

Perpetuities and Accumulations Act 2009

January 2010

The Perpetuities and Accumulations Act 2009 (the Act) will come into force on 6 April 2010 and it will affect all wills and trusts executed on or after that date. Clients and their advisers need to understand how the changes will affect wills and trusts so that they can consider whether there is any action they should take in relation to their wills or to any trusts which are in contemplation.

The existing law

The rule against perpetuities

The rule restricts the time period within which future interests in a trust must vest (i.e. become fixed). Future interests in a trust must vest:

- Within a period specified by reference to the lifetime of individuals (“lives in being”), who are identified in the trust instrument and who are living at the date the trust is made, plus 21 years; or
- Within a fixed period of up to 80 years from the date the trust commences.

The rule against excessive accumulations

The rule restricts the period during which income can be accumulated. Permitted periods include:

- The lifetime of the settlor;
- 21 years from the date of the creation of the trust;
- 21 years from the death of the settlor;
- The minority of any person living at the death of the settlor.

The new law

The perpetuities rule

The rule will apply to interests specified in the Act; they include trust interests and they exclude interests such as easements, restrictive covenants, options and pre-emption rights. All trusts (including trusts set up by will, but excluding charitable trusts) created on or after 6 April will have a perpetuity period of 125 years, which will begin on the date on which the trust is created. This perpetuity period will apply even if the trust instrument specifies a different period. It will still be open to individuals to specify a shorter period during which their trust will exist and/or to give the trustees the power to bring the trust to an end at any time during the perpetuity period.

The trustees of a trust created before 6 April 2010 with a perpetuity period defined by reference to lives in being will be able to apply to replace that perpetuity period with a 100 year fixed period, if they can demonstrate that it is difficult to ascertain whether the relevant lives in being have ended.

The accumulations rule

The provisions restricting accumulation of income to one of the specified periods will be abolished for non-charitable trusts (including trusts set up by will) created on or after 6 April 2010; trustees will be able to accumulate income throughout the lifetime of the trust. The abolition of the restrictions on accumulating income will not prevent individuals imposing restrictions on accumulating income in wills and trust instruments, if they choose to do so.

What should you do now?

Trusts

If you are planning to set up a trust in the near future, you should consider whether you would like the new rules to apply to the trust. In many cases, the application of the extended perpetuity period and the removal of the restrictions on accumulating income will offer advantages, in which case you could think about delaying creating the trust until on or after 6 April 2010. It is essential, however, that you bear in mind that if you choose to wait before creating the trust, your plans may be adversely affected by a change in personal circumstances or a change to the tax laws before the crucial date.

Wills

The new rules will apply to wills and codicils executed on or after 6 April 2010, where the testator dies on or after 6 April 2010. It would be inadvisable to delay executing a will if the delay would result in you dying intestate or with a will which does not reflect your wishes. So, we suggest that you execute any will which you are contemplating without delay but that you should consider whether the change to the rules would have a beneficial impact on any trust set up under your will. If the answer is yes, you could then re-execute your will (with appropriate amendments) on or after 6 April 2010. It may be feasible to make use of the new rules by executing a codicil to your will but this issue is still under debate and until it has been decided, we would recommend re-executing the will itself.

If you would like advice and information on the changes outlined in this note, please contact:

Gregory Laming

Partner

for Mills & Reeve LLP

+44(0)1603 693445

gregory.laming@mills-reeve.com

Chris Belcher

Partner

for Mills & Reeve LLP

+44(0)1223 222618

chris.belcher@mills-reeve.com

Gary Barber

Partner

for Mills & Reeve LLP

+44(0)121 456 8230

gary.barber@mills-reeve.com

Deborah Clark

Associate

for Mills & Reeve LLP

+44(0)161 2355432

deborah.clark@mills-reeve.com

The contents of this document are copyright © Mills & Reeve LLP. All rights reserved. This document contains general advice and comments only and therefore specific legal advice should be taken before reliance is placed upon it in any particular circumstances. Where hyperlinks are provided to third party websites, Mills & Reeve LLP is not responsible for the content of such sites.

Mills & Reeve LLP is a limited liability partnership regulated by the Solicitors Regulation Authority and registered in England and Wales with registered number OC326165. Its registered office is at Fountain House, 130 Fenchurch Street, London, EC3M 5DJ, which is the London office of Mills & Reeve LLP. A list of members may be inspected at any of the LLP's offices. The term "partner" is used to refer to a member of Mills & Reeve LLP.