

# PERPETUITIES AND ACCUMULATIONS ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Perpetuities: miscellaneous*

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

54. At common law, where a gift was made in favour of a group of people (a class) the whole gift was void if all of the possible members of the class of beneficiaries were not ascertainable during the perpetuity period. This was because at common law a gift would fail even if only a part of it might vest outside the perpetuity period. Class closing prevents this result by artificially closing the class to prevent potential members (for example, those yet unborn) from being taken into consideration.
55. The 1964 Act applies the “wait and see” principle to the class closing rule, meaning that all of the members who qualify for the gift during the perpetuity period will benefit. If all of the potential beneficiaries do not qualify during the “wait and see” period, section 4(4) of the 1964 Act allows for the exclusion of any members who did not qualify during the perpetuity period.
56. **Section 8** replicates the effect of section 4(4) of the 1964 Act. Section 8 applies if it becomes apparent — whether at the time the instrument takes effect or at some later stage — that the estate or interest would be void for perpetuity if certain members (whether alive or unborn) are included in the class. Under *subsection (2)*, once it is clear that an interest will be void for perpetuity if certain potential members are included in the class, they are excluded, provided their exclusion does not exhaust the class. *Subsection (3)* provides that, if the “wait and see” rule (section 7(1) and (2)) also applies, section 8 does not invalidate anything done during the “wait and see” period (section 7(2)) in relation to the estate or interest. *Subsection (4)* specifies who is to be treated as a member or potential member of a class.