

**Reprint  
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## Perpetuities Act 1964

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This Act is administered by the Ministry of Justice.**

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**An Act to effect reforms in the rule of law commonly known as the rule against perpetuities and to abolish the rule of law commonly known as the rule against accumulations**

**1 Short Title**

This Act may be cited as the Perpetuities Act 1964.

**2 Interpretation**

(1) In this Act, unless the context otherwise requires,—

**disposition** includes the conferring or exercise of a power of appointment or any other power or authority to dispose of an interest in or right over property, and any other disposition of an interest in or right over property; and references to the interest disposed of shall be construed accordingly

**in being** means living or *en ventre sa mere*

**instrument** includes a will, and also includes an instrument, testamentary or otherwise, exercising a power of appointment, whether general or special; but does not include an Act of Parliament

**issue**, in relation to any person, means the children and other descendants of that person; and includes any person who bears any such relationship illegitimately

**power of appointment** includes any discretionary power to transfer or grant or create a beneficial interest in property without valuable consideration

**property** includes any interest in real or personal property and any thing in action

**will** includes a codicil.

- (2) For the purposes of this Act a disposition contained in a will shall be deemed to be made at the death of the testator.
- (3) For the purposes of this Act a person shall be treated as a member of a class if in his case all the conditions identifying a member of the class are satisfied, and shall be treated as a potential member if in his case only one or some of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied.

Compare: Law Reform (Property, Perpetuities, and Succession) Act 1962 s 4 (WA); Perpetuities and Accumulations Act 1964 s 15(2), (3) (UK)

### **3 Act and rule against perpetuities to bind the Crown**

This Act and the rule against perpetuities shall bind the Crown except in respect of dispositions of property made by the Crown.

Compare: Law Reform (Property, Perpetuities, and Succession) Act 1962 s 3(2) (WA); Perpetuities and Accumulations Act 1964 s 15(7) (UK)

### **4 Application of Act**

- (1) Except where otherwise expressly provided in this Act, every provision of this Act,—
  - (a) in so far as it applies to wills, shall apply only to the wills of testators who die after the commencement of this Act; and
  - (b) in so far as it applies to instruments other than wills, shall apply only to instruments executed after the commencement of this Act.
- (2) Where a provision of this Act so applies to a will or other instrument that exercises a power of appointment, that provision shall apply in relation to that exercise, whether or not it applies to the will or other instrument creating the power.
- (3) All wills of testators who have died before the commencement of this Act, and all other instruments executed before the commencement of this Act, shall, except where otherwise expressly provided in this Act, be governed by the enactments and rules of law which would have applied to them if this Act had not been passed.
- (4) This Act shall apply in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument other than a will executed when the disposition was made.

Compare: Law Reform (Property, Perpetuities, and Succession) Act 1962 s 3(1) (WA); Perpetuities and Accumulations Act 1964 s 15(5), (6) (UK)

### **5 Powers of appointment**

For the purposes of the rule against perpetuities, a power of appointment shall be treated as a special power unless—

- (a) in the instrument creating the power it is expressed to be exercisable by 1 person only; and

- (b) it could, at all times during its currency when that person is of full age and capacity, be exercised by him so as immediately to transfer to himself the whole of the interest governed by the power without the consent of any other person or compliance with any other condition, not being a formal condition relating only to the mode of exercise of the power:

provided that, for the purpose of determining whether a disposition made under a power of appointment exercisable by will only is invalid as infringing the rule against perpetuities, the power shall be treated as a general power where it would have fallen to be so treated if exercisable by deed.

Compare: Law Reform (Property, Perpetuities, and Succession) Act 1962 s 16 (WA); Perpetuities and Accumulations Act 1964 s 7 (UK)

## **6 Power to specify perpetuity period**

- (1) Subject to subsection (2), where the instrument by which any disposition is made so provides, the perpetuity period applicable to the disposition under the rule against perpetuities, instead of being of any other duration, shall be such period not exceeding 80 years as is specified in the instrument as the perpetuity period applicable to the disposition.
- (2) The perpetuity period applicable to any power of appointment may be so specified under this section either in the instrument creating the power of appointment or (subject to the terms of the power) in the instrument made in exercise of the power of appointment.
- (3) In the case of a disposition in an instrument made in exercise of a special power of appointment, the period specified as aforesaid shall run from the date of the creation of the power, and in all other cases shall run from the time when the instrument comes into operation.
- (4) *[Repealed]*

Compare: Law Reform (Property, Perpetuities, and Succession) Act 1962 s 5 (WA); Perpetuities and Accumulations Act 1964 s 1 (UK)

Section 6(1): amended (with effect on 11 November 1964), on 20 October 1966, by section 2(1)(a) of the Perpetuities Amendment Act 1966 (1966 No 79).

Section 6(4): repealed (with effect on 11 November 1964), on 20 October 1966, by section 2(1)(b) of the Perpetuities Amendment Act 1966 (1966 No 79).

## **7 Presumptions and evidence as to future parenthood**

- (1) This section shall apply whenever it becomes relevant to inquire whether any person is or at any relevant date was or will be capable of having a child, if—
- (a) the inquiry is necessary for the purpose of determining the rights of any person to put an end to a trust or accumulation or to accelerate the vesting in possession of any interest, whether (in the case of a will) the testator has died or dies before or after the commencement of this Act or (in the case of any other instrument) it was made before or after the commencement of this Act; or

- (b) in any other case where this paragraph applies in accordance with section 4, the inquiry is necessary for the purpose of determining whether any disposition is invalid as infringing the rule against perpetuities, or arises generally in the management or administration of any trust, estate, or fund, or is necessary for any purpose relating to the disposition, transmission, or devolution of property.
- (2) Where this section applies, there shall be a presumption, rebuttable by sufficient evidence to the contrary tendered at the time at which the matter falls for decision, but not subsequently, that—
- (a) a woman who has attained the age of 55 years is incapable of having a child and will not subsequently have a child; and
- (b) a male or female who has not attained the age of 12 years is incapable of having a child while under that age.
- (3) Where this section applies, evidence that a male or female of any age is or at a relevant date was or will be incapable of having a child shall be admissible in proceedings in order to establish that incapacity, and the court may accept any such evidence of a high degree of improbability of having a child as it thinks proper as establishing the incapacity.
- (4) Where there is an instrument to which this subsection applies in accordance with section 4 and any question is decided by the High Court or any higher court under this section in respect of any disposition made by that instrument by treating a person as incapable of having or unlikely to have a child at a particular time, then (whether or not he or she does so) he or she shall be so treated for the purpose of any question which may arise in relation to the same disposition in any subsequent proceedings; and no action shall lie against a trustee by reason of his having distributed any property in reliance on any such decision of the court:
- provided that, if a disposition that is not itself invalid as infringing the rule against perpetuities confers upon a child who is born to a parent at a time when any such court has treated the parent as unable or unlikely to have a child, or upon the husband or wife or civil union partner or de facto partner of such a child, or upon the child's issue or the husband or wife or civil union partner or de facto partner of any of the child's issue, a right to any property, that right (including any right to follow or trace the property) shall not be affected by the decision of the court.
- (5) In the foregoing provisions of this section references to having a child are references to begetting or giving birth to a child; but (except as provided in subsection (6)) those provisions, except subsection (3), shall also apply in relation

to the possibility that a person may at any time have or have had a child by adoption, legitimation, or other means:

provided that, in relation to that possibility, subsection (2) shall be read as if the words “rebuttable by sufficient evidence to the contrary tendered at the time at which the matter falls for decision, but not subsequently” were omitted.

- (6) The foregoing provisions of this section, so far as they would otherwise apply in relation to the possibility that a person will at any future time have a child by legitimation, shall not apply in the case of any person if it is established that the person has had an illegitimate child who has not been adopted by some other person and that the child and both its parents are living, unless the court is satisfied that there is a high degree of improbability that the child will be legitimated.

Compare: Law Reform (Property, Perpetuities, and Succession) Act 1962 s 6 (WA); Perpetuities and Accumulations Act 1964 ss 2, 14 (UK)

Section 7(4): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 7(4) proviso: amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

## **8 Necessity to wait and see**

- (1) Where, apart from the provisions of this section, a disposition would be invalid as infringing the rule against perpetuities, the disposition shall be treated, until such time (if any) as it becomes certain that the vesting must occur, if at all, after the end of the perpetuity period, as if the disposition were not invalid as infringing the rule against perpetuities; and its becoming so certain shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income, or otherwise.
- (2) Where, apart from the said provisions, a disposition consisting of the conferring of a general power of appointment would be invalid as infringing the rule against perpetuities, the disposition shall be treated, until such time (if any) as it becomes certain that the power will not be exercisable within the perpetuity period, as if the disposition were not invalid as infringing the rule against perpetuities.
- (3) Where, apart from the said provisions, a disposition consisting of the conferring of any power, option, or other right would be invalid as infringing the rule against perpetuities, the disposition shall be treated as regards any exercise of the right within the perpetuity period as if it were not so invalid and, subject to the said provisions, shall be treated as invalid as infringing the rule against perpetuities only if and so far as the right is not fully exercised within that period.
- (4) Where any of the foregoing provisions of this section applies to a disposition and the duration of the perpetuity period is not determined by virtue of section 6, it shall be determined as follows:

- (a) where any persons falling within subsection (5) are individuals in being and ascertainable at the commencement of the perpetuity period, the perpetuity period shall be the period expiring 21 years after the death of the survivor of them, and no regard shall be had to any other lives, but so that the lives of any description of persons falling within paragraph (b) or paragraph (c) of that subsection shall be disregarded if the number of persons of that description is such as to render it impracticable to ascertain the date of death of the survivor:
  - (b) when there are no lives under paragraph (a), the period shall be 21 years.
- (5) The said persons shall be as follows:
- (a) the person by whom the disposition was made:
  - (b) a person to whom or in whose favour the disposition was made, that is to say—
    - (i) in the case of a disposition to a class of persons, any member or potential member of the class:
    - (ii) in the case of an individual disposition to a person taking only on certain conditions being satisfied, any person as to whom only one or some of the conditions are satisfied and the remainder may in time be satisfied:
    - (iii) in the case of a disposition conferring a special power of appointment exercisable in favour of members of a class, any member or potential member of the class:
    - (iv) in the case of a disposition conferring a special power of appointment exercisable in favour of 1 person only, that person or, where the object of the power is ascertainable only on certain conditions being satisfied, any person as to whom only one or some of the conditions are satisfied and the remainder may in time be satisfied:
    - (v) in the case of any power, option, or other right, the person on whom the right is conferred:
  - (c) a person having a child or grandchild who falls within subparagraphs (i) to (iv) of paragraph (b), or any of whose children or grandchildren, if subsequently born, would by virtue of his or her descent fall within those subparagraphs:
  - (d) any person on the failure or determination of whose prior interest the disposition is limited to take effect.

Compare: Law Reform (Property, Perpetuities, and Succession) Act 1962 s 7 (WA); Perpetuities and Accumulations Act 1964 s 3 (UK)

*Cy-pres modifications of dispositions***9 Reduction of age and exclusion of class members to avoid remoteness**

- (1) Where a disposition is limited by reference to the attainment by any person or persons of a specified age exceeding 21 years, and it is apparent at the time the disposition is made or becomes apparent at a subsequent time—
  - (a) that the disposition would, apart from this section, be invalid as infringing the rule against perpetuities, but
  - (b) that it would not be so invalid if the specified age had been 21 years,—  
the disposition shall be treated for all purposes as if, instead of being limited by reference to the age in fact specified, it had been limited by reference to the age nearest to the specified age which would, if specified instead, have prevented the disposition from being so invalid.
- (2) Where in the case of any disposition different ages exceeding 21 years are specified in relation to different persons,—
  - (a) the reference in paragraph (b) of subsection (1) to the specified age shall be construed as a reference to all the specified ages; and
  - (b) that subsection shall operate to reduce each such age so far as is necessary to save the disposition from being invalid as infringing the rule against perpetuities.
- (3) Where it is apparent at the time when any disposition is made or becomes apparent at any subsequent time that, apart from this subsection, the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, prevents the foregoing provisions of this section from operating to save a disposition from being invalid as infringing the rule against perpetuities, those persons shall thenceforth be deemed for all the purposes of the disposition to be excluded from the class, and the said provisions shall thenceforth have effect accordingly.
- (4) Where, in the case of a disposition to which subsection (3) does not apply, it is apparent at the time the disposition is made or becomes apparent at a subsequent time that, apart from this subsection, the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of a class, would cause the disposition to be treated as invalid as infringing the rule against perpetuities, those persons shall, unless their exclusion would exhaust the class, thenceforth be deemed for all the purposes of the disposition to be excluded from the class.
- (5) Where this section has effect in relation to a disposition to which section 8 applies, the operation of this section shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income, or otherwise.

- (6) Section 25 of the Property Law Act 1952 is hereby consequentially repealed: provided that the repeal of that section shall not restrict the operation of subsection (3) of section 4 of this Act.

Compare: Perpetuities and Accumulations Act 1964 s 4 (UK)

#### **10 *Cy-pres* modification in certain other cases**

- (1) Subject to the provisions of this section, where it has become apparent that, apart from the provisions of this section, any disposition (whether made before or after the commencement of this Act) would be invalid solely on the ground that it infringes the rule against perpetuities, and where the general intentions originally governing the disposition can be ascertained from the instrument governing the disposition or (where there is no such instrument) from the terms and scheme of the disposition, the disposition shall be reformed so as to give effect, if possible and as far as possible, to those general intentions within the limits permitted under the rule against perpetuities.
- (2) No disposition of any property that was made before the commencement of this Act shall be so reformed—
- (a) if the disposition has been declared invalid before the commencement of this Act by any order or judgment made or given in any legal proceedings; or
  - (b) if any property comprised in the disposition has, before the commencement of this Act, been paid or transferred to, or applied for the benefit of, or set apart for, the persons entitled by reason of the invalidity of the disposition; or
  - (c) if the person who made the disposition of the property while living and of full capacity has, before 1 January 1967, and whether before or after the commencement of this Act, elected in accordance with subsection (8) to accept the property under a resulting trust in his favour; or
  - (d) so as to prejudice any person who has, before the commencement of this Act, reasonably so altered his position in reliance on the invalidity of the disposition that, in the opinion of the High Court, having regard to all possible implications in respect of other persons, it is inequitable to reform the disposition wholly or in part.
- (3) Where it is possible that any disposition made after the commencement of this section would, apart from the provisions of this section, become invalid solely on the ground that it infringes the rule against perpetuities, and where (if the disposition subsequently became invalid) it would have to be reformed in accordance with subsection (1), the disposition may be reformed under this section before that subsection applies to it, if—
- (a) the reformation would not prejudice any person who could possibly take under the disposition if it were not reformed and it proved to be valid; or

- (b) every person who could possibly be prejudiced by the reformation consents to it.
- (4) In every case where the reformation of a disposition of any property is required or permitted under this section,—
  - (a) if the disposition was made before the commencement of this Act, and it has become apparent that the person who made the disposition of the property has become entitled to it under a resulting trust, or that he or his personal representative will become so entitled to it,—
    - (i) the reformation may be made by that person executing, before 1 January 1967, a deed specifying such alterations to the disposition as are necessary to provide for its reformation in accordance with the provisions of this section; or
    - (ii) the reformation may be made, on or after the last-mentioned date or before that date if the person has died or is for the time being of unsound mind, by the High Court, by order specifying such alterations to the disposition as are necessary to provide for its reformation in accordance with the provisions of this section:
  - (b) if paragraph (a) does not apply to the disposition, the reformation may be made by the High Court, by order specifying such alterations to the disposition as are necessary to provide for its reformation in accordance with the provisions of this section.
- (5) Where a disposition made before the commencement of this Act is reformed under this section, in determining the validity of the reformed disposition, regard may be had to events and circumstances which have occurred or exist at the date of the reformation.
- (6) In any case where the trustees of property comprised in any disposition have become aware that the disposition requires to be reformed, it shall be their duty to take all reasonable steps that may be necessary to secure the reformation of the disposition.
- (7) Where a disposition is reformed in accordance with this section,—
  - (a) the perpetuity period shall run from the date of the original disposition:
  - (b) except as otherwise provided in this Act, the disposition as reformed shall be governed by the enactments and rules of law which would have applied to it if the reformed disposition had been made at the time of the original one:
  - (c) subject to the foregoing provisions of this section, the reformation shall be deemed to have had effect as from the making of the disposition; and all consequences (including revenue consequences) shall follow as if the reformed disposition had been made at the time of and instead of the original one.

- (8) For the purposes of this section, a person who is entitled to elect to accept any property under a resulting trust may—
- (a) declare his intention to do so by deed; or
  - (b) manifest his intention to do so by—
    - (i) accepting a transfer or payment of the property or any part thereof from the trustees of the property; or
    - (ii) otherwise dealing with the property or any part thereof as his own property.
- (9) No election which is not so declared or manifested before 1 January 1967 shall have any effect for the purposes of paragraph (c) of subsection (2).
- (10) On the reformation under this section of a disposition in a will of a testator who dies after the commencement of this Act, or of a disposition in any other instrument executed after the commencement of this Act, the perpetuity period in respect of that disposition may be specified under section 6.

Section 10(2)(d): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 10(4)(a)(ii): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 10(4)(b): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

## **11 Restrictions on acceptance of resulting trust**

- (1) In the case of any disposition made before the commencement of this Act which is capable of reformation under section 10, where any person other than a donor of property that was given to the trustee upon trust has sold other property to that trustee, or has assisted that trustee (by loan, guarantee, or otherwise) to acquire other property, the High Court may direct that the right of any such donor to elect after the commencement of this Act to accept under a resulting trust any property that is subject to the trust governing the disposition shall be restricted to so much of that property as was given by that donor or fairly attributable to his gift.
- (2) Upon any such direction being given by the High Court, any election (whether made before or after the time of the direction) shall be restricted to such property as is specified in the direction.
- (3) At the time of giving any such direction or at any subsequent time the High Court may make an order under section 10 reforming the disposition in respect of so much of the property comprised in the disposition as was not given to the trustee by any donor or fairly attributable to any such gift; and the provisions of section 10 shall apply to that part of the property as if the donor thereof were dead.
- (4) An application to the High Court under this section in respect of the property comprised in any disposition may be made by the trustee of that property, or by

any vendor of property to that trustee, or by any person who assisted that trustee (by loan, guarantee, or otherwise) to acquire that property, or by any person who may be prejudiced by an election to accept a resulting trust in respect of any such property.

Section 11(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 11(2): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 11(3): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 11(4): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

## 12 Previous *cy-pres* resettlements

In any case where, before the commencement of this Act, it has become apparent that any disposition would be invalid solely on the ground that it infringes the rule against perpetuities, or doubts have arisen as to whether any disposition might be invalid solely on that ground, if within 6 years before the commencement of this Act the property has been resettled to carry into effect the general intentions originally governing the disposition as those general intentions appeared from the instrument governing the disposition or (where there was no such instrument) from the terms and scheme of the disposition, the provisions of paragraph (c) of subsection (7) of section 10, so far as it relates to revenue consequences, shall apply to the resettlement as if it were a reformation of the disposition.

### *Miscellaneous provisions affecting rule against perpetuities*

## 13 Unborn husband, wife, or civil union partner

The widow, widower, or surviving civil union partner of a person who is a life in being for the purpose of the rule against perpetuities shall be deemed to be a life in being for the purpose of—

- (a) a disposition in favour of that widow, widower, or surviving civil union partner; and
- (b) a disposition in favour of a charity which attains, or of a person who attains, or of a class the members of which attain, according to the terms of the disposition, a vested interest on or after the death of the survivor of the said person who is a life in being and that widow, widower, or surviving civil union partner, or on or after the death of that widow, widower, or surviving civil union partner, or on or after the happening of any contingency during her or his lifetime.

Compare: Law Reform (Property, Perpetuities, and Succession) Act 1962 s 12 (WA); Perpetuities and Accumulations Act 1964 s 5 (UK)

Section 13 heading: amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 13: amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 13(a): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 13(b): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

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

A disposition shall not be treated as invalid as infringing the rule against perpetuities by reason only that the interest disposed of is ulterior to and dependent upon an interest under a disposition which is so invalid, and the vesting of an interest shall not be prevented from being accelerated on the failure of a prior interest by reason only that the failure arises because of remoteness.

Compare: Law Reform (Property, Perpetuities, and Succession) Act 1962 s 13 (WA); Perpetuities and Accumulations Act 1964 s 6 (UK)

#### **15 Rule of remorseless construction abolished**

Where a court is construing a will or other instrument, whether made before or after the commencement of this Act, and the will or instrument makes a disposition of any property, the court may have regard to the fact that, while under one possible construction the disposition would or might be void as infringing the rule against perpetuities, under another possible construction it would or might be valid; and, in considering which of those constructions is to be preferred, the court may take into account that the maker thereof would probably have intended the construction under which the disposition would be valid.

#### **16 Administrative powers of trustees**

- (1) The rule against perpetuities shall not operate, and shall be deemed never to have operated, to invalidate a power conferred on trustees or other persons to sell, lease, exchange, or otherwise dispose of any property for valuable consideration, or to do any other act in the administration (as distinct from the distribution) of any property, and shall not prevent, and shall be deemed never to have prevented, the payment to trustees or other persons of reasonable remuneration for their services.
- (2) Subsection (1) shall not—
  - (a) render any trustee or other person liable for any acts done before the commencement of this Act for which the trustee or person would not have been liable if this Act had not been passed; or
  - (b) enable any trustee or person to recover any money distributed or paid under any trust, if he could not have recovered that money had that subsection not been enacted.

Compare: Perpetuities and Accumulations Act 1964 s 8 (UK)

**17 Options relating to property**

- (1) The rule against perpetuities shall not apply to a disposition consisting of the conferring of an option to acquire for valuable consideration an interest reversionary (whether directly or indirectly) on the term of a lease if—
  - (a) the option is exercisable only by the lessee or its or his successors in title; and
  - (b) it ceases to be exercisable at or before the expiration of 1 year following the determination of the lease.
- (2) Subsection (1) shall apply in relation to an agreement for a lease as it applies in relation to a lease, and the term **lessee** shall be construed accordingly.
- (3) The rule against perpetuities shall not apply to a disposition consisting of the conferring of an option to acquire any property for valuable consideration, if the option is exercised within 21 years after the date on which the instrument conferring the option takes effect, or if—
  - (a) the option is conferred by an instrument which provides for the settlement upon trust of assets comprising or including the property; and
  - (b) the option is exercised at or before the expiration of 1 year after the first point of time when,—
    - (i) in accordance with the settlement, all interests in remainder in the property that vest within the perpetuity period have vested and all prior interests in the property have terminated; and
    - (ii) the persons entitled in remainder to the property in accordance with the settlement have all attained the age of 21 years or sooner died.
- (4) In the case of a disposition to which the foregoing provisions of this section do not apply and which consists of the conferring of an option to acquire for valuable consideration any interest in land, the rule against perpetuities shall not apply, but that option shall become void on the expiry of 21 years from the date of its grant as between the original parties to that grant and all persons claiming through them; and no remedy shall lie in contract or otherwise for giving effect to it or making restitution for its lack of effect.

Compare: Law Reform (Property, Perpetuities, and Succession) Act 1962 s 14 (WA); Perpetuities and Accumulations Act 1964 ss 9, 10 (UK)

**18 Possibilities of reverter, conditions subsequent, exceptions, and reservations**

- (1) The rule against perpetuities as modified by this Act shall apply—
  - (a) to a possibility of reverter in land on the determination of a determinable fee simple, in which case, if the fee simple does not determine within the perpetuity period, it shall thereafter continue as a fee simple absolute:

- (b) to a possibility of a resulting trust on the determination of any other determinable interest in property; in which case, if the prior interest created by the trust does not determine within the perpetuity period, the interest it creates shall thereafter continue as an absolute interest:
  - (c) to a right of entry for condition broken the exercise of which may determine a fee simple subject to a condition subsequent, and to an equivalent right in the case of property other than land; in which case, if the right of entry or other right is not exercised within the perpetuity period, the fee simple shall thereafter continue as an absolute interest, and any such other interest in property shall thereafter continue free from the condition.
- (2) This section shall apply, whether the determinable or conditional disposition is charitable or not, except that the rule against perpetuities shall not apply to a gift over from one charity to another.
  - (3) Where a disposition is subject to any provision that causes an interest to which paragraph (a) or paragraph (b) of subsection (1) applies to be determinable, or to any condition subsequent giving rise, on breach thereof, to a right of re-entry or an equivalent right in the case of property other than land, or to any exception or reservation, the disposition shall be treated for the purposes of this Act as including a separate disposition of any rights arising by virtue of the provision, condition subsequent, exception, or reservation.

Compare: Law Reform (Property, Perpetuities, and Succession) Act 1962 s 15 (WA); Perpetuities and Accumulations Act 1964 s 12 (UK)

## **19 Rule against perpetuities not to apply in certain cases**

- (1) The rule against perpetuities shall not apply and shall be deemed never to have applied to the trusts of any fund of which the main purpose or one of the main purposes is the provision of retiring allowances or pensions on retirement to persons employed in the undertaking or combination of undertakings in connection with which the fund is established, if the fund is a superannuation fund within the meaning of the Income Tax Act 2007, or if the fund is one to which section DC 7 of that Act applies.
- (1A) The rule against perpetuities shall not apply to the trusts of a share purchase scheme as defined in section YA 1 of the Income Tax Act 2007.
- (2) *Amendment(s) incorporated in the Act(s).*

Section 19 heading: substituted, on 2 August 1974, by section 2 of the Perpetuities Amendment Act 1974 (1974 No 35).

Section 19(1): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 19(1): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 19(1): amended, on 6 August 1976, by section 11(3) of the Superannuation Schemes Act 1976 (1976 No 3).

Section 19(1A): inserted, on 2 August 1974, by section 2 of the Perpetuities Amendment Act 1974 (1974 No 35).

Section 19(1A): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 19(1A): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

## **20 Rule against inalienability**

- (1) Except as provided in subsection (2), nothing in this Act shall affect the operation of the rule of law rendering non-charitable purpose trusts void for remoteness in cases where the trust property may be applied for the purposes of the trusts after the end of the perpetuity period.
- (2) If any such trust is not otherwise void, the provisions of section 8 shall apply to it, and the property subject to the trust may be applied for the purposes of the trust during the perpetuity period, but not thereafter.

Compare: Perpetuities and Accumulations Act 1964 s 15(4) (UK)

### *Accumulation of income*

## **21 Accumulation of income**

- (1) Where property is settled or disposed of in such manner that the income thereof may or shall be accumulated wholly or in part, the power or direction to accumulate that income shall be valid if the disposition of the accumulated income is, or may be, valid, and not otherwise.
- (2) Nothing in this section shall affect the power of any person or persons to terminate an accumulation that is for his or their benefit, or any jurisdiction or power of the court to maintain or advance out of accumulations, or any powers of a trustee under the Trustee Act 1956 or under any other Act or law or under any instrument creating a trust or making a disposition.
- (3) *Amendment(s) incorporated in the Act(s).*
- (4) The enactments repealed by subsection (3), and the corresponding provisions of any former enactment, shall be deemed, in connection with the law of New Zealand, never to have applied to any power to accumulate:  
provided that this subsection shall not—
  - (a) render any trustee or other person liable for any acts done before the commencement of this Act for which the trustee or person would not have been liable if this Act had not been passed; or
  - (b) enable any trustee or person to recover any money or other property distributed or paid under any trust, if he could not have recovered that money or property had this subsection not been passed.

- (5) Except as provided in subsection (4), this section shall have effect only as provided in section 4.

Compare: Law Reform (Property, Perpetuities, and Succession) Act 1962 s 17 (WA)

*Power to apply to court for directions*

**22 Power to apply to court for directions**

Any person who is a trustee or a donor or settlor of, or who is or claims to be beneficially interested in, any property comprised in a disposition may apply to the High Court for directions in any case where doubt or difficulty arises in respect of the application of any provision of this Act in respect of that disposition.

Section 22: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

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## Perpetuities Amendment Act 1966

Public Act	1966 No 79
Date of assent	20 October 1966
Commencement	20 October 1966

### An Act to amend the Perpetuities Act 1964

#### 1 Short Title

This Act may be cited as the Perpetuities Amendment Act 1966, and shall be read together with and deemed part of the Perpetuities Act 1964 (hereinafter referred to as “the principal Act”).

#### 2 Power to specify perpetuity period

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) In any case where immediately before the passing of this section any disposition depended for its validity on subsection (4) of section 6 of the principal Act and upon the repeal of that subsection the disposition may become invalid on the ground that it infringes the rule against perpetuities, the provisions of the said section 6 shall continue to apply to that disposition as if subsection (1) had not been passed.

## Contents

- 1 General
- 2 Status of reprints
- 3 How reprints are prepared
- 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
- 5 List of amendments incorporated in this reprint (most recent first)

## Notes

### **1** *General*

This is a reprint of the Perpetuities Act 1964. It incorporates all the amendments to the Act as at 1 April 2008, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

### **2** *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

### **3** *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

### **4** *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted

enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)

- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint  
(most recent first)***

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Relationships (Statutory References) Act 2005 (2005 No 3): section 7

Income Tax Act 2004 (2004 No 35): section YA 2

Judicature Amendment Act 1979 (1979 No 124): section 12

Superannuation Schemes Act 1976 (1976 No 3): section 11(3)

Perpetuities Amendment Act 1974 (1974 No 35)

Perpetuities Amendment Act 1966 (1966 No 79)