



# Improvement Of Land Act 1864

1864 CHAPTER 114 27 and 28 Vict

*Proceedings preliminary to sanction of improvements*

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

**11 Application to Commissioners to sanction improvements.**

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improvements shall have been sanctioned by the Commissioners in manner hereinafter mentioned the application may be withdrawn or altered, or consolidated with any other application, at the pleasure of the applicant, but without prejudice to his liability as herein-after mentioned for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

**12 Joint application by several landowners.**

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

**13 Commissioners may issue forms;**

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

*Status: Point in time view as at 01/11/1996.*

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#### 14 **require security for expenses;**

The Commissioners may require security to be given to them by the landowner, by bond, deposit, or otherwise, in such form as they may think fit, for the payment to them of the expenses which they or their officers shall incur in respect of the investigation on any application, and, if they shall issue such provisional or other sanctioning order as herein-after mentioned, of the expenses which they or their officers shall incur in inspecting and ascertaining the due execution of the works; but unless the Commissioners shall issue such absolute order as herein-mentioned, such payment shall not be a charge on the land to which such application relates, but shall be a debt due by the person making such application to the Commissioners,<sup>F1</sup> . . .

#### Textual Amendments

**F1** Words in s. 14 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. XIII Gp.2

#### 15 **cause application to be investigated;**

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

#### 16 **and require proposed improvements to be modified.**

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

#### [<sup>F2</sup>17 **Advertisements and notices preliminary to sanction.**

Before the Commissioners shall sanction any improvements, notice shall be given of the application . . . <sup>F3</sup>by a notice in writing given, . . . <sup>F4</sup> . . . <sup>F3</sup>, to the nearest heir or heirs of entail, not exceeding three, and to the holders of every heritable security on such lands appearing upon the records; and in such . . . <sup>F3</sup>notices . . . <sup>F3</sup>shall be stated the maximum amount which it is proposed to charge in respect of the improvements, and the greatest and least terms over which it is proposed that the rentcharge should be spread; and the Commissioners shall not sanction the improvements until one month shall have elapsed from the . . . <sup>F3</sup>service of such notices . . . <sup>F3</sup>of which . . . <sup>F3</sup>service of all necessary notices as aforesaid, the landowner shall, if required by the Commissioners, satisfy them by one or more statutory declarations made by him or on his behalf. ]

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#### Textual Amendments

- F2 S. 17 repealed (E.W.) by [Settled Land Act 1882 \(c. 38\)](#), [Sch.](#)
- F3 Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), s. 1, [Sch. Pt. VIII](#)
- F4 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

### [<sup>F5</sup>18] **Power of dissent by persons interested, and protection of landowner's infant children.**

In case any person having any estate in or charge or security on the land to be improved shall within the month named in the last preceding section signify in writing to the Commissioners his dissent from such application, stating therein the nature of his estate in or charge or security on such land the Commissioners shall certify such dissent to the landowner by whom the application was made, and shall not make any provisional or other order sanctioning the improvements unless or until such dissent be withdrawn, or an order be made . . . <sup>F6</sup> by the Court of Session in Scotland, in manner herein-after provided, authorizing the Commissioners to sanction the same; <sup>F7</sup> . . . ]

#### Textual Amendments

- F5 S. 18 repealed (E.W.) by [Settled Land Act 1882 \(c. 38\)](#), [Sch.](#); restricted by [Agricultural Credits Act 1923 \(c. 34\)](#), s. 3(5)
- F6 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)
- F7 Words in s. 18 repealed (S.) (1.11.1996) by 1995 c. 36, s. 105(5), [Sch.5](#) (with s. 103(1)); S.I. 1996/2203, art. 3, [Sch.1](#)

### 19 **The same in case of navigable rivers and canals.**

If the Commissioners shall consider that any proposed improvement would interfere with any navigable river or canal respectively vested in or under the management or control of any commissioners, trustees, conservators, undertakers, company, or other body or individuals, or the banks or other works or conveniences thereof, or would occasion the flow or discharge into such river or canal of any drainage or other matter, the landowner shall give notice of the application in writing, together with a plan and section of the proposed improvement, to such commissioners, trustees, conservators, undertakers, company or other body, or individuals; and in case they shall, within one month after the receipt of such notice signify in writing to the Commissioners their dissent from such application, and state the nature of their interest in or authority over such river or canal, the Commissioners shall certify such dissent to the landowner by whom the application was made, and shall not sanction the improvement unless or until such dissent be withdrawn, or an order be made by the High Court of Chancery in England . . . <sup>F8</sup>, or by the Court of Session in Scotland, in manner herein-after provided, authorizing the Commissioners to sanction the improvement.

#### Textual Amendments

- F8 Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), s. 1, [Sch. Pt. VIII](#)

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

- C1 Jurisdiction of High Court of Chancery in England now exercisable by High Court of Justice (E.W.)

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## 20 Consents necessary in case of church lands.

When the land to which the application relates, or any part of such land, is held in right of any church, chapel, or other ecclesiastical benefice, the Commissioners shall not sanction any improvement of such land, or of so much thereof as is so held, unless and until the patron of the benefice, and in England . . . <sup>F9</sup>the bishop of the diocese, and in Scotland the presbytery of the bounds, shall signify to the Commissioners, by writing under their hands, their respective consents to such application.

### Textual Amendments

**F9** Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), s. 1, [Sch. Pt. VIII](#)

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

If and when any dissent from any such application to the Commissioners for their sanction of proposed improvements shall have been notified in writing to the Commissioners, either by a party interested in the lands proposed to be improved (not being lands held in right of any church, chapel, or other ecclesiastical benefice), or by the commissioners, trustees, company, or other body or individuals interested in any river or canal which would or might be interfered with as herein-before mentioned, <sup>F10</sup> . . . the landowner desiring such improvements may apply to the High Court of Chancery in England . . . <sup>F11</sup>where such lands are situate in England . . . <sup>F11</sup>, or to the Court of Session where such lands are situate in Scotland, for an order of such Court authorizing the Commissioners to entertain and proceed upon the application for such proposed improvements notwithstanding such dissent <sup>F10</sup> . . .; and such application shall be made, as to lands in England, to . . . <sup>F12</sup> any one of the Vice Chancellors sitting at chambers, by summons, calling on the party dissenting to show cause why such order should not be made; . . . <sup>F11</sup>and as to lands in Scotland, to either division of the Court of Session in time of session, or to the Lord Ordinary sitting on bills in time of vacation, by summary petition; and the Court or single judge, as the case may be, to whom such application shall be made, shall hear and determine such application, and for that purpose shall have power to make or direct to be made all such inquiries, and receive and entertain all such statements and evidence, on oath or by affidavit, as such Court or judge may consider necessary or desirable, or as may be produced before them or him; and if upon a consideration of all the circumstances such Court or judge shall be of opinion that the Commissioners should entertain and proceed upon such application, an order shall be made authorizing and requiring them to proceed thereon, and to deal with the same according to the provisions of this Act authorizing them in that behalf, notwithstanding such dissent <sup>F10</sup> . . . as aforesaid: Provided, that if at any time after notification of such dissent, and before any such order shall have been applied for and made as aforesaid, such dissent shall be withdrawn by a like notification in writing, it shall not be necessary to make or proceed with such application, or to obtain such order.

### Textual Amendments

**F10** Words repealed (E.W.) by [Settled Land Act 1882 \(c. 38\)](#), [Sch.](#)  
Words repealed (S.) (1.11.1996) by [1995 c. 36](#), s. 105(5), [Sch.5](#) (with s. 103(1)); [S.I. 1996/2203](#), art. 3, [Sch.1](#)

**F11** Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), s. 1, [Sch. Pt. VIII](#)

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**F12** Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

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

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

**22** ..... **F13**

**Textual Amendments**

**F13** S. 22 repealed by [Administration of Justice Act 1965 \(c. 2\)](#), [Sch. 2](#)

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

The costs of and incidental to every application under the twenty-first . . . <sup>F14</sup>  
sections, . . . <sup>F15</sup>shall . . . <sup>F14</sup> . . . <sup>F15</sup> . . . <sup>F14</sup> if such Court or judge shall so direct, . . .  
<sup>F15</sup> be deemed to be part of the expenses of and incidental to the application for the  
proposed improvements.

**Textual Amendments**

**F14** Words repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), s. 1, [Sch. Pt. VIII](#)

**F15** Words repealed by [Administration of Justice Act 1965 \(c. 2\)](#), [Sch. 2](#)

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

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

**Extent Information**

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

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

**C3** S. 24 excluded by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 113, [Sch. 3](#)

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

[<sup>F16</sup>Any person entitled to act as the legal representative of a person under legal disability by reason of non-age or mental incapacity shall be entitled to act on behalf of that person for the purposes of this Act; and any trustee, judicial factor, executor or administrator shall, subject to any other enactment, have the same rights and powers for the purposes of this Act as if the property vested in or administered by him had been vested in him in his own right; but no such legal representative], trustee, judicial factor, executor, or administrator shall be in anywise compelled or obliged to signify a dissent from any application under this Act, or be in anywise responsible for the consequences of such application, or of any charge made in pursuance thereof.

### Extent Information

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

### Textual Amendments

**F16** Words in s. 24 substituted (S.) (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para.3** (with s. 103(1)); S.I. 1996/2203, art. 3, **Sch.1**

### Modifications etc. (not altering text)

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

**Status:**

Point in time view as at 01/11/1996.

**Changes to legislation:**

There are currently no known outstanding effects for the Improvement Of Land Act 1864, Cross Heading: Proceedings preliminary to sanction of improvements.