

Status: Point in time view as at 01/10/2007.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Cross Heading: Preservation of interests in property disposed of on behalf of person lacking capacity. (See end of Document for details)

SCHEDULES

SCHEDULE 2

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 18,
 - (b) under P's will or intestacy, or by a gift perfected or nomination taking effect on his 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 18, 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;
- 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 necessary or expedient 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.

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- (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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