

PERPETUITIES AND ACCUMULATIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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.