These notes relate to the Title Conditions (Scotland) Act 2003 (asp 9) which received Royal Assent on 3 April 2003

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Pre-Emption and Reversion

Section 87: Right to petition under section 7 of the Entail Sites Act 1840

358. *Section 87* adopts the provisions of section 86 for claims under the Entail Sites Act 1840. This Act permitted the granting of small areas of land out of entailed sites for public spirited purposes. The heir of entail in possession could reclaim the land by petitioning the sheriff court if it was not used for these purposes.

359. The 1840 Act is repealed by the Abolition of Feudal Tenure etc. (Scotland) Act 2000, which also automatically disentails any remaining entailed land on the appointed day (section 50). This means that heirs of entail in possession lose that status *involuntarily* on the appointed day and would be prevented from petitioning for the return of land conveyed under the 1840 Act. If owners of previously entailed estates would have had a right to claim back the site but for the provisions of the 2000 Act, then subsection (1) gives them a right to a claim under section 86. Rights arising under the 1840 Act will be treated in the same way as reversions arising from the School Sites Act. The compensation regime of section 86 of the Act applies to claims which would have arisen under the 1840 Act. Paragraph (b) of subsection (1) excludes any claimant who had accepted an offer of compensation by the appointed day.

360. *Subsection (2)* provides for some modifications to the school sites procedure that was adopted by subsection (1). Paragraph (a) accounts for the fact that the Entail Sites Act allowed land to be conveyed or leased to a wider range of bodies than merely education authorities.

361. The repeal of the 1840 Act does not affect the trust in which the land is currently held. *Subsection (3)*provides that the land need no longer be held for the trust purposes referred to in the 1840 Act after a claim has been paid or any claim has prescribed.

362. *Subsection (4)*provides that any petition already commenced under the 1840 Act is to be deemed abandoned unless a final decree has been granted.