



Improvement Of Land Act 1864

1864 CHAPTER 114 27 and 28 Vict

1^{F1}

Textual Amendments

F1 S. 1 repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Commissioners, landowners, &c.

And with regard to the commissioners for the execution of this Act, and other general matters, be it enacted as follows:

2 Interpretation of “the Commissioners.”

By “the Commissioners” shall herein be meant, as regards lands in Great Britain, the Inclosure Commissioners for England and Wales, . . .^{F2}

Textual Amendments

F2 Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), s. 1, [Sch. Pt. VIII](#)

3 Provisions of 9 & 10 Vict. c. 101., &c., to extend and be applicable to proceedings of Commissioners.

All the provisions of . . .^{F3} any and every . . .^{F3} Act for the time being in force relating to any of the aforesaid Commissioners so far as the same may concern or be auxiliary to the proceedings or inquiries of the Commissioners under the authority of such Acts or any of them, or the authentication of instruments, shall, except as in this Act otherwise provided, extend and be applicable to their proceedings and inquiries, and the authentication of instruments, under this Act.

Changes to legislation: There are currently no known outstanding effects for the Improvement Of Land Act 1864. (See end of Document for details)

Textual Amendments

F3 Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\), s. 1, Sch. Pt. VIII](#)

4 Assistant commissioners may take declarations, &c.

Every assistant commissioner or inspector acting in any matter, inquiry, or proceeding by the authority and in the execution of this Act may receive declarations and statements, and examine upon declaration all such persons as may voluntarily attend before him in such matter, inquiry, or proceeding.

5 ^{F4}

Textual Amendments

F4 [S. 5](#) repealed by [Perjury Act 1911 \(c. 6\), Sch.](#) and [False Oaths \(Scotland\) Act 1933 \(c. 20\), Sch.](#)

6 As to service of notices on Commissioners.

Any notice requiring to be served upon the Commissioners may be served by the same being left at or transmitted through the post, directed to their office in London.

7 As to the services of notices on other persons.

In all cases in which it shall be necessary under the provisions of this Act to serve any notice upon any other person, it shall be sufficient to send such notice in a registered post letter, directed to such person at his then or last known place of residence or of business, unless the letter containing such notice shall be returned from the [^{F5}postal operator (within the meaning of [^{F6}Part 3 of the Postal Services Act 2011]) concerned] as undelivered; and if such person shall not have any place of residence or of business within Great Britain . . . ^{F7}, or if the place of business or of residence of such person cannot with due diligence be ascertained, then such notice may be served upon such other person as his representative, or be given in such other manner as the Commissioners shall in such case direct or approve.

Textual Amendments

F5 Words in s. 7 substituted (26.3.2001) by [S.I. 2001/1149, art. 3\(1\), Sch. 1 para. 2](#)
F6 Words in s. 7 substituted (1.10.2011) by [Postal Services Act 2011 \(c. 5\), s. 93\(2\)\(3\), Sch. 12 para. 72; S.I. 2011/2329, art. 3](#)
F7 Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\), s. 1, Sch. Pt. VIII](#)

8 Interpretation of “landowner.”

The word “landowner” shall mean herein, as to lands in England, the person who shall be in the actual possession or receipt of the rents or profits of any land, whether of freehold, ^{F8} . . . , or other tenure, except where such person shall be a tenant for life or lives holding under a lease for life or lives not renewable, or shall be a tenant for years

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holding under a lease or an agreement for a lease for a term of years not renewable, whereof less than twenty-five years shall be unexpired at the time of making any application to the Commissioners, without regard to the real amount of the interest of any person so excepted; and in the case where the person in the actual possession or receipt of the rents or profits of any land shall fall within the above exceptions, then the person who for the time being shall be in the actual receipt of the rent payable by the person so excepted, unless he shall also fall within the above exceptions, shall, jointly with the person who shall be liable to the payment thereof, be deemed for the purposes of this Act to be the owner of such lands; and as to lands in Scotland, the word “landowner” shall denote and include every fiarliferenter, or heir of entail who shall be in the actual possession of the land, or in receipt of the rents payable on the tacks, leases, or tenancies of the tenants in the actual possession thereof;^{F8} . . .; and as to lands in any part of the United Kingdom, the word “landowner” shall include a corporation, and also such persons as are empowered by the twenty-third section hereof.

Textual Amendments

F8 Words in s. 8 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. XIII Gp. 2

9 Interpretation of “improvement of land.”

By “the improvement of land” shall herein be meant all or any of the following matters:

- (1) The drainage of land, and the straitening, widening, deepening, or otherwise improving the drains, streams, and watercourses of any land:
- (2) The irrigation and warping of land:
- (3) The embanking and weiring of land from the sea or tidal waters, or from lakes, rivers, or streams, in a permanent manner:
- (4) The inclosing of lands, and the straitening of fences and redivision of fields:
- (5) The reclamation of land, including all operations necessary thereto:
- (6) The making of permanent farm roads and permanent tramways and railways and navigable canals for all purposes connected with the improvement of the estate:
- (7) The clearing of land:
- (8) The erection of labourers cottages, farmhouses, and other buildings required for farm purposes, and the improvement of and addition to labourers cottages, farmhouses, and other buildings for farm purposes already erected, so as such improvements or additions be of a permanent nature:
- (9) Planting for shelter:
- (10) The constructing or erecting of any engine-houses, waterwheels, saw and other mills, kilns, shafts, wells, ponds, tanks, reservoirs, dams, leads, pipes, conduits, watercourses, bridges, weirs, sluices, floodgates, or hatches, which will increase the value of any lands for agricultural purposes:
- (11) The construction or improvement of jetties or landing places on the sea coast, or on the banks of navigable rivers or lakes, for the transport of cattle, sheep, and other agricultural stock and produce, and of lime, manure, and other articles and things for

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agricultural purposes; provided that the Commissioners shall be satisfied that such works will add to the permanent value of the lands to be charged to an extent equal to the expense thereof:

- (12) The execution of all such works as in the judgment of the Commissioners may be necessary for carrying into effect any matter herein-before mentioned, or for deriving the full benefit thereof.

Modifications etc. (not altering text)

- C1** S.9 extended by Limited Owners Residences Act (1870) Amendment Act 1871 (c. 84), s.3, Settled Land Act 1882 (c. 38), s.30, Agricultural Credits Act 1923 (c. 34), ss. 3(4), 5(b), (E.W.) by Public Health Act 1936 (c. 49), s. 33, (S.) by Public Health (Scotland) Act 1897 (c. 38), s. 123 and (E.W.) (S.) by Improvement of Land Act 1899 (c. 46), s. 2, **Sch. 1**

10 Interpretation of “person.”

The word “person” shall in this Act include companies and all other corporations.

Proceedings preliminary to sanction of improvements

And with regard to the proceedings preliminary to the sanction of any improvements, be it enacted as follows:

11 Application to Commissioners to sanction improvements.

When any landowner shall be desirous of borrowing or advancing money under this Act for the improvement of his land, he shall make an application to the Commissioners to sanction the proposed improvements in such manner and form and stating such particulars as the Commissioners shall from time to time direct; and until the proposed improvements shall have been sanctioned by the Commissioners in manner hereinafter mentioned the application may be withdrawn or altered, or consolidated with any other application, at the pleasure of the applicant, but without prejudice to his liability as herein-after mentioned for the expenses incurred by the Commissioners or their officers in consequence of his application.

12 Joint application by several landowners.

Any two or more landowners may, with the consent of the Commissioners, join in an application to them to sanction the improvement of the lands of such landowners respectively, but the sum to be charged in pursuance of any such joint application shall be apportioned so that a separate and distinct sum may become charged on the land of each landowner.

13 Commissioners may issue forms;

The Commissioners may from time to time frame and circulate, as they shall see occasion, forms indicating the particulars of the information to be furnished to them by landowners for the purposes of this Act, and such other forms as the Commissioners may deem expedient for facilitating any proceedings under this Act.

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14 require security for expenses;

The Commissioners may require security to be given to them by the landowner, by bond, deposit, or otherwise, in such form as they may think fit, for the payment to them of the expenses which they or their officers shall incur in respect of the investigation on any application, and, if they shall issue such provisional or other sanctioning order as herein-after mentioned, of the expenses which they or their officers shall incur in inspecting and ascertaining the due execution of the works; but unless the Commissioners shall issue such absolute order as herein-mentioned, such payment shall not be a charge on the land to which such application relates, but shall be a debt due by the person making such application to the Commissioners,^{F9} . . .

Textual Amendments

F9 Words in s. 14 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. XIII Gp.2

15 cause application to be investigated;

If the Commissioners shall think fit to entertain the application so made to them, they may cause the land to be inspected and examined by an assistant commissioner, or an engineer or surveyor, who shall have regard to and examine the proposals and statements contained in such application, and shall report his opinion thereon, and who shall also report whether in his judgment the proposed improvements will effect a permanent increase of the yearly value of the land exceeding the yearly amount proposed to be charged thereon in respect of the improvements applied for; and the Commissioners may by themselves, or any assistant commissioner, engineer, or surveyor, make such other inquiries in relation to any such application as they shall think fit: Provided that the above requisition as to increased annual value shall not apply to any outlay proposed to be made upon or in respect of planting only.

16 and require proposed improvements to be modified.

The Commissioners shall have power to require such alterations as they shall think expedient to be made in the improvements proposed, or in the proposed mode of executing them.

[^{F10}17 Advertisements and notices preliminary to sanction.

Before the Commissioners shall sanction any improvements, notice shall be given of the application . . . ^{F11}by a notice in writing given, . . . ^{F12} . . . ^{F11}, to the nearest heir or heirs of entail, not exceeding three, and to the holders of every heritable security on such lands appearing upon the records; and in such . . . ^{F11}notices . . . ^{F11}shall be stated the maximum amount which it is proposed to charge in respect of the improvements, and the greatest and least terms over which it is proposed that the rentcharge should be spread; and the Commissioners shall not sanction the improvements until one month shall have elapsed from the . . . ^{F11}service of such notices . . . ^{F11}of which . . . ^{F11}service of all necessary notices as aforesaid, the landowner shall, if required by the Commissioners, satisfy them by one or more statutory declarations made by him or on his behalf.]

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Textual Amendments

- F10** S. 17 repealed (E.W.) by [Settled Land Act 1882 \(c. 38\)](#), [Sch.](#)
- F11** Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), s. 1, [Sch. Pt. VIII](#)
- F12** Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

[^{F13} 18 Power of dissent by persons interested, and protection of landowner's infant children.

In case any person having any estate in or charge or security on the land to be improved shall within the month named in the last preceding section signify in writing to the Commissioners his dissent from such application, stating therein the nature of his estate in or charge or security on such land the Commissioners shall certify such dissent to the landowner by whom the application was made, and shall not make any provisional or other order sanctioning the improvements unless or until such dissent be withdrawn, or an order be made . . . ^{F14} by the Court of Session in Scotland, in manner herein-after provided, authorizing the Commissioners to sanction the same; ^{F15} . . .]

Textual Amendments

- F13** S. 18 repealed (E.W.) by [Settled Land Act 1882 \(c. 38\)](#), [Sch.](#); restricted by [Agricultural Credits Act 1923 \(c. 34\)](#), s. 3(5)
- F14** Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)
- F15** Words in s. 18 repealed (S.) (1.11.1996) by 1995 c. 36, s. 105(5), [Sch.5](#) (with s. 103(1)); S.I. 1996/2203, art. 3, [Sch.1](#)

19 The same in case of navigable rivers and canals.

If the Commissioners shall consider that any proposed improvement would interfere with any navigable river or canal respectively vested in or under the management or control of any commissioners, trustees, conservators, undertakers, company, or other body or individuals, or the banks or other works or conveniences thereof, or would occasion the flow or discharge into such river or canal of any drainage or other matter, the landowner shall give notice of the application in writing, together with a plan and section of the proposed improvement, to such commissioners, trustees, conservators, undertakers, company or other body, or individuals; and in case they shall, within one month after the receipt of such notice signify in writing to the Commissioners their dissent from such application, and state the nature of their interest in or authority over such river or canal, the Commissioners shall certify such dissent to the landowner by whom the application was made, and shall not sanction the improvement unless or until such dissent be withdrawn, or an order be made by the High Court of Chancery in England . . . ^{F16}, or by the Court of Session in Scotland, in manner herein-after provided, authorizing the Commissioners to sanction the improvement.

Textual Amendments

- F16** Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), s. 1, [Sch. Pt. VIII](#)

Modifications etc. (not altering text)

- C2** Jurisdiction of High Court of Chancery in England now exercisable by High Court of Justice (E.W.)

Changes to legislation: There are currently no known outstanding effects for the Improvement Of Land Act 1864. (See end of Document for details)

20 Consents necessary in case of church lands.

When the land to which the application relates, or any part of such land, is held in right of any church, chapel, or other ecclesiastical benefice, the Commissioners shall not sanction any improvement of such land, or of so much thereof as is so held, unless and until the patron of the benefice, and in England . . . ^{F17}the bishop of the diocese, and in Scotland the presbytery of the bounds, shall signify to the Commissioners, by writing under their hands, their respective consents to such application.

Textual Amendments

F17 Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), s. 1, [Sch. Pt. VIII](#)

21 In case of dissent, or when landowner's children are to be protected, Court of Chancery or Session may authorise Commissioners to proceed.

If and when any dissent from any such application to the Commissioners for their sanction of proposed improvements shall have been notified in writing to the Commissioners, either by a party interested in the lands proposed to be improved (not being lands held in right of any church, chapel, or other ecclesiastical benefice), or by the commissioners, trustees, company, or other body or individuals interested in any river or canal which would or might be interfered with as herein-before mentioned, ^{F18} . . . the landowner desiring such improvements may apply to the High Court of Chancery in England . . . ^{F19} where such lands are situate in England . . . ^{F19}, or to the Court of Session where such lands are situate in Scotland, for an order of such Court authorizing the Commissioners to entertain and proceed upon the application for such proposed improvements notwithstanding such dissent ^{F18} . . .; and such application shall be made, as to lands in England, to . . . ^{F20} any one of the Vice Chancellors sitting at chambers, by summons, calling on the party dissenting to show cause why such order should not be made; . . . ^{F19} and as to lands in Scotland, to either division of the Court of Session in time of session, or to the Lord Ordinary sitting on bills in time of vacation, by summary petition; and the Court or single judge, as the case may be, to whom such application shall be made, shall hear and determine such application, and for that purpose shall have power to make or direct to be made all such inquiries, and receive and entertain all such statements and evidence, on oath or by affidavit, as such Court or judge may consider necessary or desirable, or as may be produced before them or him; and if upon a consideration of all the circumstances such Court or judge shall be of opinion that the Commissioners should entertain and proceed upon such application, an order shall be made authorizing and requiring them to proceed thereon, and to deal with the same according to the provisions of this Act authorizing them in that behalf, notwithstanding such dissent ^{F18} . . . as aforesaid: Provided, that if at any time after notification of such dissent, and before any such order shall have been applied for and made as aforesaid, such dissent shall be withdrawn by a like notification in writing, it shall not be necessary to make or proceed with such application, or to obtain such order.

Textual Amendments

F18 Words repealed (E.W.) by [Settled Land Act 1882 \(c. 38\)](#), [Sch.](#)
Words repealed (S.) (1.11.1996) by [1995 c. 36](#), s. 105(5), [Sch.5](#) (with s. 103(1)); [S.I. 1996/2203](#), art. 3, [Sch.1](#)

F19 Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), s. 1, [Sch. Pt. VIII](#)

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F20 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

C3 Jurisdiction of High Court of Chancery in England now exercisable by High Court of Justice (E.W.)

22 ^{F21}

Textual Amendments

F21 S. 22 repealed by [Administration of Justice Act 1965 \(c. 2\)](#), [Sch. 2](#)

23 **And costs may be given by the Court.**

The costs of and incidental to every application under the twenty-first . . . ^{F22} sections, . . . ^{F23} shall . . . ^{F22} . . . ^{F23} . . . ^{F22} if such Court or judge shall so direct, . . . ^{F23} be deemed to be part of the expenses of and incidental to the application for the proposed improvements.

Textual Amendments

F22 Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), s. 1, [Sch. Pt. VIII](#)

F23 Words repealed by [Administration of Justice Act 1965 \(c. 2\)](#), [Sch. 2](#)

24 **Representation of persons under disability for applications and dissents under preceding clauses.** **E+W**

All husbands, guardians, tutors, committees, curators, feoffees, trustees, judicial factors, executors, and administrators shall respectively have the same rights and powers of making applications and signifying dissents, and taking other proceedings under this Act, as their respective wives, infants, minors, lunatics, idiots, and furious and fatuous persons would have had if free from disability, or as such feoffees, trustees, judicial factors, executors, or administrators respectively would have had if the estates, charges, or interests of which they shall be such feoffees, trustees, or judicial factors, or which shall be vested in them as such executors or administrators, had been vested in them in their own right; but no guardian, tutor, committee, curator, feoffee, trustee, judicial factor, executor, or administrator shall be in anywise compelled or obliged to signify a dissent from any application under this Act, or be in anywise responsible for the consequences of such application, or of any charge made in pursuance thereof.

Extent Information

E1 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Modifications etc. (not altering text)

C4 S. 24 excluded by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 113, [Sch. 3](#)

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24 Representation of persons under disability for applications and dissents under preceding clauses. **S**

[^{F50}Any person entitled to act as the legal representative of a person under legal disability by reason of non-age or mental incapacity shall be entitled to act on behalf of that person for the purposes of this Act; and any trustee, judicial factor, executor or administrator shall, subject to any other enactment, have the same rights and powers for the purposes of this Act as if the property vested in or administered by him had been vested in him in his own right; but no such legal representative], trustee, judicial factor, executor, or administrator shall be in anywise compelled or obliged to signify a dissent from any application under this Act, or be in anywise responsible for the consequences of such application, or of any charge made in pursuance thereof.

Extent Information

E3 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F50 Words in s. 24 substituted (S.) (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para.3** (with s. 103(1)); S.I. 1996/2203, art. 3, **Sch.1**

Modifications etc. (not altering text)

C23 S. 24 excluded by **Mental Health Act 1983** (c. 20, SIF 85), s. 113, **Sch. 3**

Sanction of improvements, and rights thereunder

And with regard to the sanction of any improvements, and the rights arising thereunder, be it enacted as follows:

25 Commissioners order sanctioning improvements.

If the Commissioners shall find that the proposed improvements or any part thereof, whether with or without any alternations by them required or sanctioned, would effect a permanent increase of the yearly value of the lands proposed to be improved, or of any part thereof, exceeding the yearly amount proposed to be charged thereon, they shall sanction such improvements, or such part thereof as they shall think expedient, if under the preceding sections it shall be lawful for them so to do, by an order under their hands and seal; and they shall by the same order fix the rate of interest to be allowed on the cost of the sanctioned improvements,^{F24} . . .

Textual Amendments

F24 Words in s. 25 repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. XIII** Gp.2

26 Forms of orders sanctioning improvements to be prepared by Commissioners; what they must contain.

The Commissioners shall from time to time prepare forms of orders for sanctioning improvements, and shall also, whenever required by the landowner so to do, frame and entitle their said orders under this Act in such manner that they may also be and

Changes to legislation: There are currently no known outstanding effects for the Improvement Of Land Act 1864. (See end of Document for details)

operate as provisional, sanctioning, or other corresponding orders under the respective Acts applying to any company with which he may have contracted relating to the loan or improvements in question: Provided that every order operating under this Act to sanction any improvements shall name the landowner to whom it is issued; shall express the greatest sum to be charged in addition to any costs, charges, and expenses under the fiftieth section hereof, and the rate of interest and term of years for the repayment thereof, ^{F25} . . . ; shall specify the lands on which such repayment is to be charged; and shall either express or refer to some contract or other document expressing the general scheme of the improvements to be executed.

Textual Amendments

F25 Words in s. 26 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. XIII Gp.2

27 They may be called provisional orders, and may be assigned to parties agreeing to execute improvements.

Every order operating under this Act alone to sanction any improvement may be in the form set forth in schedule (A.) hereto, and shall be called a provisional order, and shall, subject to the following section hereof, create in favour of the landowner named therein the title to an absolute charge on the completion of the sanctioned improvements, which title such landowner may assign, either absolutely or by way of security, to any person; and such assignment may be made by endorsement on the provisional order.

28 Provision for death of landowner pending completion of improvements.

In case of the death of any landowner, or the determination of his interest, between the date of the provisional order and the completion of the improvements sanctioned thereby, the right to complete such improvements, and to assign the title to an absolute charge, shall pass to the succeeding landowner; but if the succeeding landowner shall not within three calendar months after his succession proceed with the works, so as to complete the same in conformity with the provisional order, the preceding landowner, or in case of his decease his executors or administrators, may complete such improvements, and shall become entitled to have the absolute charge executed to him or them. If the succeeding landowner shall complete the improvements there shall be distinct absolute charges executed to such landowner, and the the preceding landowner or his personal representatives, for the outlay made by the preceding and succeeding landowners respectively, and in case of difference the Commissioners shall determine the proportions; provided that the succeeding landowner may, with the sanction of the Inclosure Commissioners, and after notice to the parties to whom notice was originally given, or such of them as may be living, and such other persons, if any, as the Commissioners may direct, terminate the proceedings under the provisional order, on payment of the outlay and expenses made thereunder, and indemnifying the person to whom the title to the absolute charge may have been assigned. Notwithstanding the foregoing provisions, if the title to an absolute charge shall have been assigned by the preceding landowner, the assignee may complete the improvements if he shall proceed therewith within one calendar month from the time the preceding landowner ceased to be such landowner.

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29 Provisional orders may be modified.

The Commissioners may from time to time, on application to be made by the landowner, and after such inquiry as they shall think fit, sanction any modifications or alterations either of the scheme of the improvements or of any other matter expressed or referred to in the provisional order: Provided that no such modification or alteration shall increase the sum to be charged in respect of the improvements, or extend or curtail the term of repayment, beyond the greatest amount which it was proposed so to charge, or the greatest or least term over which it was proposed that the rentcharge should be spread, as respectively stated in the . . . ^{F26} notices herein-before required: Provided also, that every such modification or alteration shall require the consent of every party who, by having contracted for the execution of the improvements, or by having taken an assignment of the title to an absolute charge, or otherwise, may be interested therein; and the modifying order shall be in such form as the Commissioners shall from time to time appoint, and shall be construed together with the original order as one order with respect to all rights arising thereunder after the date of the modifying order.

Textual Amendments

F26 Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), s. 1, [Sch. Pt. VIII](#)

Execution of improvements

And with regard to the execution of any improvements, be it enacted as follows:

30 Detailed specifications to be delivered in advance;

Before the commencement of any improvements sanctioned in manner aforesaid the landowner shall deliver to the Commissioners a detailed specification thereof, and in the case of buildings, and also in any other case where the same shall be required by the Commissioners, a detailed plan or drawing: Provided that when it is not intended to complete the improvements within one year from the date of the provisional or other sanctioning order, the specification and plan or drawing first delivered may comprise so much only as it is intended to complete within one year from the said date, so, however, that for the works of each successive year such specification and plan or drawing as aforesaid be always delivered in advance.

31 and approved before execution of works.

The specifications and plans or drawings aforesaid shall be examined, and, if necessary, the spot visited by an assistant commissioner, or an engineer or surveyor, who shall report whether in his judgment the improvements as proposed to be effected will be effected in a substantial and durable manner, and, in the case of farm buildings, whether the same, or the improvements thereof or additions thereto, will be suitable to the locality; and no improvement shall be commenced or proceeded with until the specifications and plans or drawings aforesaid shall have been approved by the Commissioners; but nothing herein contained shall render necessary the re-delivery, re-examination, or re-approval of any detailed specifications, plans, or drawings which may have been delivered in connexion with the application for the Commissioners sanction to the general scheme of the improvements, and may have been approved in connexion with that sanction.

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32 Adjoining lands, or easements over them, may be sold for purpose of improvements, and conveniences over adjoining lands for the execution of improvements contracted for.

All persons interested in any lands adjoining or near to the land improved or proposed to be improved, and being, as to lands in England . . . ^{F27}or Ireland by the provisions of “The Lands Clauses Consolidation Act, 1845,” and as to lands in Scotland by the provisions of “The Lands Clauses Consolidation (Scotland) Act, 1845,” enabled to sell and dispose of such lands so adjoining or near, or any estate or interest therein, may, for the purpose of any improvements authorized by this Act, sell and convey or grant to the landowner whose land has been or is proposed to be improved such lands so adjoining or near, or any part thereof, or any easement, authority, or right in, through, over, or affecting the same, and any such land, easement, authority, or right so sold and conveyed or granted shall thereupon become appurtenant to or pertinent of the lands improved or proposed so to be, and with reference to the improvements whereof the same was purchased, and shall be held upon and subject to the same uses, trusts, charges, and incidents; and all such persons as aforesaid may also make any agreement with the landowner, or with any person or company that shall have contracted for the actual execution of the improvements, or their respective agents, with reference to entering on, cutting through or into, or prejudicially affecting such lands so adjoining or near; and every such sale, conveyance, grant, and agreement shall be valid and effectual accordingly, and the price or consideration shall be settled by two surveyors or a surveyor to be appointed by them, in manner provided by the ninth section of “The ^{M1}Lands Clauses Consolidation Act, 1845,” or, as the case may be, by the ninth section of “The ^{M2}Lands Clauses Consolidation (Scotland) Act, 1845,” and shall be deposited as directed by the same respective sections, and thenceforth become subject to the provisions of the same respective Acts.

Textual Amendments
F27 Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\), s. 1, Sch. Pt. VIII](#)

Marginal Citations
M1 [1845 c. 18.](#)
M2 [1845 c. 19.](#)

^{F28}**33**

Textual Amendments
F28 S. 33 repealed (5.11.1993) by [1993 c. 50, s. 1\(1\), Sch. 1 Pt. XIII Gp.2](#)

34 Provisional order to protect from impeachment of waste, and to authorize getting materials from land, &c.

Every provisional or modifying order shall be a full authority to the landowner or successive landowners and their representatives in the respective cases herein-before defined, and to all persons employed by or under contract with him or them respectively, to enter upon the lands to be improved, and any adjoining or neighbouring lands acquired or authorized to be entered under either of the two last preceding

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sections, and to execute in and on the same, without impeachment of waste by any remainderman or reversioner, all the improvements sanctioned by the same order according to the specifications and plans or drawings approved by the Commissioners, and to do, execute, and use all such acts, works, and conveniences as may be proper for making, maintaining, and using such improvements; and for the purpose of effecting any improvement under this or the recited Acts it shall be lawful to get and work freestone, limestone, clay, sand, and any other mineral or substance out of the land to be improved for charged, and to make tramroads and other ways, and to burn and make bricks, tiles, and other things to be used in effecting such improvements, and also for the same purpose to cut down and use any timber or trees not planted or serving for shelter or ornament.

35 Saving rights of the Crown.

Nothing in this Act contained shall authorize any person to purchase, take, use, or interfere with, or the Commissioners to make any order with respect to any land, soil, or water, or any right in respect thereof, belonging to Her Majesty in right of her Crown, without the previous consent in writing of the Commissioners of Woods, or, if the property should be under the management or control of Her Majesty's Commissioners of Works, without the consent in writing of such last-mentioned Commissioners, which consent the said respective Commissioners are hereby authorized to give; and nothing in this Act contained shall divert, alter, or affect any of the rights, powers, or estates vested in Her Majesty in right of her Crown.

Modifications etc. (not altering text)

- C5** Functions of Commissioners of Woods now exercisable by Crown Estate Commissioners: S.R. & O. 1924/1370 (Rev. V, p. 443: 1924, p. 228), [Crown Estate Act 1956 \(c. 73\), s. 1\(1\)](#) and [Crown Estate Act 1961 \(c. 55\), s. 1\(1\)](#)
- C6** Functions of Commissioners of Works now exercisable by Secretary of State: S.R. & O. 1945/991 (Rev. XV, p. 232: 1945 I, p. 1414), [S.I. 1962/1549](#) and 1970/1681

36 Saving rights of the Commissioners of Her Majesty's Works, &c.

Nothing in this Act contained shall authorize any person to purchase, take, use, or interfere with, or the Commissioners to make any order with respect to any land, soil, or water, or any right in respect thereof, the management or control of which may be vested in the Commissioners of Works on behalf of or in trust for Her Majesty or the public, without the consent in writing of the last-mentioned Commissioners, which they are hereby authorized to give.

Modifications etc. (not altering text)

- C7** Functions of Commissioners of Works now exercisable by Secretary of State: S.R. & O. 1945/991 (Rev. XV, p. 232: 1945 I, p. 1414), [S.I. 1962/1549](#) and 1970/1681

37 Saving rights of Duchy of Cornwall.

Nothing in this Act contained shall authorize any person to take, use, enter upon, or interfere with any land, soil, or water, or any rights in respect thereof, belonging to the Sovereign for the time being in right of the Duchy of Cornwall, without the

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consent in writing of some two or more of the regular officers of the said Duchy, or of such other persons as may be duly authorized under the provisions of “the ^{M3}Duchy of Cornwall Management Act, 1863,” section thirty-nine, to exercise all or any of the rights, powers, privileges, and authorities by the said Act made exerciseable or otherwise for the time being exerciseable in relation to the said Duchy, or belonging to the Duke of Cornwall for the time being, without the consent of such Duke, testified in writing under the seal of the Duchy of Cornwall, first had and obtained for that purpose, or to take away, diminish, alter, prejudice, or affect any property, rights, profits, privileges, powers, or authorities vested in or enjoyed by the Duke of Cornwall for the time being, or in or by the Sovereign for the time being in right of the Duchy of Cornwall.

Marginal Citations

M3 [1863 c. 49](#).

38 Saving rights of Duchy of Lancaster.

Nothing in this Act contained shall authorize any person to purchase, take, use, or interfere with any lands, soil, or water, or any right in respect thereof, belonging to Her Majesty, in right of the Duchy of Lancaster, without the previous consent in writing of the Chancellor of the said Duchy of Lancaster, which consent such Chancellor is hereby authorized to give, or to take away, lessen, prejudice, or alter any of the rights, privileges, powers, or authorities vested in or enjoyed by Her Majesty, in right of the said Duchy of Lancaster.

39 Saving rights of the Admiralty, and of the Board of Trade.

Nothing in this Act contained shall authorize any person to purchase, take, use, or interfere with any land, soil, or water, or any right in respect thereof, or to take away, lessen, prejudice, or alter any of the rights, privileges, powers, or authorities, vested in or enjoyed by the Admiralty, or vested in or enjoyed by the Board of Trade, without the previous consent of the Admiralty signified in writing under the hand of the Secretary of the Admiralty (which consent the Admiralty are hereby authorized to give), or, as the case may be, without the previous consent of the Board of Trade signified in writing under the hand of one of the secretaries of the said Board.

Modifications etc. (not altering text)

- C8** Functions of Board of Trade under s. 39 now exercisable by Secretary of State: [Ministry of Transport Act 1919 \(c. 50\), s. 2\(1\)](#), S.R. & O. 1919/1440 (Rev. XV, p. 211: 1919 II, p. 849), 1939/1470 (Rev. XV, p. 214: 1939 II, p. 3051), 1941/654 (Rev. XV, p. 228: 1941 I, p. 1221), 1946/375 (Rev. XV, p. 229; 1946 I, p. 1009) and [S.I. 1970/1681](#)
- C9** Functions of Admiralty now exercisable by a Secretary of State: [Defence \(Transfer of Functions\) Act 1964 \(c. 15\), s. 1\(2\)](#)

40 Plans to be deposited with Admiralty before commencing works below high-water mark.

With respect to any harbour, port, bay, estuary, or navigable river, or part thereof, comprised in any notice from time to time given by the Admiralty under section nine

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of “The ^{M4}Harbours Transfer Act, 1862,” previously to commencing any work below high-water mark there shall be deposited at the Admiralty Office plans, specifications and working drawings thereof for the approval of the Admiralty, such approval to be signified in writing under the hand of the Secretary of the Admiralty, and with respect to all other parts where the tide flows, previously to commencing any work below high-water mark there shall be deposited at the office of the Board of Trade plans, specifications, and working drawings thereof for the approval of the Board of Trade, such approval to be signified in writing under the hand of one of the secretaries of the said Board, and any such work shall be constructed only in accordance with such respective approval; and when any such work shall have been commenced or constructed, it shall not be lawful at any time to alter or extend the same without obtaining, previously to making any such alteration or extension, the like respective consent and approval; and if any such work shall be commenced or completed, or be altered, extended, or constructed, contrary to the provisions of this Act, it shall be lawful for the Admiralty or the Board of Trade, as the case may require, to abate, alter, and remove the same, and to restore the site thereof to its former condition, at the cost and charge of the person or company that executed the said work, ^{F29} . . .

Textual Amendments

F29 Words in s. 40 repealed (5.11.1993) by 1993 c. 50, s. 1(1), [Sch. 1 Pt. XIII](#) Gp.2

Modifications etc. (not altering text)

C10 Functions of Board of Trade under s. 40 now exercisable by Secretary of State: [Ministry of Transport Act 1919 \(c. 50\), s. 2\(1\)](#), S.R. & O. 1919/1440, (Rev. XV, p. 211: 1919 II, p. 849), 1939/1470 (Rev. XV, p. 214: 1939 II, p. 3051), 1941/654 (Rev. XV, p. 228: 1941 I, p. 1221), 1946/375 (Rev. XV, p. 229: 1946 I, p. 1009) and [S.I. 1970/1681](#)

C11 Functions of Admiralty now exercisable by a Secretary of State: [Defence \(Transfer of Functions\) Act 1964 \(c. 15\), s. 1\(2\)](#)

Marginal Citations

M4 1862 c. 69.

41 Landowner to pay expenses of survey ordered by Admiralty.

If at any time or times it shall be deemed expedient by the Admiralty or the Board of Trade, as the case may require to order a local survey and examination of any embankment or work proposed to be constructed under the powers of this Act in, over, or affecting any tidal or navigable water or river, or of the intended site thereof, the landowner shall defray the costs of every such local examination; ^{F30} . . .

Textual Amendments

F30 Words in s. 41 repealed (5.11.1993) by 1993 c. 50, s. 1(1), [Sch. 1 Pt. XIII](#) Gp.2

Modifications etc. (not altering text)

C12 Functions of Board of Trade under s. 41 now exercisable by Secretary of State: [Ministry of Transport Act 1919 \(c. 50\), s. 2\(1\)](#), S.R. & O. 1919/1440, (Rev. XV, p. 211: 1919 II, p. 849), 1939/1470 (Rev. XV, p. 214: 1939 II, p. 3051), 1941/654 (Rev. XV, p. 228: 1941 I, p. 1221), 1946/375 (Rev. XV, p. 229: 1946 I, p. 1009) and [S.I. 1970/1681](#)

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C13 Functions of Admiralty now exercisable by a Secretary of State: [Defence \(Transfer of Functions\) Act 1964 \(c. 15\), s. 1\(2\)](#)

42 Saving rights of Her Majesty's Principal Secretary of State for War.

Nothing in this Act contained shall authorize any person to purchase, take, use, or interfere with any land, soil, or water, or any right in respect thereof, or to take away, lessen, prejudice, or alter any of the rights, privileges, powers, or authorities, vested in or enjoyed by Her Majesty's Principal Secretary of State for the War Department for the time being, without the previous consent of the same Principal Secretary signified in writing under his hand, which consent the said Principal Secretary for the time being is hereby authorized to give.

Modifications etc. (not altering text)

C14 Functions of Secretary of State for the War Department now exercisable by a Secretary of State: [Defence \(Transfer of Functions\) Act 1964 \(c. 15\), s. 1\(2\)](#)

43 Rights of Commissioners of sewers saved.

Nothing in this Act contained shall take away, lessen, prejudice, or alter any of the rights, privileges, powers, or authorities vested in or to be discharged by any commissioners of sewers appointed by any commission under the Great Seal or under the seal of the Duchy of Lancaster, or in or by any other lawful commission of sewers, or the commissioners appointed under any local or private Acts of Parliament for sewers or drainage; nor shall any work be done which in any way interferes with any sewers, drains, or watercourses under the control of any commissioners of sewers; and no new sewers, drains, watercourses, or works of drainage shall be made or done under the powers of this Act within the district and jurisdiction of any such commissioners, unless the same be previously approved by those commissioners; and all such works shall be carried on and completed under the direction and control of the same commissioners and their officers; and all sewers, drains, watercourses, and works of drainage made under this Act within the district and jurisdiction of any commissioners of sewers shall be and remain subject in all respects to the jurisdiction of those commissioners; and whenever any works under this Act would intersect or interfere with any sewer, drain, or watercourse under the control of any such commissioners, the person or company executing the same shall, before any such works be made, construct such proper sewers or works of drainage, and also comply with such orders and regulations, as those commissioners shall require or make to guard against injury to the drainage of the district.

Modifications etc. (not altering text)

C15 Functions of commissioners of sewers formerly exercising jurisdiction within the City of London now exercisable by the Common Council and functions of certain other commissioners of sewers now exercisable by internal drainage boards: [City of London Sewers Act 1897 \(c. cxxxiii\)](#), [Land Drainage Act 1930 \(c. 44\), ss. 1\(4\), 4\(1\)\(b\)\(iii\)\(v\) \(vi\)\(viii\)\(ix\)\(3\), 17\(2\)\(e\), 18, 19\(1\)\(a\)\(iv\)\(b\)\(2\), 83\(2\)](#), [River Boards Act 1948 \(c. 32\), s. 4, Sch. 3 para. 3](#), [Water Resources Act 1963 \(c. 38\), s. 5, Sch. 3 para. 6\(1\)](#)

Changes to legislation: There are currently no known outstanding effects for the Improvement Of Land Act 1864. (See end of Document for details)

44 Works connected with Thames to be executed under direction of Conservators of Thames.

All works executed under the authority of this Act in or connected with the river Thames, or the towing-path thereof, within the jurisdiction of the Conservators of the river Thames, shall, in addition to the approval of such works by the Admiralty, so far as herein-before made necessary, be executed according to a plan to be approved of by such Conservators, and to be deposited at their office; and such works shall be executed and performed to the satisfaction of the engineer for the time being of such Conservators; and nothing herein contained shall extend to prejudice or derogate from the estates, rights, interests, liberties, privileges, or franchises of the Conservators of the river Thames, or to prohibit, defeat, alter, or diminish any power, authority, or jurisdiction which at the time of the passing of this Act the said Conservators did or might lawfully claim, use, or exercise.

45 Metropolitan Board of Works, &c. protected.

Where any of the intended works to be done under or by virtue of this Act shall or may pass over, under, or by the side of, or so as prejudicially to interfere with, any sewer, drain, watercourse, defence, or work under the jurisdiction or control of the Metropolitan Board of Works, or of any vestry or district board constituted under the “^{M5}Metropolis Local Management Act, 1855,” or any sewers or works to be made or executed by any such board or vestry, or shall or may in any way prejudicially affect the sewerage or drainage of the districts under the control of any such board or vestry, the person or company executing such works shall not commence the same until he or they shall have given to the said metropolitan or district board or vestry, as the case may be, fourteen days previous notice in writing of his or their intention to commence them, by leaving such notice at the principal office of such board or vestry, as the case may be, for the time being, with a plan and section showing the course and inclination of the intended works, and other necessary particulars relating thereto, and until such board or vestry respectively shall have signified their approval of the same, unless such board or vestry, as the case may be, do not signify their approval, disapproval, or other directions within fourteen days after service of the said plan, sections, and particulars as aforesaid; and such person or company shall comply with and conform to all directions and regulations of the respective board or vestry in the execution of the said works, and shall provide any new, altered, or substituted works in such manner as such board or vestry may deem necessary for the proper protection of the sewers and works herein-before referred to, and for preventing injury or impediment thereto by or by reason of the said intended works or any part thereof, and shall save harmless the said metropolitan or district board or vestry respectively against all and every expense to be occasioned thereby; and all such works as may be so required shall be done by or under the direction, superintendence, and control of the engineer or other officer or officers of the said metropolitan or district board or vestry, as the case may be, at the costs, charges, and expenses in all respects of the landowner; and when any new, altered, or substituted works as aforesaid, or any works of defence connected therewith, shall be completed under the provisions of this Act, the same shall thereafter be as fully and completely under the direction, jurisdiction, and control of the said boards and vestry respectively as any sewers or works now are or hereafter may be; and nothing in this Act shall extend to prejudice, diminish, alter, or take away any of the rights, powers, or authorities vested or to be vested in the said boards and vestries, or any of them, or their successors, but all such rights, powers, and authorities shall be as valid and effectual as if this Act had not been passed.

Changes to legislation: There are currently no known outstanding effects for the Improvement Of Land Act 1864. (See end of Document for details)

Modifications etc. (not altering text)

- C16** Functions of Metropolitan Board of Works and of vestry and district boards now exercisable as to certain sewers and watercourses and as to sewage disposal works by Greater London Council, and as to other sewers, watercourses and drains by London Borough Councils: [Local Government Act 1888 \(c. 41\), s. 40\(8\)\(9\)](#), [London Government Act 1963 \(c. 33\), ss. 3\(1\)\(b\), 35, 37, 62\(2\), Schs. 9, 14](#) and [Local Government Act 1972 \(c. 70\), s. 8, Sch. 2](#)

Marginal Citations

- M5** [1855 c. 120.](#)

46 Water companies and commissioners protected.

Nothing in this Act contained shall authorize any person to take, otherwise than by agreement, any land of any waterworks company or waterworks commissioners, or to alter or interfere with any works or property of any such company or commissioners, without their previous consent in writing, or to authorize any person to foul or otherwise injuriously interfere with or affect any stream or supply of water which any waterworks company or waterworks commissioners are authorized to use for the purposes of their undertaking.

47 Rivers, canals, &c. protected.

All works executed under the authority of this Act in or connected with any river, canal, or inland navigation, or the banks or towing-paths or works thereof, vested in or under the jurisdiction or management of any corporation, conservators, trustees, commissioners, undertakers, or individuals, or in respect of the navigation whereon or the use whereof any such corporation, conservators, trustees, commissioners, undertakers, or individuals are entitled by virtue of any Act of Parliament to the receipt of any tolls or other dues, shall be executed according to a plan to be approved by such corporation, conservators, trustees, commissioners, undertakers, or individuals, and to be deposited at their office, and such works shall be executed, maintained, and performed to the reasonable satisfaction of the engineer for the time being of such corporation, conservators, trustees, commissioners, undertakers, or individuals; and nothing in this Act contained shall prejudice or derogate from the estates, powers, rights, interests, liberties, privileges, or franchises of such corporation, conservators, trustees, commissioners, undertakers, or individuals, or prohibit, defeat, alter, or diminish any right, power, authority, or jurisdiction which, at the time of the passing of this Act, such corporation, conservators, trustees, commissioners, undertakers, or individuals, did or might lawfully claim, use, or exercise.

48 Commissioners may inspect works.

The Commissioners shall, if and as they see occasion, cause any improvements in progress under this Act to be inspected by a commissioner or assistant commissioner, or an engineer or surveyor, to ascertain the due execution thereof.

Charges for improvements

And with regard to charges for improvements under this Act, be it enacted as follows:

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49 Commissioners to execute charge on completion of works, or of some part thereof.

When the Commissioners are satisfied that the improvements sanctioned by them, or some part thereof, have been properly executed, either according to the specifications and plans or drawings approved of by them, or with such deviations therefrom as in their judgment will not diminish the permanent benefit accruing from such improvements to the lands wherein they have been made, they shall execute a charge under their hands and seal upon the inheritance or fee of the lands comprised in the provisional or other sanctioning order, or some sufficient part thereof, for the sum by the same order expressed to be chargeable in respect of such improvements, if all the said improvements have been completed, or for a proportional part of such sum, if a part only of the said improvements has been executed, together, in either case, with the interest by the same order expressed, and with the amount (if any) which shall have been paid in respect of the purchase of adjoining lands, or of any easement, authority, or right in, through, over, or affecting adjoining lands, with interest thereon at the like rate.

50 Expenses of application and certain contracts, may be included in charge.

If the landowner is desirous that the inheritance or fee of the lands improved should be charged with the expenses of and incident to his application to the Commissioners, or his contract with any company or person relating to the execution of the improvements, or to the advance of money for their execution, the Commissioners may ascertain the amount of the costs, charges, and expenses properly incurred preparatory or in relation to and consequent on such contract, and the application to the Commissioners or either of them, and may include in the principal money charged on the inheritance or fee of such lands the amount of such costs, charges, and expenses, and of the settled or taxed costs, if any, which a court or judge shall have ordered as aforesaid to be deemed and taken to be part of the expenses of and incident to the application for improvements, or such part thereof as the Commissioners think fit; and the Commissioners may also include in such principal money interest^{F31} . . . on all payments forming part of the same principal money from the respective dates of such payments to that of the absolute order, but so that no interest shall be allowed on any such payment for more than six years; provided that the total amount of the principal money to be charged on the lands improved under the provisions of this Act shall not in any case exceed that to which, in the opinion of the Commissioners, the inheritance or fee of the lands improved will be durably benefited by the improvements.

Textual Amendments

F31 Words in s. 50 repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. XIII** Gp.2

Modifications etc. (not altering text)

C17 S. 50 amended by [Agricultural Credits Act 1923 \(c. 34\)](#), s. 3(1)

51 The charges to be by way of rentcharge created by absolute order;

Every charge under this Act shall be created by way of rentcharge, payable half-yearly, extending over the term of years fixed by the provisional or other sanctioning order, and the first payment thereof to be made six months after the time when the works in respect of which the same was granted were executed to the satisfaction of the

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Commissioners; and the payment for each half year shall be, and be expressed to be as to part thereof a repayment of a certain amount of principal money, and as to the remainder thereof a payment of interest: and the charge shall be duly stamped for denoting payment of the proper ad valorem stamp duty which would be payable on a mortgage for securing the like amount as the principal money thereby charged, and shall be called an absolute order; and a copy of every such absolute order shall be authenticated by the seal of the commissioners, and shall be kept by them; and such copy, and any copy thereof authenticated by their seal, shall be evidence of the contents and purport of the same absolute order.

52 according to form in Schedule (B).

Charges under this Act shall be made according to the form in the schedule (B.) hereto annexed, or as near thereto as the circumstances of the case will admit.

53 Expenditure made under this Act may be charged under Acts of improvement companies.

Whenever, by assignment under the twenty-sixth section hereof or otherwise, a company having power to execute or advance money for the improvement of land shall become entitled to the creation of any charge under either the forty-ninth or the seventy-eighth section hereof, the Commissioners shall, if required, but subject to the provisions herein-before contained, create such charge in the form of, and so that it may also operate as, an absolute or other corresponding order under the Act or Acts applying to such company.

54 ^{F32}

Textual Amendments
F32 S. 54 repealed by [Improvement of Land Act 1899 \(c. 46\)](#), [Sch. 2](#)

55 Absolute order to be conclusive evidence of charge.

The execution of the absolute order by the Commissioners shall be conclusive evidence in all courts, and for all purposes, of the validity of the charge thereby expressed to be made, and no inquiry shall be permitted either into the title or estate of the landowner, or into the due performance of anything required to be done by this Act, or as to any other matter on which the validity of such charge might but for this enactment have depended.

56 Registry of rentcharges in Ireland, Middlesex, Yorkshire, and Scotland.

..... ^{F33}all grants of rentcharges on lands in Scotland shall be registered in the general or particular register of sasines: Provided that every rentcharge to which the present clause applies shall have priority as hereinafter declared, any law or usage to the contrary notwithstanding.

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Textual Amendments

F33 Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), s. 1, [Sch. Pt. VIII](#)

57 Landowner may borrow the amount of certain public assessments, and charge same on inheritance;

Whenever by or under the provisions of any Act of Parliament, royal charter, or commission under the Great Seal or the seal of the Duchy of Lancaster any public or general works of drainage or other improvements shall be required or authorized to be executed, and the cost thereof shall be directed or authorized to be assessed or charged upon the inheritance of the lands improved, then any landowner who shall, under such Act, charter, or commission, have been assessed, and shall have become liable to pay any sum of money so chargeable for or towards such works and improvements, or any of them, in respect of his land, may apply to the Commissioners to sanction the money so assessed being charged upon the land in respect of which such landowner shall have been so assessed; and if the Commissioners shall be satisfied that the works or improvements have been executed in accordance with the requirement or authority in such Act, charter, or commission contained, they may, after the money shall have been duly paid by such landowner, by an absolute order within the meaning of the fifty-first section hereof, charge upon the inheritance or fee of the land in respect of which such landowner shall have been so assessed the amount so assessed and paid, or such part of it as the Commissioners may be willing to sanction, to be repaid with interest.

58 in form specified, together with costs of application.

Such absolute order and charge may be made in any form and for any term permitted by this Act, and all the provisions hereof shall apply thereto in the same manner and with the same effect and operation in all respects as if such order and charge had been made in respect of improvements upon the said land executed under the powers of this Act; and if the landowner is desirous that the inheritance or fee of the said land should be charged with the costs, charges, and expenses of and incident to the said application and order, or any contract connected therewith, the provisions of the fiftieth section hereof shall extend and apply to the present case in the same manner as to the costs, charges, and expenses of the application and contracts in the said fiftieth section mentioned.

59 Grantee to have charge for principle money from time to time unpaid, with priority over other incumbrances.

From the date of the absolute order, the grantee thereof, and his executors, administrators, successors, and assigns, shall have a charge on the lands therein comprised for the principal money from time to time remaining undischarged, by payment of the rentcharge, with interest, at the rates in the several cases hereinbefore respectively expressed, and such charge shall have priority over every other then existing and future charge and incumbrance affecting such lands or estates and interests respectively, whether created under the powers of any Act of Parliament or otherwise, except quit rent, Crown rents, chief rents, feu duties, ground annuals, and other charges incident to tenure, tithe commutation rentcharges and teinds, charges created or to be created under any Act authorizing advances of public money for the improvement of land, and any charges created under this Act or charges of prior date

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created under any other existing Act of Parliament authorizing the charging of lands with the expense of and incident to their improvement: Provided that in case a part only of the land charged is subject to a mortgage or other incumbrance, the charge created under the authority of this Act shall have priority over the mortgage or other incumbrance only to the extent of a due proportion of such charge, when and so soon as the same shall be ascertained under and pursuant to the sixty-sixth section of this Act.

Modifications etc. (not altering text)

C18 S. 59 extended by [Church of Scotland \(Property and Endowments\) Act 1925 \(c. 33\), s. 47\(3\)](#)

60 Charges to be personal property, but money to be invested on real security may be invested on mortgages.

Every charge under this Act shall, as regards the holder thereof, be deemed to be personal property, except that any holder of such a charge, who shall desire to extinguish the same by reuniting it to the land charged, shall have power for that purpose to direct by any deed that it shall be reunited to and merge in the beneficial interest in the said land, as if it were of the same nature and tenure therewith; but all trustees, directors, and other persons who may be directed or authorized to invest any money on real security shall (unless the contrary be provided by the instrument directing or authorizing such investment) have power, at their discretion, to invest money in such charges, or on mortgages thereof.

Modifications etc. (not altering text)

C19 S. 60 repealed as to trustees (E.W.) by [Trustee Act 1893 \(c. 53\), Sch.](#) and (S.) by [Trusts \(Scotland\) Act 1921 \(c. 58\), Sch. C](#)

61 **F34**

Textual Amendments

F34 S. 61 repealed by [Trustee Act 1893 \(c. 53\), s. 51, Sch.](#) and [Trusts \(Scotland\) Act 1921 \(c. 58\), Sch. C](#)

62 Proprietor of Scotch entailed estate may avail himself of Act, and rentcharge to be charge on such estate.

No proprietor of an entailed estate in Scotland shall be held to have contravened the conditions of the entail by reason of his having availed himself of the provisions of this Act, and no rentcharge imposed or created on any entailed lands in Scotland under the authority of this Act shall be made use of as a ground for adjudging, selling, or evicting such lands, or any part thereof, contrary to the provisions and conditions of the entail, but every such rentcharge shall be a good and effectual charge upon and against such entailed lands to every other effect, and upon and against the rents and profits thereof.

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63 Rentcharges to be recoverable as tithe rentcharges or feu duties.

Every rentcharge on land by virtue of this Act may be recovered by the person or company for the time being entitled to the same, . . . ^{F35} as to lands in Scotland by the same means and in the like manner in all respects as any feu duties or rent or annual rent or other payment out of the same lands would be recoverable.

Textual Amendments

F35 Words repealed by [Improvement of Land Act 1899 \(c. 46\)](#), [Sch. 2](#)

64 Interest on arrears of rentcharges.

If any rentcharge payable under this Act shall be in arrear, such arrear shall not bear interest for a longer period than six months, but interest at five pounds per centum per annum in respect of the same, for any period not exceeding six months, may be recovered in the same manner as the sum in arrear: Provided that if, at the expiration of six months from the time of any payment falling into arrear, there shall not be upon the land charged [^{F36}goods that would be sufficient to pay the amount outstanding under Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods)], then the arrears of such payment shall continue to bear interest at the rate of five pounds per centum per annum until payment or satisfaction thereof, and such interest may be recovered in the same manner as the sum in arrear.

Textual Amendments

F36 Words in s. 64 substituted (E.W.) (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 14 para. 17](#) (with s. 89); S.I. 2014/768, art. 2(1)(b)

65 Assignment of charges.

The grantee or other person for the time being entitled to any rentcharge created under this Act may assign the same by deed duly stamped, and wherein the consideration is truly stated; and such assignment may be according to the form in schedule (C.) to this Act annexed, or to the like effect; and all assignments made in such form, or as near thereto as the circumstances of the case will admit, shall be effectual to vest, both at law and in equity, the charge thereby assigned, and all the powers, authorities, rights, and remedies of the assignor with reference to such charge, in the assignee, his successors, executors, administrators, and assigns respectively, and notice of such assignment shall be sent to the Commissioners at their office in London.

66 Tenants for life to keep down rentcharges.

Every landowner on whose land a charge shall have been made under this Act, and every succeeding tenant for life, tenant in tail, and other person having a limited interest in the land so charged, shall, as between himself and the persons in remainder or reversion, be bound to pay the yearly or other periodical payments of such charge which shall become payable during the continuance of his interest; and in case he be in the actual occupation or entitled to an apportioned part of the rents and profits of such land up to the time of the termination of his interest, he shall also be bound to pay an apportioned part of the yearly rent or other periodical payment of such charge

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which shall become due next after the termination of his interest, proportional to the time which elapsed between the day for the previous payment and the day of such termination: Provided that no person becoming entitled in possession to any estate or interest in the land shall be liable, as between himself and the persons entitled to the rentcharge, to pay any arrears of the charge remaining unpaid at the time of his becoming so entitled in possession beyond the amount of two years payment of such charge: Provided also, that the amount paid by any person in respect of such arrears, and any costs occasioned by nonpayment thereof, shall be a debt from the person who in the first instance ought to have paid the same, or from his estate, to the person who paid the same, and shall be recoverable accordingly.

67 Tenant may deduct rentcharge, unless he has agreed to pay it.

If any tenant or occupier at a rent join in the application for an improvement, or by writing under his hand signify to the Commissioners, or to an assistant commissioner or engineer, his consent to become charged with the charge, or an apportioned part thereof as herein-after mentioned, such tenant or occupier shall during his tenancy or occupation be liable to pay the charge, or an apportioned part thereof as herein-after mentioned; and in case the charge be made in respect of the improvement as well of other land as of the land included in such tenancy or occupation, the Commissioners may, upon such consent of the tenant or occupier, declare in the absolute order what portion of the whole charge payable in respect of the improvement shall be payable by such tenant or occupier during his tenancy or occupancy in respect of the probable improvement of the land included in his tenancy or occupation; but, except as aforesaid, every tenant or occupier who pays such charge shall be entitled to deduct the amount thereof from the rent payable by him to the landowner, and shall be allowed the same in account with him.

68 Rentcharges may be apportioned, or part of the land charged released therefrom. E+W

If at any time land charged under this Act, or under any other Act authorizing the creation of charges by the Commissioners, is occupied in separate farms or other holdings, or has become the property of separate owners, or the owner thereof is entitled thereto under separate titles or for distinct and separate interests, or is desirous to sell or dispose of part of such land, or part only of such land is subject to any mortgage or other incumbrance, or for any other reason it would be desirable that the charge should be apportioned or a part of the land charged released therefrom, the Commissioners may, with the consent of the landowner, or if the land has become the property of separate owners, or a part thereof is subject to any mortgage or incumbrance, then upon the application of any one of such owners, or of such mortgagee or incumbrancer, but in every case with due notice to the grantee or assignee of the charge, or the husband, guardian, tutor [^{F37}or curator of, or a deputy with powers in relation to property and affairs appointed by the Court of Protection for,] such grantee or assignee, if a married woman, infant [^{F38}person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to receive the notice][^{F39}or person suffering from mental disorder within the meaning of the [^{F40}Mental Health (Scotland) Act 1984]] and to such other parties (if any) as the Commissioners think right, either released from such charge any part of the land charged therewith, or apportion such charge so that a separate and distinct charge may become charged on each separate farm or holding, or on the land of each landowner, or on the land held under each separate title or for each distinct and separate interest, or on the part or each part which

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the landowner is desirous to sell or dispose of and the part intended to be retained by him, or on the part subject to such mortgage or other incumbrance and on the residue, or on any other separate parts of the land, but so that no charge charged under such apportionment shall be less than twenty shillings for each half-yearly payment . . . ^{F41}

Extent Information

- E2** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

- F37** Words in s. 68 substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), s. 68(1), [Sch. 6 para. 2\(a\)](#) (with [ss. 27-29](#), 62); [S.I. 2007/1897](#), art. 2(1)(d)
- F38** Words in s. 68 substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), s. 68(1), [Sch. 6 para. 2\(b\)](#) (with [ss. 27-29](#), 62); [S.I. 2007/1897](#), art. 2(1)(d)
- F39** Words substituted by [Mental Health \(Scotland\) Act 1960 \(c. 61\)](#), [Sch. 4](#)
- F40** Words substituted (S.) by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), ss. 17(2), 127(1), [Sch. 3 para.1](#)
- F41** Words repealed by [Improvement of Land Act 1899 \(c. 46\)](#), [Sch. 2](#)

^{F51}68 **Rentcharges may be apportioned, or part of the land charged released therefrom. S**

Extent Information

- E4** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

- F51** Act repealed (S.) (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [sch. 13 Pt. 1](#) (with [ss. 58](#), 62, 75); [S.S.I. 2003/456](#), [art. 2](#)

69 **Form, registry, and effect of orders of apportionment and release.**

Every such apportionment or release shall be made by an order under the hands and seal of the Commissioners, and shall be in the form set out in schedule (D.) or (E.) to this Act, as the case may be, or as near thereto as circumstances will permit, and as to lands . . . ^{F42}in . . . ^{F43}Scotland, shall be registered in the manner mentioned in the fifty-fourth section hereof, or as near thereto as circumstances will permit; and a copy of every such order shall be authenticated by the seal of the Commissioners, and shall be kept by them; and such copy, or any copy thereof authenticated by their seal, shall be conclusive evidence in all courts and for all purposes of the contents and purport of the same order, and of the validity of the apportionment or release thereby expressed to be made; and such order shall take effect from the date thereof, subject to the continuance of all rights and remedies for the recovery of monies which before the date thereof may have become payable out of any lands under the charge so apportioned or released.

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Textual Amendments

- F42** Words repealed by [Improvement of Land Act 1899 \(c. 46\), Sch. 2](#)
F43 Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\), s. 1, Sch. Pt. VIII](#)

70 Charges apportioned &c. to be deemed original charges.

Every charge apportioned or released as aforesaid shall be recoverable out of the lands on which the same is charged by the order of apportionment, or which shall not by the order of release be released therefrom, in the same manner as if the same had been originally charged on such lands respectively, and shall, for all the purposes of this Act, or of the Act under which the original charge was created, be deemed to be an original charge on such lands by absolute order.

71 Orders may comprise several charges.

Where any lands are charged by more than one absolute order, any order of apportionment or release under the preceding sections hereof may comprise all or any number of the rentcharges existing by virtue of such absolute orders.

Upholding improvements

And with regard to the upholding improvements under this Act, be it enacted as follows:

72 Improvements to be upheld and condition thereof certified if required.

So long as any land shall continue charged with any charge hereunder, the person for the time being bound to make the periodical payments of such charge shall uphold the improvements and works in respect of which such charge is made, and shall keep clear and open the outfalls and watercourses of all the drains (if any), and shall, if required either by the Commissioners or by any person who shall for the time being be interested in such charge under any assignment or mortgage thereof, once in every year certify to the Commissioners the state of such improvements and works, and of such outfalls and watercourses (if any); and if such person shall not so keep and uphold such improvements and works, and such outfalls and watercourses (if any), or shall fell, or cause or knowingly permit to be felled, except in proper thinning, any trees planted under the authority of this Act as an improvement, he shall be liable^{F44} . . ., for the damage thereby occasioned, at the suit of any person entitled to any estate in remainder on reversion in such lands.

Textual Amendments

- F44** Words in [s. 72](#) repealed (5.11.1993) by [1993 c. 50, s. 1\(1\), Sch. 1 Pt. XIII](#) Gp.2

73 Power to enter on neighbouring lands for repair of works, making compensation.

Every person for the time being bound to make the periodical payments of any charge may from time to time, by himself, his engineers, surveyors, agents, servants, and workmen, enter upon any lands in, through, or upon which any of the works have

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been executed, to ascertain the condition of the works, and to maintain and repair the same, nevertheless paying to the person for the time being enabled by this Act to sell or grant any easement in such lands, in case the parties differ about the same, such compensation as shall be determined by [^{F45}the Upper Tribunal]^{F46}...

Textual Amendments

- F45** Words in s. 73 substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 4** (with Sch. 5)
- F46** Words in s. 73 repealed (5.11.1993) by [Statute Law \(Repeals\) Act 1993 \(c. 50\)](#), s. 1(1), **Sch. 1 Pt. XIII Gp.2**

74 Farmhouses, &c. to be insured; power to insure in case of default.

When any farmhouses, farm buildings, or works susceptible of damage by fire shall have been erected, improved, or added to under this Act, then so long as any land shall continue charged under this Act in respect thereof, the person for the time being bound to make the yearly or other periodical payments of such charge shall insure and keep insured against damage by fire all such farmhouses, farm buildings, and works in an amount equal to the principal amount originally secured by such charge at the least; and such person shall once in every year certify to the Commissioners the fact of such insurance, and the particulars thereof, and that the premium and duty for such insurance for the year then current have been duly paid; and if such person shall not insure or keep insured such farmhouses, farm buildings, and works, or shall not duly certify the matters aforesaid, it shall be lawful for the person entitled to the charge for the time being, with the assent of the Commissioners, to insure against damage by fire the said farmhouses, farm buildings, and works in an amount not exceeding the principal amount originally secured by such charge, and either in the name of the person by whom such default shall have been made, or in the name of the landowner mentioned in the absolute order, and thereafter to keep the same insured during the continuance of the said charge; and the person for the time being bound to make the periodical payments of such charge shall from time to time, on the day on which the next payment shall become due on the said charge, repay to the person for the time being entitled to the said charge any sums so paid by him for premium and duty on such insurance; and in default of such payment the amount of such premium and duty, with interest thereon at the rate of five pounds per centum per annum from the time of such default, may be recovered by the last-mentioned person by the same means and in the like manner as if the same had been payable as part of the said charge.

Modifications etc. (not altering text)

- C20** [S. 74](#) extended by [Limited Owners Residence Act 1870 \(c. 56\)](#), s. 8

75 Inclosure Commissioners may compel maintenance of improvements.

If it shall be represented to the Commissioners that the person for the time being bound to make periodical payments of any charge created under this or any other existing Act authorizing the advance of money for the improvement of land has neglected to uphold and maintain the improvements in respect of which the charge was executed, or any of them, the Commissioners may, upon security being given for such an amount as they may consider necessary to cover any expenses that may be incurred by them,

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cause an inspection of the works to be made by an assistant commissioner, engineer, or surveyor.

After such inspection, if the Commissioners are satisfied that the improvements have not been upheld and maintained, they shall cause notice to be given to the person bound to make the said periodical payments requiring him to execute the works necessary to uphold and maintain the same within three calendar months from the time of giving such notice.

If such works shall not be executed to the satisfaction of the Commissioners within such three months, they may cause such works as in their judgment shall be necessary to uphold and maintain such improvements to be executed by a person appointed by them.

The costs thereof, including the expenses of the assistant commissioner, engineer, or surveyor, shall be repaid by the person bound to make the said periodical payments to the person entitled to the charge, on request, and in default thereof the amount so certified may be recovered, with all expenses incidental to the recovery thereof, in the name of the person for the time being entitled to the charge, by the same means and in the like manner as if the same had been payable as part of the said charge.

76 Inclosure Commissioners may give relief from maintenance of improvements.

If it shall be represented to the Commissioners that it is not expedient or necessary that any works for the cost of which there shall be a subsisting charge, or any part of such works, should be upheld or maintained, the Commissioners may, on having deposited with them a sum, to be fixed by them, to cover all expenses, cause the said works to be inspected by an assistant commissioner, engineer, or surveyor.

If after such inspection and notice to the parties who were served with notice of the application to charge the land or their representatives, and such other persons, if any, as the Commissioners may direct, the Commissioners shall find and certify that it is not expedient or necessary that the works or any of them should be upheld or maintained, thereupon the person for the time being bound to make the said periodical payment shall be relieved from all liability in respect of the maintenance of the works referred to in the Commissioners certificate.

77 Admiralty may remove works abandoned or fallen into decay.

If any embankment or work constructed under the powers of this Act in, under, over, through, or across any tidal water or navigable river, or if any portion of any embankment or work which affects or may affect any such water or river, or the access thereto, shall be abandoned, or suffered to fall into disuse or decay, it shall be lawful for the Admiralty or the Board of Trade, as the case may require, to abate and remove the same, or such part or parts thereof as he or they may at any time or times deem fit and proper, and to restore the site thereof to its former condition, at the cost and charge of the landowner,^{F47} . . .

Textual Amendments

F47 Words in s. 77 repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. XIII** Gp. 2

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Modifications etc. (not altering text)

- C21** Functions of Board of Trade under s. 77 now exercisable by Secretary of State: [Ministry of Transport Act 1919 \(c. 50\), s. 2\(1\)](#), S.R. & O. 1919/1440 (Rev. XV, p. 21: 1919 II, p. 849), 1939/1470 (Rev. XV, p. 214: 1939 II, p. 3051), 1941/654 (Rev. XV, p. 228: 1941 I, p. 1221), 1946/375 (Rev. XV, p. 229: 1946 I, p. 1009) and [S.I. 1970/1681](#)
- C22** Functions of Admiralty now exercisable by a Secretary of State: [Defence \(Transfer of Functions\) Act 1964 \(c. 15\), s. 1\(2\)](#)

Subscriptions to railways

78–89 **F48**

Textual Amendments

- F48** [Ss. 78–89](#) and enacting words prefacing these sections repealed by [Statute Law Revision Act 1964 \(c. 79\)](#)

90–91 **F49**

Textual Amendments

- F49** [Ss. 90, 91](#) repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

Changes to legislation:

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