



# ***Perpetuities and Accumulations Bill* [HL]: Committee Stage Report**

RESEARCH PAPER 09/80 28 October 2009

This is a report on the House of Commons Second Reading and Bill Committee stages of the *Perpetuities and Accumulations Bill* [HL]. It complements Research Paper 09/78 prepared for the Commons Second Reading.

The Bill received cross-party support in Second Reading Committee. There was no debate in Public Bill Committee.

John Woodhouse

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## Research Paper 09/80

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## Summary

The *Perpetuities and Accumulations Bill* [HL] would reform the rule against perpetuities and the rule against excessive accumulations. In general terms, the rule against perpetuities would only apply to rights under trusts. Other property rights would no longer be subject to the rule. Where the rule does apply, the perpetuity period would be 125 years. This period would generally apply prospectively only. The Bill would abolish the current rule against excessive accumulations for all non-charitable trusts. Charitable trusts would, however, be subject to a limit of either a 21 year period or the life of the settlor.

The Bill was considered by a Second Reading Committee where it received cross-party support, although questions were asked about various issues. These included how the Bill would apply to wills taking effect before the Bill's commencement and also what effect the 21 year accumulation period would have on charitable trusts. The same Members formed both the Second Reading Committee and the Public Bill Committee. In Public Bill Committee on 27 October 2009 there was no further debate and the Bill was reported without amendment.

## 1 Introduction

The *Perpetuities and Accumulations Bill* [HL] was introduced in the House of Lords on 1 April 2009 as Bill 35 of 2008-09 and was the first to be considered under a new procedure for Law Commission Bills. Under the new procedure, the Bill was considered in Second Reading Committee on 28 April 2009 and a formal motion for its second reading was agreed on 11 May 2009. The Bill was then considered in Special Public Bill Committee on 20 May and 2, 9 and 30 of June 2009. The Bill was introduced in the House of Commons on 20 July 2009 as Bill 145 of 2008-09. It was considered in Second Reading Committee on 19 October 2009 under Standing Order 59.<sup>1</sup> A formal motion for its second reading was agreed on 21 October 2009.<sup>2</sup> The Public Bill Committee met on 27 October 2009.

A Bill gateway is available on the Parliamentary intranet, which gives additional information and detail of the progress of the Bill. Further background and information about the Bill's provisions is included in the Library Research Paper which was prepared for the Bill's second reading in the House of Commons, [Perpetuities and Accumulations Bill \[HL\] Research Paper 09/78](#).

The Bill would implement, with minor modifications, the recommendations of a 1998 Law Commission report.<sup>3</sup> The Bill would define the circumstances in which the rule against perpetuities applies. In general terms, it would only apply to rights under trusts. Other property rights would no longer be subject to the rule. Where the rule does apply, the perpetuity period would be 125 years. This period would generally apply prospectively only. The Bill would abolish the current rule against excessive accumulations for all non-charitable trusts. Charitable trusts would, however, be subject to a limit of either a 21 year period or the life of the settlor.<sup>4</sup>

## 2 Second reading debate

As the Bill would give effect to the proposals of a Law Commission report, it was referred to a Second Reading Committee where it was debated on 19 October 2009. Bridget Prentice, Parliamentary Under-Secretary of State for Justice, said that the Bill would “modernise, simplify and streamline”<sup>5</sup> the present rule against perpetuities and the rule against excessive accumulations. She concluded her introduction by observing that although the Bill was of a technical nature, it was nevertheless relevant to many people:

Trusts are an important means of sharing private and charitable wealth. Ensuring that the underlying rules are modern will help to increase the attractiveness of the law of England and Wales to investors.<sup>6</sup>

Henry Bellingham, Shadow Minister for Justice, welcomed the “fast-track” procedure for the Bill but considered it a “pity” that the Bill could not have been dealt with on the floor of the House where other Members would have been able to participate.<sup>7</sup> He said that Conservative Members supported the Bill but he raised questions about some provisions. One of the issues raised by Mr Bellingham concerned how the rule against perpetuities would apply in relation to existing trust instruments and wills taking effect before

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<sup>1</sup> This states that, subject to certain conditions, any public bill whose main purpose is to give effect to the proposals in a Law Commission report, shall be referred to a second reading committee

<sup>2</sup> HC Deb 21 October 2009 c1027

<sup>3</sup> Law Commission, *The rules against perpetuities and excessive accumulations*, HC 579 1997-98; Law Commission No 251

<sup>4</sup> A settlor is a person who creates a trust

<sup>5</sup> Perpetuities and Accumulations Bill [HL] debate 19 October 2009 c3

<sup>6</sup> *Ibid* c5

<sup>7</sup> *Ibid* c6

commencement of the Bill.<sup>8</sup> He sought clarification on paragraph 25 of the Government's Explanatory Notes<sup>9</sup> published with the Bill which states that such instruments and wills would 'generally' not be affected by the Bill.<sup>10</sup>

In a letter dated 21 October 2009, Bridget Prentice replied that "the use of the word 'generally'...reflects that the Bill will not apply to all instruments that take effect after the Bill comes into force".<sup>11</sup> She continued:

[The Bill] will not apply to a will that was executed before the Bill comes into force, even if it takes effect after. The Bill will also not apply to the post-commencement exercise of a special power of appointment if it was created before the Bill comes into force.<sup>12</sup>

Another issue raised by Mr Bellingham was in relation to the effect of the 21 year accumulation period on charitable trusts. He suggested that the default provision of 21 years for charitable trusts might be "burdensome", particularly for those using total return investment strategies, and asked how easy it would be for this default position to be set aside by a court or the Charity Commission.<sup>13</sup>

In the letter of 21 October 2009, Bridget Prentice replied that she did not agree that the 21 year limit on accumulation would be burdensome and that it instead struck "a fair balance between allowing charities to accumulate and requiring them to distribute their income for public benefit".<sup>14</sup> She continued:

...total return investment strategy and accumulation are two separate things. A total return investment scheme does not have to involve accumulation, but it might. In appropriate circumstances, authorisation to accumulate will be granted. I understand from the Charity Commission that the application process will not be onerous, nor will a fee be charged.<sup>15</sup>

David Howarth, Liberal Democrat Shadow Secretary of State for Justice, said that it was "a good Bill in principle",<sup>16</sup> before highlighting a number of issues. One of these concerned the debate in the House of Lords on whether the proposed rule against accumulations should apply "even to existing trusts where there is a special power to create a new trust out of an existing one".<sup>17</sup>

Bridget Prentice replied that the Government's view remained that "while powers of appointment can create new arrangements, those are still ultimately part of the original trust that created the power". She continued:

The Bill was therefore amended in the Lords to ensure that no existing rights or expectations would be inadvertently affected by applying it to an arrangement that was

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<sup>8</sup> *Ibid* c7

<sup>9</sup> [Bill 145-EN](#), p6 (at 28 October 2009)

<sup>10</sup> Perpetuities and Accumulations Bill [HL] debate 19 October 2009 c7

<sup>11</sup> HL Library Deposited Paper [DEP2009-2592](#) (at 28 October 2009)

<sup>12</sup> *Ibid*

<sup>13</sup> Perpetuities and Accumulations Bill [HL] debate 19 October 2009 c6

<sup>14</sup> HL Library Deposited Paper [DEP2009-2592](#) (at 28 October 2009)

<sup>15</sup> *Ibid*

<sup>16</sup> Perpetuities and Accumulations Bill [HL] debate 19 October 2009 c7

<sup>17</sup> *Ibid* c9

made before it came into force. On balance, we would prefer to leave things as they are, despite the interesting new issues that were raised late in the day.<sup>18</sup>

A formal motion for the Bill's second reading was agreed on 21 October 2009.<sup>19</sup>

### **3 Committee stage**

The Public Bill Committee met on 27 October 2009 with the membership of the Committee the same as that of the Second Reading Committee. There was no debate and the Bill was reported without amendment.

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<sup>18</sup> *Ibid* c10

<sup>19</sup> HC Deb 21 October 2009 c1027

## **Appendix – Members of the Public Bill Committee**

**Chairman:** Mr Roger Gale

**Members:**

Ancram, Mr Michael (Devizes) (Con)  
Bailey, Mr Adrian (West Bromwich, West) (Lab/Co-op)  
Baldry, Tony (Banbury) (Con)  
Bellingham, Mr Henry (North-West Norfolk) (Con)  
Cooper, Rosie (West Lancashire) (Con)  
Hall, Mr Mike (Weaver Vale) (Lab)  
Holmes, Paul (Chesterfield) (LD)  
Howarth, David (Cambridge) (LD)  
Howarth, Mr George (Knowsley, North and Sefton, East) (Lab)  
James, Mrs Siân C (Swansea, East) (Lab)  
Jones, Helen (Vice-Chamberlain of Her Majesty's Household)  
Prentice, Bridget (Parliamentary Under-Secretary of State for Justice)  
Riordan, Mrs Linda (Halifax) (Lab/Co-op)  
Soulsby, Sir Peter (Leicester, South) (Lab)  
Viggers, Sir Peter (Gosport) (Con)  
Wright, Jeremy (Rugby and Kenilworth) (Con)

**Committee Clerk:** Alan Sandall