



# Perpetuities Act (Northern Ireland) 1966

## 1966 CHAPTER 2

**N.I.**

An Act to amend the law relating to the avoidance of future interests in property on grounds of remoteness and certain matters connected therewith. [24th March 1966]

### **1 Power to specify perpetuity period. N.I.**

- (1) Subject to subsection (2) and section 10(3), where the instrument by which any disposition is made so provides, the perpetuity period applicable to the disposition under the rule against perpetuities, instead of being of any other duration, shall be of a duration equal to such number of years not exceeding eighty as is specified in that behalf in the instrument.
- (2) Subsection (1) shall not have effect where the disposition is made in exercise of a special power of appointment, but where a period is specified under that subsection in the instrument creating such a power the period shall apply in relation to any disposition under the power as it applies in relation to the power itself.

### **2 Presumption and evidence as to future parenthood. N.I.**

- (1) Where in any proceedings there arises on the rule against perpetuities a question which turns on the ability of a person to have a child at some future time, then—
  - (a) subject to paragraph (b), it shall be presumed that a male can have a child at the age of fourteen years or over, but not under that age, and that a female can have a child at the age of twelve years or over, but not under that age or over the age of fifty-five years; but
  - (b) in the case of a living person evidence may be given to show that he or she will or will not be able to have a child at the time in question.
- (2) Where any such question is decided by treating a person as unable to have a child at a particular time, and he or she does so, the High Court may on an application made to it make such order as it thinks fit for placing the persons interested in the property comprised in the disposition, so far as may be just, in the position they would have held if the question had not been so decided.

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- (3) Subject to subsection (2), where any such question is decided in relation to a disposition by treating a person as able or unable to have a child at a particular time, then he or she shall be so treated for the purpose of any question which may arise on the rule against perpetuities in relation to the same disposition in any subsequent proceedings.
- (4) In the foregoing provisions of this section references to having a child are references to begetting or giving birth to a child, but those provisions (except subsection (1)( b)) shall apply in relation to the possibility that a person will at any time have a child by adoption, legitimation or other means as they apply to his or her ability at that time to beget or give birth to a child.
- (5) Subsections (1) to (4) shall apply to any question as to the right of beneficiaries to put an end to accumulations of income under any disposition as they apply to any question arising on the rule against perpetuities.

### 3 **Uncertainty as to remoteness. N.I.**

- (1) Where, apart from the provisions of this section and sections 4 and 5, a disposition would be void on the ground that the interest disposed of might not become vested until too remote a time, the disposition shall be treated, until such time, if any, as it becomes established that the vesting must occur, if at all, after the end of the perpetuity period, as if the disposition were not subject to the rule against perpetuities; and its becoming so established shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.
- (2) Where, apart from the provisions mentioned in subsection (1), a disposition consisting of the conferring of a general power of appointment would be void on the ground that the power might not become exercisable until too remote a time, the disposition shall be treated, until such time, if any, as it becomes established that the power will not be exercisable within the perpetuity period, as if the disposition were not subject to the rule against perpetuities.
- (3) Where, apart from the provisions mentioned in subsection (1), a disposition consisting of the conferring of any power, option or other right would be void on the ground that the right might be exercised at too remote a time, the disposition shall be treated as regards any exercise of the right within the perpetuity period as if it were not subject to the rule against perpetuities and, subject to the said provisions, shall be treated as void for remoteness only if, and so far as, the right is not fully exercised within that period.
- (4) Where this section applies to a disposition and the duration of the perpetuity period is not determined by virtue of section 1 or section 10(3), it shall be determined as follows:—
  - (a) where any persons falling within subsection (5) are individuals in being and (except in the case of a spouse<sup>F1</sup> or civil partner]<sup>F1</sup> within subsection (5)(f)) ascertainable at the commencement of the perpetuity period the duration of the period shall be determined by reference to their lives and no others, but so that the lives of any description of persons falling within paragraph ( b) or paragraph ( c) of that subsection shall be disregarded if the number of persons of that description is such as to render it impracticable to ascertain the date of death of the survivor;

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- (b) where there are no lives under paragraph (a) the period shall be twenty-one years.
- (5) The said persons are as follows:—
- (a) the person by whom the disposition was made;
  - (b) a person to whom or in whose favour the disposition was made, that is to say—
    - (i) in the case of a disposition to a class of persons, any member or potential member of the class;
    - (ii) in the case of an individual disposition to a person taking only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied;
    - (iii) in the case of a special power of appointment exercisable in favour of members of a class, any member or potential member of the class;
    - (iv) in the case of a special power of appointment, exercisable in favour of one person only, that person or, where the object of the power is ascertainable only on certain conditions being satisfied, any person as to whom some of the conditions are satisfied and the remainder may in time be satisfied;
    - (v) in the case of any power, option or other right, the person on whom the right is conferred;
  - (c) a person having a child or grandchild within sub-paragraphs (i) to (iv) of paragraph (b), or any of whose children or grandchildren, if subsequently born, would by virtue of his or her descent fall within those sub-paragraphs, or any of whose grandchildren, if subsequently born, would by virtue of his or her birth take a vested interest under the disposition;
  - (d) any person on the failure or determination of whose prior interest the disposition is limited either mediately or immediately to take effect;
  - (e) a person having a child or grandchild within paragraph (d);
  - (f) a spouse<sup>F1</sup> or civil partner<sup>F1</sup> of any person within paragraph (b)(i) to (iv).

F1 2004 c.33

#### 4 Reduction of age and exclusion of class members to avoid remoteness. **N.I.**

- (1) Where a disposition is limited by reference to the attainment by any person or persons of a specified age exceeding twenty-one years, and it is apparent at the time the disposition is made or becomes apparent at a subsequent time—
- (a) that the disposition would, apart from this section, be void for remoteness; but
  - (b) that it would not be so void if the specified age had been twenty-one years;
- the disposition shall be treated for all purposes as if, instead of being limited by reference to the age in fact specified, it had been limited by reference to the age nearest to that age which would, if specified instead, have prevented the disposition from being so void.
- (2) Where in the case of any disposition different ages exceeding twenty-one years are specified in relation to different persons—
- (a) the reference in subsection (1)(b) to the specified age shall be construed as a reference to all the the specified ages; and
  - (b) that subsection shall operate to reduce each such age so far as is necessary to save the disposition from being void for remoteness.

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- (3) Where the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, prevents the foregoing provisions of this section from operating to save a disposition from being void for remoteness, those persons shall thenceforth be deemed for all the purposes of the disposition to be excluded from the class, and the said provisions shall thereupon have effect accordingly.
- (4) Where, in the case of a disposition to which subsection (3) does not apply, it is apparent at the time the disposition is made or becomes apparent at a subsequent time that, apart from this subsection, the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, would cause the disposition to be treated as void for remoteness, those persons shall, unless their exclusion would exhaust the class, thenceforth be deemed for all the purposes of the disposition to be excluded from the class.
- (5) Where this section has effect in relation to a disposition to which section 3 applies, the operation of this section shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

## 5 Condition relating to death of surviving spouse<sup>F2</sup> or civil partner<sup>F2</sup>. **N.I.**

Where a disposition is limited by reference to the time of death of the survivor of a person in being at the commencement of the perpetuity period and any spouse<sup>F2</sup> or civil partner<sup>F2</sup> of that person, and that time has not arrived at the end of the perpetuity period, the disposition shall be treated for all purposes, where to do so would save it from being void for remoteness, as if it had instead been limited by reference to the time immediately before the end of that period.

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## 6 Saving and acceleration of expectant interests. **N.I.**

A disposition shall not be treated as void for remoteness by reason only that the interest disposed of is ulterior to and dependent upon an interest under a disposition which is so void, and the vesting of an interest shall not be prevented from being accelerated on the failure of a prior interest by reason only that the failure arises because of remoteness.

## 7 Powers of appointment. **N.I.**

- (1) Subject to subsection (2), for the purposes of the rule against perpetuities, a power of appointment shall be treated as a special power unless—
- (a) in the instrument creating the power it is expressed to be exercisable by one person only; and
  - (b) it could, at all times during its currency when that person is of full age and capacity, be exercised by him so as immediately to transfer to himself the whole of the interest governed by the power without the consent of any other person or compliance with any other condition, not being a formal condition relating only to the mode of exercise of the power.

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- (2) For the purpose of determining whether a disposition made under a power of appointment exercisable by will only is void for remoteness, the power shall be treated as a general power where it would have fallen to be so treated if exercisable by deed.

## **8 Administrative powers of trustees. N.I.**

- (1) The rule against perpetuities shall not operate to invalidate a power conferred on trustees or other persons to sell, lease, exchange or otherwise dispose of any property for full consideration, or to do any other act in the administration (as opposed to the distribution) of any property, and shall not prevent the payment to trustees or other persons of reasonable remuneration for their services.
- (2) Subsection (1) shall apply for the purpose of enabling a power to be exercised at any time after the passing of this Act notwithstanding that the power is conferred by an instrument which took effect before that passing.

## **9 Other restrictions on the perpetuity rule. N.I.**

- (1) It is hereby declared that the rule against perpetuities does not apply, and never applied, to—
- (a) any power to distrain on or to take possession of land or the income thereof given by way of indemnity against a rent, whether charged upon or payable in respect of any part of that land or not; or
  - (b) any rentcharge created only as an indemnity against another rentcharge, although the indemnity rentcharge may arise or become payable only on breach of a condition or stipulation; or
  - (c) any power, whether exercisable on breach of a condition or stipulation or not to retain or withhold payment of any instalment of a rentcharge as an indemnity against another rentcharge; or
  - (d) any grant, exception, or reservation of any right of entry on, or user of, the surface of land or of any easements, rights, or privileges over or under land for the purpose of—
    - (i) winning, working, inspecting, measuring, converting, manufacturing, carrying away, and disposing of mines and minerals;
    - (ii) inspecting, grubbing up, felling and carrying away timber and other trees, and the tops and lops thereof;
    - (iii) executing repairs, alterations, or additions to any adjoining land, or the buildings and erections thereon;
    - (iv) constructing, laying down, altering, repairing, renewing, cleansing, and maintaining sewers, water-courses, cesspools, gutters, drains, water-pipes, gas-pipes, electric wires or cables or other like works.
- (2) Subsection (1) shall apply to instruments coming into operation before or after the passing of this Act.

## **10 Options relating to land. N.I.**

- (1) The rule against perpetuities shall not apply to a disposition consisting of the conferring of an option to acquire for valuable consideration an interest reversionary (whether directly or indirectly) on any lease if—
- (a) the option is exercisable only by the lessee or his successors in title; and

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- (b) it ceases to be exercisable at or before the expiration of one year following the determination of the lease.
- (2) Subsection (1) shall apply in relation to an agreement for a lease as it applies in relation to a lease, and “lessee” shall be construed accordingly.
- (3) In the case of a disposition consisting of the conferring of an option to acquire for valuable consideration any interest in land (other than such a disposition as is mentioned in subsection (1)), the perpetuity period under the rule against perpetuities shall be twenty-one years, and section 1 shall not apply.

## 11 Avoidance of contractual and other rights in cases of remoteness. **N.I.**

Where a disposition inter vivos would fall to be treated as void for remoteness if the rights and duties thereunder were capable of transmission to persons other than the original parties and had been so transmitted, it shall be treated as void as between the person by whom it was made and the person to whom or in whose favour it was made or any successor of his, and no remedy shall lie in contract or otherwise for giving effect to it or making restitution for its lack of effect.

## 12 Rights for enforcement of rentcharges. **N.I.**

- (1) Notwithstanding anything in section 13 the rule against perpetuities shall not apply to any powers or remedies for recovering or compelling the payment of an annual sum to which section 44 of the Conveyancing and Law of Property Act 1881 and section 6 of the Conveyancing Act 1911 apply, or otherwise becoming exercisable or enforceable on the breach of any condition or other requirement relating to that sum.

*Subs.(2) rep. by SLR 1973; subs.(3) amends s.6(2) of 1911 c.37*

## 13 Conditions subsequent, possibilities of reverter, etc. **N.I.**

- (1) Subject to the succeeding provisions of this section, the following rights shall not be exercisable after the end of the perpetuity period:—
  - (a) a right of entry in respect of a fee simple exercisable on condition broken or for any other reason; or
  - (b) in relation to property other than land, any right equivalent to the right mentioned in paragraph (a).
- (2) Subsection (1)(a) does not apply to any right conferred by section 52 of the Landlord and Tenant Law Amendment Act, Ireland, 1860 .
- (3) Where a disposition creates—
  - (a) a possibility of reverter on the determination of a determinable fee simple; or
  - (b) a possibility of a resulting trust on the determination of any other determinable interest in property;
 the possibility of reverter or of a resulting trust, as the case may be, shall cease to exist at the end of the perpetuity period, and accordingly the fee or interest in question shall cease to be determinable.

- (4) Where—

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- (a) a disposition is subject to any exception or reservation or to any condition subsequent giving rise, on breach thereof, to any such right as is mentioned in subsection (1); or
  - (b) a disposition creates any such possibility as is mentioned in subsection (3); the disposition shall be treated for the purposes of this Act as including a separate disposition of any rights arising by virtue of the exception, reservation, condition subsequent or possibility.
- (5) Subsection (1)(b) shall apply to instruments coming into operation before or after the passing of this Act.

#### 14 **Contingent remainders.** **N.I.**

- (1) The rule against perpetuities shall not be inapplicable to a disposition by reason only that it creates a contingent remainder.
- (2) Subsection (1) shall apply to a disposition by way of the exercise of a power of appointment whether the power is created before or after the passing of this Act.

#### 15 **Abolition of the double possibility rule.** **N.I.**

The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is hereby abrogated, but without prejudice to the rule against perpetuities.

#### 16 **Short title and interpretation.** **N.I.**

- (1) This Act may be cited as the Perpetuities Act (Northern Ireland) 1966.
- (2) In this Act—
  - “disposition” includes the conferring of a power of appointment and any other disposition of an interest in or right over property, and references to the interest disposed of shall be construed accordingly;
  - “in being” means living or en ventre sa mère;
  - “power of appointment” includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration;
  - “will” includes a codicil;and for the purposes of this Act a disposition contained in a will shall be deemed to be made at the death of the testator.
- (3) For the purposes of this Act a person shall be treated as a member of a class if in his case all the conditions identifying a member of the class are satisfied, and shall be treated as a potential member if in his case some only of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied.
- (4) Nothing in this Act shall affect the operation of the rule of law rendering void for remoteness certain dispositions under which property is limited to be applied for purposes other than the benefit of any person or class of persons in cases where the property may be so applied after the end of the perpetuity period.
- (5) The foregoing sections shall apply (except as provided in section 8(2), section 9(2), section 13(5) and section 14(2)) only in relation to instruments taking effect after the passing of this Act, and in the case of an instrument made in the exercise of a special

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power of appointment shall apply only where the instrument creating the power takes effect after that passing, so however that section 7 shall apply in all cases for construing the foregoing reference to a special power of appointment.

- (6) This Act shall apply in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument taking effect when the disposition was made.



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