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 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.