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 **[**[F1]and in either case after calling all parties who appear to it to have an interest**]**, 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.

[[F2](3A) If a document is registered in the Land Register of Scotland in favour of a person acting in good faith then, unless the person consents to rectification of the document, it is not competent to order its rectification under subsection (3) above.**]**

(4) Subject to **[**[F3]sections 8A and 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.

Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Section 8 is up to date with all changes known to be in force on or before 09 June 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) View outstanding changes*

(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 **[**[F4]except that this subsection is subject to subsection (8A) below.**]**.

(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.

[[F5](8A) A notice under subsection (7) above registered on or after the date on which section 67 of the Land Registration etc. (Scotland) Act 2012 (asp 5) (warrant to place a caveat) comes into force shall not have any effect in rendering litigious any land for which there is a title sheet in the Land Register of Scotland or in placing in bad faith any person acquiring such land. **]**

(9) In this section and section 9 of this Act "the court" means the Court of Session or the sheriff.

Textual Amendments

F1 Words in s. 8(3) inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), **ss. 55(2)(a)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

F2 S. 8(3A) inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), **ss. 55(2)(b)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

F3 Words in s. 8(4) substituted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), **ss. 55(2)(c)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

F4 Words in s. 8(7) inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **Sch. 5 paras. 30(a)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

F5 S. 8(8A) inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **Sch. 5 paras. 30(b)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

Modifications etc. (not altering text)

C1 S. 8 restricted (1.9.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 16, Sch. 3 paras. 3(2), **4(5)**; S.I. 1992/817, art. 3(2), **Sch. 3**

C2 S. 8 restricted (1.4.1993) by Further and Higher Education (Scotland) Act 1992 (c. 37), **s. 17(7)**; S.I. 1992/817, art. 3(2), **Sch. 4**

Changes to legislation:
Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Section 8 is up to date with all changes known to be in force on or before 09 June 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.
View outstanding changes

Changes and effects yet to be applied to :

– s. 8(7) words repealed by 2007 asp 3 Sch. 6 Pt. 1

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

– s. 8(5A) inserted by 2007 asp 3 s. 48(3)