

## CHAPTER 16

**APPOINTMENT OF NEW TRUSTEES IN PLACE OF  
TRUSTEES LACKING MENTAL CAPACITY****1. INTRODUCTION****Agent acting on behalf of trustee lacking capacity**

**16-02** NOTE 1. FOR THE REFERENCE TO *Chitty on Contracts*, SEE NOW (30th edn), Vol.2, § 31-164.

**Lack of capacity***Statutory definitions concerning lack of capacity*

**16-08** NOTE 22. Mental Health Act 1983, s.1 is amended by Mental Health Act 2007, s.1 with effect from November 3, 2008: Mental Health Act 2007 (Commencement No.7 and Transitional Provisions) Order 2008 (SI 2008/1900). For the reference to Heywood and Massey, *Court of Protection Practice*, see now Chap.4.

**2. APPOINTMENT UNDER STATUTORY AND EXPRESS POWERS****Statutory power***Nominated person lacking capacity*

**16-12** NOTE 42. FOR THE REFERENCE TO Heywood and Massey, *Court of Protection Practice*, SEE NOW §§ 22-010 and 22-011.

*Trustee lacks capacity: nominated person available to act*

**16-15** THIRD SENTENCE. Delete the reference to section 40(3) of the Trustee Act 1925 and replace by a reference to section 40(4) of the Trustee Act 1925.

**TRUSTEES LACKING MENTAL CAPACITY**

*Trustee lacks capacity, no available nominated person but another trustee available to act*

- 16–16** NOTE 71. FOR THE REFERENCE TO Heywood and Massey, *Court of Protection Practice*, SEE NOW §§ 22–013 and 22–014.

**3. APPOINTMENT AT THE INSTANCE OF BENEFICIARIES****Directions by beneficiaries**

- 16–24** NOTE 94. FOR THE REFERENCE TO Heywood and Massey, *Court of Protection Practice*, SEE NOW § 22–021.

**Vesting of trust assets**

- 16–25** SECOND SENTENCE. DELETE section 40(3) of the Trustee Act 1925 AND REPLACE BY: section 40(4) of the Trustee Act 1925.

**4. APPOINTMENT BY THE COURT****Concurrent jurisdiction of Court of Protection**

- 16–28** NOTE 16. FOR THE REFERENCE TO Heywood and Massey, *Court of Protection Practice*, SEE NOW § 22–016.

**5. RETIREMENT OR REMOVAL WITHOUT NEW APPOINTMENT****Retirement under section 39 of the Trustee Act 1925 or under express power**

- 16–31** NOTES 27, 30 AND 32. FOR THE REFERENCE TO Heywood and Massey, *Court of Protection Practice*, SEE NOW §§ 22–010 and 22–011.

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