



Inclosure Act 1845

1845 CHAPTER 118 8 and 9 Vict

An Act to facilitate the Inclosure and Improvement of Commons and Lands held in common, the Exchange of Lands, and the Division of intermixed Lands; to provide Remedies for defective or incomplete Executions, and for the Non-execution of the Powers of general and local Inclosure Acts; and to provide for the Revival of such Powers in certain cases. [8th August 1845]

Modifications etc. (not altering text)

- C1 Short title given by [Short Titles Act 1896 \(c. 14\)](#)
- C2 Functions of inclosure commissioners for England and Wales now exercisable by Secretary of State, and functions of assistant commissioners exercisable by officer of the Secretary of State assigned for that purpose: [Settled Land Act 1882 \(c. 38\), s. 48\(1\)](#), [Board of Agriculture Act 1889 \(c. 30\), s. 2\(1\)\(b\), Sch. 1 Pt. II](#), [Board of Agriculture and Fisheries Act 1903 \(c. 31\), s. 1\(1\)](#), [Ministry of Agriculture and Fisheries Act 1919 \(c. 91\), s. 1](#), S.I. 1955/554 (1955 I, p. 1200), 1965/143, 1967/156 and 1970/1681
- C3 Functions of churchwardens and overseers of the poor (except so far as they relate to church affairs or ecclesiastical charities) now exercisable in parishes by parish councils or meetings, in communities by community councils, in the City of London by the Common Council, in Greater London (except the City and Temples) by London borough councils and otherwise by rating authorities: [Local Government Act 1894 \(c. 73\), ss. 5\(2\), 6\(1\)\(c\)](#), [London Government Act 1899 \(c. 14\), ss. 11, 23](#), [City of London \(Union of Parishes\) Act 1907 \(c. cxl\), s. 11](#), [Rating and Valuation Act 1925 \(c. 90\), s. 62](#), S.R. & O. 1927/55 (Rev. XIX, p. 599: 1927, p. 967), [London Government Act 1963 \(c. 33\), s. 1\(6\)](#) and [Local Government Act 1972 \(c. 70\), ss. 1, 2, 20, 179, Schs. 1, 4](#)
- C4 Functions of allotment wardens now exercisable in parishes by parish councils or meetings, in communities by community councils, in Greater London (except the City and Temples) by agreement with any London borough council by that council and in districts by agreement with any district council by that council: [Local Government Act 1894 \(c. 73\), s. 6\(4\)](#), [Small Holdings and Allotments Act 1908 \(c. 36\), s. 33](#), [London Government Act 1963 \(c. 33\), s. 1\(6\)](#) and [Local Government Act 1972 \(c. 70\), ss. 1, 2, 20, 179, Schs. 1, 4](#)
- C5 Preamble omitted under authority of [Statute Law Revision Act 1891 \(c. 67\)](#)
Act except section 12: powers transferred (1.7.1999) by virtue of S.I. 1999/672, art. 2, [Sch.1](#)

Status: Point in time view as at 05/11/1993.
Changes to legislation: There are currently no known outstanding effects for the Inclosure Act 1845. (See end of Document for details)

Textual Amendments

F1 Ss. 1, 4, 5, 7, 169 repealed by Statute Law Revision Act 1875 (c. 66)

2 **F2**

Textual Amendments

F2 S. 2 repealed with savings by Board of Agriculture Act 1889 (c. 30), s. 13, **Sch. 2**

3 **F3**

Textual Amendments

F3 S. 3 repealed by Statute Law Revision Act 1875 (c. 66) and Statute Law Revision Act 1950 (c. 6)

4–5 **F4**

Textual Amendments

F4 Ss. 1, 4, 5, 7, 169 repealed by Statute Law Revision Act 1875 (c. 66)

6 **F5**

Textual Amendments

F5 Ss. 6, 8 repealed with savings by Board of Agriculture Act 1889 (c. 30), s. 13, **Sch. 2**

7 **F6**

Textual Amendments

F6 Ss. 1, 4, 5, 7, 169 repealed by Statute Law Revision Act 1875 (c. 66)

8 **F7**

Textual Amendments

F7 Ss. 6, 8 repealed with savings by Board of Agriculture Act 1889 (c. 30), s. 13, **Sch. 2**

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9 Documents of the tithe commissioners may be used. Power to summon witnesses.

All awards, apportionments, agreements, writings and maps in the custody of the tithe commissioners for England and Wales shall be open to the use and inspection of the inclosure commissioners for England and Wales, or any person by them authorized; and such copies of or extracts from such awards, apportionments, agreements, writings, and maps as the commissioners shall require shall be furnished to them for the purposes of this Act; and the commissioners or any assistant commissioner may, by summons under the seal of the commission or under the hands of such assistant commissioner, require the attendance of all such persons as they or he may think fit to examine upon any matter relating to any inclosure or proposed inclosure or other proceeding under the authority of this Act, and also make any inquiries and call for any answer or return as to any such matter, and also administer or receive declarations, and examine all such persons upon declaration, and cause to be produced before them or him, upon declaration, all court rolls, and all rate books, instruments of tithe apportionment, and other public writings, maps, plans, and surveys, of or belonging to any parish, or copies thereof respectively, in anywise relating to any such matter; and the commissioners may, when they shall think fit, by summons under the seal of the commission, require the attendance before any valuer acting in the matter of an inclosure under this Act of all such persons as the valuer may certify to the commissioners as persons whose testimony may be necessary for the matter of such inclosure, and cause to be produced before such valuer, upon declaration, all such court rolls, rate books, public writings, maps, plans, and surveys, or copies thereof, as aforesaid; and every valuer acting in the matter of an inclosure under this Act may also administer or receive declarations, and examine upon declaration all such persons as shall attend before him under such summons of the commissioners, and all such persons as may voluntarily attend before him as witnesses in such matter: Provided always, that no such person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him; and no such person shall be required in any case, in obedience to any such summons, to travel more than ten miles from the place of his abode.

Modifications etc. (not altering text)

- C6 Custody of documents of Tithe Commissioners for England and Wales transferred to Commissioners of Inland Revenue: [Tithe Act 1936 \(c. 43\), s. 6](#), [Tithe Act 1951 \(c. 62\), s. 10\(5\)](#) and [S.I. 1959/1971 \(1959 II, p. 2618\), art. 2\(2\)](#).

10 Commissioners may delegate powers to assistant commissioners.

The commissioners may delegate to the assistant commissioners, or to any one or more of them, such of the powers hereby given to the commissioners as the commissioners shall think fit, (except the power to confirm awards, or to do any act herein required to be done under the seal of the commissioners,) and the power so delegated shall be exercised under such regulations as the commissioners shall direct; and the commissioners may at any time recall or alter all or any of the powers delegated as aforesaid, and, notwithstanding the delegation thereof, may act as if no such delegation had been made; and all acts done by any such assistant commissioner in pursuance of such delegated power shall be obeyed by all persons as if they had proceeded from the commissioners, and the non-observance thereof shall be punishable in like manner.

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11 Descriptions of land subject to be inclosed under this Act.

All such lands as are herein-after mentioned, (that is to say,) all lands subject to any rights of common whatsoever, and whether such rights may be exercised or enjoyed at all times, or may be exercised or enjoyed only during limited times, seasons, or periods, or be subject to any suspension or restriction whatsoever in respect of the time of the enjoyment thereof; all gated and stinted pastures in which the property of the soil or of some part thereof is in the owners of the cattle gates or other gates or stints, or any of them; and also all gated and stinted pastures in which no part of the property of the soil is in the owners of the cattle gates or other gates or stints, or any of them; all land held, occupied, or used in common, either at all times or during any time or season, or periodically, and either for all purposes or for any limited purpose, and whether the separate parcels of the several owners of the soil shall or shall not be known by metes or bounds or otherwise distinguishable; all land in which the property or right of or to the vesture or herbage, or any part thereof, during the whole or any part of the year, or the property or right of or to the wood or underwood growing and to grow thereon, is separated from the property of the soil; and all lot meadows and other lands the occupation or enjoyment of the separate lots or parcels of which is subject to interchange among the respective owners in any known course of rotation or otherwise, shall be land subject to be inclosed under this Act.

12 Wastes of manors and lands subject to indefinite common rights at all times not to be inclosed without previous direction of Parliament.

Provided always, that no waste land of any manor on which the tenants of such manor have rights of common, nor any land whatsoever subject to rights of common which may be exercised at all times of every year for cattle levant and couchant upon other land, or to any rights of common which may be exercised at all times of every year, and which shall not be limited by number or stints, shall be inclosed under this Act without the previous authority of Parliament in each particular case, as herein-after provided: Provided also, that neither this Act, nor anything which may be done under or by virtue thereof, shall authorize to be made any embankment, erection, or encroachment, without the consent of [^{F8}the Secretary of State], and, where the consent of any grantee of the office of admiral or vice-admiral might have been required by law if this Act had not been passed, the consent also of such grantee, in or upon the shore of any harbour, or the bank of any navigable river so far as the tide flows up the same, or shall give to or confer upon any person any right, title, estate, or interest to or in any such embankment, erection, or encroachment already made, other than what he may legally have at the time of the passing of this Act, or confer upon any person whatsoever any right, title, estate, or interest whatsoever in any lands or soil whereon the tide of the sea flows and re-flows.

Textual Amendments

F8 Words substituted by virtue of [Defence \(Transfer of Functions\) Act 1964 \(c. 15\), s. 3\(2\)](#)

[^{F9}13 New Forest and Forest of Dean excepted.

Provided also, that no part of the New Forest in the county of Southampton, or of the Forest of Dean in the county of Gloucester, shall be land subject to be enclosed under this Act.]

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Textual Amendments

- F9** **S. 13** repealed so far as relates to the portions of the Forest of Dean called Walmore Common in the parish of Westbury on Severn, and the Bearce Common in the parish of St. Briavel's by the Act 29 & 30 Vict. (c. 70), s. 1

14 Land within certain distances of large towns not to be inclosed without the previous direction of Parliament.

Provided also, that no lands situate within fifteen miles of the city of London, or within two miles of any city or town of ten thousand inhabitants, or within two miles and a half of any city or town of twenty thousand inhabitants, or within three miles of any city or town of thirty thousand inhabitants, or within three miles and a half of any city or town of seventy thousand inhabitants, or within four miles of any city or town of one hundred thousand inhabitants, shall be subject to be inclosed under the provisions of this Act without the previous authority of Parliament in each particular case, as herein-after provided; and in all such cases the number of inhabitants shall be ascertained by the then last Parliamentary census thereof, and that the distance shall be measured in a direct line from the town hall, if there shall be any town hall, or if there shall be no town hall then from the cathedral or church if there shall be only one church, or if there shall be more churches than one then from the principal market place, of any such city or town.

15 Village greens not to be inclosed; but provision may be made for preserving the surface and fixing boundaries.

No town green or village green shall be subject to be inclosed under this Act; provided that in every case in which an inclosure of lands in the parish in which such town green or village green may be situate shall be made under the authority of this Act it shall be lawful for the commissioners, if they shall think fit, to direct that such town green or village green, provided such green be of equal or greater extent, be allotted to the church-wardens and overseers of the poor of such parish, in trust to allow the same to be used for the purposes of exercise and recreation, and the same shall be allotted and awarded accordingly, in like manner, and with the like provisions for making or maintaining the fences thereof, and preserving the surface thereof, and draining and levelling the same where occasion shall require, as herein-after directed concerning the allotments to be made for the purposes of exercise and recreation; and such green may be so allotted in addition to other land which may be allotted for the purposes of exercise and recreation, or, if the commissioners shall think it sufficient, may be allotted in substitution for other land which might have been required to be allotted for such purposes; and in every case in which such town green or village green shall adjoin land subject to be inclosed under this Act, and shall not be separated from such land by fences or known bounds, the commissioners shall, in the provisional order concerning such inclosure, set out a boundary line between such green and the adjoining land, and shall in their annual general report mention and describe such boundary.

16 Persons interested in lands for purposes of applications, &c.

For the purposes of this Act the persons interested in land subject to be inclosed under this Act, or otherwise subject or to become subject to the provisions of this Act, shall be deemed to be the persons herein-after mentioned, and no others; (that is to say,) the

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persons who shall be in the actual possession or enjoyment of any such land or any part thereof, or any common or common right thereon, or any manor of which such land or any part thereof shall be waste, or who shall be in the actual receipt of the rents and profits of such land or part thereof, common, or common right, or manor respectively, (except any tenant for life or lives, or for years, holding under a lease or agreement for a lease on which a rent of not less than two-thirds of the clear yearly value of the premises comprised therein shall have been reserved, and except any tenant for years whatsoever holding under a lease or agreement for a lease for a term which shall not have exceeded fourteen years from the commencement thereof, and except any tenant from year to year at will or sufferance,) and that without regard to the real amount of interest of such persons; and in every case in which any such land, common, or common right, or manor, shall have been leased or agreed to be leased to any person or persons for life or lives, or for years by any lease or agreement for a lease on which a rent of not less than two-thirds of the clear yearly value of the premises comprised therein shall have been reserved, and in every case in which any such land, common, or common right, or son manor, shall be in the possession of a tenant from year to year at will of sufferance, or shall have been leased or agreed to be leased for a term which shall not have exceeded fourteen years from the commencement thereof, the person who shall for the time being be entitled to the said land, common, or common right, or manor, in reversion immediately expectant on the term created or agreed to be created by such lease or agreement for a lease respectively, or subject to the tenancy from year to year at will or sufferance shall be deemed for the purposes of this Act to be the person interested as aforesaid in respect of such land, common, or common right, or manor; and in every case in which any such land, common, or common right, or manor, as aforesaid, shall have been leased or agreed to be leased to any person for life or lives, or for years, by any lease or agreement for a lease in which a rent less than two-thirds of the clear yearly value of the premises comprised therein shall have been reserved, and of which the term shall have exceeded fourteen years from the commencement thereof, the person who shall for the time being be in the actual receipt of the rent reserved upon such lease or agreement for a lease shall, jointly with the person who shall be liable to the payment of such rent of such land, common, or common right, or manor, be deemed for the purposes of this Act to be the person interested in respect of such land, common, or common right, or manor respectively; and in every case in which any person shall be in possession or enjoyment or receipt of the rents or profits of any such land, common, or common right, or manor, under any sequestration, extent, elegit, or other writ of execution, or as a receiver under any order of a court of equity, the person who but for such writ or order would have been in possession, enjoyment, or receipt of the rents and profits, shall, jointly with the person in possession, enjoyment, or receipt by virtue of such writ or order, be deemed for the purposes of this Act to be the person interested in respect of such land, common, or common right, or manor respectively.

17 Where the crown is interested, who shall be substituted.

Whenever her Majesty shall be interested in land as aforesaid [^{F10}The Crown Estate Commissioners], or in case her Majesty shall be so interested in right of the duchy of Lancaster the chancellor of the duchy of Lancaster shall, for the purposes of this Act, and to the extent of such respective interest, be substituted for the person interested as aforesaid.

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Textual Amendments

- F10** Words substituted by virtue of [Forestry \(Transfer of Woods\) Act 1923 \(c. 21\), s. 4](#), S.R. & O. 1924/1370 (Rev. V p. 443: 1924 p. 228), [Crown Lands Act 1927 \(c. 23\), s. 1](#), [Crown Estate Act 1956 \(c. 73\), s. 1](#) and [Crown Estate Act 1961 \(c. 55\), s. 1\(1\)](#)

18 Where Duke of Cornwall is interested, who shall be substituted.

Whenever the Duke of Cornwall shall be interested in land as aforesaid the lord warden of the Stannaries shall for the purposes of this Act, and to the extent of such interest, be substituted instead of the person interested as aforesaid.

19 Provision for persons jointly interested.

Whenever an interest in land according to the provisions of this Act shall be vested in several persons as co-trustees or in joint tenancy, such persons shall for the purposes of this Act be considered as jointly interested, and entitled to one vote only in respect of their joint interest; but any one or more of such persons may, unless the other or others of them shall dissent therefrom, act or vote under this Act; and the majority in number of any such persons may, notwithstanding any dissent of the minority, act or vote under this Act in the same manner as if all such persons had concurred; and whenever several persons as tenants in coparcenary or in common shall be so interested, each coparcener or tenant in common shall for the purposes of this Act and to the extent of the value of his respective undivided share, be deemed separately interested and entitled to vote as if he were tenant in severalty.

20 In case of disability Commissioners to name substitutes.

Whenever any person interested in land as aforesaid shall be an infant, [^{F11}person of unsound mind], idiot, feme covert, or under any other legal disability, or beyond the seas, the guardian, trustee, committee of the estate, husband, or attorney respectively, or in default thereof such person as may be nominated for that purpose by the commissioners, and whom they are hereby empowered to nominate under their hands and seal, shall for the purposes of this Act be substituted in the place of such person so interested.

Textual Amendments

- F11** Words substituted by virtue of [Mental Treatment Act 1930 \(c. 23\), s. 20\(5\)](#)

Modifications etc. (not altering text)

- C7** [S. 20](#) excluded by [Mental Health Act 1983 \(c. 20, SIF 85\), s. 113, Sch. 3](#)

21 Attornies may be appointed by persons interested. Form of power of attorney.

It shall be lawful for any person interested in any land subject to be inclosed under this Act, or otherwise subject or to become subject to the provisions of this Act, by a power of attorney, given in writing under his hand, to appoint an agent to act for him for the purposes of this Act; and all things which by this Act are directed to be done by or with relation to any such person may be lawfully done by or with relation

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to the agent so duly authorized of such person; and every such agent shall have full power, in the name and on behalf of his principal, to sign, concur in, and execute any application or act, to signify consent or dissent, and to vote on any question arising out of the execution of this Act; and every person shall be bound by the acts of any such agent, according to the authority committed to him, as fully as if the principal of such agent had so acted; and the power of attorney under which the agent shall have acted, or a copy thereof, authenticated by the signature of a witness or witnesses, shall be deposited in the office of the commissioners; and any such power of attorney may be in the form following:

“I, of , do hereby appoint , of , to be my attorney for all the purposes of the Inclosure Act 1845.”

22 Proportional interests, how estimated.

Provided always, that the proportional value of the respective interests of the several persons interested in any land subject to be inclosed under this Act, or otherwise subject or to become subject to the provisions of this Act, shall, so far as relates to the power to sign any application, or to give any notice or consent, or to vote at any meeting under this Act, be estimated as herein-after mentioned; (that is to say,) where their interests shall be in respect of land or other rateable property, then according to the proportional sums at which such land or rateable property shall be rated to the relief of the poor; and when their interests shall be in respect of rights of common enjoyed or claimed in respect of any land, and not defined by numbers or stints, then according to the proportional sum at which the land in respect of which they enjoy or claim such rights of common shall be rated to the relief of the poor; and in case such interest shall be in respect of rights in a gated or stinted pasture, or of other rights defined by numbers or stints, then according to the proportional amount of their respective numbers or stints; but in case such interests shall be in respect of rights of common in gross, not rated to the relief of the poor, and not defined by numbers or stints, or in case, from any other cause, it shall appear to the commissioners or to the assistant commissioner presiding at any meeting held for the purposes of this Act, impracticable to estimate such proportional value in manner aforesaid, it shall be lawful for the commissioners or such assistant commissioner to direct in what manner such proportional value shall be estimated, regard being had to the circumstances of each particular case: Provided always, that in every case in which such assistant commissioner shall have directed in what manner such proportional value shall be estimated under the power herein-before contained he shall specially report to the commissioners the circumstances under which it shall have become necessary to exercise such power, and the directions he shall have given in the exercise thereof.

Modifications etc. (not altering text)

- C8** Reference to poor rate, except in application of section to City of London and Temples, to be construed as reference to general rate: [General Rate Act 1967 \(c. 9\), s. 116\(2\)](#)

23 Proportional interests of lords of manors.

The proportional value of the interest of the lord of a manor interested as lord in any land subject to be inclosed under this Act, or, in case there shall be several lords of a manor or lords of several manors so interested in any land subject to be inclosed under

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this Act, the proportional value of the respective interests of such lords, shall for the purposes aforesaid be estimated in such manner as the [commissioners] may direct.

24— F12
27.

Textual Amendments

F12 Ss. 24–27 repealed with saving by [Commons Act 1876 \(c. 56\)](#), ss. 34, 35

28 Separate applications for separate tracts.

When it shall appear to the commissioners that land proposed to be inclosed under this Act shall be in part a tract of open and common arable, meadow, or pasture lands or fields, and in part a tract of common or waste lands subject to rights of common, or shall otherwise consist of separate and distinct tracts subject to separate and distinct rights or classes of rights, and the persons interested in one of such tracts shall not be all interested in the other of them, it shall be lawful for the commissioners to ascertain whether persons interested in each of such tracts whose interests shall not be less than two thirds in value of the whole interest therein shall consent to the proposed inclosure, on the terms and conditions in their provisions order specified; and in case it shall thereupon appear that such proportion in value of the persons interested in any such tract as aforesaid shall not have consented, the said commissioners shall not . . . F13 certify in their annual general report the expediency of the inclosure thereof, unless or until persons interested therein whose interest shall not be less than two thirds shall have consented thereto.

Textual Amendments

F13 Words repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

29 Consent of the lord of the manor.

Provided always, that when the land to which such application shall relate shall be the waste of any manor, or land within any manor to the soil of which the lord of such manor shall be entitled in right of his manor, then, unless there shall be more than one person interested in such manor according to the definition of this Act, the commissioners shall not proceed to an inclosure on such application, or certify in their annual general report the expediency thereof, unless the person interested in the land subject to be inclosed as aforesaid in right of such manor, or his substitute under this Act, shall consent to such inclosure; and where there shall be more than one person interested in such manor the commissioners shall not proceed to an inclosure, or certify as aforesaid the expediency thereof, in case such persons or the majority of such persons in respect of interest, shall signify their dissent within the time limited by the commissioners.

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30 Allotments for exercise and recreation may be required as conditions of inclosure.

In the provisional order of the commissioners concerning the inclosure under the provisions of this Act of any waste land of any manor on which the tenants of such manor have rights of common, or of any other land subject to rights of common which may be exercised at all times of the year for cattle levant and couchant, or to any rights of common which may be exercised at all times of the year, and which shall not be limited by number or stints, it shall be lawful for the commissioners to require, and in their provisional order to specify, as one of the terms and conditions of such inclosure, the appropriation of an allotment for the purposes of exercise and recreation for the inhabitants of the neighbourhood; . . . ^{F14} and if in the provisional order for such inclosure the commissioners shall not have required the appropriation of an allotment for the purposes of exercise and recreation, the commissioners shall in their annual general report state the grounds on which they shall have abstained from requiring such appropriation.

Textual Amendments

F14 Words repealed by [Commons Act 1876 \(c. 56\), s. 34](#)

31 Allotments for labouring poor.

In the provisional order of the commissioners concerning the inclosure under the provisions of this Act of any waste land of any manor on which the tenants of such manor have rights of common, or of any land whatsoever subject to rights of common which may be exercised at all times of the year for cattle levant and couchant as aforesaid, or to any rights of common which may be exercised at all times of the year, and which shall not be limited by number or stints, it shall be lawful for the commissioners to require and specify as one of the terms and conditions of such inclosure the appropriation of such an allotment for the labouring poor as the commissioners shall think necessary, with reference to the circumstances of each particular case, . . . ^{F15} and if in the provisional order for such inclosure the commissioners shall not have required the appropriation of an allotment for the labouring poor, the commissioners shall in their annual general report state the grounds on which they shall have abstained from requiring such appropriation.

Textual Amendments

F15 Words repealed by [Commons Act 1876 \(c. 56\), s. 24](#)

32 Acts for the inclosure of lands in pursuance of the reports of the Commissioners to be deemed public general Acts.

In case by any Act of Parliament hereafter to be passed it shall be enacted that the inclosures the expediency of which shall have been certified by the commissioners in their annual general report as aforesaid, or any of them, be proceeded with, the same shall in every case be proceeded with and completed according to the provisions of this Act, and on the terms and conditions in the provisional order of the commissioners specified in that behalf; and every such Act of Parliament hereafter to be passed containing such enactment as aforesaid shall be deemed a public general Act.

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33 Meeting for appointing valuer.

As soon as conveniently may be after the passing of any Act of Parliament by which any inclosure shall be directed to be proceeded with under the provisions of this Act, . . . ^{F16} the commissioners shall call a meeting of the persons interested in the land to be inclosed, of which twenty-one days notice shall be given by advertisement, to be held for appointing a valuer to divide, set out, and allot such land, or so much thereof as shall not be directed to be set out for public purposes, among the persons interested therein, and to set out, divide, and improve, in such manner as herein-after mentioned, so much thereof as shall be directed to be set out for public purposes; and the commissioners, if they shall so think fit, may appoint an assistant commissioner to be present and to preside at such meeting, and to take the votes of the persons present thereat; and the persons, or their agents, present at the meeting, or the majority in number, and the majority in respect of interest, may appoint a valuer; and in case the majority in number and the majority in respect of interest shall not agree upon the appointment, then the commissioners shall appoint a valuer: Provided always, that no person shall in anywise act as an assistant commissioner in an inclosure under this Act, or be appointed a valuer in such inclosure, who shall be interested in such inclosure, or shall be the agent ordinarily intrusted with the care, superintendence, or management of the estate of any person so interested.

Textual Amendments

F16 Words repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

34 Instructions to valuer.

At the meeting for appointing a valuer, or at some other meeting called by the commissioners for the purpose, the persons present, by themselves or their agents, at such meeting, or the majority in number and in respect of interest of such persons, may resolve upon instructions to the valuer, not inconsistent with the terms and conditions of the provisional order of the commissioners, and of any Act hereafter to be passed by which the inclosure may have been authorized, for the appropriation of parts of the land proposed to be inclosed for such public purposes as herein-after mentioned, or any of them; that is to say, for the formation of public roads and ways; for widening or improving existing public roads and ways; for a supply of stone, gravel, or other materials for the repairs of the roads and ways within the parish in which such lands shall be situate; for the formation of such public drains, watercourses, or embankments as may appear conducive to the health and advantage of such parish or the neighbourhood; for the formation or improvement of public ponds, wells, and watering places; for a place of exercise and recreation for the inhabitants of the neighbourhood; for allotments or field gardens for the labouring poor; for a supply of fuel for the poor or other inhabitants of such parish; for land for any burying ground, or enlarging any burying ground; for the site of any church or chapel, parsonage house, school, workhouse or garden to be attached thereto respectively; or for any other purpose of public utility or convenience, or for the general convenience or accommodation of the persons interested in the land to be inclosed; and also upon instructions to such valuer for the formation, alteration, or improvement on the land to be inclosed of private or occupation roads and ways, common ponds, ditches, watercourses, embankments, tunnels, bridges, and fences, or any of them, or any other works for the improvement of such land, or for the convenience of the occupiers of the respective allotments thereof; and also for the adoption and use, for the purposes

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of the inclosure, of a copy of any map or plan which shall have been confirmed under the hands and seal of the tithe commissioners of the land in question, or of any other map or plan of the accuracy of which the inclosure commissioners shall be satisfied, or for making any new survey, map or plan; and as to all other matters and things which may be proper to be done in the matter of the inclosure; and also for the raising and payment of all expences incident to such inclosure, either by sale of part of the land proposed to be inclosed, or by such rate as herein-after provided, as to the persons present at such meeting, or such majority as aforesaid, shall seem fit; and the majority in number and value as aforesaid may make any agreement with the valuer for the payment of such valuer for the duties to be performed by him under this Act; and all such instructions, and such agreement (if any), shall be reduced into writing, and shall be sent by the assistant commissioner (if any) present at the meeting, or otherwise by the chairman of the meeting, to the office of the commissioners; and it shall be lawful for the commissioners, having regard to the protection of the rights of all persons interested in the inclosure, to allow or disallow such instructions, in whole or in part, or to make such alterations therein or additions thereto, not inconsistent with the terms and conditions of such provisional order and Act as aforesaid, and to allow or disallow such agreement, as they shall think proper; and in case no instructions shall have been so resolved upon, and sent to the commissioners, or in case they shall disallow the instructions so resolved upon and sent, it shall be lawful for the commissioners to frame such instructions as they shall think proper, not inconsistent with the terms and conditions of such provisional order and Act as aforesaid; and in case no such agreement shall have been sent, or the agreement sent shall have been disallowed, it shall be lawful for the commissioners to make such order for the payment of the valuer as they shall think proper; and a copy, under the seal of the commissioners, of all such instructions, as the same shall have been allowed, altered, or framed as aforesaid, shall be delivered to the valuer, with a copy of such provisional order and Act of Parliament . . . ^{F17} as aforesaid; and the valuer shall in his proceedings in such inclosure observe and obey the directions and declarations of such provisional order, Act, and instructions respectively.

Textual Amendments

F17 Words repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

Modifications etc. (not altering text)

C9 Functions of Tithe Commissioners for England and Wales as to confirmation of maps and plans transferred to Board of Agriculture (now Minister of Agriculture, Fisheries and Food) by [Settled Land Act 1882 \(c. 38\)](#), [s. 48\(1\)](#), [Board of Agriculture Act 1889 \(c. 30\)](#), [ss. 2\(1\)\(b\), 10](#), [Sch. 1 Pt. II](#), [Board of Agriculture and Fisheries Act 1903 \(c. 31\)](#), [s. 1\(1\)](#), [Ministry of Agriculture and Fisheries Act 1919 \(c. 91\)](#), [s. 1](#), [S.I. 1955/554 \(1955 I, p. 1200\)](#)

35 Valuer may be assisted by an assistant commissioner.

The said valuer, upon the hearing and determining of any contested claim or objection, or upon awarding any costs, as herein-after mentioned, shall, if he think proper, or if the persons interested shall in their instructions to the valuer so direct, be assisted by an assistant commissioner, specially appointed as an assessor . . . ^{F18}; and the determinations of the said valuer as to all such contested claims and objections, and costs, shall be made pursuant to and in conformity with the decisions of such assessor: Provided nevertheless, that such assessor shall not interfere further in the execution of this Act than in settling what contested claims shall be allowed or disallowed, and

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what costs, if any, shall be allowed to or paid by any parties making or objecting to such claims.

Textual Amendments

F18 Words repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

36 Alterations in the instructions to valuer by commissioners not to be acted upon unless sanctioned by a majority of the persons interested.

Provided always, that if the commissioners shall alter or add to the instructions to the valuer which shall have been resolved upon at a meeting of the persons interested as aforesaid, or shall disallow any such instructions and frame other instructions in lieu thereof, the commissioners shall cause to be deposited for inspection, as herein-before directed with respect to the provisional order, a copy of the instructions so altered, or of the instructions so added to with the additions, or of the instructions so framed by the commissioners, as the case may be, and shall call a meeting, with fourteen days notice, of the persons interested as aforesaid, for the consideration thereof; and if such altered instructions, or such additions to the instructions, or the instructions so framed by the commissioners, as the case may be, shall not be approved by the majority in number and the majority in respect of interests of the persons present at such meeting or at some adjournment thereof, or at some other meeting of the persons interested as aforesaid, called with such notice as aforesaid, such inclosure shall not be proceeded with unless and until some instructions to the valuer, resolved upon or approved by the majority in number and the majority in respect of interests at some meeting of the persons interested as aforesaid, called with such notice as aforesaid, or at some adjournment thereof, shall be finally allowed by the commissioners.

37 A surveyor may be appointed where the parties interested think fit.

At the meeting for appointing a valuer, or at some other meeting called by the commissioners for this purpose, it shall be lawful for the persons, or their agents, present at such meeting, or the majority in number, and the majority in respect of interest, (if they shall so think fit,) to appoint a surveyor for the purposes of such inclosure, to assist or act under the directions of the valuer in the admeasurement, mapping, and setting out of the lands to be inclosed.

38 Form of declaration by valuer.

No valuer shall be capable of acting until he shall have made and subscribed, before the said commissioners, or some assistant commissioner, justice of the peace, or master extraordinary in chancery, the following declaration; (that is to say,) "I do solemnly declare, that I will faithfully, impartially, and honestly, according to the best of my skill and judgment, perform all the duties of a valuer in the inclosure of , according to the provisions of the Inclosure Act 1845."

Which declaration it shall be lawful for the commissioners, or any assistant commissioner, justice, or master extraordinary in chancery, to administer; and every such declaration so made and subscribed shall be countersigned by the person before whom the same shall have been made, and shall be sent by him to the office of the commissioners; and a certificate, under the seal of the commissioners, that the person named in such certificate has been appointed a valuer in the matter of an

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inclosure, and has made and subscribed the declaration required by this Act, shall be conclusive evidence of such appointment, and of his having made and subscribed such declaration.

39 Power to set out boundaries of parishes. Appeal on questions of boundary.

In case it shall be represented to the commissioners by the valuer acting in the matter of any inclosure, that the boundaries of any parish or manor in which the land proposed to be inclosed, or any part thereof, shall be situate, and of any parish or manor adjoining thereto, are not then sufficiently ascertained and distinguished, it shall be lawful for the commissioners, or any assistant commissioner by them appointed for that purpose, after giving such notices as they or he shall think necessary for the protection of the rights of all persons interested in this behalf, to ascertain and set out the same respectively, in writing under the hand and seal of such assistant commissioner, or under the seal of such commissioners; and after the said boundaries shall be so ascertained and set out and fixed the same shall and are hereby declared to be the boundaries of such parishes and manors respectively; and the commissioners or assistant commissioner shall, within one calendar month after ascertaining and setting out the boundaries, publish the same, by causing a description thereof in writing to be delivered to or left at the place of abode of one of the churchwardens or overseers of the poor of each of the parishes of which the boundary shall be so set out, and of the lords of the several manors of which the boundary shall be so set out, or of the stewards of the respective manors, and shall give notice that such boundary has been so set out, and that such description has been so left as aforesaid, by advertisement: Provided always, that any person interested in the determination of the commissioners or assistant commissioner respecting the said boundaries, who shall be dissatisfied with such determination, may within one calendar month next after the publication of the said boundaries, by delivering or leaving such description as aforesaid, give notice in writing of his dissatisfaction to the commissioners, specifying the particulars in respect whereof he may be dissatisfied, and request that the matter in dispute may be submitted to the determination of a jury; or any person dissatisfied may, within one calendar month after such publication of the said boundaries, give notice in writing to the commissioners of such dissatisfaction, and of such particulars thereof, and of his intention to apply to [^{F19}the High Court] to remove the determination of the commissioners or assistant commissioner, by certiorari, into the said court; and in every case in which any person shall have requested that the matter in dispute may be submitted to the determination of a jury as aforesaid, and no notice shall have been given to the commissioners by any person, within the time herein-before limited, of his intention to apply to [^{F19}the High Court] to remove the determination of the commissioners or assistant commissioners, by certiorari, as aforesaid, or such determination shall not have been removed within the time herein-after limited, the commissioners shall and they are hereby required to issue a warrant under their hands and seal to the sheriff of the county in which the parishes and manors in question, or one of them shall be situate, commanding such sheriff to impanel, summon, and return, and such sheriff is hereby accordingly empowered and required to impanel, summon, and return, a jury of at least eighteen sufficient and indifferent men, qualified according to the laws of the realm to be returned for trial of issues in [^{F19}the High Court]; and the persons so to be impanelled, summoned, and returned are hereby required to appear before any assistant commissioner specially appointed by the commissioners for that purpose, at such time and place as in such warrant shall be appointed, and to attend from day to day until duly discharged; and out of such persons so to be impanelled, summoned, and returned a jury of twelve men shall be drawn by the said assistant commissioner, or by some person to be by him appointed, in such

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manner as juries for trials of issues joined in [^{F19}the High Court] are by law directed to be drawn; and in case a sufficient number of jurymen shall not appear at the time and place so to be appointed as aforesaid, such sheriff shall return other honest and indifferent men of the standers-by, or of others that can speedily be procured to attend that service, (being so qualified as aforesaid,) to make up the said jury to the number of twelve; and all parties concerned may have their lawful challenges against any of the said jurymen, but shall not challenge the array; and the said assistant commissioner is hereby empowered and required to summon before him all persons who shall be thought necessary to be examined as witnesses touching the matter in question, and may authorize or order the said jury, or any six or more of them, to view the boundaries, or the part thereof which is in controversy; and such jury shall upon their oaths, . . . ^{F20}, as well as the oaths . . . ^{F20} of all such persons as shall be called upon to give evidence, the said assistant commissioner is hereby empowered and required to administer,) inquire into and ascertain the said boundaries, or such part thereof as shall have been in controversy, and shall declare whether the said boundaries, as described and set out and published as aforesaid, are or are not the true boundaries of the respective parishes and manors respectively, and in case they shall declare that the same are not the true boundaries, then shall declare in what manner the boundaries so described and set out and published as aforesaid ought to be amended, and shall give verdict accordingly; and the assistant commissioner shall reduce such verdict to writing, and certify the same to the commissioners, under his hand and seal; and in case such jury shall have declared that the boundaries so described and set out and published as aforesaid ought to be amended, the commissioners shall amend the same in accordance with such verdict, and such amended boundaries shall thenceforth be conclusive on all persons whomsoever.

Textual Amendments

- F19** Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), s. 224\(1\)](#)
F20 Words repealed by Statute Law (Repeals) Act 1981(c. 19), s. 1(1), Sch. 1 Pt. VIII

40 Non-attendance of jurymen.

If any person so summoned and returned upon any such jury as aforesaid shall not appear, or appearing shall refuse to be sworn, . . . ^{F21}, or shall refuse to give his verdict, or shall in any other manner wilfully neglect his duty, contrary to the true intent and meaning of this Act, or if any person so summoned to give evidence as aforesaid shall not appear, on being paid or tendered a reasonable sum for his costs and expences, or appearing shall refuse to be sworn, . . . ^{F21}, or to give evidence, every person so offending, having no reasonable excuse, to be judged of and determined by the said assistant commissioner, shall forfeit and pay for every such offence any sum not exceeding ten pounds; all which said penalties and forfeitures shall and may be recovered as penalties and forfeitures are recoverable under this Act.

Textual Amendments

- F21** Words repealed by Statute Law (Repeals) Act 1981(c. 19), s. 1(1), Sch. 1 Pt. VIII

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41 †Juries subject to same regulations as if returned for any court at Westminster.

Every such jury and jurymen as aforesaid shall also be subject to the same regulations, pains, and penalties as if such jury and jurymen had been returned for the trial of any issue joined in [^{F22}the High Court.]

Textual Amendments

F22 Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), s. 224\(1\)](#)

Modifications etc. (not altering text)

C10 Unreliable marginal note

42 Costs of appeal.

In every case in which the verdict of a jury shall be given in favour of the person who shall have requested that such jury be summoned, all the costs of summoning such jury and the expences of witnesses shall be defrayed by the commissioners, and shall be expences in the inclosure in the matter of which the question shall have arisen, and such costs and expences shall be settled and determined by the said assistant commissioner as aforesaid; but if the verdict of the jury shall be given against such person, the said costs and expences shall be defrayed by such person; and in case such costs and expences shall not be paid to the party entitled to receive the same within ten days after the same shall have been demanded, then the same shall and may, by warrant of the commissioners, directed to any person or persons whomsoever, be levied by distress; but in case such person shall have requested such jury to be summoned in pursuance of a resolution of the ratepayers of any parish in vestry assembled, the costs and expences so paid by him shall be repaid to him by the overseers of the poor of such parish, out of the poor's rate and shall be allowed in account to such overseers.

Modifications etc. (not altering text)

C11 Functions of vestry of the parish (except so far as they relate to church affairs or ecclesiastical charities) now exercisable in parishes by parish councils or meetings, in communities by community councils, in the City of London by the Common Council, in Greater London (except the City and Temples) by London borough councils and elsewhere by district councils: [Local Government Act 1894 \(c. 73\), ss. 6\(1\)\(a\), 19\(4\)](#), [City of London \(Union of Parishes\) Act 1907 \(c. cxl\), s. 13](#), [Local Government Act 1933 \(c. 51\), s. 269\(1\)\(a\)](#), [London Government Act 1963 \(c. 33\), s. 1\(6\)](#) and [Local Government Act 1972 \(c. 70\), ss. 1, 2, 20, 179, Schs. 1, 4](#)

C12 Reference to poor rate, except in application of section to City of London and Temples, to be construed as reference to general rate: [General Rate Act 1967 \(c. 9\), s. 116\(2\)](#)

C13 [S. 43](#) extended by [Inclosure Act 1852 \(c. 79\), s. 24](#)

43 Security for costs to be taken by the commissioners.

Every person who shall be dissatisfied, and shall require a jury to be summoned as aforesaid, shall at his own costs, before the commissioners shall be obliged to issue their warrant for the summoning of such jury, enter into a bond, with two sufficient sureties, to the commissioners, in a sufficient penalty, to prosecute the complaint, and to bear and pay their costs and expences of summoning and returning such jury, and

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taking such verdict, and of the summoning and attendance of witnesses, in case the said costs and expences shall fall upon them.

44 Persons dissatisfied with determination of commissioners may appeal to Court of Queen's Bench.

Any person interested in the determination of the said commissioners or assistant commissioner respecting the said boundaries, who shall be dissatisfied with such determination, and who shall, within the time herein-before limited, have given to the commissioners notice in writing of his intention to apply to [^{F23}the High Court], as herein-before mentioned, may, within six calendar months next after publication of the said boundaries, move [^{F23}the High Court] to remove the said determination of the commissioners or assistant commissioner by certiorari into the said court, the party making such application giving (in addition to such notice of his intention as aforesaid) eight days notice of such application to the said commissioners; and in case of removal as aforesaid the decision of the said court therein shall be final and conclusive as to the boundaries of such parish or manor; and after the expiration of the said term of six calendar months the determination of the commissioners or assistant commissioner shall not be removed or removable by certiorari, or any other writ or process whatsoever, into [^{F23}the High Court] or elsewhere; and no certiorari shall be allowed to remove such determination unless the party prosecuting the certiorari shall before allowance thereof enter into a recognizance before one of the justices of the said court, in the sum of fifty pounds, with condition to prosecute the same without wilful delay, and to pay to the said commissioners their full costs and charges within one calendar month after the determination shall have been confirmed, to be taxed according to the custom of the court; and no determination of a jury under the provision herein-before contained shall be removed or removable by certiorari; and in every case in which any determination of the commissioners or of any assistant commissioner, respecting the boundary of any parish or manor, shall be removed into [^{F23}the High Court], it shall be lawful for the court to direct the trial of one or more feigned issues upon such points as the court shall think fit, and also to direct who shall be the plaintiff or plaintiffs, and who shall be the defendant or defendants, on such trial, or to determine the same in a summary manner, or otherwise dispose of the question or questions in dispute, and to make such other rules and orders therein, as to costs and all other matters, as may appear to be just and reasonable.

Textual Amendments

F23 Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), s. 224\(1\)](#)

45 Power to straighten boundaries.

For the purpose of shortening or rendering straight any boundary fences between the land to be inclosed and any adjoining lands it shall be lawful for the valuer acting in the matter of any inclosure, with the consent in writing of the person interested in such adjoining lands, to set out and determine the boundaries between the land to be inclosed and such adjoining land, or to draw and define a new line of boundary, as he shall judge proper, for the purposes aforesaid; and after such boundaries shall have been so set out and determined as aforesaid, or such new line of boundary drawn and defined, the same shall be made, fenced, ditched, or mounded by such person, in such manner, and at such times, as the valuer shall direct, and shall for ever thereafter be deemed the boundaries and limits of such respective lands.

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46 Valuer to hold meetings.

The valuer acting in the matter of any inclosure shall from time to time hold such meetings for the examination of claims, and otherwise in the matter of such inclosure, as occasion shall require, and shall cause notice to be given on the church door, and also like notice to be given by advertisement, of the time and place of the meeting in the matter of such inclosure, and of each subsequent meeting, in the like manner, fourteen days at least before such respective meeting (meetings by adjournment only excepted); and if from any cause the valuer shall think fit to adjourn or postpone any such meeting, it shall be lawful for him to adjourn or postpone such meeting to any future day.

47 Claims to be delivered in writing.

All persons claiming any common or other right or interest in any land proposed to be inclosed as aforesaid shall deliver such claims in writing to the valuer acting in the matter of such inclosure, at such meeting as the valuer shall appoint for the purpose, . . .^{F24}; and no such claim shall be received by such valuer after the last meeting to be held for the purpose, (of which notice shall be given,) except for some special cause, to be allowed by the commissioners.

Textual Amendments

F24 Words repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

48 Statement of claims to be deposited for examination. Claims to be heard and determined by valuer, subject to appeal to commissioners.

A statement of all claims in the matter of any inclosure which shall have been delivered to the valuer acting in the matter of such inclosure, as herein-before provided, shall be made, and deposited by him at some public place within the parish in which the land to be inclosed, or the greater part thereof, shall be situate; and the valuer shall give notice on the church door of such parish, and by advertisement of such statement having been deposited, and shall in such notice limit such time for the delivery of objections to claims as the commissioners under the circumstances of each inclosure shall think reasonable, and by order under their seal direct, or in case no direction shall have been given by the commissioners in this behalf, then such time as the valuer shall think reasonable, not being less in any case than twenty-one days after such notice shall have been given; and every person who shall object to a claim shall deliver his objection in writing to the valuer, and also deliver a copy of such objection at the place of abode of the claimant or his agent, within the time limited for delivery of objections to claims as aforesaid; and no objection to any such claim shall be received by the valuer after the time so limited for the delivery of objections to claims, unless for some special cause to be allowed by the commissioners; and after the time limited for the delivery of claims shall have expired the valuer shall cause fourteen days notice to be given of the time and place of the meeting for the examination of such claims, and for the attendance of all parties concerned therein; and at such meeting the valuer shall proceed to examine into and determine such claims, and shall and may allow or disallow the same, in whole or in part, and make such order therein as to him shall appear just; and in case any doubts or difficulties shall arise respecting such claims, or any differences shall happen between any of the claimants touching their respective claims, or the relative proportions of their rights and interests, the valuer shall determine the same,

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and shall make such order therein as to him shall appear just, which order shall be final, unless any party shall be dissatisfied with the determination of the valuer, and shall give notice, as herein-after provided, of his desire to have the claim or matter heard and determined by the commissioners or an assistant commissioner, or in case the commissioner shall think fit to revise such determination, under the power herein-after contained; and in case the valuer, on the determination of any claim which shall have been objected to as aforesaid, or if any objection which shall have been made to any claim shall see cause to award any costs, it shall be lawful for the valuer, upon application, to assess and award such costs as he shall think reasonable to be paid to the person in whose favour any determination shall have been made, and by the person whose claim or objection shall have been disallowed; and in case any person liable to pay such costs shall neglect or refuse to pay the same, upon demand, or within fourteen days thereafter, the valuer shall, by warrant under his hand and seal, directed to any person or persons whomsoever, cause such costs to be levied by distress; and if there shall be no goods or chattels whereon to levy such costs it shall be lawful for the person in whose favour such costs shall be awarded to recover the same by action of debt or on the case, in which action it shall be sufficient for the plaintiff to declare that the defendant is indebted to him in the sum specified in the order of adjudication made by the valuer, and in consequence of such order, without setting forth any other proceedings under this Act: Provided always, that the valuer may pay the expences of any witnesses, or of the production of any writings, maps, plans, and surveys, or copies thereof, where such witnesses shall attend, or such maps, plans, surveys, or copies thereof, shall be produced before such valuer, only on the request and for the information or guidance of the valuer, (and not on behalf of any party in difference,) such last-mentioned expences to be considered as part of the expences of the inclosure.

49 Titles not to be determined by valuer, commissioners, or assistant commissioners.

Provided also, that nothing in this Act contained shall extend to enable the valuer, or the commissioners, or any assistant commissioner, to determine the title of any lands, or to determine any right between any parties contrary to the actual possession of any such party (except in cases of encroachment as herein-after mentioned), but in case the valuer, or the commissioners or assistant commissioner, shall be of opinion against the rights of the party in possession, they or he shall forbear to make any determination thereupon until the possession shall have been given up by such party, or recovered from him in due course of law, or, where the circumstances shall admit, such valuer, or the commissioners or assistant commissioner, may declare what right is appendant or appurtenant to any land or hereditament, or otherwise declare by any sufficient description the rights of the owner for the time being of any land or hereditament, without declaring by name who may be the actual owner of such land or hereditament.

50 Encroachments within twenty years.

All encroachments and inclosures, other than inclosures duly authorized by the custom of any manor of which such land shall be parcel, or otherwise according to law, which shall have been made by any person from or upon any part of the land proposed to be inclosed within twenty years next before the first meeting for the examination of claims in the matter of the inclosure thereof, whether any amerciamento, rent, or money payment or acknowledgement shall or shall not have been paid or made in respect of the same, to or for the use of the lord of the soil or any other person, shall be deemed parcel of the land subject to be inclosed, and shall be divided, allotted,

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and inclosed, accordingly: Provided always, that in case, under the circumstances of any such encroachment or inclosures, it shall appear to the commissioners just or reasonable that rights or interests in the lands to be inclosed should be allowed to the persons in possession of such encroachments or inclosures, it shall be lawful for the commissioners, either in the instructions to the valuer, or by any subsequent order under their seal, to direct what rights and interests, either absolute or for any limited terms or estates, should be allowed in respect of such encroachments, and the valuer shall allow and declare such rights accordingly: Provided also, that it shall be lawful for the several persons who shall be in possession of any such encroachments or inclosures, or in the receipt of the rent thereof, at the time of the determination of claims under this Act, to take down or remove all such buildings, fences, and other erections as shall then be thereon, and to convert the materials thereof to their own use, within two calendar months after notice in writing signed by the valuer given to such respective persons, or posted on the church door; and in case any dispute or difference shall arise touching any such encroachments or inclosures, or as to the extent thereof, such dispute or difference shall be determined by the valuer.

51 School-houses, &c. not to be deemed encroachments.

Provided also, that in case any such land shall have been taken or used, at any time before such first meeting for the examination of claims, for the erection of a school-house or the appurtenances thereto, or for other such purposes as in the opinion of the commissioners shall be charitable or parochial purposes, such land so taken, or the erections made thereon, shall not be taken or deemed to be of the nature of an encroachment within the meaning of this Act; but where such land shall have been so taken for the purposes aforesaid within twenty years next before such first meeting for the examination of claims, it shall be lawful for the commissioners, where it shall appear just and desirable for the purposes of inclosure, to direct that such land be deemed parcel of the land subject to be inclosed, and be divided, allotted, and inclosed accordingly, and that compensation be made to the persons in possession thereof, or to trustees for the purposes for which such land shall have been so taken or used, by adequate allotments of the lands so to be inclosed.

52 Encroachments of twenty years standing to be deemed ancient inclosures.

Provided always, that all lands which shall have been inclosed from any land subject to be inclosed under this Act for more than twenty years next preceding the day of the first meeting for the examination of claims in the matter of such inclosure, shall for the purposes of this Act be deemed and taken to be ancient inclosures, but not so as to carry any right of common, or compensation or allotment for or in respect of right of common, which might be claimed in respect of ancient inclosures.

53 Rights in respect of tofts to be allowed.

All tofts, foundations or sites of ancient, commonable messuages or cottages, shall, upon proof being made to the satisfaction of the valuer acting in the matter of any inclosure that commonable messuages or cottages formerly stood thereon, be deemed commonable messuages or cottages, and the respective proprietors thereof shall be entitled to the same compensation for the rights of common originally belonging thereto as if such messuages or cottages were still standing.

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54 Rights not sustainable in law to be allowed upon proof of sixty years usage.

Where any claim shall be made to any right of common or other right which, in the judgment of the valuer, or of the commissioners or assistant commissioner, could not be sustained in law, but proof shall be made to the satisfaction of the valuer, or of the commissioners or assistant commissioner, that there has been enjoyment under the right so claimed for the space of sixty years or upwards next before the first meeting for the examination of claims in the matter of such inclosure, it shall be lawful for the valuer, or the commissioners or assistant commissioner, to allow such claims, in such and the same manner as if the right so claimed might have been legally sustained and established.

55 Schedule of claims allowed by valuer to be made and deposited for inspection. Claims may be reheard by commissioners or an assistant commissioner.

After the valuer shall have heard and determined all claims and objections which shall have been made in the matter of an inclosure he shall cause a schedule of such claims and objections, and of his determinations thereon, to be deposited, and to remain for thirty days at the least, for the inspection of all persons interested therein, at some public place within the parish in which the land to be inclosed, or the greater part thereof, shall be situate, and shall cause notice to be given on the church door of such parish, and by advertisement, of such deposit, and shall also send a copy of such schedule to the commissioners, and shall furnish any explanations or information in relation thereto to the commissioners as they shall require; and in case any party dissatisfied with any determination of the valuer as aforesaid shall, within thirty days next after notice by the valuer of such deposit of the said schedule, cause to be delivered to the commissioners notice in writing of such dissatisfaction, and of the desire of such party to have the claim or matter so determined by the valuer heard and determined by the commissioners or by an assistant commissioner, or in case the commissioners shall, on the representation of any persons interested in such inclosure, or on the information given by the valuer in relation to such schedule, be of opinion that all or any of the determinations of such valuer shall have been made without due consideration of the legal rights of the parties interested, or shall be erroneous, then and in any such case the commissioners shall forthwith give notice, in such manner as they shall think fit, appointing some convenient place and time for holding a meeting to hear and determine the claim or matter which shall be so desired to be reheard, or all or any of the claims or matters which shall be mentioned in the said schedule, as the commissioners shall think fit; and the commissioners or any assistant commissioner specially empowered for that purpose, shall rehear and determine such claim or matter; and the determination of the commissioners or such assistant commissioner shall be final and conclusive, and shall be binding on the valuer acting in the matter of such inclosure, unless any party dissatisfied therewith shall try his right by an issue at law, as herein-after provided.

56 Appeal against determination of the commissioners.

Provided always, that if any person claiming to be interested in any land proposed to be inclosed under this Act shall be dissatisfied with any determination of the commissioners or assistant commissioner concerning any claim or interest in or to the land proposed to be inclosed under the powers herein-before contained, and shall cause notice in writing of such dissatisfaction to be delivered to the commissioners within thirty days next after notice of such determination shall have been given to the

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several parties or persons specially interested, if any such there be, it shall be lawful for such person so dissatisfied, and giving such notice as aforesaid, to bring an action upon a feigned issue against the person in whose favour such determination shall have been made, or against the commissioners, and to proceed to a trial at law [^{F25}in the High Court]; and the defendant in such action shall, upon being served with the usual process therein, appear thereto, and accept one or more issue or issues, whereby such claim, and the right and interest thereby insisted upon, may be tried and determined, such issue to be settled by the proper officer of the court in which the said action shall be commenced, in case the parties shall differ about the same; and the verdict given upon the trial of such action shall be binding and conclusive upon all parties thereto, unless the court wherein such action shall be brought shall set aside such verdict, and order a new trial to be had; and after such verdict shall be given and final judgment obtained thereon, the commissioners shall act in conformity thereto, and allow or disallow the claim thereby determined, according to the event of such trial; and the costs attending any such action shall abide the event of the trial.

Textual Amendments

F25 Words substituted by virtue of [Courts Act 1971 \(c. 23\)](#), [Sch. 8 para. 2](#)

57 Determination of commissioners not appealed against conclusive.

Provided always, that if no such notice of dissatisfaction shall be given, or if no such action at law shall be commenced as aforesaid, or if any such action shall be commenced, and the plaintiff therein shall not proceed to trial within the time hereinbefore limited for that purpose, unless the court for sufficient cause put off the trial, then the determination of the said commissioners or assistant commissioner shall be final and conclusive.

^{F26}**58**

Textual Amendments

F26 [S. 58](#) repealed (5.11.1993) by [1993 c. 50, s. 1\(1\)](#), [Sch. 1 Pt.IV](#)

59 Commissioners may award costs.

In case the commissioners, or any assistant commissioner appointed to hear and determine any claim or matter in pursuance of this Act, shall see cause to award any costs, it shall be lawful for the commissioners or assistant commissioner, upon application, to assess and award such costs as they or he shall think reasonable to be paid to the person in whose favour any determination of the commissioners or assistant commissioner shall have been made, and by the person whose claim or objection shall have been disallowed; and in case any person liable to pay such costs shall neglect or refuse to pay the same upon demand, or within fourteen days thereafter, the commissioners or assistant commissioner shall, by warrant directed to any person or persons whomsoever, cause such costs to be levied by distress; and if there shall be no goods and chattels whereon to levy such costs it shall be lawful for the person in whose favour such costs shall be awarded to recover the same by action of debt or on the case, in which action it shall be sufficient for the plaintiff to declare that the

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defendant is indebted to him in the sum specified in the order of adjudication made by the commissioners or assistant commissioner, and in consequence of such order, without setting forth any other proceedings under this Act.

60 Differences may be submitted to arbitration.

Provided always, that in case any person herein-before authorized to bring an action upon a feigned issue, and the person against whom such action might be brought, shall be desirous of submitting the matter in dispute or difference to the arbitration of any arbitrator, or of any arbitrators and umpire, it shall be lawful for such persons to submit such matter in dispute accordingly, and such submission shall be irrevocable, and the decision thereupon shall be binding on both parties, and be obeyed accordingly, and the costs of such arbitration shall abide the event; and the commissioners may require each of the persons in difference upon any such submission to arbitration to give such security for the payment of the costs of such arbitration as the commissioners shall think fit.

61 Power to valuer to make watercourses, &c.

It shall be lawful for the valuer acting in the matter of any inclosure to set out and make such common ponds, ditches, watercourses, embankments, tunnels, and bridges, of such extent and form, and in such situations, as he shall deem necessary, and as shall not be inconsistent with the terms and conditions and instructions herein-before mentioned, in the land to be inclosed, and also to enlarge, cleanse, or alter the course of and improve any of the existing ditches or watercourses, embankments, tunnels, or bridges, as well in and over the same land as also in any ancient inclosures or other lands in the parish or respective parishes in which the land to be inclosed may be situate, as the valuer shall deem necessary, making such satisfaction to the proprietors of such ancient inclosures or lands, for the damage done thereby, as the valuer shall think just; and the expence of making and enlarging, altering, and cleansing such ponds, ditches, watercourses, embankments, tunnels, and bridges, when the same shall be first done in pursuance of this Act, if not otherwise provided for, shall be raised and paid in the same manner as the other expences of the inclosure; but all such ponds, ditches, watercourses, embankments, tunnels, and bridges shall at all times afterwards be repaired, cleansed, and maintained by such persons and in such manner as the valuer shall direct; provided that no watercourse be diverted or turned without the consent in writing of the person interested in the land from which the same may be diverted, and of the person interested in the lands into which the same may be turned, or to the prejudice of any person interested in such watercourse, except with his consent in writing; and that no ditch or watercourse, embankment, tunnel, or bridge, be enlarged or altered on any land other than the land to be inclosed, without the consent in writing of the person interested in such land.

62 Power to alter roads and ways.

In the first place the valuer acting in the matter of any inclosure shall and may, before he shall proceed to make any of the divisions and allotments of the land to be inclosed, in pursuance of or in any manner not inconsistent with the instructions given to such valuer as aforesaid, set out and make public roads and ways, and widen public roads and ways, in or over the land to be inclosed, and stop up, divert, or alter any of the roads or ways passing through the land to be inclosed, or through any old inclosures in the parish or respective parishes in which the land to be inclosed shall be situate;

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and the soil of such of the roads and ways so to be discontinued and stopped up as pass through the lands to be inclosed shall be deemed part of the lands to be inclosed: Provided always, that . . . ^{F27} before any public road or way shall be discontinued, diverted, stopped up, or altered by the valuer acting in the matter of any inclosure, the valuer shall cause to be affixed at each end of such road or way a notice to the effect that the same is intended to be discontinued, stopped up, diverted, or altered, as the case may be, from and after a day to be mentioned in such notice; and the valuer shall also cause the same notice to be given by advertisement for four successive weeks, and also on the church door on the four Sundays of the said four successive weeks; and after the said several notices shall have been so given such road or way shall, from and after the day in such notice mentioned, be deemed to be discontinued, stopped up, diverted, or altered, as the case may be, subject, however, to such appeal as is hereinafter mentioned.

Textual Amendments

F27 Words repealed by [Statute Law Revision \(No. 2\) Act 1893 \(c. 54\)](#)

63 †Appeal to quarter sessions.

It shall be lawful for any person, within four months after the first Sunday on which such notice shall have been given on the church door of the intention that such road or way should be discontinued, stopped up, diverted, or altered, as the case may be, to make his complaint thereof, by appeal to [^{F28}the Crown Court], upon giving to the valuer fourteen days notice in writing of such appeal, together with a statement in writing of the grounds thereof; but it shall not be lawful for the appellant to be heard in support of such appeal unless such notice and statement shall have been given as aforesaid, nor on any hearing of appeal to go into evidence of any other grounds of appeal than those set forth in such statement as aforesaid.

Textual Amendments

F28 Words substituted by [Courts Act 1971 \(c. 23\)](#), s. 56(2), [Sch. 9 Pt. I](#)

Modifications etc. (not altering text)

C14 Unreliable marginal note

64 Trial of appeal.

In case of such appeal [^{F29}the Crown Court] shall, for the purpose of determining whether such public road or way shall be discontinued, stopped up, diverted, or altered, or whether the party appealing would be thereby injured or aggrieved, impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such [^{F29}court]; and if after hearing the evidence produced before them the said jury shall return a verdict that such road or way is unnecessary, or may beneficially to the public be discontinued, stopped up, diverted, or altered, and that the party appealing would not be injured or aggrieved thereby, then the said court shall dismiss such appeal, and shall award the costs of resisting the said appeal to be paid by the appellant to the valuer, and the same shall be recoverable in the same manner as any penalties and forfeitures are recoverable under this Act; but if the said jury shall return a verdict that such road or way is not unnecessary, and that the same could not beneficially to the

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public be so discontinued, stopped up, diverted, or altered, or that the party appealing would be injured or aggrieved thereby, the said court shall allow such appeal and such public road or way shall not be discontinued, stopped up, diverted, or altered, or in case the same shall have been discontinued, stopped up, diverted, or altered, the said court shall make an order restoring the same to its original state and shall award to the appellant the costs of prosecuting such appeal, and such costs shall be paid by the said valuer out of the monies to be raised for the expences of the inclosure: Provided always, that in every case in which any such appeal as aforesaid shall be made by the surveyor of the highways of any parish or place, under the direction of the inhabitants of such parish in vestry assembled, or, where there shall be no vestry meeting in such place, under the direction of the inhabitants contributing to highway rates assembled at any meeting of which fourteen days notice shall have been given by advertisement and on the church door, then, although such appeal shall be dismissed, the costs of prosecuting such appeal, and also such costs as shall be awarded to be paid by the appellant to the valuer, shall be paid out of the highway rate of such parish or place.

Textual Amendments

F29 Words substituted by virtue of [Courts Act 1971 \(c. 23\)](#), [Sch. 8 para. 2](#)

Modifications etc. (not altering text)

- C15** Reference to highway rates, except in application of section to City of London and Temples, to be construed as reference to general rate: [General Rate Act 1967 \(c. 9\)](#), [s. 116\(2\)](#)
- C16** Functions of vestry of the parish (except so far as they relate to church affairs or ecclesiastical charities) now exercisable in parishes by parish councils or meetings, in communities by community councils, in the City of London by the Common Council, in Greater London (except the City and Temples) by London borough councils and elsewhere by district councils: [Local Government Act 1894 \(c. 73\)](#), [ss. 6\(1\)\(a\), 19\(4\)](#), City of London (Union of Parishes) Act 1907 (c. cxI), s. 13, [Local Government Act 1933 \(c. 51\)](#), [s. 269\(1\)\(a\)](#), [London Government Act 1963 \(c. 33\)](#), [s. 1\(6\)](#) and [Local Government Act 1972 \(c. 70\)](#), [ss. 1, 2, 20, 179](#), [Schs. 1, 4](#)
- C17** References to a surveyor of the highways to be construed as references to a highway authority: [Highways Act 1980 \(c. 66, SIF 59\)](#), s. 343(1), [Sch. 23 para. 23](#)

65 Roads to be fenced.

Such public carriage roads so to be set out as aforesaid shall be well and sufficiently fenced on both sides, by such of the persons interested in the land to be inclosed, and within such time, as the valuer acting in the matter of such inclosure shall direct; and the valuer shall form and complete such parts of the said public roads and ways as shall be newly made; and every such public road and way to be set out and made under this Act shall be of the width required by the ^{M1}Highway Act 1835 for a road or way of the like description which may be dedicated to the use of the public.

Marginal Citations

M1 [1835 c. 50](#).

66 Expenses of making and altering public roads.

The expenses attending the purchasing of the soil of all such public roads and ways as aforesaid, and the making, the stopping up, discontinuing, diverting, widening, and

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altering of such roads and ways, and the money compensation in respect thereof, upon any inclosure, shall be paid in such manner as the expences of such inclosure shall be directed to be paid.

67 Roads to be repaired by the parish after certificate by two justices of the peace.

When and so soon as two or more of her Majesty's justices of the peace for the county, riding, division, or jurisdiction in which the lands to be inclosed shall be situate shall certify any of the public roads and ways to be set out in pursuance of this Act on any inclosure to be sufficiently formed and completed such roads shall thenceforth be kept in repair by such persons and in such manner as the public roads within the said parish are or ought by law to be kept in repair; and every such certificate shall, at the quarter sessions of the peace to be holden for the said county, riding, division, or jurisdiction next after the date thereof, be filed of record by the clerk of the peace.

Modifications etc. (not altering text)

C18 Functions of quarter sessions under s. 67 now exercisable by local authority for the area and functions of clerk of the peace under the section now exercisable by clerk of that authority: [Courts Act 1971 \(c. 23\)](#), [Sch. 8 Pt. I para. 1](#)

68 Private roads.

The valuer acting in the matter of any inclosure shall and may set out such private or occupation roads and ways through the lands to be inclosed as he shall think requisite, for the use of the persons interested in such lands or any of them; and any expences which the valuer may incur relative to the setting out or formation or completion of such private roads and ways, or any of them, shall, unless the valuer shall otherwise direct, be paid in the same manner as the other expences of the inclosure; and such expences of the formation and completion of such private roads and ways as the valuer shall direct shall be borne by, and after the formation and completion of such private roads and ways the same shall be maintained and kept in repair by and at the expence of the owners and proprietors for the time being of the land inclosed, or such of them, and in such shares and proportions, and in such manner, as the valuer shall direct; and after such private roads and ways shall have been set out and made the grass and herbage arising shall for ever belong to and be for the use of such persons interested in the lands to be inclosed as the valuer shall direct, and in the absence of such direction shall belong to the proprietors of the land to be inclosed which shall next adjoin the said roads and ways on either side thereof as far as the crown of the road and after such setting out as aforesaid all private or occupation roads or ways over, through, and upon the lands to be inclosed which shall not be set out as aforesaid shall be for ever stopped up and extinguished.

69 Rights of common may be suspended.

It shall be lawful for the valuer acting in the matter of any inclosure, before the making of the award, when the commissioners shall think necessary for the purpose of the inclosure, and by order under their seal authorize or direct, by notice on the church door to order all or any part of the rights of sheepwalk, common or other rights, in or over the land to be inclosed, or any part thereof, to be extinguished from such time or the exercise thereof to be suspended during such time as shall be expressed in such

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notice, and from the time mentioned in such notice such rights shall be extinguished or suspended accordingly; and if during the suspension or after the extinguishment of any such rights of sheepwalk, common or other rights as aforesaid, any person shall permit his horses, cattle, sheep, or swine to go or depasture upon any of the lands over which such rights shall be suspended or extinguished, it shall be lawful for the valuer acting in the matter of the inclosure, or any other person by his order, (testified in writing under his hand,) or any of the persons interested in such lands or in the inclosure thereof, to distrain such horses, cattle, sheep, or swine being upon such lands contrary to such order, and to impound the same until the person so offending shall pay to the person so distraining such sum of money as the valuer shall by writing under his hand have previously ordered, not exceeding [^{F30}50p] for each horse or head of cattle, and [^{F30}25p] for each sheep or swine so distrained; and in case the same shall not be paid within seven days after the same shall have been impounded the valuer is hereby authorized to recover the same by way of penalty, as herein-after mentioned.

Textual Amendments

F30 Words substituted by virtue of [Decimal Currency Act 1969 \(c. 19\), s. 10\(1\)](#)

70 Course of husbandry may be directed.

It shall be lawful for the valuer acting in the matter of any inclosure, at such time as he shall think fit, by notice on the church door, to direct the course of husbandry and the stint or rule of stocking that shall be observed upon the land to be inclosed, until the time when the inclosure thereof shall be completed, as well with respect to the laying down, ploughing, sowing, fallowing, manuring, and tilling thereof, as to the stocking and feeding of the commonable lands and fallows or stubbles upon the same, and to direct such recompence to be made as he shall think right to any person injured by such directions, all which directions shall be binding upon all parties interested, their farmers and tenants; and the valuer shall impose such pecuniary penalties on every person not conforming to such directions as he shall think necessary, not exceeding the sum of five pounds per acre in the case of cross-cropping, or withholding from the land its due proportion of manure, or ten pounds in any other case, for any one offence, and shall also determine, in all cases where the tenant is entitled by agreement or custom to the manure arising from the lands in his occupation, by whom and in what sum of money such tenant shall be compensated for any such manure left or given up by him; and such penalties and other sums of money shall be recovered in the same manner as by this Act directed for the recovery of penalties.

71 Compensation for growing crops.

The valuer acting in the matter of any inclosure shall by writing under his hand order what recompence in money shall be made to the owner of any crops growing, according to his agreement or lease, or according to the customary mode of cultivation within the parish in which the land to be inclosed shall be situate, upon such land, at the time of the division, allotment, and inclosure, for the said crops, by the person to whom the land on which such crops are growing shall be allotted, and also, what recompence in money shall be paid, and by whom, to any tenant or occupier of land, as well for the ploughing, tilling, cultivating, manuring, or folding any land to be inclosed, for the benefit accruing thereby to the person to whom such land shall be allotted, or for any loss or disadvantage which any tenant or occupier may sustain by the loss of his following or way-going crops upon the land to be inclosed; and if in any of the said

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cases the money to be paid for such recompence be not paid at the time and in the manner ordered by the valuer, then the same may be recovered by the person entitled thereto, from the person liable to pay the same, in the same manner as penalties and forfeitures are recoverable under this Act.

72 Allotment for repair of roads.

The valuer acting in the matter of any inclosure shall allot to the surveyor of the highways for the time being of the parish in which the land proposed to be inclosed, or any part thereof, shall be situate, and to his successors for ever, such part of the land proposed to be inclosed as by the instructions given to such valuer shall have been directed to be appropriated for supplying stone, gravel, or other materials for the repairs of roads and ways, as aforesaid, or in case no such instructions shall have been given in this behalf, and the valuer shall think an allotment necessary for the purposes aforesaid, such part as the valuer shall think fit; and such allotments shall be inclosed and fenced as the valuer shall direct, and shall from the confirmation of the award be vested in the surveyor of the highways within the said parish for the time being, in trust for the purposes aforesaid; and the grass and herbage of such allotments shall belong to such persons as by the valuer shall be directed, and if he shall make no such direction then such surveyor shall from time to time let any such allotment, reserving the right to get and take away such stone, gravel, and other materials when and as he shall think fit, for the most money that can be obtained for the same . . . ^{F31}

Textual Amendments

F31 Words repealed with savings by [Highways Act 1959 \(c. 25\), s. 312\(2\)](#), [Sch. 25](#) and [London Government Act 1963 \(c. 33\), s. 16\(2\)](#), [Sch. 6 para. 70](#)

Modifications etc. (not altering text)

C19 References to a surveyor of the highways to be construed as references to a highway authority: [Highways Act 1980 \(c. 66, SIF 59\), s. 343\(1\)](#), [Sch. 23 para. 23](#)

73 Allotments for public purposes.

The valuer acting in the matter of any inclosure shall and may, in pursuance of the directions of or in any manner not inconsistent with the directions of the provisional order of the commissioners, or any Act hereafter to be passed, or the instructions given to such valuer as aforesaid, set out and allot such part of the lands to be inclosed as by such provisional order or Act or instructions respectively shall have been directed to be appropriated as a place of exercise and recreation for the inhabitants of the said parish and neighbourhood; and such allotment shall, . . . ^{F32} be made and awarded to the churchwardens and overseers for the time being of the parish in which the same shall be situated, and shall be held by the churchwardens and overseers for the time being of the said parish for the purposes aforesaid, and shall be in the first instance fenced, and, where occasion shall require, drained and levelled by the valuer, the expence in such case to be considered part of the expences of the inclosure, or shall be fenced by any person to whom adjoining land shall be allotted, as the valuer may direct; and the fences of such allotment shall for ever afterwards be repaired and maintained, and the surface thereof kept drained and level, by such churchwardens and overseers, or by the churchwardens and overseers of the several parishes interested therein, in such proportions and manner as shall be directed by the valuer, out of the rents to be received for the herbage of the said allotment, or out of the poor rate of the said

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parish or respective parishes, or otherwise; and the grass and herbage growing upon such allotment may be from time to time let by the churchwardens and overseers in whom the same shall be vested, and the rents which shall be received by them for the same shall be by them from time to time applied in the first place in maintaining and repairing the fences of the said allotment, and keeping the surface thereof drained and level as aforesaid . . . ^{F32} and the valuer shall in like manner set out and allot such part of the land to be inclosed as by such provisional order or Act or instructions as aforesaid shall have been directed to be appropriated as an allotment for the labouring poor unto the churchwardens and overseers of the poor of the parish in which such allotment shall be situate . . . ^{F32}; and the said valuer shall in like manner, in pursuance of the directions of or in any manner not inconsistent with the directions of such provisional order or Act or instructions as aforesaid, set out and allot, for the other public purposes mentioned in such provisional order or Act or instructions as aforesaid, such parts of the land to be inclosed as shall have been thereby respectively directed to be set apart for such purposes, and such allotments shall be made to such persons respectively, with such regulations and provisions as to the fencing, maintenance, use, and enjoyment thereof respectively, as the valuer, with the approbation of the commissioners, shall direct; and in every case in which the valuer, with such approbation of the commissioners, shall not think it necessary or proper to direct the same to be otherwise made, such allotments shall be made to the churchwardens and overseers of the poor for the time being of the parish in which such allotments shall be situate; and all allotments which shall be made to the churchwardens and overseers under this Act shall be held by the churchwardens and overseers of the poor for the time being in the same manner and with the same legal powers and incidents as if the same allotments were lands belonging to the parish, but in trust nevertheless for the purposes for which the same shall be allotted, and subject, as to the said allotment for the labouring poor, to the provisions in relation thereto herein-after contained, and, as to all other such allotments, subject to such directions for the maintenance, fencing, management, and use thereof as the valuer, with the approbation of the commissioners, may think fit.

Textual Amendments

F32 Words repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

Modifications etc. (not altering text)

C20 Reference to poor rate, except in application of section to City of London and Temples, to be construed as reference to general rate: [General Rate Act 1967 \(c. 9\), s. 116\(2\)](#)

74 †Provision for awarding allotments for exercise to individuals, subject to the obligation of permitting it to be used.

..... ^{F33} the person to whom the land so to be appropriated shall be allotted, and all future owners thereof, shall, unless it shall be otherwise directed by the award, be subject to the obligation of maintaining the fences of such land, and of preserving the surface thereof in good condition, and of permitting such land to be at all times used for exercise and recreation by the inhabitants of the parish and neighbourhood, and, subject to such obligations, the herbage of such land shall belong to the person to whom such land shall be so allotted.

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Textual Amendments

F33 Words repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

Modifications etc. (not altering text)

C21 Unreliable marginal note

C22 “Land so to be appropriated” means land appropriated as a place of exercise and recreation

75 †Allotments for the labouring poor may be made subject to a corn rent-charge, to vary and be recoverable as a tithe rent-charge.

.....^{F34} Every such rent-charge shall be paid by equal half-yearly payments on the first day of July and the first day of January, the first of such half-yearly payments to be made on the first of such half-yearly days after the expiration of three years from the date of the confirmation of such award; and such sum of money shall be payable in respect of such yearly rent-charge as according to the prices ascertained by the then next preceding advertisement for the purposes of the Tithe^{M2} Act 1836 would have been payable in respect of a rent-charge of like amount charged on lands under the provisions of such Act; and the sum of money thenceforth payable in respect of such rent-charge charged under the provisions of this Act shall vary so as always to consist of the price of such number of bushels, and decimal parts of a bushel, of wheat, barley, and oats respectively according to the next preceding advertisement for the time being, in like manner as if the same had been a rent payable under the provisions of the Tithe^{M3} Act 1836 and the persons entitled to any rent-charge charged under the provisions of this Act shall have the same powers and remedies for enforcing payment thereof, in all respects, as are by the Tithe^{M4} Act 1836 or by any Act for amending the same, given to the persons entitled to rent-charges charged under the Tithe^{M5} Act 1836 for recovering and enforcing payment of such last-mentioned rent-charges; and nothing herein or in such award contained shall render any person personally liable to the payment of any rent-charges to be charged under the provisions of this Act: Provided always, that when such allotment, or any part thereof, shall be let and occupied as gardens under the provisions herein-after contained, the person for the time being entitled to the rent-charge charged thereon shall not distrain for such rent-charge on the occupiers of such gardens, but the person so entitled may in case such rent-charge shall be in arrear, give notice to the occupiers of such gardens, and to the allotment wardens, or any of them, and shall thenceforth, until the arrears of such rent-charge, with all expences occasioned by the nonpayment thereof, shall be fully paid, be entitled to receive all the rent which after such notice shall accrue in respect of such gardens, and shall have the same remedies for recovering such rent, and the same powers of determining the tenancy of such occupiers, and of letting and dealing with such allotment, as such allotment wardens would have had in case such rent-charge had not been in arrear; and in case the said allotment wardens, or any of them, after such notice shall have been given to them as aforesaid, and before the arrears of such rent-charge, with all such expences as aforesaid, shall have been fully paid, shall receive any rent from the occupiers of such gardens, such of the allotment wardens as shall have received such rent shall, on demand, pay to the person then entitled thereto the arrears of the said rent-charge then remaining unpaid, and the expences occasioned by the nonpayment thereof; and in default of such payment, on demand, such arrears of rent-charge and expences may be recovered from the allotment wardens liable to pay the same, as penalties are recoverable under this Act.

Status: Point in time view as at 05/11/1993.

Changes to legislation: There are currently no known outstanding effects for the Inclosure Act 1845. (See end of Document for details)

Textual Amendments

F34 Words repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

Modifications etc. (not altering text)

C23 Unreliable marginal note

C24 “Every such rent-charge” means a corn rent-charge being a rent-charge which varies and is recoverable as a tithe rent-charge

Marginal Citations

M2 [1836 c. 71.](#)

M3 [1836 c. 71](#)

M4 [1836 c. 71](#)

M5 [1836 c. 71.](#)

76 Allotment to the lord of the manor.

After the several allotments herein-before directed shall have been set out and made, and after making provision for the payment of the expences by sale of land, in case the expences shall be so directed to be paid, the valuer acting in the matter of any inclosure shall allot and award unto the lord of the manor so much and such part of the land proposed to be inclosed as shall in the judgment of the valuer be equal (quantity and value considered) to such a part of the residue of such land as shall be proportioned to his right or interest therein, according to the directions of the provisional order of the commissioners, in lieu of his right and interest in the soil of the said land, exclusive of any other allotments which may be made to such lord in lieu of or in satisfaction for any other rights or interests in such land to which he may be entitled, and which shall not have been included in the estimate in such provisional order of his right and interest; and in case it shall have been declared by such provisional order that the right or interest of the lord has been estimated exclusively of his right or interest in all or any of the mines, minerals, stone, and other substrata under the land to be inclosed, then the valuer shall and may, on the request in writing of the lord, reserve or award to the lord such rights and easements for searching for, working, and carrying away such mines, minerals, stone, or other substrata which shall not have been included in such estimate of his right and interest, subject to such provisions for compensation for damage to be done to the surface in the exercise of such rights and easements, as by the valuer, with the approbation of the commissioners, shall be thought reasonable, and as shall not be inconsistent as to the terms of such provisional order.

77 Allotment of residue.

After the several allotments herein-before directed shall have been set out and made, and after making provision for all or any part of the expences of the inclosure by sale of lands, in case all or any part of the expences shall be so directed to be paid, the valuer acting in the matter of the inclosure shall divide, allot, and award all the remainder of the land to be inclosed unto and amongst the several persons who shall be interested therein, in such shares and proportions as he shall adjudge and determine to be proportionate to the value of their respective rights and interests which shall have been claimed and allowed under the provisions herein-before contained.

Status: Point in time view as at 05/11/1993.
Changes to legislation: There are currently no known outstanding effects for the Inclosure Act 1845. (See end of Document for details)

78 F35

Textual Amendments
F35 S. 78 repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

79 Separate allotments to be made in respect of separate titles.

When any person to whom any allotment shall be made or land assigned in exchange by virtue of this Act shall hold such land, or the land in respect of which such allotment or exchange is made, under different titles or for different estates, and, as to copyhold or customary land, by separate quit rents, the valuer in the matter of the inclosure shall ascertain and distinguish the land held for each of such estates and under each of such titles respectively, and shall accordingly set out distinct and several allotments for such respective lands, and distinguish the several estates holden by several and distinct quit rents.

80 Several allotments may by consent be laid together.

In case any number of the persons interested in the land to be inclosed shall desire to have their allotments thrown together, and distinguished by metes and bounds, but not fenced from each other, and of such their desire shall give notice in writing to the valuer acting in the inclosure, such valuer shall set out the several allotments of such persons so giving notice as aforesaid by metes and bounds, but in one parcel of land, and without requiring them to make any sub-division fences or other fences, save such ring or outer fences as may be necessary, or as the valuer may direct to be made, for dividing the said parcel of land from the residue of the land so to be inclosed.

81 Cultivated land and buildings to be allotted to the proprietor.

Provided always, that it shall not be lawful for the said valuer to allot to any other person than the proprietor thereof any land (other than encroachments and inclosures not authorized by law made within twenty years next before the first meeting for the examination of claims as aforesaid) which may be cultivated as orchard or garden, or on which any building may have been erected, or which may have been inclosed by virtue of any agreement between the proprietor thereof and the persons having right of common over the same, without the consent in writing of such proprietor.

82 Regard to be had to the situation of homesteads.

The valuer, in making the several allotments hereby directed, shall have due regard as well to the situation of the respective houses or homesteads of the persons interested in the land to be inclosed as to the quantity and quality of the land to be allotted to them respectively, so far as may be consistent with the general convenience of such persons, and such valuer in making the said allotments shall have particular regard to the convenience of the persons interested in respect of the smallest estates in the land subject to be inclosed under this Act.

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83 Allotments to be fenced.

The several allotments to be made, except the allotments to the surveyor and churchwardens and overseers respectively, and the other allotments for public purposes, shall be inclosed, ditched, and fenced, at the expence of the respective persons to whom the same shall be allotted, in such manner and within such times as the valuer shall direct; and the fences so to be made shall for ever afterwards be repaired and maintained by such persons as the valuer shall direct; and if from the situation or from any other circumstance it shall happen that any person to whom any allotment shall be made shall not have a fair proportion of the boundary ditches or fences assigned to him to make, it shall be lawful for the valuer acting in the matter of any inclosure to ascertain and appoint what sum of money shall be contributed by such person towards making the boundary ditches and fences of the allotments of such other persons as shall have assigned to them to make too great a proportion thereof; and such money shall be paid to such persons and in such manner as by the valuer shall be directed, and the same may be recovered in the same manner as penalties or forfeitures are recoverable under this Act.

Modifications etc. (not altering text)

C25 References to a surveyor of the highways to be construed as references to a highway authority:
[Highways Act 1980 \(c. 66, SIF 59\)](#), s. 343(1), [Sch. 23 para. 23](#)

84 If interest in land is sold before allotment is made the valuer to make the allotment to the purchaser.

If at any time before an allotment shall have been made by the valuer any person shall sell his right or interest in the land to be inclosed, or any part thereof, to any person, the valuer shall, upon such sale being certified to him in writing by the vendor, make an allotment of land to the purchaser, or to his heirs or assigns, in respect of the right or interest so sold; and every such purchaser, or his heirs or assigns, shall from the confirmation of the award hold and enjoy the land so to be allotted to him in such manner as the vendor might or ought to have done in case such sale had not been made; and it shall be lawful for any person who shall be entitled to any allotment under this Act to devise, convey, surrender, or otherwise assure the same allotment, or all or any part of his interest therein, at any time before the confirmation of the award; and every such devise, conveyance, surrender and assurance shall be of the same validity as if the same had been made after the confirmation of the said award; and it shall be lawful for any person entitled to any allotment to sell, dispose of, or convey the estate in right of which he may be entitled to such allotment separate from and retaining to himself such allotment, or the right thereto; and the valuer is hereby required to award such allotment accordingly.

85 Allotments to be made to representatives of parties dying.

If any person interested in any inclosure under this Act shall die before the same shall have been completed, the powers and authorities hereby vested in the commissioners, assistant commissioner, and valuer shall not be thereby determined or suspended, but they shall proceed in the execution of such powers and authorities in such manner as they might have done in case such person had not died; and the allotment which might have been made to the person so dying shall be made to such person as by the law shall become entitled to the same, and shall be accepted and fenced by such party

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according to the directions contained in the award, and he shall be liable to the charges and expences and other conditions of the inclosure.

86 Old inclosures may be allotted, with consent.

It shall be lawful for the valuer acting in the matter of any inclosure, with the consent in writing of the person interested in any old inclosed lands, or lands holden in severalty, or otherwise not subject to be inclosed under the general provisions herein-before contained, but within the parish in which the land to be inclosed, or some part thereof, shall be situate, or within some parish adjoining thereto, to order and direct such old inclosed lands or other lands as last aforesaid to be considered as allottable, and parcel of the land to be inclosed; and such allowance shall be made to the person interested in such lands, on account of the situation or other beneficial circumstances thereof, as the valuer shall adjudge to be just and reasonable; and he shall allot and award unto the person so interested in such old inclosed lands or other lands as aforesaid so much and such part of the land to be inclosed as he shall think reasonable and just.

87 Allotments to freemen and other classes of persons entitled to common rights to be made to trustees.

Where the freeman or burgesses of any city or borough or the householders or inhabitant householders of any town or place, or any class or description of such freemen, burgesses, householders or inhabitant householders, or any other persons as a class, shall be entitled to rights of common or other rights over the lands to be inclosed, it shall be lawful for the valuer to award in respect of such rights one or more allotment or allotments for the benefit of the class so entitled, to any two or more trustees, who shall be nominated by the majority at such meeting as herein-after mentioned, or in case two or more trustees shall not be nominated at such meeting, then to such trustees as the commissioners shall approve, with provisions for the appointment of new trustees from time to time, or to the churchwardens and overseers of the poor of the parish in which each allotment shall be situate, in trust for the parties entitled to the right in respect of which the allotment shall be made; and it shall be also lawful for the valuer, having regard to such instructions, if any, as may have been resolved on at such meeting as hereafter mentioned, or to such instructions as shall be given by the commissioners in this behalf, to direct in what manner and under what regulations such allotment shall be occupied or enjoyed by the persons from time to time entitled to the benefit thereof, and (in case the valuer, having regard to such instructions, shall think fit,) to give directions and powers for the letting of such allotment from year to year, or for any term of years, subject to such provisions and restrictions as the said valuer, with the approbation of the commissioners, shall think fit, and for the receipt of the money to arise from such letting, and for the application of such money for the benefit of the persons entitled to the benefit of the allotment, and to give all such directions and provisions for the fencing, draining, and management of such allotment as the valuer may think expedient.

88 Power to sell such allotments. Application of purchase money.

Provided also, that it shall be lawful for the valuer, with the approbation of the commissioners and of such meeting as herein-after mentioned, to sell and dispose of the whole or any part of the allotment to which any such class of persons as aforesaid shall be entitled under this Act; and the allotment or any part thereof so sold shall be conveyed by the commissioners as the purchase shall direct, and the commissioners

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shall sign a receipt for the purchase money, which shall be a sufficient discharge for the same; and the purchase money arising from the sale, or the surplus thereof after payment thereof of any expences to which the same shall be liable, shall, with the approbation of the commissioners, be paid to any trustee or trustees, upon trust for the investment thereof, with provisions for the appointment of new trustees from time to time, and for the application of the interest and annual produce of such investment to such purposes, for the benefit of the persons who would have been entitled to such allotment, or the part thereof so sold, in case the same had not been sold, as the commissioners shall approve, and by the final award in the matter of such inclosure direct.

89 Meeting of persons so entitled for giving instructions to valuer.

Provided also, that when the claim of any class of persons entitled as aforesaid shall be allowed the valuer shall certify such allowance to the commissioners, and the commissioners shall call a meeting of such persons by advertisement, for the purpose of appointing trustees of the allotment to be made for their benefit, and for giving instructions to the valuer concerning the enjoyment, occupation, and management of such allotment, or for letting the same, and for the application of the money to arise from such letting, or, in case such meeting shall think fit that such allotment or any part thereof shall be sold, for directing the sale thereof, and the investment of the money arising from such sale, and the application of the income thereof; and the commissioners, having reference to the total number of such class, (so far as the valuer or the commissioners may have ascertained the same,) shall by such notice declare the number of persons who should be present at such meeting to give validity to the proceedings; and the decision of the majority of such meeting shall bind the minority and all absent parties: Provided always, that no meeting shall be effectual for the purpose aforesaid unless such a number of the said persons shall attend the same as shall be mentioned in that behalf in the advertisement calling such meeting; and if no effectual meeting shall be held for the purpose aforesaid, or, being held, no instructions shall be resolved on by the majority present at such meeting, or in case the commissioners shall deem such instructions unjust or unreasonable, the commissioners may give such instructions to the valuer in respect of the matters aforesaid as they shall think fit; provided that no sale of any such allotment or any part thereof shall be made except in pursuance of a resolution of a meeting called as aforesaid; but a recital in the conveyance by the commissioners upon any sale that such sale was duly authorized shall for all purposes of title be evidence that such sale was made in pursuance of the resolution of a meeting duly called as aforesaid.

90 Partitions may be made.

Where any persons interested in land to be inclosed under this Act shall be so interested in undivided shares, or as joint tenants, co-parceners, or tenants in common, it shall be lawful for the valuer, upon the request in writing of any of the persons so interested in undivided shares, or as joint tenants, co-parceners or tenants in common, to make partition of the lands or allotments coming to such persons so interested, and to allot the same to such persons in severalty; and immediately after the said allotments shall be so made and declared the same shall be holden and enjoyed by the persons to whom the same shall be allotted in severalty, subject to the same uses as such undivided share would have been subject to in case such partition had not been made; and every such partition shall be specified in the award, and shall be valid and effectual to all purposes.

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91 Costs of partition.

All costs and expences attending any partition to be made by virtue of this Act shall be borne and defrayed by the several proprietors of or persons interested in the estates which shall be so parted, in such manner and proportions as the valuer shall order, and in case of nonpayment thereof shall be recovered in the manner directed with respect to the recovery of penalties and forfeitures.

92 Exchanges.

It shall be lawful for the valuer to allot and award any land to be inclosed in exchange for any other land within the parish in which the land to be inclosed shall be situate, or any adjoining parish; and it shall be lawful for the valuer, in exercise of this present power, to allot all or any part of the land which would have been subject to be allotted under this Act for the purposes of exercise and recreation, or for the labouring poor, or for any other public purposes, to any person, in exchange for other land in the parish or in any adjoining parish which shall appear to the valuer more suitable or convenient for the purposes of exercise and recreation, or for the labouring poor, or for such other public purposes as aforesaid, and to allot such other land for such purposes accordingly; and all lands taken and allotted as aforesaid under this provision, although not situate in the parish in which the land given in exchange for the same shall be situate, shall for the purposes of the provisions herein contained be deemed to be within such parish, and be managed and dealt with accordingly; provided that all exchanges under which land shall be taken and allotted for public purposes as aforesaid shall be made with the consent of the person interested in the land so taken and that all other exchanges be made with the consent in writing of the persons interested in the lands so exchanged; and every such exchange so to be made shall be valid and effectual to all purposes, and shall be specified and declared in the award: Provided also, that no exchange shall be made of any land held in right of any church or chapel or other ecclesiastical benefice without the consent, testified in writing, of the bishop of the diocese and the patron of such benefice: Provided also, that all costs and expences attending the making and completing of any such exchanges, except exchanges of land taken for public purposes, shall be borne by the several parties making such exchanges in such manner and in such proportions as the valuer shall direct, and in case of nonpayment thereof shall be recovered in the manner directed with respect to the recovery of penalties and forfeitures; and the expences of the exchanges of land taken for public purposes shall be considered part of the expences of the inclosure.

93 Wills and settlements not to be affected.

Nothing in this Act contained shall extend to revoke, make void, or alter any will, settlement, uses, or trusts, or to prejudice any person having any right or claim of dower, jointure, annuity, portion, debt, charge, rent, or incumbrance upon or affecting any of the land to be inclosed, or which shall be exchanged or given in partition, in pursuance of this Act, but the land allotted, and the land given in exchange or partition, shall immediately after such allotment, exchange, or partition be and enure, and the several persons to whom the same shall be allotted or given in exchange or partition as aforesaid shall thenceforth stand and be seised and possessed thereof respectively, to and for such and the same estates, uses, trusts, intents, and purposes, and subject to the same conditions, charges and incumbrances, as the several lands, rights, or undivided shares thereof, in respect whereof such allotments, exchanges, and partitions shall have been made would have stood limited to and for or been subject to in case the same had not been allotted, exchanged, or given in partition as aforesaid, and as if this

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Act had not been made, save and except such leases and tenancies at rack rents as shall become void by virtue of this Act, and any joint tenancy which may have been severed by partition as aforesaid, and such rights of common and other rights as are intended to be extinguished by the inclosure, and subject nevertheless to all such mortgages and sales as shall be made by authority of this Act.

Modifications etc. (not altering text)

C26 [S. 93](#) so far as it requires land to be conveyed to uses now takes effect as a direction that the land shall be conveyed to a person of full age upon the requisite trusts: [Law of Property Act 1925 \(c. 20\), s. 1\(9\)](#)

94 Tenure of the allotments.

All such land as shall be taken in exchange or on partition or be allotted by virtue of this Act shall be held by the person to whom it shall be given in exchange or on partition or allotted under the same tenures, rents, customs, and services as the land in respect of which such land shall have been given in exchange or on partition or allotted would have been held in case no such exchange, partition, or inclosure had been made; and the land taken in exchange or on partition or allotted in respect of freehold shall be deemed freehold; and the land taken in exchange or on partition or allotted in respect of copyhold or customary land shall be deemed copyhold or customary land, and shall be held of the lord of the same manor under the same rent, and by the same customs and services, as the copyhold or customary land in respect of which it may have been taken in exchange or on partition or allotted was or ought to have been held, and shall pass in like manner as the copyhold or customary land in respect whereof such exchanges, partitions, or allotments shall be made, and as to copyhold or customary allotments without any new admittance in respect of the lands taken or allotted respectively; and the land given in exchange or on partition or allotted in respect of leasehold land shall in like manner be deemed leasehold, and shall be held under the same rents and covenants as the land in respect of which it may have been allotted was held, and the remainder or reversion thereof shall be vested in the same lessor respectively as the remainder or reversion of such other land was vested before the exchange, partition, or allotment, except where otherwise particularly directed by this Act.

Modifications etc. (not altering text)

C27 “Land” explained by [Inclosure Act 1854 \(c. 97\), s. 8](#)

95 Leases at rack rent may be voided.

Immediately after the allotments herein directed to be made on any inclosure shall have been marked and staked out the valuer acting in the matter of such inclosure may direct the same to be entered upon by the persons respectively for whom the same shall be intended; and immediately after the valuer shall so direct them to be entered upon, all leases, agreements, and tenancies at rack rent subsisting of any part of the land to be inclosed, or which shall be exchanged in pursuance of this Act, or any common right thereon, shall, so far only as respects the land to be divided and allotted or exchanged, or common right, cease and be void at such time or times as the valuer shall by writing under his hand direct or appoint, so as the respective lessors or landlords of such land do, before or at the respective times at which such leases, agreements, or tenancies

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shall be directed to cease, make and pay such satisfaction to the respective lessees or tenants, for the loss which shall be sustained by the determination of such leases, agreements, and tenancies respectively, so far as regards the land or common right the leases, agreements, and tenancies whereof are hereby authorized to be determined, as shall be mutually settled and agreed between them, or as the valuer, being required by either of the parties, shall ascertain and direct; and the valuer, being so required, is hereby empowered and directed, by writing under his hand, to apportion a reasonable and proportionable part having regard to the season of the year, of the rent reserved on any such lease, agreement, or tenancy, for or in respect of the time which shall have elapsed between the last day on which any payment of the rent shall have become due and the determination of any such lease, agreement, or tenancy, and such part of the rent shall be recoverable by such ways and means as may by law be used for the recovery of rent in arrear; and the valuer is hereby empowered and directed, in every case where such land or common right shall be held by virtue of any such lease, agreement, or tenancy together with other lands or hereditaments, by one entire rent, by writing under his hand to apportion and determine what part of such rent shall be deducted in respect of the land or common right in such lease, agreement, or tenancy comprised as to which the same shall be determined as aforesaid, and from what time such deduction shall take place, and the rest of the rent reserved on any such lease, agreement, or tenancy shall during the remainder of the term thereof be the rent of and for the residue of such lands and hereditaments, and shall be payable and recoverable in like manner as the entire rent reserved by such lease, agreement or tenancy shall immediately before such apportionment be payable and recoverable; and the lessor or reversioner shall in respect of such apportioned rent, and in respect of the residue of such lands and hereditaments, have the benefit and advantage of the provisoes and conditions which would have been applicable to the entire rent, and to all the lands and hereditaments comprised in such lease, agreement, or tenancy, in case such lease, agreement, or tenancy had not been determined as to any part of such land: Provided always, that no lease, agreement, or tenancy shall be determined as aforesaid as to any house, cottage, or other building without three calendar months previous notice in writing of such determination, under the hand of the valuer, shall have been given to the lessee or tenant, or left at such house, cottage, or building.

96 Seigniories not affected, except with consent.

Provided always, that in every case all seigniories, royalties, franchises, and manorial jurisdictions whatsoever in or upon the land to be inclosed under this Act shall not be deemed to be compensated or extinguished, but shall be saved and excepted out of the operation of this Act, unless in and by the award it shall be declared, with the consent of the lord or respective lords interested therein, that such seigniories, franchises, royalties, and jurisdictions shall be extinguished upon the proposed inclosure.

97 Minerals under regulated pastures may be reserved, while minerals under lands to be held in severalty are relinquished.

Provided always, that in every case in which, under the provisions herein-after contained, part of the land subject to be inclosed under this Act shall be converted into and used as a regulated pasture, and the residue thereof shall be divided and allotted in severalty, it shall be lawful for the valuer, having regard to the right of the lord of the manor, as the same shall have been ascertained and declared by the provisional order of the commissioners, and with the consent of the lord of the manor and a majority in value of the other persons interested in the lands proposed to be inclosed, to direct

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that the rights of the lord of the manor in and to all or any of the mines, minerals, stone, and other substrata under such part of the land as shall be converted into and used as a regulated pasture shall be reserved to the lord, and that all or any of the mines, minerals, stone, and other substrata under the residue to be divided and allotted in severalty shall become the property of the owners of the respective allotments, and that the allotments be adjusted accordingly.

98 Right to minerals under land inclosed existing distinct from the property in the surface, and not compensated upon inclosure, not to be affected.

Provided also, that in every case in which the right to all or any of the mines, minerals, stone, and other substrata under any land inclosed under this Act shall exist as property distinct and separate from the property in the surface, and shall not be compensated upon the inclosure, the right and property in such mines, minerals, stone, or other substrata, and all rights and easements auxiliary to or connected with the exercise or enjoyment of the right and property in such mines, minerals, stone, or other substrata, shall be in nowise affected by the inclosure; and in case any mines, minerals, stone, or other substrata under any land inclosed under this Act, or the right of searching for or getting the same, shall have been leased or agreed to be leased to any person as property distinct and separate from the property in the surface, with or without powers over the surface of the land auxiliary to the purposes of such lease, the rights of the lessee or tenant under such lease or agreement shall be in nowise affected by the inclosure.

99 Trees to be allotted with the land.

The timber trees and other trees and underwood standing and growing upon any land to be inclosed shall be allotted and go along with the land whereon they respectively stand, and shall be deemed the property of the several persons to whom the same land shall be respectively allotted, such person paying to the owner of such trees and underwood such sums of money for the same, and at such time or times and place or places, as the valuer shall by writing under his hand direct; but if the parties who are to make such respective payments shall neglect or refuse to make the same accordingly, then it shall be lawful to and for the respective parties who shall be entitled to have and receive such payments to enter on the said lands, and cut down, take, and carry away to their own use the said trees and underwood in respect of which the said payments were respectively to be made to them, at any seasonable time or times within one year next after such neglect or default, doing as little damage on the land as may be.

100 Cattle not to be depastured on roads.

No person shall graze or keep any horse, beast, cattle, sheep, or swine upon any of the roads or ways which the valuer shall order to be set out, and which shall be fenced on both sides, for the space of seven years next after the execution of the award; and every owner of land to be enclosed, his servants and labourers, and also every peace officer and parish officer of the parish in which the land shall be situate, for the time being is hereby empowered to take and impound any such horse, beast, cattle, sheep, or swine which shall be found so grazing as aforesaid, as cattle damage feasant: Provided always, that nothing herein contained shall prevent the proprietors of the land which shall next adjoin the private roads and ways from depasturing their cattle thereon so far as the frontage of their respective lands extends.

Status: Point in time view as at 05/11/1993.

Changes to legislation: There are currently no known outstanding effects for the Inclosure Act 1845. (See end of Document for details)

101 Alterations may be made in allotments.

It shall be lawful for the valuer acting in any inclosure, at any time before the confirmation of the award, with the approbation or by the direction of the commissioners, to make any alterations which he may think right and expedient in the allotments or in the fences which he may have set out and ordered, or in the private roads he may have set out, or in any of the orders or directions relating thereto which he may have made in the matter of such inclosure; and in case any person shall be injured by any such alteration, on account of any expences he may have incurred, or otherwise, the valuer shall ascertain and determine what recompence shall be made to him for such injury, and shall either pay the amount thereof out of the monies raised for the expence of the inclosure, or shall direct by whom and in what manner such recompence shall be made; and in case of non-payment thereof the same shall be recovered in the same manner as penalties and forfeitures are recoverable under this Act.

102 Valuer to draw up a report and annex thereto a map of the claims.

The valuer acting in the matter of any inclosure shall, as soon as conveniently may be after the division and allotment of the land to be inclosed shall be completed, draw up a report in writing, with a map thereunto annexed, which shall specify all the claims allowed, and all the allotments, exchanges, and partitions made in the matter of such inclosure, and all roads, ways, and works set out or directed to be made by the said valuer; and such report shall contain all such particulars in relation to such allotments, roads, ways, and works as are by this Act directed, and all such other directions and determinations authorized by this Act as the said valuer shall think proper for the purposes of the inclosure; and the map to be annexed to such report shall comprise and show the land to be inclosed and the lands exchanged, and also the lands in respect of which any allotments of the land inclosed shall have been made, and shall distinguish by proper references the allotments made in respect of the several lands respectively, and such other particulars as the commissioners shall by any general or special instructions in relation to such report direct the valuer to set forth therein; and such report shall be signed by the valuer, and shall, together with the map thereunto annexed, be sent to the office of the commissioners.

Modifications etc. (not altering text)

C28 S. 102 amended by [Inclosure Act 1848 \(c. 99\), s. 2](#)

103 Report to be deposited for inspection.

As soon as the report of the valuer shall have been sent to the commissioners they shall cause a copy of the same to be deposited at some convenient place within the parish in which the land to be inclosed, or some part thereof, shall be situate, for the inspection of all persons interested in such land, and shall forthwith cause notice to be given where the said copy may be inspected, and shall also in such notice appoint some convenient place, and such times as they shall think necessary, (the first not earlier than twenty-one days from the first giving of such notice,) for holding a meeting to hear objections to any allotment, direction, determination, or matter in the report; and the commissioners or some assistant commissioner at such meeting as aforesaid shall hear and determine any objections which may be then and there made to any such allotment, direction, determination, or matter by any person interested therein, or adjourn the further hearing thereof, if they or he shall think proper, to a future

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meeting, and may, if they or he shall see occasion, direct any further valuation or survey of the land or any part thereof, and take such other measures for ascertaining the justice and propriety of the determinations and directions of the valuer, as to the commissioners or assistant commissioner shall seem proper, and from time to time, if they or he shall see occasion, fix further meetings for the hearing and determining of objections, of which further meetings, when not holden by adjournment, notice shall be given in manner herein-before directed with regard to the original meeting; and when the said commissioners or assistant commissioner shall have heard and determined all such objections, and made such inquiries as the commissioners shall think fit in relation thereto, the commissioners shall approve such report, or cause the allotments, directions, determinations and matters therein mentioned, or any of them, to be amended, as they shall see occasion.

104 Award to be drawn up by the valuer, and confirmed by the commissioners.

After such proceedings as aforesaid shall have been had, and all such objections to such report (if any) shall have been finally disposed of, and such amendments (if any) shall have been made in the allotments, directions, and matters therein contained as aforesaid, the valuer, under the direction of the commissioners, shall cause to be drawn up and engrossed on parchment the award in the matter of such inclosure, which shall be signed by the valuer, and shall describe the boundaries, if any, which shall have been ascertained and set out under the provisions herein-before contained, and shall contain or set forth the report of the valuer, or the allotments, exchanges, partitions, directions, and matters contained in such report, if so approved as aforesaid, or such allotments, exchanges, directions, and matters therein contained as the same shall have been amended as aforesaid, and shall contain a declaration whether all or any and which of the mines, minerals, stone, and other substrata shall or shall not have been included in the estimate of the right and interest of the lord in the soil (in respect of which any allotment shall have been made to him); and the valuer shall annex to such engrossment the map referred to by such report; and the commissioners shall confirm such award, with the date of such confirmation thereunto annexed, under their hands and seal.

105 Confirmation of award to be conclusive evidence that the directions of this Act have been obeyed.

Such confirmation as aforesaid shall be conclusive evidence that all the directions of this Act in relation to such award, and to every allotment, exchange, partition, and matter therein set forth and contained, which ought to have been obeyed and performed previously to such confirmation, shall have been obeyed and performed; and no such award shall be impeached by reason of any mistake or informality therein, or in any proceeding relating thereunto, or on account of any want of any notices or consents required by this Act, or on account of defects or omissions in any previous proceeding whatever in the matter of the inclosure; and every allotment, exchange, partition, direction, matter, and thing specified and set forth in such award as aforesaid shall be binding and conclusive on all persons whomsoever.

Modifications etc. (not altering text)

C29 S. 105 extended by [Commons Act 1876 \(c. 56\)](#), s. 33

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106 Allotments to be in compensation of previous rights.

The several allotments which shall upon any inclosure under this Act be allotted to the several persons who shall be entitled to the same shall when so allotted be and be taken to be in full bar of and satisfaction and compensation for their several and respective lands, rights of common, and all other rights and properties whatsoever, not excepted or reserved by this Act or by the award in the matter of such inclosure, which they respectively had or were entitled to in and over the said lands immediately before such inclosure; and from and immediately after the confirmation of the award by the commissioners, or at such earlier time as the valuer, with the approbation of the commissioners, shall by notice on the church door direct, all rights of common, and all rights whatever by the inclosure intended to be extinguished, belonging to or claimed by any person whomsoever, in or upon such lands, shall cease, determine, and be for ever extinguished.

107 Allotments may be sub-divided by supplemental order.

Provided always, that when any award, so confirmed as aforesaid, shall not have distinguished the several tenures of any of the lands therein mentioned, or the different estates or titles for or under which the same shall be held, or shall have set out and awarded an aggregate allotment in any case in which there should have been set out and awarded several and distinct allotments, it shall be lawful for the commissioners, at any time within two years after the confirmation of the award, upon request in writing to them made by any person interested in any such aggregate allotment, to do all such acts as may be necessary for supplying such omission, and for sub-dividing such aggregate allotment, and for that purpose to examine witnesses, and proceed as if the said award had not been confirmed, and by any order or instrument under their hands and seal to sub-divide any aggregate allotment into separate allotments, and to distinguish and set out the allotments and lands held by different tenures, and also the allotments and lands held by, for, or under different estates or titles respectively, in the same manner as by this Act is authorized and required to be done in cases where such allotments and lands are directed to be ascertained, distinguished, and set out by the valuer; and every such separate instrument shall have the same power and effect as if it were contained in the said award; and such instrument shall be engrossed, and deposited with the award, and shall thenceforth be deemed to be part thereof to all intents and purposes; and all the expences which shall be reasonably incurred in or about any such subsequent inquiry or separate instrument as aforesaid, and the engrossment thereof, shall be paid by the party who shall have requested the commissioners to make and execute the same, or by his executors or administrators.

108 Allotment for the labouring poor shall be managed by the allotment wardens.

The allotment which upon any inclosure under this Act shall be made for the labouring poor shall be under the management of the incumbent of the parish or ecclesiastical district in which such allotment shall be situate, (or the officiating minister for the time being nominated by the incumbent for that purpose,) the churchwarden, if there be but one, or (if there be more than one) one of the churchwardens for the time being of such parish, and two other persons who shall be rated to the relief of the poor in such parish; and such churchwarden, where there is more than one churchwarden, shall be yearly named, and such two other persons shall be yearly chosen and appointed, at the same time, and by the same persons, and in the same manner, as the overseers of the poor for such parish shall be chosen and appointed, and shall continue in office in like manner until the next appointment of overseers, or until others are named and chosen and

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appointed in their stead; and such incumbent, (or officiating minister), churchwarden, and two other persons for the time being shall be styled “The Allotment Wardens” of the parish, and shall manage and let the said allotment as herein-after provided, and all things by this Act authorized to be done by such allotment wardens may be done by any two of them, and in the event of the death or retirement from office of any one or more of the said allotment wardens the surviving or continuing wardens may act as if no such vacancy had happened.

109 Such allotments how to be let.

The allotment wardens shall from time to time let the allotment under their management in gardens not exceeding a quarter of an acre each, to such poor inhabitants of the parish, for one year, or from year to year, at such rents, payable at such times, and on such terms and conditions, not inconsistent with the provisions of this Act, as they shall think fit: Provided always, that the commissioners may frame such regulations, not inconsistent with the provisions of the Act, for the letting of such allotments as aforesaid, as they may think advisable, and such regulations shall be obligatory on the allotment wardens during five years from the date thereof, or during such shorter period as the commissioners shall direct: Provided also, that the gardens so to be let shall be let free of all tithe or tithe rent-charge, (if any,) rates, taxes, and assessments whatsoever, and shall before the first letting thereof, and one at least in every ten years after such first letting, be valued by a competent person to be appointed by the allotment wardens for that purpose, who shall estimate the full rent which the same would be worth to be let by the year for farming purposes, all tithes or tithe rent-charges, rates, taxes, and assessments, being borne by the landlord, and shall verify such valuation by solemn declaration under the statute; . . . ^{F36} and the allotment wardens shall, for the purposes of all rates and taxes, be deemed the occupiers of such allotment, and shall pay all rates and taxes, tithes and tithe rent-charge, (if any,) in respect thereof: Provided always, that no building whatsoever shall, under any such letting as aforesaid or otherwise, on any pretence, be erected for or used as a dwelling on any such garden or on any part of any such allotment; and in case any such building shall be erected or used as aforesaid contrary to this provision, the allotment wardens shall forthwith pull down the same, and sell and dispose of the materials thereof, and the produce of such sale shall be applicable in like manner as the rents of such gardens.

Textual Amendments

F36 Words repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

Modifications etc. (not altering text)

C30 [S. 109](#) amended by [Commons Act 1876 \(c. 56\)](#), [s. 26](#)

110 Recovery of gardens on nonpayment of rent, &c.

If the rent reserved upon the letting of any garden by the allotment wardens shall at any time be in arrear for forty days, or if at any time during the tenancy, being not less than three calendar months after the commencement thereof, it shall appear to the allotment wardens that the occupier of such garden shall not have duly observed the terms and conditions of his tenancy, or shall have gone to reside more than one mile out of the parish, then and in every such case the allotment wardens shall serve a notice upon such occupier, or in case he shall have gone to reside out of the parish shall affix the same to the door of the church of the parish, determining the tenancy

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at the expiration of one month after such notice shall have been so served or affixed, and thereupon such tenancy shall be determined accordingly: . . . ^{F37}

Textual Amendments

F37 Words repealed by [Allotments Act 1922 \(c. 51\)](#), [Sch.](#)

111 Possession, how to be recovered from tenant holding over.

In case upon the determination of any such tenancy as aforesaid the occupier of any such garden shall refuse to quit and deliver up possession thereof, or if any other person shall unlawfully enter upon, take, or hold possession of any such garden, or of any part of such allotment, the allotment wardens may recover possession [^{F38}by proceedings in the County Court.]

Textual Amendments

F38 Words substituted by [Rent Act 1965 \(c. 75\)](#), [Sch. 6 para. 1](#)

112 Rents of allotment how to be applied.

All rents payable in respect of the allotment under the management of the allotment wardens shall be payable to such wardens, who shall have the same remedies for recovery thereof by distress and otherwise as if the legal estate of and in such allotment were vested in them under this Act; and such rents shall be applicable, in the first place, to the payment of all rates, taxes, tithes, tithe rent-charge, . . . ^{F39}, and of all expences incurred by the allotment wardens in the execution of their trusts and powers under this Act; . . . ^{F40}

Textual Amendments

F39 Words repealed by [Commons Act 1876 \(c. 56\)](#), [s. 24](#)

F40 Words repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

Modifications etc. (not altering text)

C31 [S. 112](#) amended by [Commons Act 1876 \(c. 56\)](#), [s. 27](#)

113 Regulated pastures may be set out.

It shall be lawful for the commissioners, on the application in writing of persons interested in any land which shall be directed to be inclosed under this Act whose interest shall exceed in value one half of the whole interest in such land, (such application to be made at any time before the instructions to the valuer shall have been delivered to him under the seal of the commissioners, as herein-before provided,) to direct such land or any part thereof to be converted into and used as a regulated pasture to be stocked and depastured in common by the persons interested therein, in proportion to their respective rights and interests as the same shall be determined on the examination of claims; and in case part of such land only shall be so directed to be stocked and depastured in common, the valuer shall, subject to the instructions which shall be given to him under the provisions of this Act, ascertain and set out the

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part which shall be so used as a regulated pasture, and shall direct how and at whose expence the same shall be fenced and divided from the residue of such land; and the valuer acting in the matter of such inclosure shall, in every case where land shall be so directed to be used as a regulated pasture, ascertain and allot the respective stints or rights of pasturage (specifying the respective numbers of the respective kinds of stock or animals to be admitted to the pasture in respect of such respective stints or rights of pasturage, with such option as to equivalent numbers of the respective kinds of stock and animals as he shall think just, and, if he shall think fit, specifying the time during which such stock or animals may be kept on the pasture,) as he shall adjudge and determine to be proportionate to the value of the respective rights and interests of the persons interested as aforesaid; and the commissioners may frame such directions as they shall think fit for guiding the valuer in the correct specification of such stints or rights: Provided always, that in every case in which part only of the land subject to be inclosed under this Act shall be so directed to be used as a regulated pasture, and the residue thereof to be divided and allotted in severalty, it shall be lawful for such valuer, having regard to the convenience of the persons interested in such land, to award to any such person either a stint or right of pasture or an allotment in severalty only, or both a stint or right of pasture and an allotment in severalty, so as such stint or right only, or such allotment only, or (as the case may be) such stint or right and allotment together, be in the judgment of the valuer proportionate to the right and interest in respect of which the same shall be awarded: Provided also, that in any case in which it shall appear to the valuer that the proportionate right or interest of any person is too small to be conveniently compensated by a stint or right of pasture, or that it is not practicable wholly to compensate such person by a stint or right of pasture, and the circumstances of the inclosure will not admit, in the judgment of the valuer, of an adjustment or compensation by an allotment in severalty, it shall be lawful for such valuer, for the purpose of compensation or adjustment, to direct a sum of money to be paid to such person in lieu of or (as the case may require) in addition to the award of a right of pasture or stint; and such sum of money shall be paid out of the monies applicable to the payment of the expences of the inclosure.

114 Conversion into regulated pasture to be deemed an inclosure.

All the provisions and powers herein-before contained in relation to public and private roads, ways, and works, and all other the powers, provisions, and directions, penalties and forfeitures, applicable to the case of an inclosure under this Act, and the provisions and directions concerning examination of claims, and the rehearing thereof, and the report of the valuer, and the amendment of the matter thereof, and the award, and the confirmation and effect of the award, shall be applicable to the case where the land subject to be inclosed shall be directed to be used as a regulated pasture; and the word "inclosure" shall in every case in this Act where the context is not repugnant to such construction include the conversion of land subject to be inclosed into such regulated pasture, and the proceedings in relation thereto.

115 Rule of rating to be established.

In every case in which land shall be directed to be converted into and used as regulated pasture under this Act, the valuer acting in the matter of the inclosure shall determine and direct the proportionate shares or aliquot parts which the respective owners for the time being of the several stints or rights of pasture shall be liable to pay of any sum of money which shall be raised by way of rate on such owners under the provisions of this Act; and such determination and direction, in case the same shall be approved, or

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as the same may be amended by the commissioners, shall be for ever after observed in every rate to be made under the provisions of this Act, and shall be the rule also according to which the proportionate values of the stints shall be determined in taking the votes of the owners of stints under the provisions herein-after contained.

116 Property of soil of regulated pastures.

The right of soil of an in all land which shall be converted into regulated pastures shall, subject to the right of the lord of the manor to all or any of the mines, minerals, stone, and other substrata, where the same shall be reserved to him under this Act, and to the other rights given or reserved by this Act and the award in the matter of such inclosure, be vested in the persons who under the directions and determinations of such award shall be the owners of the stints or rights of pasture therein, in proportion to the shares or aliquot parts which such stints shall be thereby declared liable to of any rate under this Act, as tenants in common.

117 Election of field reeves.

Where any land shall have been converted into a regulated pasture under the provisions of this Act, a meeting shall be called by the commissioners of the owners of the stints or rights of pasture, at such time after the confirmation of the award as the commissioners shall by notice on the church door appoint; and the major part in value of such owners present by themselves or their agent authorized in this behalf at such meeting shall elect a fit person or persons to be field reeve or reeves of such regulated pasture; and every field reeve so to be elected as aforesaid, or to be elected or re-elected at any subsequent meeting, shall continue in office until the expiration of fifteen days after the day of the annual meeting of such owners then next following, and no longer, unless he shall be re-elected at such annual meeting; and such owners shall ever after such first meeting meet for the election of a field reeve or field reeves on the first Monday in February in every year; and the owners assembled at such meetings shall from time to time fix, increase, or diminish the salary or payment to be made to every such field reeve, and may appoint or authorize any field reeve to appoint and employ herds and assistants, as such owners may think fit; and any such field reeve may be removed by four fifths in value of the owners of stints present by themselves or their agents authorized in this behalf at any meeting called for the purpose by fourteen days notice on the church door under the hands of any two such owners of stints; and in case any such field reeve shall die while he shall hold such office or shall be removed as aforesaid, it shall be lawful for the majority in value of owners of stints or pastures present as aforesaid at any meeting which upon such vacancy any two owners may call by fourteen days notice on the church door to appoint a field reeve in his place, who shall hold the office until the expiration of fifteen days after the then next annual meeting; and a certificate in writing under the hands and seals of two justices of the peace of the election of any field reeve (which certificates any two justices of the peace are authorized, if they think fit, to give, on the request and upon the declaration of any owner of such stints as the agent of any such owner present at the meeting at which the election shall have taken place,) shall in all matters and proceedings whatsoever in which any acts done by any field reeve in the execution of his office shall be in question be evidence that he was duly appointed field reeve.

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118 Duties of field reeves.

The field reeve or reeves for the time being of every such regulated pasture shall, subject to such orders and instructions in writing as may from time to time be agreed on by the majority in value of the owners of such stints as aforesaid at their yearly meetings, regulate the times in each year during which stock or animals shall be admitted to and excluded from such regulated pasture, and shall maintain and keep in order the fences, gates, ditches, drains, watercourses, embankments, jetties and weirs, or make any new fences, gates, ditches, drains, watercourses, embankments, jetties, or weirs, and do all works necessary for the maintenance and improvement and good order of such regulated pasture, and shall and may distrain all stock and animals found thereon contrary to the regulations of such pasture, and do all other acts for the maintenance and improvement of such regulated pasture, and the convenient use and occupation thereof, as the field reeve or reeves, subject to such instructions as aforesaid, may think fit; and where there shall be any buildings on such regulated pasture, or where the majority in value of the owners of stints at any yearly meeting shall direct that any buildings for the shelter or stall-feeding of stock or animals be erected thereon, such field reeve or reeves shall or may maintain and keep in repair such buildings, or cause such buildings to be erected, in pursuance of such direction, and let the same from year to year, or, under such instructions as aforesaid, for any term of years, and shall receive the rents thereof; and such rents shall be applicable in the first place to the same purposes as the rates hereinafter authorized to be raised on the owners of stints are made applicable, and the residue (if any) shall be paid to the owners of stints, in proportion to the respective liability of their stints to such rates.

119 Provision for rateable increase or diminution of rights.

When it shall appear to the majority in value of the owners of stints present at any annual meeting that the condition of the pasture would admit of an increase of the respective rights of pasture thereon, or would require a diminution of such respective rights, it shall be lawful for such majority of the owners so present to direct that the respective number of stock or animals to be admitted to the pasture in respect of the several rights be increased, or, as the case may be, diminished, rateably to such extent as they shall think fit: Provided always, that in case it shall happen that the right of any such owner shall not be sufficient to admit of a rateable increase or diminution, such annual money payment shall be made to such owner in lieu of increase of his right, or, as the case may be, charged on such owner in lieu of the diminution of his right, as such majority shall award, or in case the person to or on whom such money payment shall be awarded or charged shall think the sum awarded insufficient, or the sum charged excessive, then as any two justices of the peace shall, upon the complaint of such person, and after summons of the field reeve or one of the field reeves of such pasture, (which may be in the form in the schedule to this Act,) and on hearing in a summary way the matter in difference, think reasonable and order to be paid; and such order may be in the form of the schedule to this Act; and every such money payment payable in lieu of increase of right shall be paid annually by the field reeve out of the monies raised by the rate made for the expences of such regulated pasture; and the money charged on any such owner shall be recoverable as a rate on owners of stints is hereby made recoverable; and all annual payments payable as aforesaid shall be payable on the first Monday in February in every year.

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120 Expences to be raised by rate.

All salaries and allowances to field reeves and other persons, and all expences in and about the management of every such regulated pasture, and the repairs and erection of buildings thereon, under the directions of such meetings of owners as aforesaid, and all other expenses of such regulated pasture, shall be paid and defrayed by the owners of the respective stints therein; and for that purpose it shall be lawful for the field reeve or one of the field reeves, under the directions of any such meeting of owners, from time to time to make a rate on the respective owners for such sum as the majority of owners present at such meeting shall think requisite; and every such rate shall be apportioned and paid by the owners according to the rule of rating established for such regulated pasture, and shall be paid to the field reeve on demand thereof, and, in case the same shall not be paid within fourteen days after demand thereof, shall be recoverable by distress; and it shall be lawful for any field reeve to exclude from such regulated pasture the stock or animals of any owner or his tenant whose proportion of the rate shall be in arrear and unpaid for fourteen days after demand thereof, until the proportion of such rate so in arrear shall be fully paid; and any such demand or distress may be made of or on the occupier of any such stint, as if the occupier were the owner liable to the payment of such rate, and such rate may be paid by any such occupier on demand thereof, and the money so paid by such occupier shall be deemed a payment on account of his rent, and shall be allowed by his landlord accordingly.

121 F41

Textual Amendments
F41 Ss. 121, 122 repealed with saving by [Commons Act 1899 \(c. 30\)](#), s. 23, [Sch. 2](#)

122 F42

Textual Amendments
F42 Ss. 121, 122 repealed with saving by [Commons Act 1899 \(c. 30\)](#), s. 23, [Sch. 2](#)

123 Power to enter land for surveys, &c.

For surveying and valuing any land to be inclosed or otherwise dealt with under this Act, and for the other purposes of this Act, it shall be lawful for the commissioners, or an assistant commissioner or valuer, or any person or persons to be appointed by such commissioners, assistant commissioner, or valuer, at any time after application has been made to the commissioners to sanction an inclosure, or to certify to the expediency of an inclosure, as the case may be, to make any survey, admeasurement, plan, or valuation, with assistants and servants, and at any time or times whatsoever, until the inclosure or other proceedings under this Act shall be completed, to enter into, view, and examine, survey, or admeasure, all and every part of the land to be inclosed or dealt with, and to do or cause to be done any act or thing necessary for putting this Act into execution.

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124 Expenses of inclosures.

The allowances and payments to be made to and by the valuer which shall have been audited and approved by or under the directions of the commissioners, and all other the expences of every inclosure, except the allowances and salaries to the commissioner who is to have a salary, and to the assistant commissioners, secretary, clerks, messengers, and officers of the commissioners, and the travelling and other expences of the commissioners and assistant commissioners, and except any expences which the commissioners or assistant commissioner, or any court under the powers of this Act, shall order to be otherwise paid, shall be borne and defrayed by the several persons interested in the lands to be inclosed (except the surveyors of highways, churchwardens and overseers, and persons to whom lands shall be allotted for public purposes, in respect of the allotments hereinbefore authorized or directed to be made to them respectively) in such shares and proportions, and shall be paid at such time and place, or respective times and places, and to such persons, as the valuer, with the approbation of the commissioners, signified by writing under their hands and seal, shall direct; and such valuer shall give notice requiring payment of the respective shares and proportions of such expences on the church door, and shall give to all persons so liable who shall not reside in the parish in which the land inclosed or any part thereof shall be situate, and whose respective places of abode shall be known to the valuer, notice by letter sent by the post of the sums they respectively shall be liable to pay, at least fourteen days before the time appointed for such payment; and the valuer shall from time to time make estimates of all such expences, and raise the amount of such estimates at such times as he shall, with such approbation of the commissioners, deem proper, either before or after the confirmation of the award.

Modifications etc. (not altering text)

C32 References to a surveyor of the highways to be construed as references to a highway authority:
[Highways Act 1980 \(c. 66, SIF 59\)](#), s. 343(1), [Sch. 23 para. 23](#)

125 Estimates of expenses to be approved of at public meeting.

Provided always, that before the commissioners shall approve the estimates of such expences they shall submit the same to a meeting of persons interested, called after seven days notice, and shall take into consideration any representation with respect to such estimates which may be made to them on the part of the majority of the persons present at such meeting.

126 Remedies in case of non-payment of expences.

If any person shall refuse or neglect to pay his proportion of such expences within such time and to such person as the valuer shall appoint, it shall be lawful for the valuer to recover the same, together with lawful interest, to be computed from the day on which the same ought to have been paid, by action at law in his own name in [^{F43}the High Court], or it shall be lawful for him, by warrant directed to any person whomsoever, to cause the same, with such interest thereon as aforesaid, to be levied by distress, or it shall be lawful for the valuer, or any person authorized by him, immediately after such neglect or refusal, to enter into and upon the premises so to be allotted to such person, and demise the same, or to demise any stint or right of pasture allotted to such person, and receive the rents and profits thereof respectively, until thereby or otherwise such share or proportion, with lawful interest as aforesaid, and also all the

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costs and expences attending such entry upon and demise and receipt of the rents and profits of the said premises, shall be fully paid and satisfied: Provided always, that no such action at law as aforesaid shall be brought by the valuer against any person for his proportion of such expences as aforesaid, nor shall any proceeding be taken to levy any such proportion of expences by distress as aforesaid, before the expiration of thirty days after notice in writing that such proportion of expences is in arrear, and requiring payment thereof, shall have been given to the person liable to pay the same, or left at the usual place of abode of such person.

Textual Amendments

F43 Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\)](#), s. 224(1)

127 Power to make additional rate.

Provided always, that if at any time after the allotments shall have been staked out it shall appear to the valuer either before or after the confirmation of the award, that the money to arise by any previous rates will not be sufficient to defray the expences aforesaid, the deficiency shall, with such approbation of the commissioners as aforesaid, be made up and raised from time to time by a rate to be made and levied upon the several persons interested in the lands to be inclosed, (except as aforesaid,) in such shares and proportions, within such time, and to be paid to such persons, as the valuer shall from time to time direct; and in case any persons herein-before made subject to the payment of any money towards such expences shall neglect or refuse to pay his share or proportion of any such rate within the time appointed for that purpose, or at any time after such demand, the same shall be levied and recovered in the manner directed by this Act with respect to the previous rate.

128 Commissioners may remove valuers.

If any valuer or surveyor chosen or appointed to act in the matter of any inclosure or other matter under this Act shall, before his duties shall be fully performed, refuse to attend to or become by sickness or otherwise incapable to act in such matter, or by writing under his hand desire to be discharged from the office of valuer or surveyor respectively, or shall in the judgment of the commissioners neglect his duties, or misconduct himself in his office, or become or be found incompetent or unfit to act as a valuer or surveyor under this Act, it shall be lawful for the commissioners, by order under their hands and seal, to remove him from the office of valuer or surveyor, as the case may be; and if any valuer or surveyor shall be so removed, or shall die, it shall be lawful for the commissioners, by order under their seal, to appoint a valuer or surveyor in his stead, and every valuer and surveyor so appointed shall have the same powers as if he had been chosen at a meeting of the persons interested in the land in manner herein-before directed.

129 Valuer not to purchase lands in the parish for seven years after the award.

No valuer who shall have acted in the matter of any inclosure shall be capable of being a purchaser of any land within the parish in which the land to be inclosed, or any part thereof, shall be situate, until the expiration of seven years after the confirmation of the award in such inclosure.

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130 Repayment to consolidated fund.

It shall be lawful for the commissioners, having regard to the time and labour and expences of the assistant commissioners and all other persons, if any, specially employed and paid by the commissioners in or about any inclosure, exchange, division, partition, or other proceeding under this Act, by any order under their hands and seal, to order and declare that a sum, in such order to be mentioned, be paid to the commissioners in respect of the salary, allowance, and expences of the assistant commissioners and other persons, if any, so specially employed in or about such inclosure, exchange, division, partition, or other proceeding; and the commissioners shall by such order declare such sum to be charged on the persons interested in the land to be inclosed, or to which such proceeding shall relate, in such shares as they shall think just, and shall appoint a time for payment thereof; and the same shall be raised in the same manner as the expences of the inclosure, or of subjecting the land to the provisions concerning regulated pasture, are directed to be raised under this Act, and be deemed part of the expences of the inclosure or matter aforesaid, or, in the case of an exchange, division, or partition, in the same manner as the expences of such exchange, division, or partition, and when raised shall be paid to the commissioners, who shall forthwith pay the same into her Majesty's Exchequer, to be carried to the account of the consolidated fund.

131 Persons attending meetings to pay their own expences.

Provided always, that the several persons interested in the inclosure or other proceeding under this Act, and their respective agents, shall pay their own expences whenever they shall attend any of the meetings to be held in the matter of any inclosure.

132 Expenses of witnesses.

The commissioners or assistant commissioner acting in the matter of any inclosure, or in any inquiry into the expediency or in expediency of any proposed inclosure, where they or he may see fit, may order such expenses of witnesses, and of the production of any books, deeds, court rolls, and writings, maps, plans, and surveys, or copies thereof, and all other expences (except the salary or allowance to any assistant commissioner) incurred in the settlement of any suit or difference, or in the hearing and determining any objection or matter whatever before the said commissioners or any assistant commissioner, to be paid by such parties interested in the production thereof respectively, or in the event of such suit, difference, objection, or matter, or in any such inquiry, by or in such proportions as the commissioners or assistant commissioner shall think fit and reasonable; and the commissioners may, when they shall see occasion, require such security to be given by persons making application for any inquiry under this Act, for the payment by such persons of the expences of or occasioned by such inquiry, as the commissioners may think fit.

133 Power to mortgage allotments.

It shall be lawful for the respective persons interested in allotments in severalty or allotments of stints or rights of pasture respectively to be made under this Act, being tenants for life or in tail, or for any other estate of freehold or inheritance, and also for the husbands, guardians, trustees, committees, or attornies of any of the proprietors, being under coverture, infants, [^{F44}persons of unsound mind], idiots, or under any other disability or incapacity, or beyond the seas, or by the persons acting as such guardians, trustees, committees, or attornies respectively, and for the trustees or feoffees for

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charitable, parochial, or other uses, or the majority in number of them, in respect of any lands held by them in trust for any charitable, parochial, or other uses, (with the consent of the commissioners, testified in writing under their hands and seal,) and for the incumbent of any ecclesiastical benefice, with the consent in writing of the bishop of the diocese and of the patron of such benefice, from time to time to charge their respective allotments with any money not exceeding, as to any allotment in severalty, five pounds per acre, towards their respective proportions of the inclosure expences, and for securing the repayment of such money, with interest, to mortgage or demise the said allotments unto or in trust for any person who shall advance any money for any term of years, but so that every such mortgage or demise be made with a condition to cease or upon trust to be surrendered or assigned when the money thereby to be secured, with all interest thereon, shall have been fully paid, and so that in every such mortgage or demise which shall be made by or on behalf of any person entitled to any such allotment for the term of his natural life there be contained a covenant to pay and keep down the interest of the money to be secured during his life, in such manner that no person afterwards becoming possessed of such lands shall be subject or liable to pay any larger arrear of interest than for six months previous to the time when the title of such person shall accrue or commence; and every incumbent of a benefice by whom such mortgage or demise shall be made shall keep down the interest on the money to be secured, or on so much thereof as shall remain owing, and shall repay, in reduction of the principal, one thirtieth part of the money originally secured at the expiration of the term of one year from the time of making such mortgage, and a like sum at the expiration of each succeeding term of one year, until the whole be repaid; and every such mortgage or demise shall be valid in the law for the purposes thereby intended; and every such mortgagee and his assigns shall have the like remedies in case of nonpayment of the monies thereby secured as in the case of other mortgages of the like nature.

Textual Amendments

F44 Words substituted by virtue of [Mental Treatment Act 1930 \(c. 23\), s. 20\(5\)](#)

Modifications etc. (not altering text)

C33 [S. 133](#) excluded by [Mental Health Act 1983 \(c. 20, SIF 85\), s. 113, Sch. 3](#)

134 Power to sell parts of allotments.

It shall be lawful for the commissioners, on application made to them in writing by any of the proprietors of allotments to be made by virtue of this Act, or by any of the husbands, guardians, trustees, committees, or attornies of or for any of such proprietors, being under coverture, infants, [^{F45}persons of unsound mind], idiots, or under any other disability or incapacity, or beyond the seas, or by the persons acting as such guardians, trustees, committees, or attornies respectively, or by any of the said proprietors, being tenants in tail or for life, or by any trustees or feoffees for charitable, parochial, or other uses, or by the majority in number of them, or by any incumbent of an ecclesiastical benefice in right of which an allotment may have been made, and the bishop of the diocese and the patron of such benefice, to direct a sale of any part of such allotment, for raising a sum of money sufficient to defray the proportionable part of the expences which shall in such rates be charged upon such parties, and of the expences of making and completing such sale: Provided always, that in all cases in which the monies so raised by any such sale shall not be equal to the money which might be borrowed or charged on such allotment as aforesaid, it shall be lawful for

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the proprietor, or the person herein-before authorized to direct a sale on behalf of the proprietor, part of whose allotment shall be sold as aforesaid, to charge his allotment with any sum not exceeding the difference.

Textual Amendments

F45 Words substituted by virtue of [Mental Treatment Act 1930 \(c. 23\)](#), s. 20(5)

Modifications etc. (not altering text)

C34 S. 134 excluded by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 113, [Sch. 3](#)

135 Sales of parts of allotments how to be made.

Such sales shall be made by the valuer, with the approbation of the commissioners, in the same manner and subject to the same regulations as are herein-after prescribed in respect of the sale of part of the land subject to be inclosed towards defraying the expences of the inclosure; and every part of an allotment for which the full purchase money shall be paid shall be conveyed by the commissioners, at the expence of the purchaser, as he shall appoint, and shall be inclosed and held by such purchaser in severalty: Provided always, that nothing herein contained shall enable the commissioners to convey any allotments set out by them as copyhold or customary as freehold, but such copyhold or customary allotments shall be held by the purchaser thereof by, under, and subject to the same rents, suits, and services as such allotment would have been held in case no such sale had been made.

136 Commissioners to receive and apply purchase money.

The receipt of the commissioners shall be a sufficient discharge to the purchaser for the said purchase money; and such purchase money shall be applied by the commissioners in or towards defraying the costs and expences for raising which such sale shall have been made; and the surplus (if any) shall be paid to the parties from whose allotments such sale shall have been so made respectively; and the shares of such of them as shall be tenants in fee simple shall be paid to them respectively, and the shares of the other proprietors of such surplus money shall be applied and disposed of in manner herein-after directed.

137 Application of compensation money of parties under disabilities.

When any money is, under the provisions of this Act, directed to be paid for the purchase of any timber or wood growing on any land which shall belong to any tenant for life or in tail, or to any feoffee in trust, executor, or administrator, husband, guardian, committee, or trustee, for or on behalf of any infant, idiot, [^{F46}person of unsound mind], feme covert, or cestuique trust, or to any person whose lands are limited in strict or other settlement, or to any person under any other disability or incapacity whatsoever, or to any corporation, not being legally and equitably entitled to sell and dispose of such timber and wood, it shall be lawful for the valuer out of such money to defray the proportion (if any) of the inclosure expences which shall be charged upon the land, or any land held under the same title, on which such timber or wood actually grew, and also, with the approbation of the commissioners, to defray the expence of any permanent improvement, such as building, sub-dividing, dividing, draining, or planting, and the like, which shall in the judgment of the valuer be proper

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to be made, and shall be made, under his direction, upon any land to be under the powers of this Act allotted to such parties.

Textual Amendments

F46 Words substituted by virtue of [Mental Treatment Act 1930 \(c. 23\)](#), **s. 20(5)**

Modifications etc. (not altering text)

C35 [S. 137](#) excluded by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 113, **Sch. 3**

138 Investment of surplus when 200*l.* or upwards.

If the surplus of any such monies, or the surplus of any monies to arise from the sale of part of an allotment for raising money for expences, where the same shall not be paid to the proprietors under the directions herein-before contained, shall amount to or exceed the sum of two hundred pounds, the same shall, with all convenient speed, unless the commissioners shall otherwise direct, under the provisions herein-after contained, [^{F47}be paid into the Supreme Court] . . . ^{F48}; and shall, when so paid in, there remain until the same shall, by order of the said court, made upon a petition in a summary way by the parties who would have been entitled to the rents and profits of the said land, be applied to the following purposes or any of them; (that is to say,)

The redemption or discharge of . . . ^{F49} any debt or other incumbrance affecting the same land, or affecting other lands standing settled therewith to the same or the like uses or trusts:

The purchase of other land, to be conveyed or settled upon the like uses or trusts, or such of them as shall be then existing undetermined or capable of taking effect.

Textual Amendments

F47 Words substituted by [Administration of Justice Act 1965 \(c. 2\)](#), **Sch. 1**

F48 Words repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

F49 Words repealed by [Finance Act 1963 \(c. 25\)](#), s. 73(8)(b), **Sch. 14 Pt. V**

139 ^{F50}

Textual Amendments

F50 [S. 139](#) repealed by [Administration of Justice Act 1965 \(c. 2\)](#), **Sch. 1**

140 Application of money under 200*l.*

In case the surplus of any such monies as aforesaid shall be less than the sum of two hundred pounds, and shall exceed or amount to the sum of twenty pounds, the same shall, at the option of the parties who for the time being would have been entitled to the rents and profits of the said land, or their guardians or committees, in case of infancy, idiotcy, [^{F51}unsoundness of mind], or other incapacity, with the approbation of the commissioners, to be signified in writing under their seal, [^{F52}be paid into the Supreme Court] in order to be applied in manner herein-before directed: or otherwise

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the same may be paid, at the like option and with the like approbation, to two trustees, to be nominated by the said parties who for the time being would have been entitled to the rents and profits of the said land as aforesaid, such nomination to be approved of by the commissioners, and such nomination and approbation to be signified in writing under the hands (or common seal, as the case may be,) of the nominating parties, and under the seal of the commissioners; and in any case in which such monies small amount to or exceed the sum of two hundred pounds, the same if the commissioners shall so think fit and direct, shall in like manner be paid to trustees to be nominated and approved as aforesaid; [F52 and the money so paid to such trustees shall be by them applied in like manner as is hereinbefore directed with respect to money paid into the Supreme Court, but without obtaining or being required to obtain any order of the court touching the application thereof, and the dividends and produce arising from the money before it is so applied shall from time to time be paid to the parties aforesaid.]

Textual Amendments

- F51** Words substituted by virtue of [Mental Treatment Act 1930 \(c. 23\), s. 20\(5\)](#)
F52 Words substituted by [Administration of Justice Act 1965 \(c. 2\), Sch. 1](#)

141 Under 20/.

In case the surplus of any such monies as aforesaid shall be less than twenty pounds the same shall be paid to the parties for the time being entitled to the rents and profits of the said land, for their own use and benefit; or in case of infancy, idiocy, [F53 unsoundness of mind], or other incapacity, then such money shall be paid to their guardians, committees, or trustees, for the use and benefit of the parties respectively entitled thereto.

Textual Amendments

- F53** Words substituted by virtue of [Mental Treatment Act 1930 \(c. 23\), s. 20\(5\)](#)

142 Sale of land by valuer for expenses.

Provided always, that in case the valuer acting in the matter of any inclosure shall, under the instructions herein-before required in this behalf, proceed to raise all or any part of the expences of the inclosure by sale of part of the land proposed to be inclosed, such valuer shall set out such parts of the land to be inclosed as he shall judge sufficient in value to defray the expences aforesaid, and shall, from time to time as he shall find expedient, sell and dispose of the same by public auction or by private contract, with the approbation of the commissioners; and the purchase monies to arise by such sales shall be paid into the hands of the commissioners, or as they shall direct, and shall be by them applied in discharging the said expences.

143 Conveyances to be made by Commissioners.

Upon every sale to be made by the valuer under the provisions of this Act the commissioners shall sign and deliver to each purchaser a receipt for his purchase money, which shall be a sufficient discharge for the same; and upon receipt of the whole purchase money for any of the lands which shall be sold as aforesaid the commissioners shall convey such lands, and the fee simple and inheritance thereof in

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possession, by conveyance under their hands and seal, to such uses and in such manner as such purchaser shall direct; and after such conveyance the premises conveyed shall be freehold of inheritance, and shall be held to the uses and in manner expressed by such conveyance; and any such conveyance may be to the effect set forth in the schedule to this Act, and shall be evidence of the regularity of the sale in pursuance of which such conveyance shall be made.

Modifications etc. (not altering text)

C36 Provision that land shall be conveyed to uses now takes effect as direction that land shall be conveyed to a person of full age upon the requisite trusts: [Law of Property Act 1925 \(c. 20\), s. 1\(9\)](#)

144 Application of purchase monies.

All such purchase monies as shall be from time to time raised or received by the commissioners by such respective sales as aforesaid shall, after payment of the charges and expences attending such respective sales, be paid and applied by the commissioners towards the expences of the inclosure; and the respective purchasers or other persons paying the same shall not in any manner be liable to see to the application or be answerable for any misapplication thereof.

145 Notice may be given to reversioners.

The commissioners, before authorizing or certifying the expediency of any inclosure, or determining any claim or matter, or approving any report or award, or in any other stage of the proceedings on any inclosure, or of the proceedings for subjecting any gated or stinted pasture to the provisions of this Act concerning regulated pastures, if they shall see occasion, may require notice to be given, in any such manner as they shall direct, to the person next in remainder, reversion, or expectancy of an estate of inheritance in any lands, or to any other person to whom they may think notice ought to be given, and may by themselves or by some assistant commissioner hear and determine any objection which may be made by the person so next in remainder, reversion, or expectancy.

146 Copies of award to be made and deposited.

Two copies of every confirmed award shall be made, and sealed with the seal of the said commissioners, and one such copy shall be deposited with the clerk of the peace of the county in which the lands inclosed shall be situate, who is hereby required to deposit and keep the same among the records of the said county, so that recourse may be had thereto by any person interested in the premises, and the other copy shall be deposited with the church or chapel wardens for the time being of the parish in which the lands or the greater part thereof shall be situated, to be kept by them and their successors in office with the public books, writings, and papers of the parish, or shall be deposited with such other fit persons as the commissioners shall approve; and all persons interested therein may have access to and be furnished with copies of or extracts from any such copy, on giving reasonable notice to the person having custody of the same, and on payment of [^{F54}12½p] for such inspection, and after the rate of [^{F54}1.25p] for every seventy-two words contained in such copy or extract; and all such copies of and extracts from any such copy of any confirmed award as shall be furnished by the clerk of the peace shall be signed by the said clerk of the peace or

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his deputy, purporting the same to be a true copy; and every such copy and extract, so signed, shall be received in evidence without further proof thereof; and every recital or statement in such confirmed award or any sealed copy thereof shall be deemed satisfactory evidence of the matters therein recited or stated.

Textual Amendments

F54 Words substituted by virtue of [Decimal Currency Act 1969 \(c. 19\)](#), **s. 10(1)**

Modifications etc. (not altering text)

C37 Functions of clerk of the peace under s. 146 now exercisable by clerk of local authority for the area: [Courts Act 1971 \(c. 23\)](#), **Sch. 8 Pt. I para. 1**

147 Exchanges may be made of land not subject to be inclosed.

It shall be lawful for the commissioners, upon the application in writing of the persons interested, according to the definition herein-before contained, in lands not subject to be inclosed under this Act, or in lands subject to be inclosed under this Act as to which no proceedings for an inclosure shall be pending, and who shall desire to effect an exchange of lands in which they respectively shall be so interested, to direct inquiries whether such proposed exchange would be beneficial to the owners of such respective lands; and in case the commissioners shall be of opinion that such exchange would be beneficial, and that the terms of the proposed exchange are just and reasonable, they shall, unless notice of dissent to the proposed exchange shall be given, under the provision herein-after contained, cause to be framed, and confirmed under the hands and seal of the commissioners, an order of exchange, with a map or plan thereunto annexed, in which order shall be specified and shown the lands given and taken in exchange by each person so interested respectively; and a copy of such order, under the seal of the commissioners, shall be delivered to each of the parties on whose application the exchange shall have been made; and such order of exchange shall be good, valid, and effectual in the law to all intents and purposes whatsoever, and shall be in nowise liable to be impeached by reason of any infirmity of estate or defect of title of the persons on whose application the same shall have been made; and the land taken upon every such exchange shall be and enure to, for, and upon the same uses, trusts, intents, and purposes, and subject to the same conditions, charges, and incumbrances, as the lands given on such exchange would have stood limited or been subject to in case such order had not been made; and all expences with reference to such order and exchange, or the inquiries in relation thereto, or to any proposed exchange, shall be borne by the persons on whose application such order shall have been made or such inquiries undertaken: Provided always, that no exchange shall be made of any land held in right of any church or chapel or other ecclesiastical benefice, without the consent, testified in writing, of the bishop of the diocese and the patron of such benefice.

148 Division of intermixed lands.

It shall be lawful for the commissioners, upon the application in writing of any number of persons who shall be separately interested in parcels of land not subject to be inclosed under this Act, or of land subject to be inclosed under this Act as to which no proceedings for an inclosure shall be pending, so intermixed or divided into parcels of inconvenient form or quantity that the same cannot be cultivated or occupied to the best advantage, but forming together a tract which may be divided into convenient parcels,

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and who shall desire to have the whole of such tract divided into convenient parcels, to be allotted in lieu of the old parcels, to direct an inquiry whether such proposed division and allotment would be beneficial to the owners of such lands; and in case the commissioners shall be of opinion that the proposed division and allotment would be beneficial, they shall, unless notice of dissent from the proposed division and allotment shall be given, under the provisions herein-after contained, cause to be framed an order for the division or allotment thereof accordingly, with a map or plan thereunto annexed, in which shall be specified as well the parcels which the several persons on whose application such order shall have been made were respectively interested in before such division and allotment, as the several parcels allotted to them respectively by such order, and such order shall be confirmed under the hands and seal of the commissioners; and a copy of such order, sealed with the seal of the commissioners, shall be delivered to each of the parties on whose application the division and allotment shall have been made; and such order of division shall be good in the law to all intents and purposes whatsoever, and shall in nowise be liable to be impeached by reason of any infirmity of estate or defect of title of the persons on whose application the same shall have been made; and the parcels of land taken by the persons interested under such division shall be and enure to, for, and upon the same uses, trusts, intents, and purposes, and subject to the same conditions, charges, and incumbrances, as the several lands which the persons taking the same shall have relinquished or lost on such division would have stood limited to, for, or upon, or been subject to, in case such order had not been made; and all expences with reference to any such order, division, and allotment, or the inquiries in relation thereto, or to any proposed division or allotment, shall be borne by the persons on whose application such order shall have been made or such inquiries undertaken.

149 Inconvenient allotments for the poor and for public purposes may be exchanged for land more convenient.

Where, under the powers of any inclosure Act, any allotment shall have been made in trust for the poor inhabitants of any parish, or of any class of such poor inhabitants, or in trust to be leased, used, or enjoyed to or by or upon any other trusts for the benefit of such poor inhabitants, or for the purposes of exercise and recreation, or for any other public or parochial purpose, and it shall appear to the commissioners that such allotment, by reason of its distance from the dwellings of such poor inhabitants, or from the nature or quality of the soil, or otherwise, shall not be convenient or suitable for the purposes for which the same shall have been made, it shall be lawful for the commissioners, upon the application in writing of the churchwardens and overseers of the poor of the parish in which such allotment shall be situate, or of the trustees for the time being of such allotment, and of the person interested in land more convenient or suitable for the purposes for which such allotment shall have been made, and who may be willing to give such land in exchange for such allotment, in case the commissioners shall be of opinion that such exchange would be beneficial to the poor inhabitants or other persons for whose benefit or more suitable to the purposes for which such allotment was made, to cause to be framed and to confirm an order of exchange of such allotment for such other land as aforesaid; and the provisions herein contained concerning exchanges shall apply to such allotment, as if such churchwardens and overseers or trustees respectively were the persons interested in such allotment.

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150 Notices of intended exchanges and divisions to be given.

Provided always, that no such order of exchange or order of division and allotment as aforesaid shall be confirmed by the commissioners until notice shall have been given by advertisement in [^{F55}two] successive weeks of such proposed exchange or division and allotment and [^{F55}one month] shall have elapsed from the publication of the last of such advertisements; and in case before the expiration of such [^{F55}one month] any person entitled to any estate in or to any charge upon any land included in such proposed exchange or division and allotment shall give notice in writing to the commissioners of his dissent from such proposed exchange or division and allotment, as the case may be, the commissioners shall not confirm an order for such exchange or such division or allotment unless such dissent shall be withdrawn, or it shall be shown to the commissioners that the estate or charge of the party so dissenting shall have ceased.

Textual Amendments

F55 Words substituted by [Commons Act 1899 \(c. 30\), s. 19](#)

151 Expences of exchanges and divisions.

If any difference shall arise touching the said expences in relation to any exchange, division, allotment, orders, or inquiries as aforesaid, or the share thereof to be paid by any person, it shall be lawful for the commissioners to certify under their hands and seal the amount to be paid by such person; and in case any person shall neglect or refuse to pay his share so certified to be payable by him, and upon the production of such certificate before any two justices of the peace for the county or other jurisdiction wherein the land shall be situate, such justices, upon the nonpayment thereof, are hereby required, by warrant under their hands and seals, to cause the same to be levied by distress.

152 Commissioners may remedy defects and omissions of awards under local Acts of inclosure, or under 6 & 7 Will. 4. c. 115.

Where any award already made and executed, or hereafter to be made and executed, in pursuance of any local Act of inclosure, or in pursuance of the ^{M6}Inclosure Act 1836 shall not have duly distinguished the several tenures of all the lands thereby awarded or allotted, or of any other lands of which the tenure ought to have been distinguished in or by such award, or the different estates or titles for or under which any lands therein mentioned should be held, or shall not have duly distinguished the lands which after such award should remain subject to all or any tithes, and the lands which should be discharged from all or any tithes, or where by any such award an aggregate allotment shall have been set out and awarded in any case in which several and distinct allotments ought to have been set out and awarded, in every such case, and in every other case in which it shall appear to the commissioners that inconvenience shall have arisen from inaccuracy, confusion, or omission in any such award, it shall be lawful for the commissioners, upon the application in writing of any person interested in the lands to which such award may relate, or of any person prejudiced by the inaccuracy, confusion, or omission in such award, to make such inquiries and take such evidence, by themselves or by an assistant commissioner, as they shall think fit, and by an order under their hands and seal to amend such award, and to distinguish the several tenures of the lands thereby allotted and awarded, and the different estates or

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Changes to legislation: There are currently no known outstanding effects for the Inclosure Act 1845. (See end of Document for details)

titles for or under which the same should be held, and to distinguish the lands which should be discharged from all or any tithes, and the lands which should remain subject to all or any tithes, and to subdivide aggregate allotments into separate allotments, and to distinguish the tenures or titles thereof, or the lands or rights in respect of which they were respectively made, and generally to make or give such declarations or directions as may appear necessary to supply any omission and rectify any inaccuracy or confusion in such award; and such order of the commissioners shall have the same force and effect as if the allotments, directions, and declarations therein contained had been duly made and contained in the original award, in addition, or, as the case may require, in substitution for the parts thereof to which such amendments may relate; and all expences with reference to such order as last aforesaid, and of and consequent upon all inquiries in relation thereto, or to any proposed amendment of any such award, shall be borne by the persons on whose application such order shall be made or such inquiries undertaken.

Marginal Citations

M6 [1836 c. 115.](#)

153 Commissioners may revive powers under local inclosure Acts lost by lapse of time, or otherwise.

Where under any local Act of inclosure the powers and authorities originally vested in the commissioner or commissioners acting under any such local Act, or any such power or authority, shall not have been fully executed according to the intent of such local Act, and shall have been lost or become incapable of being executed by reason of the neglect or omission to execute the same, or to take some proceeding necessary to the due execution thereof, within the time limited in that behalf by such local Act, or from any other cause whatsoever, it shall be lawful for the Inclosure Commissioners for England and Wales, by any order under their hands and seal, to authorize the commissioner or commissioners appointed by or acting under the authority of such local Act to execute and to carry into effect the powers and authorities originally vested in such last-mentioned commissioner or commissioners, or in any previous commissioner or commissioners, under such local Act, in the same manner as if such powers and authorities had not been lost or become incapable of being executed, or as near thereto as lapse of time and other circumstances may permit, and subject to such conditions and restrictions as the justice of the case may appear to require, and in and by such order to direct any act or proceeding to be done or taken in substitution for any act or proceeding which shall have been required or directed by such local Act, and which shall have become incapable of being done or taken by lapse of time or other circumstances; and all proceedings, adjudications, orders, directions, and acts, taken, made, and done by the commissioner or commissioners under any local Act in pursuance of any such order as aforesaid of the Inclosure Commissioners for England and Wales, shall have the same force and effect as if the same had been duly authorized by such local Act; and the expences of such order, and of the inquiries in relation thereto, shall be paid by the commissioner or commissioners acting under such local Act, and shall be deemed expences under the inclosure by such local Act authorized.

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154 Commissioners may appoint persons to complete proceedings in an imperfect inclosure.

Where the powers and authorities of any local Act of inclosure shall not have been fully executed and performed, whether the same shall or shall not have been lost or have become incapable of being executed from lapse of time or otherwise, and there shall be no commissioner acting under such local inclosure Act, or in case from any other cause any of the persons interested in the land to which such local Act shall relate shall be desirous that the powers and authorities of such Act should be executed, and the proceedings thereunder completed, under the direction of the Inclosure Commissioners for England and Wales, it shall be lawful for the said commissioners, by order under their hands and seal, upon the application in writing of the major part in value of the persons interested in the lands subject to be inclosed under such local Act, to appoint any person to execute the powers or authorities of such local Act, in the place of the commissioner or commissioners by such Act appointed or authorized to be appointed, and to complete the proceedings under the same; and it shall be lawful for the said Inclosure Commissioners for England and Wales, by such order as aforesaid, or by any supplemental or other order, to authorize the person so appointed to execute and to carry into effect any powers or authorities originally vested in any commissioner or commissioners under such local Act, and which may have been lost or become incapable of being executed, and to give such other directions in relation thereto as under the provision herein-before contained might have been given to the commissioner or commissioners appointed by or acting under a local Act; and the person so appointed by the commissioners shall and may complete the proceedings under such local Act, and make an award therein, and shall have such and the like powers and authorities in all respects as the commissioner or commissioners originally appointed by or acting under such local Act would have had if he or they had continued to act; and it shall be lawful for the Inclosure Commissioners for England and Wales, by order under their hands and seal, to remove any person so appointed, and upon such removal, or in case any person so appointed shall die, or desire to be discharged from his office, before the proceedings in such inclosure shall be completed, from time to time to appoint any other person in his stead, with all such powers and authorities as aforesaid; and the expences of such orders of the commissioners, and of all proceedings in relation thereto, shall be expences in the inclosure, and raised in the same manner as other expences may by such local Act be authorized to be raised.

155 F56

Textual Amendments
F56 S. 155 repealed by [Inclosure Act 1847 \(c. 111\), s. 5](#)

156 Proviso for cases where dealings have been had with land on faith of inaccuracies, &c. proposed to be rectified.

Provided also, that in every case in which dealings shall have been had with such land, or some part thereof, on the faith of the inaccuracy, confusion, or omission which it shall be proposed to rectify or supply, or on the faith of such powers or authorities having been lost or become incapable of being executed, or on the faith of the powers or authorities of such local Act not being executed under the powers of such local Act, or the actual possession of the land, or the receipt of the rents and

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profits of the land, to which the award so proposed to be amended, or the part thereof proposed to be amended, shall relate, or, as the case may be, the possession of the land, or the receipt of the rents and profits of the land, to be affected by the exercise of such powers or authorities, would be altered by the proposed amendment of the award, or by the exercise of such powers or authorities as aforesaid, the commissioners shall not proceed on such application, so far as respects the land with which such dealings may have been had, or of which the possession or the receipt of rents and profits would be altered as aforesaid, without the consent of the persons interested in such last-mentioned land, nor shall the commissioners proceed in any case upon such application, so far as respects such last-mentioned land, in case within two calendar months after the publication of the last of such advertisements as aforesaid any person entitled to any estate in or to any charge upon such last-mentioned land shall give notice in writing to the commissioners of his dissent from such application.

Modifications etc. (not altering text)

C38 “The last of such advertisements” means the last of four advertisements in four successive weeks giving notice of the application to the Commissioners required by s. 155 of this Act now repealed

157 Commissioners may confirm awards or agreements made under supposed authority of 6 & 7 Will. 4. c. 115.

Where by any award or agreement expressed to be made under the authority of the ^{M7}Inclosure Act 1836 any moors, commons, or waste lands, or other lands not subject to be inclosed under the provisions of such last-mentioned Act, shall have been inclosed or apportioned and allotted, and the lands so inclosed or apportioned and allotted shall be within the definition of lands subject to be inclosed under this Act, it shall be lawful for the commissioners, upon the application of any person interested in any land so inclosed or apportioned and allotted, to make such inquiries in relation to such award or agreement as the commissioners shall think fit; and if it shall appear to the commissioners that the rights and interests of all parties interested in the lands expressed to be inclosed or apportioned and allotted by such award or agreement shall have been duly provided for and compensated thereby, or might be duly provided for and compensated thereby if such award or agreement were confirmed, or amended and confirmed, as herein-after mentioned, it shall be lawful for the commissioners, by any order under their hands and seal, to confirm such award or agreement, or to amend the same, as the justice of the case and the rights and interests of the parties may appear to the commissioners to require, and to confirm the same, with the amendments specified in such order, as the commissioners shall think fit; and every award and agreement so confirmed shall, with the amendments, if any, which shall have been made by such order, have the same force and effect as a final award under the authority of this Act; and all expences with reference to such order as last aforesaid, and of all inquiries in relation thereto, or to any proposed confirmation of any such award or agreement, shall be borne by the persons interested in the lands by such award or agreement inclosed or apportioned and allotted, in such proportions as the commissioners shall direct: Provided always, that the commissioners shall not confirm any such award or agreement, or proceed to make any inquiries in relation thereto, unless it shall be made to appear to the commissioners that the persons making the application for a confirmation of such award or agreement represent at least one third in value of the interests in such lands.

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Changes to legislation: There are currently no known outstanding effects for the Inclosure Act 1845. (See end of Document for details)

Marginal Citations

M7 1836 c. 115.

158 Power to reduce the number of trustees under local Act where a sufficient number of persons qualified cannot be found.

Where, under any local Act of inclosure, or under any award made under the authority of any local Act of inclosure, provision shall have been made for the election, from among persons having certain qualifications in respect of property or otherwise, of a number of trustees or other functionaries for making or maintaining works on the lands inclosed, or for any other local functions, and it shall appear to the commissioners that by reason of alterations in the state of property or otherwise persons cannot be found according to the qualifications required by such local Act of inclosure to fill up the number of trustees or other functionaries required by such local Act, it shall be lawful for the commissioners, after such inquiries as they shall think fit, upon the request and at the expence of any persons interested in the works to be made or maintained or in the functions to be performed by such trustees or functionaries, by order under the seal of the commissioners to declare that any such lesser number, in such order to be mentioned, of trustees or other functionaries, may be from time to time elected for the purposes or be competent to exercise and perform the powers and functions in such local Act of inclosure required or authorized to be exercised by the number of trustees or other functionaries directed to be elected by such local Act, and such lesser number shall be from time to time elected, and shall be competent to exercise and perform such powers and functions accordingly.

159 Penalties and forfeitures, how recoverable.

All penalties and forfeitures imposed by this Act, or which shall be imposed by the commissioners or assistant commissioner acting in the matter of any inclosure or other proceeding under or by virtue of the authority of this Act, shall be levied and recovered before any two justices of the peace for the county in which the land subject to be inclosed, or to which such other proceeding shall relate, shall be situate, and not interested in the matter in question, for which purpose it shall be lawful for any such justices of the peace, upon complaint made to them, to summon the party accused and the witnesses on both sides, and upon the appearance or contempt of the party accused to examine such witnesses upon oath, (which oath such justices are hereby empowered to administer,) and upon such evidence to give judgment accordingly, and to condemn the party accused (proof of the accusation being made by one or more witness or witnesses as aforesaid) in such penalties and forfeitures as the offender shall have incurred, and to levy such penalties and forfeitures by distress, together with reasonable costs; . . . ^{F57}

Textual Amendments

F57 Words repealed with saving by [Justices of the Peace Act 1949 \(c. 101\)](#), s. 46(2), [Sch. 7 Pt. III](#)

Modifications etc. (not altering text)

C39 [S. 159](#) modified (1.4.1996) by [S.I. 1996/674](#), reg. 2, [Sch. Pt. II para. 5\(1\)\(2\)\(h\)](#)

C40 [S. 159](#) modified (1.4.1996) by [S.I. 1996/675](#), art. 2, [Sch. Pt. II para. 7\(1\)\(2\)\(h\)](#)

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160 Distress, how to be made.

When in this Act any sum of money, whether in the nature of penalty or otherwise, shall be directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the surplus monies arising from such sale, after satisfying such sum of money, and the costs and expences attending the distress and sale, shall, on demand, be rendered to the party whose goods and chattels shall have been distrained.

161 Distress not unlawful for informality.

No distress levied by virtue of this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the warrant of distress or other proceeding relating thereto, nor shall such party be deemed a trespasser ab initio on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

162 Notices, how to be given.

All notices by this Act directed to be given by advertisement shall be given by an advertisement to be inserted in some newspaper or newspapers printed or usually circulated in the county in which the land subject to be inclosed, or other land to which such notice shall relate, shall be situate; and all notices directed to be given on the church door shall be by writing under the hand of the party giving such notice, to be affixed to the principal outer door of the church of every parish and ecclesiastical district in which the land subject to be inclosed, or other land to which such notice shall relate, or any part thereof, shall be situate on Sunday before divine service, or where in any such parish or ecclesiastical district there shall be no church, then to be affixed in some conspicuous place of such parish or ecclesiastical district on Sunday before ten of the clock in the forenoon; and all notices necessary to be given by the commissioners or any assistant commissioner or valuer acting in the matter of any inclosure (the mode of giving which is not hereby particularly directed) shall be by either or both of the methods aforesaid, as the commissioners or assistant commissioner or valuer respectively shall think fit; and all notices so given shall be deemed sufficient notices to all persons concerning all matters and things to which such respective notices shall relate.

163 †Advertisements, awards, &c. free of duty.

.....^{F58} no agreement,.....
^{F59}.....^{F60} made or confirmed or used under this
 Act, shall be chargeable with any stamp duty.

Textual Amendments

F58 Words repealed by [Statute Law Revision Act 1950 \(c. 6\)](#)

F59 Words repealed by [Finance Act 1949 \(c. 47\)](#), [Sch. 11 Pt. V](#) and [Finance Act 1971 \(c. 68\)](#), [Sch. 14 Pt. VI](#)

F60 Words repealed by [Finance Act 1985 \(c. 54, SIF 114\)](#), s. 98(6), [Sch. 27 Pt. IX\(2\)](#)

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Modifications etc. (not altering text)

C41 Unreliable marginal note

164 Persons giving false evidence, &c. to be guilty of a misdemeanor.

If any person under the provisions of this Act . . . ^{F61} shall wilfully refuse to attend in obedience to any lawful summons of the commissioners or an assistant commissioner or valuer, or to give evidence or shall wilfully alter, withhold, destroy, or refuse to produce any book, court roll, or writing, map, plan, or survey or any copy of the same, which may be lawfully required to be produced before the commissioners or assistant commissioner or valuer, he shall be deemed guilty of a misdemeanor.

Textual Amendments

F61 Words repealed by [Perjury Act 1911 \(c. 6\)](#), [Sch.](#)

165 ^{F62}

Textual Amendments

F62 [S. 165](#) repealed by [Public Authorities Protection Act 1893 \(c. 61\)](#), [Sch.](#)

^{F63} **166**

Textual Amendments

F63 [S. 166](#) repealed (5.11.1993) by [1993 c. 50, s. 1\(1\)](#), [Sch. 1 Pt. IV](#)

167 Interpretation clause.

In the construction and for the purposes of this Act, unless there be something in the subject or context repugnant to such construction, the word “person” shall mean and include the Queen’s Majesty, and any body corporate, aggregate or sole, as well as an individual; any word importing the singular number only shall mean and include several persons or parties as well as one person or party, and several things as well as one thing respectively, and the converse; any word importing the masculine gender only shall mean and include a female as well as a male; the word “inclosure” shall extend to and include division or allotment; the word “inclose” and its conjugates shall include the meaning also of the words “divide” and “allot” and their respective conjugates; and the words “local Act of inclosure” shall extend to and include any local Act of which inclosure, division, or allotment of lands shall have been one of the objects or purposes; the word “manor” shall extend to and include any hundred, honor, or lordship; the word “land” shall mean and include all messuages, lands, and corporeal tenements and hereditaments; ^{F64} . . . the word “church” shall mean and include any chapel where there is no church; the word “schoolhouse” shall mean any parochial or charitable schoolhouse; the words “the commissioners” shall

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mean the Inclosure Commissioners for England and Wales; and the words “assistant commissioner” shall mean the assistant commissioner appointed by the Inclosure Commissioners.

Textual Amendments

F64 In s. 167 definitions of "county" and "parish" repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt.IV**

168 Act to extend only to England and Wales.

This Act shall extend only to England and Wales.

169^{F65}

Textual Amendments

F65 Ss. 1, 4, 5, 7, 169 repealed by Statute Law Revision Act 1875 (c. 66)

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THE SCHEDULE TO WHICH THIS ACT REFERS

FORM OF CONVEYANCE BY COMMISSIONERS.

In the matter of the Inclosure.

We, , the Inclosure Commissioners for England and Wales, by virtue of the ^{M8}Inclosure Act 1845 and in consideration of the sum of paid into our hands by , being the purchase money of the hereditaments herein-after described, do by these presents convey unto , his heirs and assigns, all that [here describe the premises], with the appurtenances to hold the same unto the said , his heirs and assigns [here state the uses, trusts, or purposes of the conveyance, as the case may require]. In witness whereof we have hereunto affixed, our seal, this day of

Marginal Citations

M8 1845 c. 118.

Form of Summons.

To of of , field reeve of to wit. I, esquire, one of her Majesty's justices of the peace in and for the said county of, do hereby summon you personally to be and appear before such two of her Majesty's justices of the peace as shall be present at, in the said county, on the, day of next, at the hour of in the noon of the same day, to answer the complaint of A.B. that [he is refused reasonable compensation for diminution of his right of pasture in the regulated pasture in], or [that the said A.B. is charged with an excessive payment for increase of his right of pasture in the regulated pasture of], otherwise the complaint will be proceeded with as if you had appeared. Given under my hand and seal, this day of in the year .

Form of Order.

The order ofand , to wit. esquires, two of her Majesty's justices of the peace in and for the said county, made at, in the said county of, the day of in the year .

Whereas complaint hath been made to us by A.B. for that he [state the complaint as in the summons]; we do declare that [the yearly sum of is a reasonable compensation for the diminution of the right of pasture of the said A.B.], or [the yearly sum of is a reasonable payment for increase of the right of pasture of the said A.B.], and do order that such yearly sum be paid, according to the directions of the statute in that behalf. Given under our hands and seals, this day of in the year .

Status:

Point in time view as at 05/11/1993.

Changes to legislation:

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