



# Inclosure Act 1845

1845 CHAPTER 118 8 and 9 Vict

E+W

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 19/11/1998.*  
*Changes to legislation: There are currently no known outstanding effects for the Inclosure Act 1845. (See end of Document for details)*

1 ..... F1 **E+W**

**Textual Amendments**

F1 Ss. 1, 4, 5, 7, 169 repealed by Statute Law Revision Act 1875 (c. 66)

2 ..... F2 **E+W**

**Textual Amendments**

F2 S. 2 repealed with savings by Board of Agriculture Act 1889 (c. 30), s. 13, Sch. 2

3 ..... F3 **E+W**

**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 **E+W**

**Textual Amendments**

F4 Ss. 1, 4, 5, 7, 169 repealed by Statute Law Revision Act 1875 (c. 66)

6 ..... F5 **E+W**

**Textual Amendments**

F5 Ss. 6, 8 repealed with savings by Board of Agriculture Act 1889 (c. 30), s. 13, Sch. 2

7 ..... F6 **E+W**

**Textual Amendments**

F6 Ss. 1, 4, 5, 7, 169 repealed by Statute Law Revision Act 1875 (c. 66)

8 ..... F7 **E+W**

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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)*

#### Textual Amendments

**F7** Ss. 6, 8 repealed with savings by [Board of Agriculture Act 1889 \(c. 30\)](#), s. 13, [Sch. 2](#)

### 9 Documents of the tithe commissioners may be used. Power to summon witnesses. **E+W**

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<sup>F8</sup>. . . . 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.

#### Textual Amendments

**F8** Words in s. 9 repealed (19.11.1998) by [1998 c. 43](#), s. 1(1), [Sch. 1 Pt.VI](#)

#### 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. **E+W**

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. **E+W**

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. **E+W**

<sup>F9</sup>. . . 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 [<sup>F10</sup>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

**F9** S. 12: first proviso repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt. VI

**F10** Words substituted by virtue of [Defence \(Transfer of Functions\) Act 1964 \(c. 15\), s. 3\(2\)](#)

## [<sup>F11</sup>13 New Forest and Forest of Dean excepted. **E+W**

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

- F11** 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. **E+W**

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. **E+W**

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. **E+W**

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. E+W**

Whenever her Majesty shall be interested in land as aforesaid [<sup>F12</sup>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

- F12** 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.** **E+W**

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.** **E+W**

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.** **E+W**

Whenever any person interested in land as aforesaid shall be an infant, [<sup>F13</sup>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

- F13** 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.** **E+W**

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



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done by or with relation to any such person may be lawfully done by or with relation 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. **E+W**

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. **E+W**

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**— ..... <sup>F14</sup> **E+W**  
**27.**

**Textual Amendments**  
**F14** Ss. 24–27 repealed with saving by Commons Act 1876 (c. 56), ss. 34, 35

<sup>F15</sup>**28** ..... **E+W**

**Textual Amendments**  
**F15** S. 28 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F16</sup>**29** ..... **E+W**

**Textual Amendments**  
**F16** S. 29 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F17</sup>**30** ..... **E+W**

**Textual Amendments**  
**F17** S. 30 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F18</sup>**31** ..... **E+W**

**Textual Amendments**  
**F18** S. 31 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F19</sup>**32** ..... **E+W**

**Textual Amendments**  
**F19** S. 32 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

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F20 **33** ..... **E+W**

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**Textual Amendments**  
F20 S. 33 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

F21 **34** ..... **E+W**

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**Textual Amendments**  
F21 S. 34 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

F22 **35** ..... **E+W**

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**Textual Amendments**  
F22 S. 35 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

F23 **36** ..... **E+W**

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**Textual Amendments**  
F23 S. 36 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

F24 **37** ..... **E+W**

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**Textual Amendments**  
F24 S. 37 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

F25 **38** ..... **E+W**

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**Textual Amendments**  
F25 S. 38 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

F26 **39** ..... **E+W**

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**Textual Amendments**

**F26** S. 39 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F27</sup> **40** ..... **E+W**

**Textual Amendments**

**F27** S. 40 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F28</sup> **41** ..... **E+W**

**Textual Amendments**

**F28** S. 41 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F29</sup> **42** ..... **E+W**

**Textual Amendments**

**F29** S. 42 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F30</sup> **43** ..... **E+W**

**Textual Amendments**

**F30** S. 43 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F31</sup> **44** ..... **E+W**

**Textual Amendments**

**F31** S. 44 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F32</sup> **45** ..... **E+W**

**Textual Amendments**

**F32** S. 45 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

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<sup>F33</sup> 46 ..... **E+W**

**Textual Amendments**  
**F33** S. 46 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F34</sup> 47 ..... **E+W**

**Textual Amendments**  
**F34** S. 47 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F35</sup> 48 ..... **E+W**

**Textual Amendments**  
**F35** S. 48 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

**49 Titles not to be determined by valuer, commissioners, or assistant commissioners.** **E+W**

Provided also, that nothing in this Act contained shall extend to enable <sup>F36</sup> . . . 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 <sup>F36</sup> . . . 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, <sup>F36</sup> . . . 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.

**Textual Amendments**  
**F36** Words in s. 49 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt. VI

<sup>F37</sup> 50 ..... **E+W**

**Textual Amendments**  
**F37** S. 50 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

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F38 **51** ..... **E+W**

**Textual Amendments**

**F38** S. 51 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

F39 **52** ..... **E+W**

**Textual Amendments**

**F39** S. 52 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

F40 **53** ..... **E+W**

**Textual Amendments**

**F40** S. 53 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt. VI

F41 **54** ..... **E+W**

**Textual Amendments**

**F41** S. 54 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

F42 **55** ..... **E+W**

**Textual Amendments**

**F42** S. 55 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

**56** **Appeal against determination of the commissioners.** **E+W**

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 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 [<sup>F43</sup> in the High Court]; and the defendant in such action shall, upon being served with the usual

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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**  
F43 Words substituted by virtue of [Courts Act 1971 \(c. 23\)](#), [Sch. 8 para. 2](#)

<sup>F44</sup>57 ..... **E+W**

**Textual Amendments**  
F44 [S. 57](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\)](#), [Sch. 1 Pt.VI](#)

<sup>F45</sup>58 ..... **E+W**

**Textual Amendments**  
F45 [S. 58](#) repealed (5.11.1993) by [1993 c. 50, s. 1\(1\)](#), [Sch. 1 Pt.IV](#)

<sup>F46</sup>59 ..... **E+W**

**Textual Amendments**  
F46 [S. 59](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\)](#), [Sch. 1 Pt.VI](#)

<sup>F47</sup>60 ..... **E+W**

**Textual Amendments**  
F47 [S. 60](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\)](#), [Sch. 1 Pt.VI](#)

61 **Power to valuer to make watercourses, &c.** **E+W**

<sup>F48</sup> . . . 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. <sup>F48</sup> . . .

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**Textual Amendments**

**F48** Words in s. 61 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt. VI

<sup>F49</sup> **62** ..... **E+W**

**Textual Amendments**

**F49** S. 62 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F50</sup> **63** ..... **E+W**

**Textual Amendments**

**F50** S. 63 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F51</sup> **64** ..... **E+W**

**Textual Amendments**

**F51** S. 64 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F52</sup> **65** ..... **E+W**

**Textual Amendments**

**F52** S. 65 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F53</sup> **66** ..... **E+W**

**Textual Amendments**

**F53** S. 66 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

**67** **Roads to be repaired by the parish after certificate by two justices of the peace.**  
**E+W**

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



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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)**

- C9** 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.** **E+W**

<sup>F54</sup> . . . 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.

**Textual Amendments**

- F54** Words in [s. 68](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\)](#), [Sch 1 Pt. VI](#)

<sup>F55</sup>**69** . . . . . **E+W**

**Textual Amendments**

- F55** [S. 69](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\)](#), [Sch. 1 Pt.VI](#)

<sup>F56</sup>**70** . . . . . **E+W**

**Textual Amendments**

- F56** [S. 70](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\)](#), [Sch. 1 Pt.VI](#)

<sup>F57</sup>**71** . . . . . **E+W**

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#### Textual Amendments

**F57** S. 71 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

### 72 Allotment for repair of roads. **E+W**

<sup>F58</sup> . . . 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 . . . <sup>F59</sup>

#### Textual Amendments

**F58** Words in s. 72 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

**F59** 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)

**C10** 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. **E+W**

<sup>F60</sup> . . . 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 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 . . . <sup>F61F60</sup> . . . 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

**F60** Words in s. 73 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

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**F61** Words repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

**Modifications etc. (not altering text)**

**C11** 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.** **E+W**

.....<sup>F62</sup> 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.

**Textual Amendments**

**F62** Words repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

**Modifications etc. (not altering text)**

**C12** Unreliable marginal note

**C13** “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.** **E+W**

.....<sup>F63</sup> 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<sup>M1</sup> 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<sup>M2</sup> 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<sup>M3</sup> Act 1836 or by any Act for amending the same, given to the persons entitled to rent-charges charged under the Tithe<sup>M4</sup> 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

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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.

**Textual Amendments**

**F63** Words repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

**Modifications etc. (not altering text)**

**C14** Unreliable marginal note

**C15** “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**

**M1** [1836 c. 71.](#)

**M2** [1836 c. 71](#)

**M3** [1836 c. 71](#)

**M4** [1836 c. 71.](#)

**F64**<sup>76</sup> ..... **E+W**

**Textual Amendments**

**F64** [S. 76](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\)](#), [Sch. 1 Pt.VI](#)

**F65**<sup>77</sup> ..... **E+W**

**Textual Amendments**

**F65** [S. 77](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\)](#), [Sch. 1 Pt.VI](#)

**78** ..... **F66** **E+W**

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**Textual Amendments**

**F66** S. 78 repealed by Statute Law Revision Act 1891 (c. 67)

<sup>F67</sup>**79** ..... **E+W**

**Textual Amendments**

**F67** S. 79 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

<sup>F68</sup>**80** ..... **E+W**

**Textual Amendments**

**F68** S. 80 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

<sup>F69</sup>**81** ..... **E+W**

**Textual Amendments**

**F69** S. 81 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

<sup>F70</sup>**82** ..... **E+W**

**Textual Amendments**

**F70** S. 82 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

**83 Allotments to be fenced. **E+W****

<sup>F71</sup> . . . The fences so to be made shall for ever afterwards be repaired and maintained by such persons as the valuer shall direct. <sup>F71</sup> . . .

**Textual Amendments**

**F71** Words in s. 83 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

**Modifications etc. (not altering text)**

**C16** 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**

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F72 **84** ..... **E+W**

.....  
**Textual Amendments**

**F72** S. 84 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

F73 **85** ..... **E+W**

.....  
**Textual Amendments**

**F73** S. 85 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

F74 **86** ..... **E+W**

.....  
**Textual Amendments**

**F74** S. 86 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

F75 **87** ..... **E+W**

.....  
**Textual Amendments**

**F75** S. 87 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

F76 **88** ..... **E+W**

.....  
**Textual Amendments**

**F76** S. 88 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

F77 **89** ..... **E+W**

.....  
**Textual Amendments**

**F77** S. 89 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

F78 **90** ..... **E+W**

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**Textual Amendments**

**F78** S. 90 repealed (19.11.1998) by 1998 c. 43, s. 1(1), [Sch. 1 Pt. VI](#)

<sup>F79</sup>**91** ..... **E+W**

**Textual Amendments**

**F79** S. 91 repealed (19.11.1998) by 1998 c. 43, s. 1(1), [Sch. 1 Pt. VI](#)

<sup>F80</sup>**92** ..... **E+W**

**Textual Amendments**

**F80** S. 92 repealed (19.11.1998) by 1998 c. 43, s. 1(1), [Sch. 1 Pt. VI](#)

**93 Wills and settlements not to be affected. **E+W****

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 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)**

**C17** 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. **E+W****

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



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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)**

C18 “Land” explained by [Inclosure Act 1854 \(c. 97\)](#), s. 8

<sup>F81</sup>95 ..... **E+W**

**Textual Amendments**

F81 [S. 95](#) repealed (19.11.1998) by [1998 c. 43](#), s. 1(1), [Sch. 1 Pt.VI](#)

96 **Seigniories not affected, except with consent.** **E+W**

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.

<sup>F82</sup>97 ..... **E+W**

**Textual Amendments**

F82 [S. 97](#) repealed (19.11.1998) by [1998 c. 43](#), s. 1(1), [Sch. 1 Pt.VI](#)

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

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.

**F83 99 ..... E+W**

**Textual Amendments**  
**F83** S. 99 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

**F84 100 ..... E+W**

**Textual Amendments**  
**F84** S. 100 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

**F85 101 ..... E+W**

**Textual Amendments**  
**F85** S. 101 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

**F86 102 ..... E+W**

**Textual Amendments**  
**F86** S. 102 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

**F87 103 ..... E+W**

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**Textual Amendments**

**F87** S. 103 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt. VI

**F88** **104** ..... **E+W**

**Textual Amendments**

**F88** S. 104 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt. VI

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

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)**

**C19** S. 105 extended by Commons Act 1876 (c. 56), s. 33

**106 Allotments to be in compensation of previous rights. **E+W****

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. **E+W****

**F89** . . . 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

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with the award, and shall thenceforth be deemed to be part thereof to all intents and purposes. <sup>F89</sup> . . .

#### Textual Amendments

**F89** Words in s. 107 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

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

**+W**

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 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.** **E+W**

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; . . . <sup>F90</sup> 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

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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**

**F90** Words repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

**Modifications etc. (not altering text)**

**C20** [S. 109](#) amended by [Commons Act 1876 \(c. 56\)](#), [s. 26](#)

**110 Recovery of gardens on nonpayment of rent, &c. E+W**

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 at the expiration of one month after such notice shall have been so served or affixed, and thereupon such tenancy shall be determined accordingly: . . . <sup>F91</sup>

**Textual Amendments**

**F91** Words repealed by [Allotments Act 1922 \(c. 51\)](#), [Sch.](#)

**111 Possession, how to be recovered from tenant holding over. E+W**

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 [<sup>F92</sup>by proceedings in the County Court.]

**Textual Amendments**

**F92** Words substituted by [Rent Act 1965 \(c. 75\)](#), [Sch. 6 para. 1](#)

**112 Rents of allotment how to be applied. E+W**

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, . . . <sup>F93</sup>, and of all expences incurred by the allotment wardens in the execution of their trusts and powers under this Act; . . . <sup>F94</sup>

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#### Textual Amendments

- F93** Words repealed by [Commons Act 1876 \(c. 56\), s. 24](#)  
**F94** Words repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

#### Modifications etc. (not altering text)

- C21** [S. 112](#) amended by [Commons Act 1876 \(c. 56\), s. 27](#)

### <sup>F95</sup> **113 Regulated pastures may be set out. E+W**

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#### Textual Amendments

- F95** [S. 113](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\), Sch. 1 Pt.VI](#)

### **114 Conversion into regulated pasture to be deemed an inclosure. E+W**

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 <sup>F96</sup> . . . 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.

#### Textual Amendments

- F96** Words in [s. 114](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\), Sch. 1 Pt.VI](#)

### **115 Rule of rating to be established. E+W**

<sup>F97</sup> . . . Such determination and direction, in case the same shall be approved, or 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.

#### Textual Amendments

- F97** Words in [s. 115](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\), Sch. 1 Pt.VI](#)

### **116 Property of soil of regulated pastures. E+W**

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

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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. E+W**

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.

**118 Duties of field reeves. E+W**

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



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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. E+W**

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.

**120 Expences to be raised by rate. E+W**

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

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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** ..... <sup>F98</sup> **E+W**

**Textual Amendments**  
**F98** Ss. 121, 122 repealed with saving by Commons Act 1899 (c. 30), s. 23, Sch. 2

**122** ..... <sup>F99</sup> **E+W**

**Textual Amendments**  
**F99** Ss. 121, 122 repealed with saving by Commons Act 1899 (c. 30), s. 23, Sch. 2

**123** **Power to enter land for surveys, &c.** **E+W**

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 <sup>F100</sup> . . . , or any person or persons to be appointed by such commissioners, assistant commissioner <sup>F100</sup> . . . , 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.

**Textual Amendments**  
**F100** Words in s. 123 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F101</sup>**124** ..... **E+W**

**Textual Amendments**  
**F101** S. 124 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F102</sup>**125** ..... **E+W**

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**Textual Amendments**  
F102 S. 125 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

F103 126 ..... **E+W**

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**Textual Amendments**  
F103 S. 126 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

F104 127 ..... **E+W**

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**Textual Amendments**  
F104 S. 127 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

F105 128 ..... **E+W**

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**Textual Amendments**  
F105 S. 128 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

F106 129 ..... **E+W**

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**Textual Amendments**  
F106 S. 129 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

**130 Repayment to consolidated fund. **E+W****

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,

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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. E+W**

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. E+W**

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 expences 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.

**F107 133 ..... E+W**

**Textual Amendments**  
**F107** S. 133 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

**F108 134 ..... E+W**

**Textual Amendments**  
**F108** S. 134 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

**F109 135 ..... E+W**

**Textual Amendments**  
**F109** S. 135 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

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<sup>F110</sup>**136** ..... **E+W**

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**Textual Amendments**  
**F110** S. 136 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

<sup>F111</sup>**137** ..... **E+W**

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**Textual Amendments**  
**F111** S. 137 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

<sup>F112</sup>**138** ..... **E+W**

.....  
**Textual Amendments**  
**F112** S. 138 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

**139** ..... <sup>F113</sup> **E+W**

.....  
**Textual Amendments**  
**F113** S. 139 repealed by Administration of Justice Act 1965 (c. 2), **Sch. 1**

<sup>F114</sup>**140** ..... **E+W**

.....  
**Textual Amendments**  
**F114** S. 140 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

<sup>F115</sup>**141** ..... **E+W**

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**Textual Amendments**  
**F115** S. 141 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt.VI**

<sup>F116</sup>**142** ..... **E+W**

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**Textual Amendments**

**F116** S. 142 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F117</sup>**143** ..... **E+W**

**Textual Amendments**

**F117** S. 143 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

<sup>F118</sup>**144** ..... **E+W**

**Textual Amendments**

**F118** S. 144 repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1 Pt.VI

**145** **Notice may be given to reversioners.** **E+W**

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.** **E+W**

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 [<sup>F119</sup>12½p] for such inspection, and after the rate of [<sup>F119</sup>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 his deputy, purporting the same to be a true copy; and every such copy and extract, so

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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

**F119** Words substituted by virtue of [Decimal Currency Act 1969 \(c. 19\), s. 10\(1\)](#)

#### Modifications etc. (not altering text)

**C22** 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. **E+W**

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. **E+W**

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, and who shall desire to have the whole of such tract divided into convenient parcels,



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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. E+W**

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.

**150 Notices of intended exchanges and divisions to be given. E+W**

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

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given by advertisement in [<sup>F120</sup>two] successive weeks of such proposed exchange or division and allotment and [<sup>F120</sup>one month] shall have elapsed from the publication of the last of such advertisements; and in case before the expiration of such [<sup>F120</sup>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**  
F120 Words substituted by [Commons Act 1899 \(c. 30\), s. 19](#)

**151 Expences of exchanges and divisions. E+W**

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.

<sup>F121</sup>**152** ..... **E+W**

**Textual Amendments**  
F121 [S. 152](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\), Sch. 1 Pt.VI](#)

<sup>F122</sup>**153** ..... **E+W**

**Textual Amendments**  
F122 [S. 153](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\), Sch. 1 Pt.VI](#)

<sup>F123</sup>**154** ..... **E+W**

**Textual Amendments**  
F123 [S. 154](#) repealed (19.11.1998) by [1998 c. 43, s. 1\(1\), Sch. 1 Pt.VI](#)

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**155** .....<sup>F124</sup> **E+W**

**Textual Amendments**

**F124** S. 155 repealed by [Inclosure Act 1847 \(c. 111\)](#), s. 5

<sup>F125</sup>**156** ..... **E+W**

**Textual Amendments**

**F125** S. 156 repealed (19.11.1998) by [1998 c. 43](#), s. 1(1), [Sch. 1 Pt.VI](#)

<sup>F126</sup>**157** ..... **E+W**

**Textual Amendments**

**F126** S. 157 repealed (19.11.1998) by [1998 c. 43](#), s. 1(1), [Sch. 1 Pt.VI](#)

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

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.** **E+W**

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

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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; . . . <sup>F127</sup>

#### Textual Amendments

**F127** 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)

**C23** [S. 159](#) modified (1.4.1996) by [S.I. 1996/674](#), reg. 2, [Sch. Pt. II para. 5\(1\)\(2\)\(h\)](#)

**C24** [S. 159](#) modified (1.4.1996) by [S.I. 1996/675](#), art. 2, [Sch. Pt. II para. 7\(1\)\(2\)\(h\)](#)

### 160 Distress, how to be made. **E+W**

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. **E+W**

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. **E+W**

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 <sup>F128</sup> . . . 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

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methods aforesaid, as the commissioners or assistant commissioner <sup>F128</sup> . . . 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.

**Textual Amendments**

**F128** Words in s. 162 repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt. VI**

**163 † Advertisements, awards, &c. free of duty. E+W**

..... <sup>F129</sup> no agreement, .....  
<sup>F130</sup> ..... <sup>F131</sup> made or confirmed or used under this Act, shall be chargeable with any stamp duty.

**Textual Amendments**

- F129** Words repealed by [Statute Law Revision Act 1950 \(c. 6\)](#)
- F130** Words repealed by [Finance Act 1949 \(c. 47\)](#), **Sch. 11 Pt. V** and [Finance Act 1971 \(c. 68\)](#), **Sch. 14 Pt. VI**
- F131** Words repealed by [Finance Act 1985 \(c. 54, SIF 114\)](#), s. 98(6), **Sch. 27 Pt. IX(2)**

**Modifications etc. (not altering text)**

**C25** Unreliable marginal note

**164 Persons giving false evidence, &c. to be guilty of a misdemeanor. E+W**

If any person under the provisions of this Act . . . <sup>F132</sup> 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**

**F132** Words repealed by [Perjury Act 1911 \(c. 6\)](#), **Sch.**

**165 ..... <sup>F133</sup> E+W**

**Textual Amendments**

**F133** S. 165 repealed by [Public Authorities Protection Act 1893 \(c. 61\)](#), **Sch.**

**<sup>F134</sup> 166 ..... E+W**

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#### Textual Amendments

**F134** S. 166 repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. IV**

#### 167 Interpretation clause. **E+W**

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; <sup>F135</sup> . . . 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 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

**F135** 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. **E+W**

This Act shall extend only to England and Wales.

#### 169 ..... <sup>F136</sup> **E+W**

#### Textual Amendments

**F136** 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 **E+W**

F137  
...

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**Textual Amendments**

**F137** Schedule: “the Form of Conveyance by Commissioners” repealed (19.11.1998) by [1998 c. 43, s. 1\(1\)](#), [Sch. 1 Pt.VI](#)

**Status:**

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**Changes to legislation:**

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