

*These notes refer to the Mental Capacity Act (Northern Ireland)  
2016 (c.18) which received Royal Assent on 9 May 2016*

# Mental Capacity Act (Northern Ireland) 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 6 – High Court Powers: Decisions and Deputies**

##### ***Section 115 – Section 113 powers: property and affairs***

This section provides that the High Court's powers under section 113 as they relate to P's property and affairs extend in particular to a number of areas, for example, control and management of P's property, carrying out a contract entered into by P, discharging P's debts and executing a will for P. However, a will cannot be executed unless P has reached the age of 18. The section also provides that any powers regarding P's property and affairs, except the power to execute a will, can be exercised even though P is not yet aged 16, if the court considers that it is likely that P will still lack capacity to make decisions about that issue when he or she reaches 18 years of age.

The section also provides that these powers are subject to section 117 which makes provision for restrictions about matters that can be delegated to deputies.

Schedule 5 makes provision for the execution of a will on behalf of P under section 115. It provides that a will may make any provision which could be made by a will which was executed by P if he or she had capacity to do so.

The Schedule also provides that any will executed in pursuance of a court order or direction must state that it is signed by the authorised person on behalf of P; be signed by the authorised person with P's name and the authorised person's name in the presence of two or more witnesses who are present at the same time; be attested and subscribed by those witnesses in the presence of the authorised person and must be sealed with the official seal of the court.

Where a will is executed in accordance with the Schedule, the Wills and Administration Proceedings (Northern Ireland) Order 1994 will have effect, subject to modifications to references in the Order to formalities for executing a will. The will has the same effect as if P had capacity to make a valid will and that will had been executed in accordance with the Order. However, a will executed in accordance with the Schedule will not have effect in so far as it disposes of immovable property outside Northern Ireland, nor will it have effect in so far as it relates to any property or matter other than immovable property

if P is domiciled outside of Northern Ireland when the will is executed and the question of P's testamentary capacity would fall to be determined in accordance with the law of a place outside Northern Ireland.

The Schedule also provides that if, under section 115, provision is made for the settlement of any of P's property or the exercise of P's power to appoint trustees or retire from a trust, the court can also make a consequential vesting order or such other order as may be required.

Additionally, the Schedule makes provision for the court to vary or revoke a settlement in various circumstances if a settlement has been made under section 115, and to transfer stock or dividends in certain circumstances.

The Schedule also provides that an individual who would have benefitted from P's property under a will or intestacy, but the property has been disposed of under section 115, that individual can take the same interest, in so far as possible, in the property that represents the property that was disposed of. Provision is also made that where the court has ordered or directed the expenditure of money for carrying out permanent improvements on P's property or for the permanent benefit of the property, the court may order that all the expenditure or part of it can be a charge on the property. However, any such charge does not confer a right of sale or foreclosure during the lifetime of P.