



Department  
for Business  
Innovation & Skills

**On amending the rule against  
perpetuities and further  
reducing the complexity of  
employee ownership:**

**Call for Evidence**

NOVEMBER 2013

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# Amending the rule against perpetuities and further reducing the complexity of employee ownership

In July 2012 the Nuttall Review of Employee Ownership '*Sharing Success*' was published.<sup>1</sup> This Review concluded that the barriers to greater adoption of employee ownership fell into three categories: (i) a lack of awareness of the concept of employee ownership; (ii) a lack of resources available to support employee ownership; and (iii) the actual (or perceived) legal, tax and other regulatory complexities of employee ownership.

Since the publication of the Review, significant steps have been taken to reduce these barriers. A full summary can be found in the One Year On Report<sup>2</sup> published alongside this Call.

On the specific issue of reducing the complexity of employee ownership, steps taken include the production of model company documentation and simplifications into the way internal share markets operate. This Call for Evidence seeks views on what further actions Government should take and specifically, seeks views on whether and how Nuttall Review Recommendation U should be taken forward. This recommended that employee benefit trusts should be able to last forever and should not be subject to the rule against perpetuities.

Issued: 19 November 2013

Respond by: 19 February 2014

Enquiries to:

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This Call for Evidence is relevant to: UK businesses who have already adopted employee ownership (particularly using an employee benefit trust), UK businesses with an interest in adopting employee ownership and those organisations who represent or advise such businesses, and in particular those who advise on creating and maintaining employee benefit trusts.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31706/12-933-sharing-success-nuttall-review-employee-ownership.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31706/12-933-sharing-success-nuttall-review-employee-ownership.pdf)

<sup>2</sup> <https://www.gov.uk/government/publications/nuttall-review-of-employee-ownership-one-year-on>

## 1. Executive Summary

This Call for Evidence seeks views on what Government can do to further reduce the complexity of businesses adopting employee ownership.

This Call also seeks evidence from UK stakeholders with regard to recommendation U in the Nuttall Review of Employee Ownership, *Sharing Success*, July 2012 that employee benefit trusts should be able to last forever and should not be subject to the rule against perpetuities.

Responses to this Call for Evidence will help inform the decision on whether to seek to amend existing legislation on perpetuities to exempt employee benefit trusts and how best to frame such an exemption.

## 2. How to respond

Response forms can be found at Annex A. When responding please state whether you are responding as an individual, a business, a representative organisation or a business advisor.

Responses can be submitted by letter, fax or email to:

Janet Ford  
Business and Society  
Department for Business, Innovation and Skills  
3<sup>rd</sup> Floor, Spur 2  
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London SW1H 0ET

Tel: 020 7215 6524

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Email: [employeeownership@bis.gsi.gov.uk](mailto:employeeownership@bis.gsi.gov.uk)

Please state clearly in your response if you wish any or all of it to be kept confidential.

A list of those organisations who have received a copy of this Call for Evidence is in Annex E.

You may make copies of this document, or forward it to other interested parties without seeking permission. An electronic version of the Call for Evidence and response form can be found at: <https://www.gov.uk/government/consultations/amending-the-perpetuities-rule-and-simplifying-employee-ownership>

### 3. Confidentiality & Data Protection

Information provided in response to this Call for Evidence, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

### 4. Help with queries

Questions about the issues raised in the document can be addressed to:

Janet Ford  
Business and Society  
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1 Victoria Street  
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## 5. General question on how to further reduce complexity

The Nuttall Review of Employee Ownership ‘*Sharing Success*’<sup>3</sup> was published in July 2012. This Review concluded that the barriers to greater adoption of employee ownership fell into three categories: (i) a lack of awareness of the concept of employee ownership; (ii) a lack of resources available to support employee ownership; and (iii) the actual (or perceived) legal, tax and other regulatory complexities of employee ownership.

Since the publication of the Review, significant steps have been taken to reduce these barriers.

Steps taken by BIS to reduce the complexity of employee ownership include:

- the production of model company documentation<sup>4</sup> and
- simplifications to the way that internal share markets operate<sup>5</sup>

Full details can be found in the One Year On Report<sup>6</sup> published alongside this Call.

We would welcome views on how to further reduce the complexity of employee ownership. In particular, we would welcome views on any remaining non-tax regulations that have a disproportionate impact on businesses that are seeking to adopt, or have already adopted, employee ownership, and on how these should be changed. We would also welcome evidence on any remaining non-tax regulations that have a disproportionate impact on employee-owned co-operatives. It is important that any suggestions are supported by evidence and, where possible, set out the cost implications of the current situation, as well as the estimated benefits of whatever change is being proposed.

**Question 1. Can you provide evidence of any non-tax regulations that have a disproportionate impact on businesses, or co-operatives, that are seeking to adopt, or have already adopted, employee ownership?**

**If yes, what are the regulations? What impact do they cause? What change would you propose? Please provide evidence to support your responses wherever possible.**

**Question 2. What else do you think could be done to further reduce the complexity of employee ownership?**

<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31706/12-933-sharing-success-nuttall-review-employee-ownership.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31706/12-933-sharing-success-nuttall-review-employee-ownership.pdf)

<sup>4</sup> <https://www.gov.uk/government/publications/employee-ownership-company-model-documentation>

<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/81699/bis-13-590-employee-ownership-and-share-buy-backs-implementation-of-nuttall-review-recommendation-v-government-response-to-consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/81699/bis-13-590-employee-ownership-and-share-buy-backs-implementation-of-nuttall-review-recommendation-v-government-response-to-consultation.pdf)

<sup>6</sup> <https://www.gov.uk/government/publications/nuttall-review-of-employee-ownership-one-year-on>

## 6. Employee benefit trusts and the rule against perpetuities

### The situation in different parts of the UK

The rule against perpetuities applies differently in different parts of the UK. This Call for Evidence focuses on its application in England and Wales.

Under the law of Northern Ireland new employee benefit trusts are subject to an 80 year perpetuity period under the Perpetuities Act (Northern Ireland) 1996. While there are currently no known businesses in Northern Ireland with Employee Ownership, the Northern Ireland Executive may consider the case for a similar exemption to that under discussion in England and Wales subject to the findings of this Call for Evidence.

**Question 3. Do you think that if an exemption is introduced in England and Wales, a similar exemption should be applied in Northern Ireland?**

**Please explain why you think this.**

It is also worth noting that under the law in Scotland, new employee benefit trusts are not subject to any rule against perpetuities and can therefore last forever.

### Background

The rule against perpetuities is a longstanding rule of law applicable to trusts and wills. It addresses the broad issue of the extent to which one generation should be able to dictate the future use and ownership of property (the so-called “dead hand control”) and thereby restrict the freedom of later generations of owners to deal with property as they please. It does so by restricting the length of time (the perpetuity period) into the future that the creator of the legal arrangement in question can pre-determine the future ownership of property held in trust.

The rule has its origins in the common law, but when and how the rule will apply has been affected in England and Wales by the Perpetuities and Accumulations Act 1964 and the Perpetuities and Accumulations Act 2009. In general terms, whether and how the rule applies will depend on when the legal arrangement in question was created. In brief, the common law perpetuity period is the length of the relevant life or lives in being when the trust was created, plus 21 years. This period applies to trusts created before 16 July 1964. For trusts created on or after that date and before 6 April 2010 the common law period can be replaced by an 80 year period. For trusts created on or after 6 April 2010 there is a single fixed perpetuity period of 125 years.

The rule against perpetuities was originally developed in the context of family settlements to curtail control by one generation of the use of property by future generations. However, the rule was later extended to other types of property rights such as future easements, options to purchase and some rights of pre-emption.

The Perpetuities and Accumulations Act 2009 implemented recommendations made by the Law Commission in its 1998 report, *The rules against perpetuities and excessive accumulations*.<sup>7</sup> The Commission made two principal recommendations relating to the then rule against perpetuities. First, it recommended that the scope of application of the rule against perpetuities should be reduced so that for the future it should only apply where statute provided that it should. This was intended to exclude the rule from a wide range of commercial transactions, such as options and rights of pre-emption. Secondly, it recommended that where the rule continued to apply, a fixed perpetuity period of 125 years should be introduced.

Although the Commission considered whether all commercial transactions should be excluded from the rule, it did not recommend this outcome. This was principally because of the difficulty of creating an appropriate definition.<sup>8</sup> However, the Commission did consider whether employee benefit trusts should remain subject to the rule and decided that they should. In the Commission's view, including them would not create undue difficulty and the new perpetuity period was likely to be longer than existing periods.<sup>9</sup> Therefore, unlike certain pension schemes, which are expressly exempted from the rule by the Perpetuities and Accumulations Act 2009,<sup>10</sup> employee ownership trusts remain subject to the rule.

The Commission did, however, recommend that there should be a power for the Lord Chancellor to make additional exemptions from the rule by making an order, subject to the affirmative resolution procedure. This recommendation was enacted in the Perpetuities and Accumulations Act 2009.<sup>11</sup>

### New employee benefit trusts

The Nuttall Review on Employee Ownership, *Sharing Success*, published in July 2012, recommended that employee benefit trusts in England and Wales should be able to last forever and not be subject to the rule against perpetuities. The relevant extract from the Nuttall Review is given in Annex B. The Government Response to the Nuttall Review, *Next Steps for Employee Ownership*, published in October 2012<sup>12</sup> stated that the Government would review this recommendation and report back.

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<sup>7</sup> [http://lawcommission.justice.gov.uk/docs/lc251\\_The\\_Rules\\_Against\\_Perpetuities\\_and\\_Accumulations.pdf](http://lawcommission.justice.gov.uk/docs/lc251_The_Rules_Against_Perpetuities_and_Accumulations.pdf)

<sup>8</sup> Ibid paragraph 7.38.

<sup>9</sup> Ibid paragraph 7.51.

<sup>10</sup> Section 2.

<sup>11</sup> Section 3.

<sup>12</sup> <https://www.gov.uk/government/publications/employee-ownership-next-steps-government-response-to-the-nuttall-review>



The Implementation Group that was set up to oversee implementation of the recommendations in the Nuttall Review considered the issue at its meetings in November 2012<sup>13</sup> and July 2013<sup>14</sup> and agreed to launch a Call for Evidence in order to gather evidence that will support a greater understanding of the arguments for and against exempting some or all employee benefit trusts from the rule against perpetuities.

The Nuttall Review suggested that it is illogical to expect a business to adopt a limited life trust at the point of its establishment. It could further be argued that because employee benefit trusts are subject to the rule against perpetuities, the rule *ipso facto* represents a deterrent to businesses establishing employee ownership. The Nuttall Review therefore concluded that the rule against perpetuities should not apply to employee benefit trusts created in the future so as to enable their perpetual ownership.

**Question 4. To what extent do you think that the existing rule against perpetuities in England and Wales acts as a deterrent for businesses considering a move to employee ownership?**

**Please explain why you think this and provide evidence where possible.**

On the other hand, it has also been suggested that 125 years is a long time for any business to exist and that transferring an employee benefit trust at the end of its perpetuity period, or making a resettlement, should not present undue difficulty.

Additionally, it has been noted that although certain pension schemes are excluded from the effect of the rule against perpetuities, there are good arguments that if the rule were to have applied, each employee's pension would for the purposes of the rule be a separate trust. If the same analysis applies to employee benefit trusts then each employee under a new scheme would have a perpetuity period of 125 years and the overall company "scheme" would in effect be perpetual. We are not aware of any definitive case law on this point in relation to employee benefit trusts, so some uncertainty exists as to whether the rule applies in this way. We would welcome views on this analysis.<sup>15</sup>

**Question 5. What is your view on whether the rule against perpetuities applies to each individual in an employee benefit trust or to the overall scheme?**

**Please explain your reasoning.**

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<sup>13</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/81701/minutes-implementation-group-on-employee-ownership-november-2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/81701/minutes-implementation-group-on-employee-ownership-november-2012.pdf)

<sup>14</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/227026/minutes-implementation-group-employee-ownership-july-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227026/minutes-implementation-group-employee-ownership-july-2013.pdf)

<sup>15</sup> The statutory exemption for relevant pension schemes, which was preserved in the Perpetuities and Accumulations Act 2009, made consideration of this point academic in relation to them.

## Existing employee benefit trusts

Alongside arguing for an exemption to the rule against perpetuities for new employee benefit trusts, the Nuttall Review recommended that consideration be given to permitting existing employee benefit trusts to opt-in to any new exemption.

The Perpetuities and Accumulations Act 2009 did not take this approach. The Law Commission explained the reasons for this in paragraphs 7.53 and 8.18 of its 1998 report – see Annex C for details. In essence, it was felt that retrospective interference with established trusts could create problems for the unwary or the ill-advised.

A right to opt-in to any new exemption from the rule against perpetuities in relation to employee benefit trusts would, in principle, run the same risks. It could, for example, interfere with commercial agreements that had been concluded under the present law.

We welcome your views on whether existing employee benefit trusts should be able to opt-in to any new exemption and, if so, how best to take this forward.

**Question 6. To what extent do you agree that existing employee benefit trusts should be able to opt-in to any exemption from the rule against perpetuities?**

**Please explain why you think this and provide evidence where possible.**

**If you think opting-in should be possible, how should this be done?**

## Evidence

In order to decide whether or not to take the recommendation for an exemption further, we need to gather and consider evidence on the costs and benefits of such a change.

Since there are no readily available and reliable figures on the number of businesses with employee ownership and with employee benefit trusts, we welcome evidence that will inform estimates on the scale of the problem. In particular, we welcome your estimate of how many businesses in England and Wales are likely to be affected by their employee benefit trust coming to the end of its perpetuity period.

**Question 7. What is your estimate on the likely number of businesses in England and Wales whose existing employee benefit trust will reach the end of its perpetuity period during the following periods: 10 years, 30 years and 50 years?**

**Please explain any assumptions used in making these estimates and provide evidence where possible.**

It has been suggested that transferring an employment benefit trust at the end of its perpetuity period or making a resettlement should not present undue difficulty but we welcome your evidence on the likely costs per business of these options, or any other options of which you are aware.

**Question 8. What do you estimate will be the average cost to a business of handling a situation where its employee benefit trust comes to the end of its perpetuity period?**

**Please explain any assumptions made in making these estimates and provide evidence where possible.**

### Specifying what entities to exempt

If we are to proceed with an exemption from the rule against perpetuities for employee benefit trusts we will need one or more legal definitions.

The Government is aware that not all employee benefit trusts are created with the aim of supporting employee ownership. Employee ownership in this context means a significant and meaningful stake in a business for all its employees. Essentially, this occurs where employees have both a 'voice' in how the business is run through employee engagement and a stake in the success of the business. There is an argument that any exemption to the rule against perpetuities for employee benefit trusts should only be granted to those employee benefit trusts that are used to support employee ownership. We welcome your views on this point.

**Question 9. Should any exemption from the rule against perpetuities apply to all employee benefit trusts or only those that genuinely support employee ownership? If so, how should this be done?**

**Please explain your reasoning.**

In addition, employee benefit trusts can hold shares or other assets. We also welcome your views on whether the type of asset held by an employee benefit trust should determine whether or not it comes under any exemption to the rule against perpetuities.

**Question 10. Should any exemption from the rule against perpetuities apply only to employee benefit trusts that hold certain types of assets, e.g. shares?**

**Please explain your reasoning.**

In terms of drafting a legal definition, we would welcome your views on whether it would be helpful to draw from one or more of the following existing legal definitions (full texts can be found in Annex D):

1. Section 86 of the Inheritance Tax Act 1984 (as recommended by the Nuttall Review)
2. Section 550 of the Income Tax, Earnings and Pensions Act 2003
3. Section 496A(5) of the Income Tax Act 2007
4. Section 1166 of the Companies Act 2006

We welcome your views on which, if any, of these existing legal definitions should be the basis for, or inform, a legal definition for any exemption for employee benefit trusts from the rule against perpetuities.

**Question 11. Which, if any, existing legal definition should be the basis for, or inform, a legal definition for any exemption for employee benefit trusts from the rule against perpetuities?**

**What other issues do you think need to be considered when drafting this definition?**

### Unintended consequences

It is possible that there may be consequences to making changes to the way the rule against perpetuities affects employee benefit trusts that are not covered by the above questions. We welcome your suggestions on what, if any, these other unintended consequences might be.

**Question 12. What, if any, other unintended consequences might there be to changing the way the rule against perpetuities affects employee benefit trusts?**

## 7. What happens next

Responses to this Call for Evidence will inform our next steps on reducing the complexity of employee ownership. If it is decided to proceed with any legislative change, a consultation will be launched in due course.

## Annex A: Response Form

Call for Evidence on amending the rule against perpetuities and other means of further reducing the complexity of employee ownership

A copy of the Call for Evidence on further reducing the complexity of employee ownership can be found at:

<https://www.gov.uk/government/consultations/amending-the-perpetuities-rule-and-simplifying-employee-ownership>

You can email, post or fax this completed response form to the following official at the Department for Business, Innovation and Skills (BIS):

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Business and Society  
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3<sup>rd</sup> Floor, Victoria 1  
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The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this call for evidence is: 19 February 2014.

## Your details

Name:

Organisation (if applicable):

Address:

Telephone:

Fax:

Email:

Please tick the boxes below that best describe you as a respondent to this call for evidence:

- Individual
- Small business (0 to 49 staff)
- Medium business (50 to 250 staff)
- Large business (over 250 staff)
- Business advisor
- Business representative organisation
- Other (please describe):

If you are responding on behalf of an organisation, please explain how the views of the members of that organisation were assembled:

**Question 1:** Can you provide evidence of any non-tax regulations that have a disproportionate impact on businesses, or co-operatives, that are seeking to adopt, or have already adopted, employee ownership?

- Yes
- No

If yes, what are the regulations?

What impact do they cause?

What change would you propose?

Please provide evidence to support your responses wherever possible.

**Question 2:** What else do you think could be done to further reduce the complexity of employee ownership?

**Question 3:** Do you think that if an exemption is introduced in England and Wales, a similar exemption should be applied in Northern Ireland?

- Yes
- No

Please explain why you think this.

**Question 4:** To what extent do you think that the existing rule against perpetuities in England and Wales acts as a deterrent for businesses considering a move to employee ownership?

- Considerable amount
- Reasonable amount
- Not very much
- Not at all

Please explain why you think this and provide evidence where possible.

**Question 5:** What is your view on whether the rule against perpetuities applies to each individual in an employee benefit trust or to the overall scheme? Please explain your reasoning.

**Question 6:** To what extent do you agree that existing employee benefit trusts should be able to opt-in to any exemption from the rule against perpetuities?

- Considerable amount
- Reasonable amount
- Not very much
- Not at all

Please explain why you think this and provide evidence where possible.

If you think opting-in should be possible, how should this be done?



**Question 7.** What is your estimate on the likely number of businesses in England and Wales whose existing employee benefit trust will reach the end of its perpetuity period during the following periods:

In 10 years

In 30 years

In 50 years

Please explain any assumptions used in making these estimates and provide evidence where possible.

**Question 8:** What do you estimate will be the average cost to a business of handling a situation where its employee benefit trust comes to the end of its perpetuity period?

Please explain any assumptions made in making these estimates and provide evidence where possible.

**Question 9.** Should any exemption from the rule against perpetuities apply to all employee benefit trusts or only those that genuinely support employee ownership?

All

Only those that genuinely support employee ownership.

If “Only those that genuinely support employee ownership”, how should this be done?

Please explain your reasoning.

**Question 10:** Should any exemption from the rule against perpetuities apply only to employee benefit trusts that hold certain types of assets, e.g. shares?

Yes

No

Please explain your reasoning.

**Question 11:** Which, if any, existing legal definition should be the basis for, or inform, a legal definition for any exemption for employee benefit trusts from the rule against perpetuities?

What other issues do you think need to be considered when drafting this definition?

**Question 12:** What, if any, other unintended consequences might there be to changing the way the rule against perpetuities affects employee benefit trusts?

**Thank you.**

## Annex B: Extract from the Nuttall Review on Employee Ownership

“5.27 Those creating new employee benefit trusts under English law as part of a permanent employee ownership solution want their trusts to last forever. In practice, founders typically work on the basis that either the law will have changed or a solution will be found when the fixed perpetuity period is reaching its end to enable shares to be re-settled for another 125 years. There are such solutions available but this review believes this is an unnecessary risk and complication and that employee benefit trusts should be another exclusion from the rule against perpetuities.

5.28. This review believes the law and practice has moved on since the Law Commission's consideration of the case for an employee benefit trust exemption:

- Other jurisdictions have adopted a different approach when reforming their trust law. Since 27 October 2006, unless its terms provide otherwise, a Jersey trust may continue in existence for an unlimited period and no rule against perpetuities or excessive accumulations shall apply to a trust or to any advancement, appointment, payment or application of assets from a Jersey trust. Guernsey law has similarly changed; and
- Scottish law has developed so as to permit perpetual trusts. The Law Commission found that the mere fact the law in Scotland allows the creation of perpetual trusts does not lead settlers to create them; and perpetual trusts, when created, tended to be confined to public purposes. This review found the situation to be different now and that employee benefit trusts established under Scots law may now be established as perpetual trusts.

5.29 There is a power to create additional exceptions under the Perpetuities and Accumulations Act 2009. It was thought conceivable that situations may arise in future where the rule against perpetuities would apply, but where that might be undesirable. In order to meet this possibility changes may be made by statutory instrument. An exemption could apply to any new employee benefit trust established under English law unless its terms provided otherwise. Consideration should also be given to permitting existing employee benefit trusts to opt in to any new exemption. Alternatively, there might be scope for existing employee benefit trusts to be exempted specifically.

5.30. There is a generally applicable definition of employee benefit trusts. Employee benefit trusts are practically always drafted so as to meet the definition of a trust for the benefit of employees in section 86 of the Inheritance Tax Act 1984, because of the inheritance tax advantages this brings. Although not required under section 86, employee benefit trusts are also almost always discretionary trusts. The Law Commission believed its changes could have had retrospective effect only if there had been a saving for what are known as vested rights. In a discretionary trust no beneficiary has any vested rights.

5.31. Subject to consultation, it should be possible to define an exemption for employee benefit trusts by cross-reference to section 86 with a further condition that the trust is a discretionary trust.“

## Annex C: Extract from 1998 Law Commission Report

### Paragraph 7.53

We can see obvious objections to the retrospective application of the recommendations that we have made in this Part. To abrogate the applicability of the rule to certain types of right and interest might have the effect of validating dispositions that had been treated either as void *ab initio* or as spent through the effluxion of the perpetuity period. It would also almost certainly interfere with commercial bargains that had been concluded on the basis of the present law. The only justification for retrospective reform would be to make the law simpler and to obviate the need to know the former law. We are not satisfied that any viable scheme having retrospective effect would meet those goals, because of the need to preserve the effect of concluded or void transactions. **We therefore recommend that the restrictions on the scope of the rule against perpetuities that we propose in this Part should only apply to instruments taking effect on or after the date on which any legislation is brought into force.** (Draft Bill, Cls 15(1), (3), 22.)

### Paragraph 8.18

(Fourthly), **we recommend that, subject to two exceptions, the 125-year perpetuity period should only apply prospectively to instruments taking effect on or after the date on which any legislation is brought into force.** (Draft Bill, Cl 15(1).) The dangers of retrospective application are less acute in relation to the length of the perpetuity period than they are as regards the applicability of the rule.<sup>30</sup> However, there is a risk that if the new period were to apply to existing trusts it could defeat the intentions of settlers and testators and affect the rights of beneficiaries. Many existing trusts are likely to contain provisions that are incompatible with the new regime. They might (for example) specify perpetuity periods or trust periods of 80 years,<sup>31</sup> and the wishes of testators might be overridden and thereby frustrated or defeated. For this reason not only will the provisions not be retrospective, but there is also one category of instrument that will take effect *after* the legislation is brought into force to which the new provisions would *not* apply. Many testators will have executed wills on the basis of the law as it stood before the legislation was brought into force. In the light of this, **we recommend that the new perpetuity provisions should not apply to wills that were executed before the new legislation was brought into force, but where the testator died after that date.** (Draft Bill, Cls 15(1), 16.32)

## Annex D: Legal definitions

### 1. Section 86 of the Inheritance Tax Act 1984

*Trusts for benefit of employees.*

*(1) Where settled property is held on trusts which, either indefinitely or until the end of a period (whether defined by a date or in some other way) do not permit any of the settled property to be applied otherwise than for the benefit of—*

*(a) persons of a class defined by reference to employment in a particular trade or profession, or employment by, or office with, a body carrying on a trade, profession or undertaking, or*

*(b) persons of a class defined by reference to marriage to, or civil partnership with, or relationship to, or dependence on, persons of a class defined as mentioned in paragraph (a) above,*

*then, subject to subsection (3) below, this section applies to that settled property or, as the case may be, applies to it during that period.*

*(2) Where settled property is held on trusts permitting the property to be applied for the benefit of persons within paragraph (a) or (b) of subsection (1) above, those trusts shall not be regarded as outside the description specified in that subsection by reason only that they also permit the settled property to be applied for charitable purposes.*

*(3) Where any class mentioned in subsection (1) above is defined by reference to employment by or office with a particular body, this section applies to the settled property only if—*

*(a) the class comprises all or most of the persons employed by or holding office with the body concerned, or*

*(b) the trusts on which the settled property is held are those of a profit sharing scheme approved in accordance with Schedule 9 to the Taxes Act 1988; or*

*(c) the trusts on which the settled property is held are those of a share incentive plan approved under Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003 .*

*(4) Where this section applies to any settled property—*

*(a) the property shall be treated as comprised in one settlement, whether or not it would fall to be so treated apart from this section, and*

*(b) an interest in possession in any part of the settled property shall be disregarded for the purposes of this Act (except section 55) if that part is less than 5 per cent. of the whole.*

*(5) Where any property to which this section applies ceases to be comprised in a settlement and, either immediately or not more than one month later, the whole of it becomes comprised in another settlement, then, if this section again applies to it when it becomes comprised in the second settlement, it shall be treated for all the purposes of this Act as if it had remained comprised in the first settlement.*

## 2. Section 550 of Income Tax Earnings and Pensions Act 2003.

### *'Employee Benefit Trusts'*

(1) In this Chapter "employee benefit trust", in relation to a company, means a trust where conditions A and B are met.

(2) Condition A is that all or most of the employees of the company are eligible to benefit under the trust.

(3) Condition B is that after 13th March 1989 either—

(a) there has been no disposal of any of the property subject to the trust, or

(b) any disposal of any of that property was a disposal within subsection (4).

(4) The disposals within this subsection are—

(a) disposals in the ordinary management of the trust, or

(b) qualifying disposals (within the meaning given by [section 551](#)).

(5) In this section and [section 551](#) "disposal" means disposal by sale, loan or otherwise.

## 3. Section 496A (5) of the Income Tax Act 2007: tax charged on trustees

(5) A settlement is an employee benefit settlement if the trusts on which the settled property is held do not permit the settled property to be applied otherwise than—

(a) for the benefit of persons of one or more relevant classes, or

(b) for the benefit of such persons and for charitable purposes.

## 4. Section 1166 of Companies Act (2006)

### *"Employees' share scheme"*

For the purposes of the Companies Acts an employees' share scheme is a scheme for encouraging or facilitating the holding of shares in or debentures of a company by or for the benefit of—

(a) the bona fide employees or former employees of—

(i) the company,

(ii) any subsidiary of the company, or

(iii) the company's holding company or any subsidiary of the company's holding company, or

(b) the spouses, civil partners, surviving spouses, surviving civil partners, or minor children or step-children of such employees or former employees.

## **Annex E: List of Stakeholders**

### **Legal Firms**

1. Allen and Overy
2. BDO
3. Baker & McKenzie
4. Baker Tilly Tax and Advisory Services
5. Bates Wells & Braithwaite
6. Berkley Law
7. Berwin Leighton Paisner
8. Bircham Dyson Bell
9. Bird & Bird
10. Boodle Hatfield
11. Charles Russell
12. Clifford Chance
13. Collyer Bristow
14. Costa Carlisle Solicitors
15. Currey & Co.
16. Deloitte & Touche
17. Farrer & Co.
18. Field Fisher Waterhouse
19. Forsters
20. Grant Thornton UK
21. Marcus Sinclair
22. Howard Kennedy Fsi
23. Hunters

24. Keating Chambers
25. Lawrence Graham
26. Lewis Silkin
27. Linklaters
28. MacFarlanes
29. Maurice Turnor Garner
30. Mishcon de Reya
31. New Quadrant Partners
32. Norton Rose
33. Payne Hicks Beach
34. Penningtons Solicitors
35. Perkins Slade
36. Pett Franklin & Co.
37. Pinsent Masons
38. Price Waterhouse Coopers
39. Rawlinson Hunter
40. Russell Cooke
41. Slaughter & May
42. Speechly Bircham
43. Squire Sanders (UK)
44. Taylor Wessing
45. Trowers and Hamlin
46. Turcan Connell
47. Walker Morris
48. Withers



## **Legal Associations**

1. The Bar Council
2. The Law Society
3. The Law Society of Scotland
4. The Share Plan Lawyers Group
5. Society of Trust and Estate Practitioners (STEP)
6. Trust Discussion Forum – Administered by STEP

## **Associations, Institutes and other organisations**

1. Advisory Conciliation and Arbitration Services (ACAS)
2. Association of Corporate Trustees
3. British Chambers of Commerce (BCC)
4. Chartered Institute of Taxation (CIOT)
5. Confederation of British Industry (CBI)
6. Co-operatives Development Scotland
7. Co-operatives UK
8. Eaga Trust
9. Employee Engagement Taskforce
10. Employee Ownership Association (EOA)
11. Employee Share Ownership (ESOP) Centre
12. European Federation of Employee Share Ownership (EFESO)
13. Federation of Small Businesses (FSB)
14. Institute of Chartered Accountants in England and Wales (ICAEW)
15. Institute of Directors (IOD)
16. Irish Proshare

17. London Society of Chartered Accountants
18. Low Income Tax Reform Group (LITRG)
19. National Centre for Employee Ownership (NCEO)
20. Social Enterprise UK
21. SustainAbility
22. Trades Union Council
23. Wales Co-operative Centre
24. Welsh Govt. Dept. for Economy Science and Transport
25. White Rose Employee Ownership Centre

## **Businesses**

1. Arup Group
2. Baxendale Partnership
3. Boydell and Brewer Group Ltd.
4. Cambridge Weight Plan
5. Childbase
6. Co-ownership Solutions
7. Ernst & Young
8. Gripple
9. Handelbanken
10. Hurlstons
11. John Lewis Partnership
12. Jordans
13. KPMG
14. Macleod

15. Make
16. Mooncup Ltd.
17. Network ROI
18. NTLWorld
19. Office for Public Management Ltd.
20. Parfetts
21. Parisi Tax LLP
22. Price Waterhouse Coopers
23. Prospects
24. Quintessa
25. RM2 Partnership Ltd.
26. Santander
27. School Trends
28. Scitech
29. Scott Bader Commonwealth
30. Shakespeares
31. Share Centre
32. Skye Instruments
33. Tibbalds Planning and Urban Design Ltd.
34. Yorkshire Building Society

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