

Status: Point in time view as at 01/04/2008.

Changes to legislation: Mental Capacity Act 2005, Cross Heading: Trustee Act 1925 (c. 19) is up to date with all changes known to be in force on or before 24 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)

SCHEDULES¹

SCHEDULE 6

MINOR AND CONSEQUENTIAL AMENDMENTS

Trustee Act 1925 (c. 19)

- 3 (1) The Trustee Act 1925 (c. 19) is amended as follows.
- (2) In section 36 (appointment of new trustee)—
- (a) in subsection (6C), for the words from “a power of attorney” to the end, substitute “ an enduring power of attorney or lasting power of attorney registered under the Mental Capacity Act 2005 ”, and
 - (b) in subsection (9)—
 - (i) for the words from “is incapable” to “exercising” substitute “ lacks capacity to exercise ”, and
 - (ii) for the words from “the authority” to the end substitute “ the Court of Protection ”.
- (3) In section 41(1) (power of court to appoint new trustee) for the words from “is incapable” to “exercising” substitute “ lacks capacity to exercise ”.
- (4) In section 54 (mental health jurisdiction)—
- (a) for subsection (1) substitute—

“(1) Subject to subsection (2), the Court of Protection may not make an order, or give a direction or authority, in relation to a person who lacks capacity to exercise his functions as trustee, if the High Court may make an order to that effect under this Act.”,
 - (b) in subsection (2)—
 - (i) for the words from the beginning to “of a receiver” substitute “ Where a person lacks capacity to exercise his functions as a trustee and a deputy is appointed for him by the Court of Protection or an application for the appointment of a deputy ”,
 - (ii) for “the said authority”, in each place, substitute “ the Court of Protection ”, and
 - (iii) for “the patient”, in each place, substitute “ the person concerned ”, and
 - (c) omit subsection (3).
- (5) In section 55 (order made on particular allegation to be conclusive evidence of it)—
- (a) for the words from “Part VII” to “Northern Ireland” substitute “ sections 15 to 20 of the Mental Capacity Act 2005 or any corresponding provisions having effect in Northern Ireland ”, and
 - (b) for paragraph (a) substitute—

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“(a) that a trustee or mortgagee lacks capacity in relation to the matter in question;”.

(6) In section 68 (definitions), at the end add—

“(3) Any reference in this Act to a person who lacks capacity in relation to a matter is to a person—

- (a) who lacks capacity within the meaning of the Mental Capacity Act 2005 in relation to that matter, or
- (b) in respect of whom the powers conferred by section 48 of that Act are exercisable and have been exercised in relation to that matter.”.

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