



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

## 1985 CHAPTER 73

### *Provisions relating to other contracts and obligations*

#### **8 Rectification of defectively expressed documents**

- (1) Subject to section 9 of this Act, where the court is satisfied, on an application made to it, that—
  - (a) a document intended to express or to give effect to an agreement fails to express accurately the common intention of the parties to the agreement at the date when it was made ; or
  - (b) a document intended to create, transfer, vary or renounce a right, not being a document falling within paragraph (a) above, fails to express accurately the intention of the grantor of the document at the date when it was executed,it may order the document to be rectified in any manner that it may specify in order to give effect to that intention.
- (2) For the purposes of subsection (1) above, the court shall be entitled to have regard to all relevant evidence, whether written or oral.
- (3) Subject to section 9 of this Act, in ordering the rectification of a document under subsection (1) above (in this subsection referred to as " the original document"), the court may, at its own instance or on an application made to it, order the rectification of any other document intended for any of the purposes mentioned in paragraph (a) or (b) of subsection (1) above which is defectively expressed by reason of the defect in the original document.
- (4) Subject to section 9(4) of this Act, a document ordered to be rectified under this section shall have effect as if it had always been so rectified.
- (5) Subject to section 9(5) of this Act, where a document recorded in the Register of Sasines is ordered to be rectified under this section and the order is likewise recorded, the document shall be treated as having been always so recorded as rectified.

- (6) Nothing in this section shall apply to a document of a testamentary nature.
- (7) It shall be competent to register in the Register of Inhibitions and Adjudications a notice of an application under this section for the rectification of a deed relating to land, being an application in respect of which authority for service or citation has been granted; and the land to which the application relates shall be rendered litigious as from the date of registration of such a notice.
- (8) A notice under subsection (7) above shall specify the names and designations of the parties to the application and the date when authority for service or citation was granted and contain a description of the land to which the application relates.
- (9) In this section and section 9 of this Act " the court" means the Court of Session or the sheriff.

## **9 Provisions supplementary to section 8: protection of other interests**

- (1) The court shall order a document to be rectified under section 8 of this Act only where it is satisfied—
  - (a) that the interests of a person to whom this section applies would not be adversely affected to a material extent by the rectification ; or
  - (b) that that person has consented to the proposed rectification.
- (2) Subject to subsection (3) below, this section applies to a person (other than a party to the agreement or the grantor of the document) who has acted or refrained from acting in reliance on the terms of the document or on the title sheet of an interest in land registered in the Land Register of Scotland being an interest to which the document relates, with the result that his position has been affected to a material extent.
- (3) This section does not apply to a person—
  - (a) who, at the time when he acted or refrained from acting as mentioned in subsection (2) above, knew, or ought in the circumstances known to him at that time to have been aware, that the document or (as the case may be) the title sheet failed accurately to express the common intention of the parties to the agreement or, as the case may be, the intention of the grantor of the document; or
  - (b) whose reliance on the terms of the document or on the title sheet was otherwise unreasonable.
- (4) Notwithstanding subsection (4) of section 8 of this Act and without prejudice to subsection (5) below, the court may, for the purpose of protecting the interests of a person to whom this section applies, order that the rectification of a document shall have effect as at such date as it may specify, being a date later than that as at which it would have effect by virtue of the said subsection (4).
- (5) Notwithstanding subsection (5) of section 8 of this Act and without prejudice to subsection (4) above, the court may, for the purpose of protecting the interests of a person to whom this section applies, order that a document as rectified shall be treated as having been recorded as mentioned in the said subsection (5) at such date as it may specify, being a date later than that as at which it would be treated by virtue of that subsection as having been so recorded. <6) For the purposes of subsection (1) above, the court may require the Keeper of the Registers of Scotland to produce such information as he has in his possession relating to any persons who have asked him to supply details with regard to a title sheet mentioned in subsection (2) above; and any

expense incurred by the Keeper under this subsection shall be borne by the applicant for the order.

- (7) Where a person to whom this section applies was unaware, before a document was ordered to be rectified under section 8 of this Act, that an application had been made under that section for the rectification of the document, the Court of Session, on an application made by that person within the time specified in subsection (8) below, may—
- (a) reduce the rectifying order ; or
  - (b) order the applicant for the rectifying order to pay such compensation to that person as it thinks fit in respect of his reliance on the terms of the document or on the title sheet.
- (8) The time referred to in subsection (7) above is whichever is the earlier of the following—
- (a) the expiry of 5 years after the making of the rectifying order;
  - (b) the expiry of 2 years after the making of that order first came to the notice of the person referred to in that subsection.

## **10 Negligent misrepresentation**

- (1) A party to a contract who has been induced to enter into it by negligent misrepresentation made by or on behalf of another party to the contract shall not be disentitled, by reason only that the misrepresentation is not fraudulent, from recovering damages from the other party in respect of any loss or damage he has suffered as a result of the misrepresentation ; and any rule of law that such damages cannot be recovered unless fraud is proved shall cease to have effect.
- (2) Subsection (1) applies to any proceedings commenced on or after the date on which it comes into force, whether or not the negligent misrepresentation was made before or after that date, but does not apply to any proceedings commenced before that date.

## **11 Amendment of Bills of Exchange Act 1882 as respects countermanded cheques**

In the Bills of Exchange Act 1882—

- (a) at the beginning of section 53(2) (which provides as to the effect of presentment of a bill of exchange) there shall be inserted the words " Subject to section 75A of this Act, "; and
- (b) after section 75 there shall be inserted the following section—
  - (1) On the countermand of payment of a cheque, the banker shall be treated as having no funds available for the payment of the cheque.
  - (2) This section applies to Scotland only.”.

## **12 Limitation of defamation and other actions**

- (1) The Prescription and Limitation (Scotland) Act 1973 shall be amended in accordance with the following provisions of this section.
- (2) After section 18 of that Act there shall be inserted the following section—

**“18A Limitation of defamation and other actions.**

- (1) Subject to subsections (2) and (3) below and section 19A of this Act, no action for defamation shall be brought unless it is commenced within a period of 3 years after the date when the right of action accrued.
- (2) In the computation of the period specified in subsection (1) above there shall be disregarded any time during which the person alleged to have been defamed was under legal disability by reason of nonage or unsoundness of mind.
- (3) Nothing in this section shall affect any right of action which accrued before the commencement of this section.
- (4) In this section—
  - (a) "defamation" includes convicium and malicious falsehood, and "defamed" shall be construed accordingly; and
  - (b) references to the date when a right of action accrued shall be construed as references to the date when the publication or communication in respect of which the action for defamation is to be brought first came to the notice of the pursuer.”
- (3) In section 19A(1) of that Act (power of court to override time limits) after "18" there shall be inserted the words "and 18A".
- (4) In section 22(2) of that Act (assigned rights of action) for the words "or 18" there shall be substituted the words ", 18 or 18A" and for the words ", as the case may be, 18" there shall be substituted the words "of the said section 18 or, as the case may be, subsection (A)(b) of the said section 18A".
- (5) In Schedule 1 to that Act, in paragraph 2 (obligations to which the five year prescription does not apply) after subparagraph (g) there shall be inserted the following—
  - “(gg) to any obligation to make reparation or otherwise make good in respect of defamation within the meaning of section 18A of this Act;”.

**13 Amendments of Matrimonial Homes (Family Protection) (Scotland) Act 1981**

- (1) The Matrimonial Homes (Family Protection) (Scotland) Act 1981 shall be amended in accordance with the following provisions of this section.
- (2) In section 1(1)(a) of that Act (right of occupying spouse not to be excluded from matrimonial home), for the words from "not" to the end there shall be substituted the words "to continue to occupy the matrimonial home ;".
- (3) After section 1 of that Act there shall be inserted the following subsection—
  - “(1A) The rights conferred by subsection (1) above to continue to occupy or, as the case may be, to enter and occupy the matrimonial home include, without prejudice to their generality, the right to do so together with any child of the family.”.
- (4) In section 1(6) of that Act (renunciation of occupancy rights to be sworn or affirmed before notary public) at the end there shall be added the following—

“In this subsection, " notary public " includes any person duly authorised by the law of the country (other than Scotland) in which the swearing or affirmation takes place to administer oaths or receive affirmations in that other country.”.

(5) In section 4(1) of that Act after the words " either spouse " there shall be inserted the words " whether or not that spouse is in occupation at the time of the application. " .

(6) In section 6 of that Act (continued exercise of occupancy rights after dealings with the matrimonial home)—

(a) the word "or" occurring immediately after subsection (3)(d) shall be omitted;

(b) in subsection (3)(e)—

(i) for the words " the purchase of a matrimonial home by " there shall be substituted the words " a sale to ";

(ii) after the word " at" there shall be inserted the words " or before ";

(iii) for the words from " entitled spouse ", where first occurring, to the word " spouse ", where thirdly occurring, there shall be substituted the words—

“seller—

(i) an affidavit sworn or affirmed by the seller declaring that the subjects of sale are not a matrimonial home in relation to which a spouse of the seller has occupancy rights;”and

(iv) at the end there shall be added the words—

“For the purposes of this paragraph, the time of the dealing, in the case of the sale of an interest in heritable property, is the date of delivery to the purchaser of the deed transferring title to that interest.”;

(c) after subsection(3)(e) there shall be added—

“; or

(f) the entitled spouse has permanently ceased to be entitled to occupy the matrimonial home, and at any time thereafter a continuous period of 5 years has elapsed during which the non-entitled spouse has not occupied the matrimonial home.”.

(7) In section 8(2) of that Act (protection of interests of heritable creditors) after the word " apply " there shall be inserted the words " to secured loans in respect of which the security was granted prior to the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 " .

(8) After section 8(2) of that Act there shall be inserted the following subsections—

“(2A) This section shall not apply to secured loans in respect of which the security was granted after the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 unless the third party in granting the secured loan acted in good faith and at or before the granting of the security there was produced to the third party by the grantor—

(a) an affidavit sworn or affirmed by the grantor declaring that the security subjects are not a matrimonial home in relation to which a spouse of the grantor has occupancy rights ; or

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*Status: This is the original version (as it was originally enacted).*

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- (b) a renunciation of occupancy rights or consent to the granting of the security which bears to have been properly made or given by the non-entitled spouse.

(2B) for the purposes of subsections (2) and (2A) above, the time of granting a security, in the case of a heritable security, is the date of delivery of the deed creating the security.”.

(9) In section 18 of that Act (occupancy rights of cohabiting couples)—

- (a) in subsection (1) for the word " 3 " there shall be inserted the word " 6 " ; and
- (b) in subsection (6), in the definition of "occupancy rights"—
  - (i) in paragraph (a) for the words from " not" to the end there shall be substituted the words " to continue to occupy the house; " and
  - (ii) at the end there shall be inserted the words— " and, without prejudice to the generality of these rights, includes the right to continue to occupy or, as the case may be, to enter and occupy the house together with any child residing with the cohabiting couple " .

(10) In section 22 of that Act in the definition of " matrimonial home " there shall be added at the end the following—

“but does not include a residence provided or made available by one spouse for that spouse to reside in, whether with any child of the family or not, separately from the other spouse.”.

(11) Any—

- (a) affidavit lawfully sworn or affirmed before the commencement of this section in pursuance of paragraph (e) of subsection (3) of section 6 or subsection (2) of section 8 of that Act;
- (b) consent lawfully given before such commencement in pursuance of the said subsection (2),

shall have effect for the purposes of the said subsection (3) as amended by this section or, as the case may be, section 8(2A) of that Act as if it had been duly sworn, affirmed or, as the case may be, given in pursuance of the said paragraph (e) as so amended or, as the case may be, the said section 8(2A).