



Section 2 of The School Sites Act 1841 was of particular concern to the Keeper. It stated: *'Any person, ... in Scotland being the proprietor in fee simple or under entail, and in possession for the time being, may grant, convey, or enfranchise by way of gift, sale, or exchange, in fee simple or for a term of years, any quantity not exceeding one acre of such land, as a site for a school for the education of poor persons, or for the residence of the schoolmaster or schoolmistress, or otherwise for the education of such poor persons in religious and useful knowledge; ... Provided also, that upon the said land so granted as aforesaid, or any part thereof, ceasing to be used for the purposes in this Act mentioned, the same shall thereupon immediately revert to and become a portion of the estate held in fee simple or otherwise,....., as fully to all intents and purposes as if this Act had not been passed, any thing herein contained to the contrary notwithstanding.'*

The Act covered England and Wales as well as Scotland and was repealed, for Scotland only, by the Education (Scotland) Act 1945 with effect from 2 July 1945. However, this latter Act contained a savings clause, which provided that the repeal would not affect *'the title of an education authority to any property vested in or held in trust for them at the appointed day'* so the reversion was assumed to survive. The terms of the clause also mean that any site sold previous to that date ceased to be subject to the reversion.

As a consequence of Section 2 and in the light of the decision in *Hamilton v Grampian Regional Council* 1995 GWD8-443, 1996 GWD 5-227, the Keeper adopted a cautious approach. Where a school or school house, which was no longer used for educational purposes, was transferred, the Keeper excluded indemnity in respect of any challenge which might arise from the right of reversion.

However, in terms of Section 86 of the Title Conditions (Scotland) Act 2003, which came into force on 4 April 2003, the right of reversion has been converted into a right of compensation exercisable against the Local Authority.



Therefore, from 4 April 2003 an exclusion of indemnity in respect of the School Sites Act 1841 can be removed from the Title Sheet, and consequently the Land Certificate, on receipt of an appropriate application. The Keeper does not require any evidence or further investigation before the removal of such exclusions.

The Keeper's policy on removal of such existing exclusions is as follows :

(a) Where the Land Certificate is in the Agency for the processing of an application, the exclusion note will be removed (whether or not this has been specifically requested). No application form is required and no fee will be payable for the removal.

(b) Where removal is sought on its own it should be requested on a Form 2 application accompanied by Form 4 in duplicate and the Land Certificate. A miscellaneous event fee is payable. Section 86 of the Title Conditions (Scotland) Act 2003 should be inserted in the section marked "Name of Deed" in Part A of the Form 2.

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