the effect of section 6 of the 1964 Act. *Subsection (1)* provides that, where an estate or interest is void for remoteness, an estate or interest ulterior (or subsequent) to, and dependent on, the void estate or interest is not void for remoteness simply for that reason. This deals with the technical problem that, at common law, if a disposition was void for perpetuity, a subsequent disposition that depended on it was also void.

58. *Subsection (2)* provides that, where a prior disposition is void for remoteness, the subsequent interest may take effect earlier than it otherwise would have done (though it can do so only if any other conditions attached to it have been fulfilled).

***Section 10: Determinable interests becoming absolute***

59. Section 10 provides that, if an estate (in land) arising under a right of reverter or an interest (in property other than land) arising under a resulting trust on the determination of a determinable interest is void under the rule, the determinable estate or interest becomes absolute. This replicates the effect of section 12 of the 1964 Act.

***Section 11: Powers of appointment***

60. The Act refers at various points to powers of appointment, special powers of appointment and general powers of appointment. Section 11 defines when a power of appointment is a "special power of appointment" for the purposes of the Act. The definition has substantially the same effect as section 7 of the 1964 Act, which does not apply by virtue of section 16. Powers of appointment not falling within the section 11 definition are classed as general powers; these are tantamount to outright ownership.

61. A power of appointment may be given so as to be exercisable in a variety of ways. The Act divides these into three categories.

62. *Subsections (1) and (2)* define when a power is a special power of appointment for the purposes of a power exercisable otherwise than by will. All such powers are special powers unless they are exercisable by one person only and that person (being of full age and capacity) could transfer all the property subject to the power to himself or herself without having to obtain consent from anyone else and without complying with any other condition.

63. *Subsections (3) and (4)* make analogous provision in relation to special powers exercisable by will.

64. *Subsections (5) and (6)* apply to powers exercisable by will or otherwise. In such cases, the power is a special power of appointment if it satisfies either subsection (2) or subsection (4).

***Section 12: Pre-commencement instruments: period difficult to ascertain***

65. Section 12 applies to instruments which have taken effect (or, in the case of wills, been executed) before the Act came into force, and which have a "lives in being" perpetuity period. Where it is difficult or not reasonably practicable to ascertain whether the lives have ended, and therefore whether the perpetuity period has ended, under section 12 the trustees have a power to "opt in" to a 100-year perpetuity period. To exercise the opt-in the trustees must execute a deed stating that the trustees believe it is difficult or not reasonably practicable to know if the perpetuity period has ended, and that subsection (2) is to apply (*subsection (1)*). This deed cannot be revoked *(subsection (3)*). The effect of the opt-in is that the trust is deemed to have always had a perpetuity period of 100 years and is subject to sections 6 to 11 of the Act. Sections 1 to 12 of the 1964 Act are treated as if they did not apply (and never applied) in relation to the trust (*subsection (2)*).

66. The power is necessarily a fiduciary power, and so must be exercised in the best interests of the beneficiaries. The power does not enable the trustees to opt in to the provisions in the Act relating to accumulations.

**Accumulations**

***Section 13: Abolition of restrictions***

67. Accumulation is the process whereby, under the terms of a trust, the trustees are authorised or required to accumulate income, thereby converting it into capital. Section 13 abolishes the pre-Act rule against excessive accumulations. Because that rule was entirely statutory, the repeal of the four relevant statutory provisions necessarily abrogates it. The repeals apply only to instruments creating powers and duties to accumulate and taking effect on or after the commencement day, other than wills made before that day. Instruments taking effect before commencement of the Act are not affected.

68. The removal of the statutory restrictions on accumulations does not mean that it is possible to accumulate income in perpetuity. This is because the rule against perpetuities, in effect, limits the life of a trust and so provides an upper limit on any accumulation.

***Section 14: Restrictions on accumulation for charitable trusts***

69. Section 14 makes specific provision in relation to charitable trusts. The section provides that any power or duty to accumulate is subject to a maximum period of 21 years, unless the trust instrument specifies that the power or duty to accumulate ceases to have effect on the death of the settlor or, where there are multiple settlors, the death of a settlor identified by name or order of death *(subsection (5))*. The 21 year period starts from the first day when the power or duty must or may be exercised (*subsection (4)*).

70. If a trust instrument provides for an accumulation period longer than 21 years, then (except where *subsection (5)* applies) the power or duty to accumulate ceases to have effect after 21 years (*subsection (3)*). *Subsection (6)* provides that the income is then distributed or applied as it would have been had there been no duty or power to accumulate in the terms of the trust. This follows the model of the pre-Act legislation on accumulations: see the Law of Property Act 1925, section 164(1).

71. *Subsection (2)* provides that the 21-year restriction on accumulation does not apply where the provision in the instrument has been made by a court or the Charity Commission for England and Wales.

**Application of statutory provisions**

***Section 15: Application of the Act***

72. Section 15 prescribes the instruments to which the Act applies.

73. The general rule is that the sections of the Act listed in *subsection (1)* apply to instruments which take effect on or after the commencement day for the Act. But they do not apply where the instrument is a will executed before that day, or is made in the exercise of a special power of appointment which was created by an instrument taking effect before that day. For such wills, or for instruments made in the exercise

of such a special power, the pre-Act law applies, subject to subsection (2). Wills are deemed to take effect on the death of the testator (section 20(6)). A reference to a will in the Act includes a reference to a codicil (section 20(7)).

74. *Subsection (2)* provides that section 12 (pre-commencement instruments: period difficult to ascertain) applies to instruments which take effect before the commencement day, and to wills executed before that day (whether or not they take effect before that day). By *subsection (3)*, section 12 cannot apply if before the commencement day the terms of the trust were exhausted or the trust property became held on charitable trusts by way of a final disposition of the property.

***Section 16: Limitation of 1964 Act to existing instruments***

75. This section excludes the application of sections 1 to 14 of the 1964 Act in relation to instruments to which the Act applies.

**General**

***Section 17: The Crown***

76. Section 17 applies the provisions of the Act to the Crown. In the case of the rule against perpetuities, it applies the provisions of the Act to Crown interests subject to the rule, but does not extend the application of the rule.

***Section 18: Rule as to duration not affected***

77. As a general rule, a trust may not be created for a non-charitable purpose. However, a small category of non-charitable purpose trusts may be regarded as valid, such as trusts for the maintenance of gravestones. These trusts are valid only if their duration is limited. The permitted period is a period equivalent to (but distinct from) the perpetuity period.

78. The Act is concerned with the law relating to the avoidance of future interests for remoteness rather than the duration of trusts. Section 18 ensures that the period permitted for the duration of non-charitable purpose trusts is not affected by the Act. The period is a life or lives in being plus 21 years, or 21 years if there is no relevant life in being.

***Section 19: Provision made otherwise than by instrument***

79. Section 19 corresponds to section 15(6) of the 1964 Act. The scope of the application of the rule against perpetuities and excessive accumulations under the Act is defined by reference to instruments. Typically these instruments are a trust deed or a will. However, it is possible to create a trust orally, without the use of writing. For the purposes of the Act, such a trust is treated as if it were made by written instrument.

***Section 20: Interpretation***

80. Section 20 provides definitions for a number of terms used in the Act.

***Section 21: Repeals***

81. Section 21 introduces the Schedule listing the repeals made by the Act. The repeals apply in relation to instruments taking effect on or after the commencement day for the Act, unless the instrument is a will executed before that day, or an instrument exercising a special power of appointment which was created by an instrument taking effect before that day (see Schedule and section 15).

## COMMENCEMENT

82. Sections 22 to 24 (inclusive) came into force on Royal Assent (section 22(1)). The remainder of the Act comes into force on such day as the Lord Chancellor may specify by order (section 22(2)).

## HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

| Stage | Date | Hansard reference |
|---|---|---|
| **House of Lords** | | |
| Introduction | 1 April 2009 | Vol. 709, Col 1081 |
| Second Reading Committee | 28 April 2009 | Vol. 710, GC1 |
| Second Reading | 11 May 2009 | Vol. 710, Col 819 |
| Committee | 20 May 2009, 2 June 2009, 9 June 2009 and 30 June 2009 | Special Public Bill Committee |
| Report | 13 July 2009 | Vol. 712, Col 939 |
| Third Reading | 20 July 2009 | Vol. 712, Col 1386 |
| **House of Commons** | | |
| Introduction | 20 July 2009 | |
| Second Reading Committee | 19 October 2009 | Second Reading Committee |
| Second Reading | 21 October 2009 | Vol. 497, Col 1027 |
| Committee | 27 October 2009 | Public Bill Committee Col 3 |
| Report and Third Reading | 2 November 2009 | Vol. 498, Col 600 |
| Royal Assent - 12 November 2009 | | House of Lords - Vol. 714, Col 918<br>House of Commons – Vol. 499, Col 418 |

## GLOSSARY

**Accumulate/accumulation:** The conversion of income arising from trust property into capital. It should be distinguished from the administrative retention of income.

**Administrative retention of income:** The temporary retention of income, usually as an administrative precaution against unseen future deficiencies. The retention of income for such purposes does not convert it to capital; it is a separate concept from the accumulation of income.

**Appoint:** To exercise a power of appointment.

**Beneficiary:** A legal person (that is, an individual or a corporation) who is entitled to the benefit of trust property, that is, entitled to it for his, her or its own benefit, and not merely as a trustee holding it for others.

**Capital:** Trust property that constitutes a pool or fund of assets, to which a particular class of beneficiaries under the trust in question may be entitled. Where there is a trust one class of beneficiaries may be entitled to the capital, and others to the income derived from it. Capital is to be distinguished from the income earned on those assets. For example, A may settle money on trust to be held first for the benefit of B for life, and then absolutely for the benefit of C. In this situation, B is entitled only to the income earned on the fund (for example, the interest earned by its investment in a bank) during B's lifetime, while C will be entitled to the money (that is, the capital sum) after B's death.

**Charitable purposes:** A charitable purpose must be for the public benefit and fall within one of the descriptions of purposes provided in section 2 of the Charities Act 2006.

**Charity:** see paragraph 39 of the Explanatory Notes.

**Charity Commission for England and Wales:** The statutory organisation which acts as the regulator and registrar of charities.

**Class-closing rules:** "Gift-saving" devices that allow potential beneficiaries whose interest would vest outside the perpetuity period to be excluded from a class of beneficiaries. This has the effect of saving the interest of the beneficiaries whose interest vests within the period. Class closing rules exist at common law and under section 4 of the Perpetuities and Accumulations Act 1964.

**Codicil:** An addition or supplement to an executed will or testament. It must be executed with all the formalities appropriate to the execution of a will.

**Common law:** Rules of law that have been derived from the decisions of the courts rather than enacted in statute by Parliament.

**Condition precedent:** A condition which delays the vesting of an interest until the occurrence of a specified event. For example, "to X if he or she graduates from medical school". A condition may be in terms of a description rather than an event. A gift "to the first person to land on Mars", or "to my first great-great-grandchild", is a gift to whatever person satisfies the stated condition.

**Condition subsequent:** A condition which provides for an interest to come to an end on the occurrence or non-occurrence of a specified event. For example, a gift of money could be made to B "provided B does not qualify as a doctor". If B does qualify as a doctor, B's right to the money will come to an end.

**Determinable interest in property:** An interest that is to come to an end on the happening of a specified event. A **determinable estate**, such as a determinable fee simple, carries a similar meaning in relation to land. For example, a gift of a sum of money "to A until A's house is no longer used as an orphanage". Whilst this type of limitation is very similar to a condition subsequent there is a subtle difference in the construction of the condition that has legal consequences. If a gift is worded in a way that suggests the event will happen, rather than might happen, a determinable interest is created—the end is determinate. When the condition is fulfilled, the interest comes to an end.

**Easement:** A right of one landowner over another's land. For example, the owner of Blackacre grants a right to the owner of Whiteacre to walk along a path through Blackacre.

**Estate:** An entitlement to land for a particular time period, which may be fixed (a lease), uncertain (for example, a life estate) or infinite (a fee simple). Under the Law of Property Act 1925, many estates in land (such as life estates or estates subject to conditions precedent) can now exist only in the context of trusts. The exceptions are the fee simple absolute in possession (freehold) and the term of years absolute (leasehold).

**Instrument:** A formal legal document.

**Income:** Assets that represent the earnings on property held on trust, to which a particular class of beneficiaries under the trust in question may be entitled. Income may be contrasted with capital and capital gains.

**Life in being:** A human being who is alive at the date of a disposition. A child who has been conceived but has not yet been born also qualifies as a life in being provided that the child is in fact born alive. The perpetuity period is the length of a life or lives in being, plus 21 years. A life in being means a life in being at the time of the disposition. Lives in being may be expressly specified in the instrument by which the disposition is made (for example, by using a royal lives clause like "the lineal descendants of Queen Victoria living at the time of my death"). If no lives are specified, the lives in being will be the persons whose lives are connected with the date of vesting of the disposition. So, for example, in a gift to "the first of A's great-great-grandchildren to play chess with B", where no such great-great-grandchildren have been born at the time of the gift, B's is the measuring life – the life in being.

**Non-charitable purpose trust:** A trust for purposes (and so not made in favour of an ascertainable group of beneficiaries) where the purposes are not charitable purposes. Very few such trusts are valid. Their duration must be confined to a period equivalent to the common law perpetuity period. An example of such a trust is a trust for the upkeep of tombs.

**Perpetuity period:** The time period within which an interest in property must vest, or be capable of vesting, in order to avoid being void for remoteness.

**Power:** In the context of the Act, an authority to act in relation to another's property. A power may be administrative or dispositive. An **administrative power** is a power, the exercise of which does not affect the beneficial interest arising under a trust, such as a power to sell or lease property. A **dispositive power** is a power, the exercise of which does affect the beneficial interests arising under a trust, for instance, a power of advancement or a power of appointment.

**Power of advancement**: A power given to trustees to apply capital for the benefit of a beneficiary under the trust who is not yet entitled to the capital. For instance, where capital is held on trust for A on reaching the age of 30, part of that capital might be paid to A at the age of 21 in order to pay for university fees.

**Power of appointment:** A power to create or transfer an interest in property. The extent of the power will depend on the terms of the instrument granting it. Under the Act general and special powers of appointment are defined in sections 11 and 20.

**Resulting trust:** A trust where the settlor of the trust property is also the beneficiary, which may arise automatically (i.e. by operation of law) in some circumstances. For example, A grants property to trustees to be held on trust for B subject to a condition subsequent. If the condition is broken, the trustees will hold the property on trust for A.

**Right of re-entry:** A right entitling a person to reclaim possession of land granted to another. For example, if X gave a house to Y on the condition that Y never marry, X has a right of re-entry which will become exercisable if Y marries.

**Right of reverter:** The possibility of the original owner of an estate in land becoming entitled to possession of the land if a determinable interest in the same land comes to an end. For example, if A grants land to B until B re-marries, A has a right of reverter. If B re-marries, the land reverts to A.

**Settlor:** A person who creates a trust.

**Trust:** An arrangement for holding property which imposes equitable obligations on a trustee to deal with property for the benefit of another. In the case of charitable trusts and non-charitable purpose trusts, trustees are obliged to use the property for certain purposes. A trust can be created by deed, by will, by statute, by declaration or by operation of law.

**Vest:** An interest designated for a person (for example, in a gift or will) vests at the point when it becomes that person's property. An interest can be **vested in possession**, in which case the interest is capable of being presently enjoyed. An interest can also be **vested in interest,** in which case the interest is not vested in possession and therefore cannot be presently enjoyed, but will come to be so on the eventual termination of the prior interest or interests in the same property. For example, when property is given to X for life, remainder to Y, X has an interest vested in possession until he dies. Y's interest in the property is vested in interest. When X eventually dies, Y then has an interest vested in possession.

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