

PERPETUITIES AND ACCUMULATIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Perpetuities: miscellaneous

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.