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*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Paragraph 3. (See end of Document for details)*

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## SCHEDULES

### 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.”.

**Changes to legislation:**

There are currently no known outstanding effects for the Mental Capacity Act 2005, Paragraph 3.