

Information

FORMER SCHOOLS, SCHOOLHOUSES ETC

Title Conditions (Scotland) Act 2003 (“the 2003 Act”) Schools Sites Act 1841 (“the 1841 Act”) Entail Sites Act 1840 (“the 1840 Act”)

Landowners whose estates may include any reversionary rights or other rights to make claims in respect of schools, schoolhouses, churches and other church property should be aware that such rights have been substantially affected by the 2003 Act.

The purpose of the 1841 Act was to encourage private landowners to convey to either voluntary organisations or congregational boards of local churches small plots of land (less than an acre) for the provision of schools for the poor and school teachers' houses. It is also provided that when land granted for that purpose ceases to be used for such purpose, it reverts to the landowner or his/her successors in title, as owners of the larger estate from which the school and/or schoolhouse was conveyed i.e. there is a right of reversion.

The 2003 Act abolished the right of reversion under the 1841 Act and replaced it by a right on the part of the landowners or their successors to claim either a conveyance of the land or compensation from the education authority for the loss of reversion. Such claims must be made within a five year period from the date of cessation of use if this takes place after the date the 2003 Act came into force (4th April, 2003) or five years after that date if the cessation of use took place prior to 4th April, 2003 i.e. no later than 3rd April 2008. In order to preserve the claim either a court action must be raised, warranted and served on the education authority within the time limit or the appropriate education authority must give an unequivocal written admission that the obligation still subsists no later than the expiry date.

The 1840 Act provided for the sale or lease of land by the owners of an entailed estate for the purpose of building churches or schools and dwellinghouses and gardens for ministers and schoolhouses. This less commonly used Act provided that on the land ceasing to be used for that purpose the owner of the entailed estate would have the right to claim back the site by petition to the Sheriff Court.

This right has also been replaced by the 2003 Act with a right in favour of the successor to the owners of the entailed estate to claim either a reconveyance of the land or compensation. The same time limits for making the claim apply i.e. where the relevant use ceased prior to 4th April 2003, the appropriate action must be taken by 3rd April 2008 or otherwise action must be taken within five years of the cessation of the relevant use.

Although the attitude of local authorities towards claims being made in respect of these reversionary rights vary, questions will inevitably arise regarding their validity including issues regarding the competence of various competing parties to pursue such claims. To enable us to investigate any possible claims it will be necessary for us to see a copy of the original title to the property and evidence as to how the title is currently held and to have information showing when the relevant use ceased.

Please note again that where the relevant use ceased prior to 4th April 2003, the time limit for taking action expires on 3rd April 2008. We will take no action unless instructed to do so.

January 2008

This note is intended as a brief summary of the changes made with regard to certain reversionary rights by the Title Conditions (Scotland) Act 2003. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.

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