



# Perpetuities and Accumulations Act 2009

## 2009 CHAPTER 18

### *Perpetuities: miscellaneous*

#### **6 Start of perpetuity period**

- (1) The perpetuity period starts when the instrument referred to in section 1(2) to (6) takes effect; but this is subject to subsections (2) and (3).
- (2) If section 1(2), (3) or (4) applies and the instrument is made in the exercise of a special power of appointment the perpetuity period starts when the instrument creating the power takes effect; but this is subject to subsection (3).
- (3) If section 1(2), (3) or (4) applies and—
  - (a) the instrument nominates benefits under a relevant pension scheme, or
  - (b) the instrument is made in the exercise of a power of advancement arising under a relevant pension scheme,the perpetuity period starts when the member concerned became a member of the scheme.
- (4) The member concerned is the member in respect of whose interest in the scheme the instrument is made.

#### **Commencement Information**

**II** [S. 6](#) in force at 6.4.2010 by [S.I. 2010/37](#), [art. 2](#)

#### **7 Wait and see rule**

- (1) Subsection (2) applies if (apart from this section and section 8) an estate or interest would be void on the ground that it might not become vested until too remote a time.
- (2) In such a case—

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*Changes to legislation: There are currently no known outstanding effects for the Perpetuities and Accumulations Act 2009, Cross Heading: Perpetuities: miscellaneous. (See end of Document for details)*

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- (a) until such time (if any) as it becomes established that the vesting must occur (if at all) after the end of the perpetuity period the estate or interest must be treated as if it were not subject to the rule against perpetuities, and
  - (b) if it becomes so established, that does not affect the validity of anything previously done (whether by way of advancement, application of intermediate income or otherwise) in relation to the estate or interest.
- (3) Subsection (4) applies if (apart from this section) any of the following would be void on the ground that it might be exercised at too remote a time—
- (a) a right of re-entry exercisable if a condition subsequent is broken;
  - (b) an equivalent right exercisable in the case of property other than land if a condition subsequent is broken;
  - (c) a special power of appointment.
- (4) In such a case—
- (a) the right or power must be treated as regards any exercise of it within the perpetuity period as if it were not subject to the rule against perpetuities, and
  - (b) the right or power must be treated as void for remoteness only if and so far as it is not fully exercised within the perpetuity period.
- (5) Subsection (6) applies if (apart from this section) a general power of appointment would be void on the ground that it might not become exercisable until too remote a time.
- (6) Until such time (if any) as it becomes established that the power will not be exercisable within the perpetuity period, it must be treated as if it were not subject to the rule against perpetuities.

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**Commencement Information**

**I2** S. 7 in force at 6.4.2010 by S.I. 2010/37, art. 2

## **8 Exclusion of class members to avoid remoteness**

- (1) This section applies if—
- (a) it is apparent at the time an instrument takes effect or becomes apparent at a later time that (apart from this section) the inclusion of certain persons as members of a class would cause an estate or interest to be treated as void for remoteness, and
  - (b) those persons are potential members of the class or unborn persons who at birth would become members or potential members of the class.
- (2) From the time it is or becomes so apparent those persons must be treated for all the purposes of the instrument as excluded from the class unless their exclusion would exhaust the class.
- (3) If this section applies in relation to an estate or interest to which section 7 applies, this section does not affect the validity of anything previously done (whether by way of advancement, application of intermediate income or otherwise) in relation to the estate or interest.
- (4) For the purposes of this section—

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- (a) a person is a member of a class if in that person's case all the conditions identifying a member of the class are satisfied, and
- (b) a person is a potential member of a class if in that person's case some only of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied.

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**Commencement Information**

**I3** [S. 8](#) in force at 6.4.2010 by [S.I. 2010/37](#), [art. 2](#)

## **9 Saving and acceleration of expectant interests**

- (1) An estate or interest is not void for remoteness by reason only that it is ulterior to and dependent on an estate or interest which is so void.
- (2) The vesting of an estate or interest is not prevented from being accelerated on the failure of a prior estate or interest by reason only that the failure arises because of remoteness.

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**Commencement Information**

**I4** [S. 9](#) in force at 6.4.2010 by [S.I. 2010/37](#), [art. 2](#)

## **10 Determinable interests becoming absolute**

- (1) If an estate arising under a right of reverter on the determination of a determinable fee simple is void for remoteness the determinable fee simple becomes absolute.
- (2) If an interest arising under a resulting trust on the determination of a determinable interest is void for remoteness the determinable interest becomes absolute.

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**Commencement Information**

**I5** [S. 10](#) in force at 6.4.2010 by [S.I. 2010/37](#), [art. 2](#)

## **11 Powers of appointment**

- (1) Subsection (2) applies to a power of appointment exercisable otherwise than by will (whether or not it is also exercisable by will).
- (2) For the purposes of the rule against perpetuities the power is a special power unless—
  - (a) the instrument creating it expresses it to be exercisable by one person only, and
  - (b) at all times during its currency when that person is of full age and capacity it could be exercised by that person so as immediately to transfer to that person the whole of the interest governed by the power without the consent of any other person or compliance with any other condition (ignoring a formal condition relating only to the mode of exercise of the power).
- (3) Subsection (4) applies to a power of appointment exercisable by will (whether or not it is also exercisable otherwise than by will).

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- (4) For the purposes of the rule against perpetuities the power is a special power unless—
- (a) the instrument creating it expresses it to be exercisable by one person only, and
  - (b) that person could exercise it so as to transfer to that person's personal representatives the whole of the estate or interest to which it relates.
- (5) Subsection (6) applies to a power of appointment exercisable by will or otherwise.
- (6) If for the purposes of the rule against perpetuities the power would be a special power under one but not both of subsections (2) and (4), for the purposes of the rule it is a special power.

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**Commencement Information**

**I6** S. 11 in force at 6.4.2010 by [S.I. 2010/37, art. 2](#)

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

- (1) If—
- (a) an instrument specifies for the purposes of property limited in trust a perpetuity period by reference to the lives of persons in being when the instrument takes effect,
  - (b) the trustees believe that it is difficult or not reasonably practicable for them to ascertain whether the lives have ended and therefore whether the perpetuity period has ended, and
  - (c) they execute a deed stating that they so believe and that subsection (2) is to apply to the instrument,
- that subsection applies to the instrument.
- (2) If this subsection applies to an instrument—
- (a) the instrument has effect as if it specified a perpetuity period of 100 years (and no other period);
  - (b) the rule against perpetuities has effect as if the only perpetuity period applicable to the instrument were 100 years;
  - (c) sections 6 to 11 of this Act are to be treated as if they applied (and always applied) in relation to the instrument;
  - (d) sections 1 to 12 of the Perpetuities and Accumulations Act 1964 (c. 55) are to be treated as if they did not apply (and never applied) in relation to the instrument.
- (3) A deed executed under this section cannot be revoked.

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**Commencement Information**

**I7** S. 12 in force at 6.4.2010 by [S.I. 2010/37, art. 2](#)

**Changes to legislation:**

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