



Defence Act 1860

1860 CHAPTER 112 23 and 24 Vict

An Act to make better provision for acquiring Lands for the Defence of the Realm. [28th August 1860]

Modifications etc. (not altering text)

- C1 Act applied by [S.I. 1965/1536](#)
- C2 Preamble recites the necessity for acquiring land for certain defence works and the erection of a central depot or arsenal and the possible necessity for keeping neighbouring land free from obstructions and is omitted under authority of [Statute Law Revision Act 1892 \(c. 19\)](#)
- C3 Words of enactment repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)
- C4 Acts cited or referred to by their short titles under authority of [Statute Law Revision Act 1893 \(c. 14\)](#), [s. 3](#)
- C5 Power to apply Act with modifications conferred by [Supply Powers Act 1975 \(c. 9, SIF 57\)](#), s. 2, [Sch. 1 Pt. 1](#)

Ascertaining the Lands to be taken or to be kept free from Buildings.

[^{F1}1] **Lands to be taken and lands to be kept free from buildings to be ascertained, &c.**

On or before the thirty-first day of August 1861 the lands required to be taken absolutely for the construction of the said works and depot and arsenal, and the lands in the vicinity of the fortifications and works aforesaid, which are required to be kept free from buildings and other obstructions shall be ascertained by a declaration or declarations to be at any time, or from time to time, made and signed by Her Majesty's Principal Secretary of State for the War Department.]

Textual Amendments

- F1 [Ss. 1, 2, 4, 7](#) and 8 repealed by [Statute Law Revision Act 1875 \(c. 66\)](#) but reproduced for the purpose of construing the remaining provisions of the Act

Status: Point in time view as at 01/02/1991.
Changes to legislation: There are currently no known outstanding effects for the Defence Act 1860. (See end of Document for details)

[^{F2} Declaration of Secretary of War, what to show.

Every such declaration shall specify and show, with the aid of a map or plan thereto annexed, constructed on a scale of not less than six inches to a mile, the lands to which the same relates, and shall distinguish what lands are required to be taken absolutely and what lands are required to be kept free from buildings and other obstructions.]

Textual Amendments

F2 Ss. 1, 2, 4, 7 and 8 repealed by [Statute Law Revision Act 1875 \(c. 66\)](#) but reproduced for the purpose of construing the remaining provisions of the Act

[^{F3}

Textual Amendments

F3 Ss. 3, 6, 39 repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

[^{F4} Copy of declaration, &c. to be deposited with clerks of the peace, &c.

The said Secretary of State shall within three months after the making of any such declaration cause copies thereof, and of the map or plan thereto annexed, to be deposited as hereinafter mentioned; (that is to say,)

There shall be deposited at the office of the clerk of the peace for every county in which any lands to which any such declaration relates are situate, a copy of such declaration, and of the map or plan thereto annexed:

There shall also be deposited with the parish clerk of every parish in England, or in the case of an extra-parochial place, with the parish clerk of some parish immediately adjoining thereto, and with the clerk of the union within which any parish is included in Ireland, a copy of so much of every such declaration, and of the map or plan thereto annexed, as relates to any lands situate in such parish or extra-parochial place.]

Textual Amendments

F4 Ss. 1, 2, 4, 7 and 8 repealed by [Statute Law Revision Act 1875 \(c. 66\)](#) but reproduced for the purpose of construing the remaining provisions of the Act

5 Clerks of the peace, &c., to receive and hold copies so deposited as under 7 Will. 4 & 1 Vict. c. 83.

All clerks of the peace, parish clerks, and clerks of unions shall receive and retain the copies deposited with them as aforesaid, and permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as provided by the Parliamentary Documents Deposit Act, 1837, with respect to plans directed to be so deposited by the standing orders of either House of Parliament.

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Modifications etc. (not altering text)

- C6** [S. 5](#) amended as to clerks of the peace and clerks of unions (N.I.) by [County Officers and Courts \(Ireland\) Act 1877 \(c. 56\)](#), [s. 8](#) and [Local Government \(Ireland\) Act 1898 \(c. 37\)](#), [s. 85\(1\)](#)

^{F5}6

Textual Amendments

- F5** [Ss. 3, 6, 39](#) repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

Notices of Lands required to be taken or to be kept free from Buildings

[^{F6}7 **Notices to owners, &c of land.**

The said Secretary of State shall, within six months after the making of any such declaration, cause such notice or notices in writing as hereinafter mentioned to be served in manner hereinafter provided on the owners or reputed owners, lessees or reputed lessees, and occupiers of the lands to which such declaration relates.]

Textual Amendments

- F6** [Ss. 1, 2, 4, 7](#) and [8](#) repealed by [Statute Law Revision Act 1875 \(c. 66\)](#) but reproduced for the purpose of construing the remaining provisions of the Act

[^{F7}8 **Contents of such notice.**

Every such notice shall specify the lands to be required to be taken or to be kept free from buildings and other obstructions (as the case may be), and the places where copies of the declaration relating thereto have been deposited as hereinbefore required:

Every such notice shall also state that the said Secretary of State is willing to treat as to the compensation to be paid for such lands or (in the case of lands required to be kept free from buildings) as to the compensation to be paid for the damage to be sustained by reason of the restraints under this Act on the exercise of the right of building and other rights incident to the ownership of such lands, and by reason of the execution under the powers of this Act of any intended works specified in such notice:

And every such notice shall demand from the party to whom the same is given the particulars of the estate and interest of such party in the lands, and of the claims made by such party in respect thereof, stating therein the amount which such party may be willing to receive as compensation for his estate and interest, or for any damage in respect thereof referred to in such notice.]

Textual Amendments

- F7** [Ss. 1, 2, 4, 7](#) and [8](#) repealed by [Statute Law Revision Act 1875 \(c. 66\)](#) but reproduced for the purpose of construing the remaining provisions of the Act

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9 How notices to be given.

Every such notice shall be served personally on the said parties, or left at their last usual places of abode, if any such can after diligent inquiry be found, and, in case any of such parties be absent from the United Kingdom, or cannot be found after diligent inquiry, shall be addressed to such party and left with the occupier of the lands, or, if there be no such occupier, affixed upon some conspicuous part of such lands:

If any of such parties be a corporation aggregate, such notice shall be left at the principal office of such corporation; or, if no such office can after diligent inquiry be found, such notice shall be served on some principal member, if any, of such corporation, and a duplicate of the notice shall be addressed to such corporation and left with the occupier of the lands, or, if there be no such occupier, affixed upon some conspicuous part of such lands.

Determination of Amount of Compensation by Agreement

10 Amount of compensation may be determined by agreement.

The amount of compensation to be paid for any lands required to be taken, and the amount of compensation to be paid in respect of any damage sustained by reason of such restraints as aforesaid, or by reason of the execution of any works in or over any lands required to be kept free from buildings, may be determined by agreement between the said Secretary of State and all parties having any estate or interest in such lands respectively.

11 Corporations, tenants for life, trustees, committees, &c. empowered to agree.

All corporations and all . . . ^{F8F9}trustees for charitable or other purposes of any lands required to be taken or to be kept free from buildings, [^{F8}and all . . . ^{F9}], and the . . . ^{F8}, guardians, trustees, . . . ^{F10}, and attorneys of such of the owners of or other persons interested in any such lands as may be [^{F9} . . . ^{F8}infants . . . ^{F10F11}or] beyond the seas, or otherwise incapable of acting for themselves, may agree with the said Secretary of State as to the amount of such compensation to be paid for any such lands, or any damage sustained in respect thereof.

All agreements made and acts done by such corporations and persons respectively in relation to such compensation shall be valid and effectual in law to all intents and purposes whatsoever.

Textual Amendments

- F8** Words “feoffees or” and from “,and all tenants” to “of any such lands” and “husbands,” “femes covert” repealed (N.I.) by Statute Law Revision (Northern Ireland) Act 1976 (c. 12), Sch. Pt. X
- F9** Words repealed (E.W.S.) by Statute Law (Repeals) Act 1976 (c. 16, SIF 99:7), Sch. 1 Pt. XV
- F10** Words repealed (N.I.) by S.I. 1986/595, (N.I. 4), art. 138, Sch. 7
- F11** Words repealed (S.) by Statute Law (Repeals) Act 1981 (c. 19), Sch. 1 Pt. XII

Modifications etc. (not altering text)

- C7** S. 11 amended as to lunatics and idiots (N.I.) by Mental Treatment Act (Northern Ireland) 1932 (c. 15), s. 7(2) and Mental Health Act (Northern Ireland) 1948 (c. 17), s. 73(1)

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Determination of Amount of Compensation otherwise than by Agreement

12 How compensation to be settled in case of neglect to treat.

If for fourteen days after the service of any such notice as aforesaid any party on whom the same is served fail to state the particulars of his claim in respect of any lands to which such notice relates, or to treat with the said Secretary of State as to the amount of compensation to be paid to such party or which he is empowered to agree upon,

or if the said Secretary of State and such party do not within such fourteen days agree as to the amount of such compensation,

such amount shall be settled by a jury in like manner as if the same were compensation for lands surveyed and marked out under . . . ^{F12} the ^{M1}Defence Act, 1842, as amended by the ^{M2}Ordnance Board Transfer Act, 1855.

Textual Amendments

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

Marginal Citations

M1 [1842 c. 94.](#)

M2 [1855 c. 117.](#)

13 Provision where compensation claimed is under 200*l*.

Provided always, that if the compensation claimed do not exceed two hundred pounds, the same shall be settled by two justices in manner following; that is to say, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before two justices at a time and place to be named in the summons; and upon the appearance of the parties, or, in the absence of either of them, upon proof of due service of the summons, it shall be lawful for such justices to determine such amount, and for that purpose to examine the claimant and the witnesses of the parties upon oath.

14 Compensation to absent parties to be settled by a surveyor to be appointed by two justices.

Where by reason of absence from the United Kingdom any party is prevented from treating, or cannot after diligent inquiry be found, the amount of such compensation shall be determined by valuation in manner following; that is to say, the said Secretary of State shall make application to two justices; and upon proof satisfactory to them that any such party is by reason of absence from the Kingdom prevented from treating, or cannot after diligent inquiry be found, such justices shall, by writing under their hands, nominate a competent surveyor for determining the amount of such compensation as aforesaid; and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

15 Surveyor acting corruptly to be guilty of a misdemeanor.

If any surveyor wilfully and corruptly make any incorrect or false valuation, or wilfully and corruptly act in the matter hereof, he shall be guilty of a misdemeanor.

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16 Valuation to be preserved and produced on demand.

The said nomination shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the said Secretary of State, who shall at all times produce the said valuation and other documents, on demand, to all parties interested . in the lands comprised therein.

17 Damage may be ascertained when works done.

Where any damage has been sustained by reason of any works authorized by this Act in or upon lands required to be kept free from buildings and other obstructions in respect of which works compensation has not been agreed upon, awarded, or otherwise ascertained prospectively, compensation shall be paid in respect thereof when the works have been done; such compensation to be determined in like manner as other compensation under this Act, or as near thereto as circumstances admit.

18 In estimating damage regard to be had to advantages derived.

In determining the amount of compensation in respect of damage sustained by reason of any such works, regard shall be had to any increase in the extent of land capable of being brought under cultivation by removal of banks, fences, hedges, and ditches, and to any improved drainage and other advantages derived from any such works.

19 Where any agreement in restraint of building exists, regard to be had thereto in estimating compensation.

Where any covenant or agreement has been entered into with the principal officers of Her Majesty's Ordnance or with the said Secretary of State in restraint of the right to build on any lands, and such covenant or agreement is legally or equitably binding on the owner of the lands, regard shall be had in ascertaining the amount of compensation to be paid under this Act for or in respect of such lands (whether the same are required to be taken absolutely or are required to be kept free from buildings) to the existing restriction arising out of such covenant or agreement.

Payment and Application of Compensation in certain cases

20 Provision for payment and application of compensation money in certain cases.

Any compensation payable under this Act for or in respect of any lands or any interest therein taken from or holden by any owner who by reason of absence is prevented from treating as aforesaid or who cannot after diligent inquiry be found, or who refuses to accept such compensation, or neglects or fails to make out a title to such lands or the interest therein claimed by such owner to the satisfaction of the said Secretary of State.

and any compensation payable for or in respect of any lands or any interest therein taken from or holden by any corporation or person not having independently of this Act and the ^{M3}Defence Act, 1842, as amended as aforesaid, power to agree as to the amount of such compensation, or to sell and convey such lands or such interest,

shall be paid and applied in manner directed by the sections numbered twenty-five to thirty of the Defence Act, 1842, (and with regard to England) as amended by section eight of the ^{M4}Queen's Remembrancer's Act, 1859, as if the said sections expressly extended to the said compensation.

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Marginal Citations

- M3** 1842 c. 94.
M4 1859 c. 21 (22 & 23 Vict.).

21 On payment into court of compensation an addition to be made to meet future expenses.

Where any compensation is required to be paid [^{F13}into the Supreme Court or into [^{F14}the Supreme Court in Northern Ireland]] under this Act, there shall be added thereto a sum of thirty pounds as an equivalent for the expenses consequent upon such payment; and upon such compensation, with such additional sum (which shall be deemed part of such compensation), being so paid, the said Secretary of State shall be discharged from all liability in respect thereof; and the Court of Chancery may allot to the tenant for life, or for any other partial or qualified estate, in respect of any expenses of investment incurred by him, any portion of any such compensation which the Court may deem just.

Textual Amendments

- F13** Words substituted by [Administration of Justice Act 1965 \(c. 2\), s. 17, Sch. 1](#)
F14 Words substituted by [Judicature \(Northern Ireland\) Act 1978 \(c. 23, SIF 38\), Sch. 5 Pt. II](#)

22 Provision for payment into Court on failure for three months after compensation ascertained to deduce a title.

The said Secretary of State may in any case at or after the expiration of three months from the time at which the compensation for any lands has been agreed upon or otherwise ascertained, if the owner thereof have not in the meantime made out a title thereto to the satisfaction of the said Secretary of State, pay such compensation, without such addition as aforesaid, [^{F15}into the Supreme Court or into [^{F16}the Supreme Court in Northern Ireland]] in manner hereinbefore referred to; and such payment shall discharge the said Secretary of State from all liability in respect of the money so paid: Provided always, that the Court of Chancery may, upon application for payment of such money to the party entitled, in case the Court be of opinion that there was no unreasonable delay in deducing the title, or that a good title was shown, order all or any costs occasioned by such payment into Court to be paid by the said Secretary of State.

Textual Amendments

- F15** Words substituted by [Administration of Justice Act 1965 \(c. 2\), s. 17, Sch. 1](#)
F16 Words substituted by [Judicature \(Northern Ireland\) Act 1978 \(c. 23, SIF 38\), Sch. 5 Pt. II](#)

23 Orders concerning money paid into Court may be made at chambers.

All orders and directions in relation to any money paid into the [4Supreme Court] under this Act, or the securities in or upon which the same may be invested, or the dividends or interest on such money and securities, which under the said Acts the Court of Chancery is empowered to make or give on motion or petition, may be made

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or given by the Master of the Rolls or any of the Vice-Chancellors while sitting at chambers, upon summons, in like manner as in other cases in which proceedings may be so had before the Master of the Rolls and Vice-Chancellor, subject, nevertheless, to any general rules and orders which may hereafter be made concerning the practice, proceedings, or business of the said Court.

Provisions as to Costs

24 Costs of and incident to agreements, &c. under this Act to be borne by Secretary of State &c.

The costs of and incident to any agreement with the said Secretary of State under this Act concerning the compensation to be paid for or in respect of any lands taken or affected under the provisions of this Act, and the costs of the deduction and verification of title, shall be paid by the said Secretary of State; all which costs shall be taxed by one of the taxing masters of the Court of Chancery in England or Ireland (according to the situation of the lands) upon the request and at the expense of the said Secretary of State.

Modifications etc. (not altering text)

- C8** Jurisdiction of Court of Chancery now exercisable by High Court of Justice (E.W.) and by Chancery Division of High Court of Justice in Northern Ireland (N.I.): [Supreme Court of Judicature \(Ireland\) Act 1877 \(c. 57\), ss. 4, 21\(1\), 36](#), [Government of Ireland Act 1920 \(c. 67\), ss. 38, 40, 41](#), S.R. & O. 1921/1802, 1804 (Rev. XVI, pp. 954, 967: 1921, pp. 1332, 422) and [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), s. 18](#)

25 Provision for costs when amount of compensation is determined by a jury or justices.

In case any jury give a verdict or assessment for more compensation for any lands or any interest therein or any damage than was offered for the same by the said Secretary of State, or for any amount of compensation where no offer of any compensation was made, then all the reasonable costs and expenses of and incident to the settlement of the amount of such compensation by a jury shall be paid by the said Secretary of State, such costs to be settled upon the request of the said Secretary of State by one of the Masters of the Court of Queen's Bench in England or Ireland, according to the situation of the lands:

But in every case in which the jury shall be of opinion that the statement delivered by the claimant of the manner in which any amount demanded as compensation has been computed and made up did not give sufficient particulars to enable the said Secretary of State to make a proper offer, and in every other case in which the jury give a verdict or assessment for the same or a less sum than was offered by the said Secretary of State, or in case no damage be found by the jury where the question is as to damage only, or where the summoning a jury arose from a refusal to state or demand any amount of compensation, then and in every such case all such costs and expenses to be settled in manner aforesaid shall be paid to the said Secretary of State by the body or person claiming the compensation or refusing to state or demand any amount of compensation; and all costs and expenses payable hereunder to the said Secretary

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of State shall be retained out of the compensation (if any) given by the verdict or assessment of the jury:

The foregoing provisions as to costs in the case of the determination of any question as to compensation by a jury shall be applicable also where such question is determined by justices.

Modifications etc. (not altering text)

- C9** Jurisdiction of Court of Queen's Bench now exercisable by High Court of Justice (E.W.) and by Queen's Bench Division of High Court of Justice in Northern Ireland (N.I.): [Supreme Court of Judicature \(Ireland\) Act 1877 \(c. 57\), ss. 4, 21\(2\), 36](#), [Government of Ireland Act 1920 \(c. 67\), ss. 38, 40, 41](#), S.R. & O. 1921/1802, 1804 (Rev. XVI, pp. 954, 967: 1921, pp. 1332, 422) and [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), s. 18](#)

Apportionment and Release of Rents and Incumbrances

26 Provision for apportionment of rents and incumbrances.

If part only of any lands comprised in any lease or mortgage or otherwise subject to any rent service or other rent, or any annual or other payment or incumbrance, be taken under this Act, such rent, payment, or incumbrance may be apportioned by agreement between the parties entitled thereto and to the lands subject thereto and the said Secretary of State; or in case no such agreement be made, the same may be apportioned by the jury or justices by whom the compensation payable in respect of the part of the said lands taken by the said Secretary of State is determined, or, if not so determined, may be determined by two justices, as herein provided in certain cases of compensation:

After such apportionment such apportioned part only of such rent, payment, or incumbrance shall be payable out of the residue of the said lands; and all covenants, provisoes, conditions, agreements, powers, and remedies in respect of the said rent, payment, or incumbrance shall remain in force in respect of the apportioned part which is to remain payable, as against the residue of such lands; and where any rent originally reserved was an ancient and accustomed rent, the part so continuing payable shall be deemed to be the ancient and accustomed rent for such residue of the said lands.

27 Power to release land from rentcharge, &c.

With the consent of the party entitled to the lands, the party entitled to any rentcharge, payment, or incumbrance may release therefrom the portion of the said lands taken as aforesaid on condition or in consideration of the remaining part remaining exclusively subject to the whole rentcharge, payment, or incumbrance; and in such case all covenants, provisoes, conditions, agreements, powers, and remedies in respect of such rentcharge, payment, or incumbrance, shall remain in force against the said residue of the said lands.

28 Who competent to make apportionment, &c.

All bodies and persons who are enabled to agree for the sale of lands to the said Secretary of State shall be competent to agree for and make an apportionment or release under either of the two last preceding enactments.

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Powers to use the Lands Clauses Consolidation Act, 1845

29 Secretary of State may avail himself of powers of 8 & 9 Vict. c. 18.

The said Secretary of State may, if he think fit, as well in respect of lands required to be kept free from buildings as in respect of lands taken under this Act, use and avail himself of all or any of the powers and authorities by the Lands Clauses Consolidation Act, 1845, given to “the promoters of the undertaking”; and every party enabled by the last-mentioned Act to sell and convey or release lands or any estate or interest therein to “the promoters of the undertaking” shall have the same or the like powers to contract and agree with the said Secretary of State as to the compensation to be paid in respect of any lands, estates, or interests taken or affected under the provisions of this Act: Provided always, that nothing in this enactment shall prejudice or affect the right to exercise the other powers or authorities hereby given.

*Vesting of Lands to be taken absolutely in the
Secretary of State and Power of immediate Entry*

30 Lands taken to be vested in Secretary of State on behalf of Her Majesty.

The lands required to be taken under this Act by the said Secretary of State shall, from and after payment of the compensation for the same, be vested in the said Secretary of State, on behalf of Her Majesty, discharged of all estates, rights, and interests whatsoever.

31 Power to Secretary of State to enter immediately.

Provided always, that it shall be lawful for the said Secretary of State, at any time after the expiration of fourteen days from the service of such notice as aforesaid in relation to any lands mentioned in any such declaration as aforesaid as required to be taken by him, to enter upon and take possession of and hold such lands, or any of them, and to cause to be executed thereon all such works as such Secretary of State may think fit.

32 Interest to be payable until payment of compensation money.

Provided also, that in case possession be taken of any lands before payment of the compensation for the same, interest shall be payable upon the amount of such compensation until payment thereof, after the rate of five pounds per centum per annum, from the time of taking possession as aforesaid; and such interest shall go and be applied as the income of the lands would have gone and been applied if possession had not been so taken.

Continuance of Liability to Tithe Rentcharge, Taxes, and Rates

33 Lands to continue subject to tithe rentcharge, taxes, and rates.

The lands vested in the said Secretary of State in pursuance of this Act, which were before the time of such vesting liable to and charged with tithes or tithe rentcharge . . .
^{F17} poor or other rates, shall continue chargeable therewith, but shall not be assessed to any tax or rate at a higher value or rent than that at which such lands were assessed at the time of such vesting.

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Textual Amendments

F17 Words repealed by [Finance Act 1963 \(c. 25\)](#), [Sch. 14 Pt. VI](#)

Modifications etc. (not altering text)

C10 [S. 33](#) repealed (E.W.) by [Local Government Act 1966 \(c. 42\)](#), [Sch. 4 para. 29](#) (f), Sch. 6 Pt. III

Restraints and Powers to attach on Lands required to be kept free from Buildings

34 Restrictions and powers with respect to lands required to be kept free from buildings.

From and after the service of such notices as aforesaid in relation to any lands required to be kept free from buildings and other obstructions, the following restrictions, powers and consequences shall attach with reference to such lands:

No building or other structure (other than barns, hovels, or other like structures of wood), shall be made or erected thereon:

It shall be lawful for the said Secretary of State, at any time after the expiration of fourteen days from the service of such notice, and from time to time, to enter and pull down any present or future buildings or structures (other than as aforesaid) thereon, and to cut down or grub up all or any of the trees thereon, and to remove or alter all or any of the banks, fences, hedges, and ditches thereon, and to make underground or other drains therein, and generally to level and clear the said lands, and do all such acts for levelling and clearing the same as may be deemed necessary or proper by the said Secretary of State: but in such manner, nevertheless, that evidence of the boundaries of the lands held by different owners may be preserved:

And it shall not be lawful for any person to alter the level of the lands, or do any act which may prejudicially affect any work done on the lands under the authority of the said Secretary of State.

35 Limitation of time for works under last preceding enactment.

The powers conferred by the enactment lastly hereinbefore contained in relation to any lands shall be exercised only within three years after the making of any declaration that the said lands are required to be kept free from buildings and other obstructions, except with respect to pulling down buildings or structures wrongfully made or erected after the expiration of that time, or keeping or re-instating such lands in the condition in which the same were left after the execution of any such work thereon as aforesaid, or maintaining or restoring the level of such lands.

Subsequent Compensation for Interests omitted to be purchased

36 Provision as to interest omitted to be purchased.

If at any time after the said Secretary of State has entered upon any lands vested in him under this Act, any party appear to be entitled to any estate, right, or interest in or charge affecting such lands, which through mistake and inadvertence has been omitted to be purchased or compensated for, the said Secretary of State shall nevertheless

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remain in the undisturbed possession of such lands, and shall be deemed to have an indefeasible title thereto, but shall pay compensation for any such estate, right, interest, or charge, which but for this enactment might be recovered or enforced, and also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the said Secretary of State thereon and the time of the payment of such compensation by the said Secretary of State, so far as such mesne profits or interest may be recoverable at law or in equity:

Such compensation shall be agreed on or awarded and paid in like manner as the same would have been agreed on or awarded and paid in case the said Secretary of State had purchased or compensated for such estate, right, interest, or charge before his entering upon such lands, or as near thereto as circumstances will admit.

37 How value of such lands to be estimated.

In estimating the compensation to be given for any such estate, right, interest, or charge affecting any lands, or for any mesne profits or interest, the jury or justices, as the case may be, shall assess the same according to the value of the lands at the time the same were entered upon by the said Secretary of State and without regard to any improvements or works made by him.

38 Secretary of State to pay the costs of litigation as to such lands.

In addition to the said compensation, the said Secretary of State shall, when the right to any such estate, right, interest, or charge has been disputed by him and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof has taken place; and such costs and expenses shall, in case the same be disputed, be settled by the proper officer of the court in which such litigation took place.

F18³⁹

Textual Amendments
F18 Ss. 3, 6, 39 repealed by Statute Law Revision Act 1875 (c. 66)

Power to divert Highways, &c.

40 Power to divert highways, &c.

It shall be lawful for the said Secretary of State, without any writ being issued or other legal proceeding being adopted, to stop up or divert or alter the level of any highway, way, sewer, drain, or pipe over, through, under, or adjoining any lands comprised in any such declaration as aforesaid; he, if necessary, previously making, opening, or laying down another good and sufficient way, sewer, drain, or pipe, in lieu of that stopped up or diverted.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Defence Act 1860. (See end of Document for details)

41 Power to alter the course of brooks, &c.

It shall be lawful for the said Secretary of State to alter the course and level of any river not navigable, brook, stream, or watercourse, and any branch of any navigable river (such branch not itself being navigable) within or adjoining such lands, making compensation for any damage sustained by reason of the exercise of such powers; such compensation to be determined and paid in like manner as other compensation under this Act, or as near thereto as circumstances admit.

Miscellaneous Provisions

42 Payment of compensations.

All monies to become payable by the said Secretary of State under this Act shall be paid out of such monies as have been or may be provided by Parliament for this purpose.

43 Protection to Secretary of State.

The said Secretary of State shall not, by reason of anything done or omitted to be done under this Act, be liable to any fine, penalty, or forfeiture, or to execution of any process against his person or property.

44 Provision for enforcing delivery of possession.

If in any case in which the said Secretary of State is by this Act authorized to take possession of or to enter upon any lands any person refuse to give up possession thereof, or hinder the said Secretary of State or the persons authorised by him from taking possession of or entering upon the same, the said Secretary of State may issue his warrant to the sheriff of the county in which the lands are situate to deliver possession of the same to the person in this behalf named in such warrant; and upon receipt of such warrant the said sheriff shall deliver possession thereof accordingly.

45 Notices, &c. may be served on or given by the solicitor.

Any notice, summons, writ, or other document required to be served on the said Secretary of State may be served by being delivered to [^{F19}the solicitor appointed to act for the Ministry of Defence] for the time being, or by being left for him thereat; and any notice, summons, writ, or other document required to be given by or on behalf of the said Secretary of State shall be given under the hand of such solicitor.

Textual Amendments

F19 Words substituted by [S.I. 1964/488](#)

Status: Point in time view as at 01/02/1991.
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Amendment of the Defence Act, 1842

46 5 & 6 Vict. c. 94 amended as herein stated.

And whereas the Defence Act, 1842, has been amended by divers Acts, and it is expedient further to amend the same:

The following provisions of this Act in relation to lands to be taken under this Act shall be applicable where lands are surveyed and marked out under the Defence Act, 1842, as amended as aforesaid; (that is to say,)

The provisions concerning the mode of serving notices on owners, lessees, and occupiers, and of notices, writs, or other documents on the said Secretary of State: The provisions concerning the determination of the amount of compensation for lands otherwise than by agreement:

The provisions concerning the payment and application of compensation, and the disposition of securities on which the same may be invested, and of the interest and dividends of such compensation and securities:

And the provision concerning interests omitted to be purchased; which last-mentioned provision shall apply as well with respect to lands already taken by the said Secretary of State, as with respect to lands to be hereafter taken by him under the said Defence Act as amended as aforesaid.

Modifications etc. (not altering text)

- C11** S. 46 applied with modifications by [Requisitioned Land and War Works Act 1945 \(c. 43\), ss. 32, 33, Sch.](#) and [Land Powers \(Defence\) Act 1958 \(c. 30\), s. 13, Sch. 2 para. 13](#)

Interpretation.

47 Interpretation of terms.

In the construction of this Act . . . ^{F20} the following words and expressions shall in this Act and the ^{M5}Defence Act, 1842, have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

The word “lands” shall extend to messuages, lands, tenements, and hereditaments of any tenure:

The word “lease” shall include an agreement for a lease:

The word “county” shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

The word “sheriff” shall include under sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, and the lands being the property of one and the same party are situate not wholly in one county, the same expression shall be construed to mean the sheriff of any county where any part of such land is situate:

The word “justices” and “justice” shall mean respectively justices or a justice of the peace acting for the county, city, borough, liberty, Cinque Port, or place where the matter requiring the cognizance of such justices or justice arises, and not interested in the matter, and, where such matter arises in respect of lands being the property of one and the same party situate not wholly in one county, city, borough,

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liberty, Cinque Port, or place, shall mean justices or a justice acting for the county, city, borough, liberty, Cinque Port, or place where any part of such lands is situate, and not interested in such matter; and the expression “two justices” shall mean two justices assembled and acting together:

The word “owner” shall include any corporation or person having authority under this Act or otherwise to agree with the said Secretary of State as to the purchase money or compensation to be paid for any lands.

Textual Amendments

F20 Words repealed by [S.I.1964/488](#)

Modifications etc. (not altering text)

C12 Functions of justices of the peace now exercisable by resident magistrates (N.I.): [Magistrates' Court Act \(Northern Ireland\) 1964 \(c. 21\), s. 13](#)

Marginal Citations

M5 [1842 c. 94.](#)

48 ^{X1†}Short titles of **5 & 6 Vict. c. 94, 18 & 19 Vict. c. 117 and this Act.**

. . . ^{F21} this Act may be cited as “The Defence Act, 1860.”

Editorial Information

X1 A dagger appended to a marginal note means that it is no longer accurate

Textual Amendments

F21 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Status:

Point in time view as at 01/02/1991.

Changes to legislation:

There are currently no known outstanding effects for the Defence Act 1860.