



# Conveyancing Amendment (Scotland) Act 1938

1938 CHAPTER 24 1 and 2 Geo 6

**S**

An Act to amend the law of conveyancing in Scotland.

[17th May 1938]

## Modifications etc. (not altering text)

C1 Words of enactment omitted under authority of [Statute Law Revision Act 1948 \(c. 62\), s. 3](#)

## 1 Provision in regard to judicial factors, &c. **S**

For the purposes of sections three and four of the Act of 1924, a judicial factor appointed by the Court to administer a trust estate comprising any land or any heritable security or part of any heritable security or any lease or security over a lease, or a trustee appointed by the Court on such a trust estate shall be deemed to be a person having a right within the meaning of the said sections to such land or heritable security or part of a heritable security or lease or security over a lease respectively, and shall with respect to any lease or security over a lease comprised in the trust estate be entitled to the benefit of all enabling powers and rights under section twenty-four of the Act of 1924, and an extract of the act and warrant appointing such judicial factor or trustee shall, for the purposes of deductions of title in terms of the said Act, be a valid midcouple or link of title.

## 2 Amendment of Act of 1924, s. 8 and Schedule D. **S**

- (1) Section eight of the Act of 1924 shall be amended as follows, that is to say:—
- (a) in subsection (4) thereof after the word “is” where this first occurs there shall be inserted the words “for any purpose”; and
  - (b) after the said subsection (4) the following subsection shall be inserted:—

“(5) Note 1 to Schedule D to this Act shall apply to a reference competently made to any deed for reservations, real burdens,

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conditions, provisions, limitations, obligations and stipulations affecting lands and to the form of such reference given in Schedule H of the Conveyancing (Scotland) Act, 1874.”

(2) In Note 1 to Schedule D to the Act of 1924 after the words “a particular description” there shall be inserted the words “or to a Deed containing reservations, real burdens, conditions, provision, limitations, obligations and stipulations affecting lands”.

(3) ..... F1

**Textual Amendments**

F1 Ss. 2(3), 3, 12(3) repealed by Statute Law Revision Act 1950 (14 Geo. 6 c. 6)

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**Modifications etc. (not altering text)**

C2 The text of S. 2(1)(2), S. 4, 7(1), 7(2), Sch. is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

3 ..... F2 S

**Textual Amendments**

F2 Ss. 2(3), 3, 12(3) repealed by Statute Law Revision Act 1950 (14 Geo. 6 c. 6)

4 **Amendment of Act of 1924, s. 17.** S

In subsection (1) of section seventeen of the Act of 1924, after the words “forty years” there shall be inserted the words “in the Act of the Parliament Scotland, 1469, cap. 4 (‘anent the Act of prescriptioun of obligationis’) in the Act of the Parliament of Scotland, 1474, cap. 9 (‘anent the Act of prescripcione of obligacionis’), and”.

**Modifications etc. (not altering text)**

C3 The text of S. 2(1)(2), S. 4, 7(1), 7(2), Sch. is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

5 ..... F3 S

**Textual Amendments**

F3 S. 5 repealed with savings by Succession (Scotland) Act 1964 (c. 41), s. 34, Sch. 3

F4 6 **Provisions as to actions of declarator of irritancy.** S

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**Textual Amendments**

**F4** S. 6 repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), Sch. 12 para. 18(2), [Sch. 13 Pt. 1](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

**7 Amendment of Act of 1924, s. 44. S**

- (1) Subsection (4) of section forty-four of the Act of 1924 shall be amended as follows, that is to say:—
- (a) in paragraph (b) thereof the words “section one hundred and three of the <sup>M1</sup>Bankruptcy (Scotland) Act, 1856, or of” and the proviso shall be omitted, and for the words “a memorandum in the form provided by the said section forty-four of the said Act of 1913, as amended by this Act, which memorandum being so recorded shall have the effect of a memorandum recorded in terms of the said section forty-four as amended as aforesaid” there shall be substituted the words “a memorandum in the form provided by Schedule 0 to this Act”; and
  - (b) in paragraph (c) thereof there shall be inserted after the words “in such register” the words “or have recorded a memorandum in such register in terms of paragraph (b) of this subsection”.
- (2) the Act of 1924 shall be amended by the addition after Schedule N thereto of a schedule in the form contained in the Schedule to this Act.

**Modifications etc. (not altering text)**

**C4** The text of S. 2(1)(2), S. 4, 7(1), 7(2), Sch. is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

**Marginal Citations**

**M1** 19 & 20 Vict. c. 79.

**<sup>F5</sup>8 Prohibition of subinfeudation annulled. S**

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**Textual Amendments**

**F5** S. 8 repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), Sch. 12 para. 18(2), [Sch. 13 Pt. 1](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

**<sup>F6</sup>9 Limitation of effect of conditions as to pre-emption. S**

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**Textual Amendments**  
**F6** S. 9 repealed (28.11.2004) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), ss. 122(1), 129(2), **Sch. 15** (with ss. 119, 121) (see [S.S.I. 2003/456](#), art. 2)

**10** ..... **F7** **S**

**Textual Amendments**  
**F7** S. 10 repealed with savings by [Succession \(Scotland\) Act 1964 \(c. 41\)](#), ss.1(1), 34(2), **Sch.3**

**11** **Certain testamentary writings to be deemed to be probative.** **S**

Any writing of a testamentary character on which confirmation of executors nominate has prior to the commencement of this Act been issued by the Commissary Court or by any sheriff court shall be deemed to be probative.<sup>1</sup>

**12** **† Interpretation, short title, construction, commencement and extent.** **S**

(1) In this Act the expression “the Act of 1924” means the <sup>M2</sup>Conveyancing (Scotland) Act, 1924.

(2) This Act may be cited as the Conveyancing Amendment (Scotland) Act, 1938, and shall be construed as one with the Act of 1924.

(3) ..... **F8**

(4) This Act shall apply to Scotland only.

**Textual Amendments**  
**F8** Ss. 2(3), 3, 12(3) repealed by [Statute Law Revision Act 1950 \(14 Geo. 6 c. 6\)](#)

**Modifications etc. (not altering text)**  
**C5** A dagger appended to a marginal note means that it is no longer accurate

**Marginal Citations**  
**M2** 1924 c. 27.

## SCHEDULE

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SCHEDULE **S**

Section 7

**Modifications etc. (not altering text)**

- C6** The text of S. 2(1)(2), S. 4, 7(1), 7(2), Sch. is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

SCHEDULE **O** **S**

Section 44

## FORM OF MEMORANDUM TO BE RECORDED IN THE REGISTER OF SASINES.

Memorandum with regard to the subjects after described:

With reference to the subjects (*describe particularly or by reference*) T. the trustee in the sequestration of B. has obtained a vesting order under section 98 of the Bankruptcy (Scotland) Act 1913 dated (*insert date of order*).

The memorandum should be signed by the trustee or his law agent, dated, and recorded with a warrant of registration in the appropriate division or divisions of the Register of Sasines.

The form may be adapted in the case of a lease thus:

Memorandum with regard to the lease after-mentioned:

With reference to the lease granted by C in favour of D of the subjects therein described lying in the county of K, dated (*insert date*) and recorded in [*specify Register of Sasines and date of recording*], T. the trustee &c.

and in the case of a heritable security thus:—

With reference to the bond and disposition in security for the sum of (*insert date*) and recorded in (*specify Register of Sasines and date of recording*), T. the trustee &c.

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**Changes and effects yet to be applied to :**

- s. 9 substituted by [2000 asp 5 Sch. 12 para. 18\(3\)](#) (This amendment has not been applied to legislation.gov.uk. Sch. 12 para. 18(3) repealed (4.4.2003) by [2003 asp 9](#), ss. 128, 129(5), Sch. 15 (with ss. 119, 121))