

Status: This version of this cross heading contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Preservation of interests in property disposed of on behalf of person lacking capacity is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

PROSPECTIVE

SCHEDULE 5

Property and affairs: supplementary provisions

Preservation of interests in property disposed of on behalf of person lacking capacity

8.—(1) Sub-paragraphs (2) and (3) apply if—

- (a) P's property has been disposed of by virtue of section 115;
- (b) under P's will or intestacy, or by a gift perfected or nomination taking effect on P's death, any other person would have taken an interest in the property but for the disposal; and
- (c) on P's death, any property belonging to P's estate represents the property disposed of.

(2) The person takes the same interest, if and so far as circumstances allow, in the property representing the property disposed of.

(3) If the property disposed of was real property, any property representing it is to be treated, so long as it remains part of P's estate, as if it were real property.

(4) The court may direct that, on a disposal of P's property—

- (a) which is made by virtue of section 115, and
- (b) which would apart from this paragraph result in the conversion of personal property into real property,

property representing the property disposed of is to be treated, so long as it remains P's property or forms part of P's estate, as if it were personal property.

(5) References in sub-paragraphs (1) to (4) to the disposal of property are to—

- (a) the sale, exchange, charging of or other dealing (otherwise than by will) with property other than money,
- (b) the removal of property from one place to another,
- (c) the application of money in acquiring property,
- (d) the transfer of money from one account to another,

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and references to property representing property disposed of are to be construed accordingly and as including the result of successive disposals.

(6) The court may give such directions as appear to it appropriate for the purpose of facilitating the operation of sub-paragraphs (1) to (3), including the carrying of money to a separate account and the transfer of property other than money.

9.—(1) Sub-paragraph (2) applies if the court has ordered or directed the expenditure of money—

- (a) for carrying out permanent improvements on any of P's property; or
- (b) otherwise for the permanent benefit of any of P's property.

(2) The court may order that—

- (a) the whole of the money expended or to be expended, or
- (b) any part of it,

is to be a charge on the property either without interest or with interest at a specified rate.

(3) An order under sub-paragraph (2) may provide for excluding or restricting the operation of paragraph 8(1) to (3).

(4) A charge under sub-paragraph (2) may be made in favour of such person as may be just and, in particular, where the money charged is paid out of P's general estate, may be made in favour of a person as trustee for P.

(5) No charge under sub-paragraph (2) may confer any right of sale or foreclosure during P's lifetime.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 285(2)(a)-(c) substituted for s. 285(2)(a)(b) by [2022 c. 18 \(N.I.\) Sch. 3 para. 77\(b\)](#)