



Commons Act 1876

1876 CHAPTER 56 39 and 40 Vict

An Act for facilitating the regulation and improvement of Commons, and for amending the Acts relating to the Inclosure of Commons. [11th August 1876]

Modifications etc. (not altering text)

- C1** Functions of Inclosure Commissioners now exercisable by Secretary of State: [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
- C2** 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 (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**
- C3** 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**
- C4** Preamble (which recites Inclosure Acts 1845 to 1868) omitted under authority of [Statute Law Revision Act 1894](#) (c. 56)
Act: powers transferred (1.7.1999) by virtue of S.I. 1999/672, art. 2, **Sch.1**

1 Short title.

This Act may be cited for all purposes as the Commons Act, 1876.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

PART I

LAW AS TO THE REGULATION AND INCLOSURE OF COMMONS

Applications in relation to Commons

2 Alternative provisional order for regulation or inclosure of commons.

The Inclosure Commissioners may entertain an application made in manner in this Act mentioned for a provisional order—

- (1) For the regulation of a common; or
- (2) For the inclosure of a common or parts of a common; Further, an application may be made as respects the same common for the regulation of part of such common, specifying the part to be regulated, and for the inclosure of the residue, and in such case the application shall be dealt with as respects such parts as if they were separate commons, with this exception, that the boundaries as proposed in the application of the part to be regulated and the part to be inclosed may be modified by the provisional order.

The Commissioners shall not proceed to carry any application under this Act into effect until it is made to appear to them that the persons making the application represent at least one third in value of such interests in the common as are proposed to the affected by the provisional order.

3 “Regulation of common” includes adjustment of rights and improvement.

A provisional order for the regulation of a common may provide, generally or otherwise, for the adjustment of rights in respect of such common, and for the improvement of such common, or for either of such purposes, or for any of the things by this Act comprised under the expression “adjustment of rights” or “improvement of a common,” or may state that all or any of such subjects are to be provided for in the proceedings subsequent to the confirmation of the provisional order by Parliament.

4 Explanation of adjustment of rights.

The adjustment of rights in respect of a common comprises for the purposes of this Act all or any of the following things:

- (1) As respects rights of common of pasture in a common, being waste land of a manor,—the determination of the persons by whom, the stock by which, and the times at which such common of pasture is to be exercised;
- (2) As respects rights of common of turbary, or taking of estovers, or taking gravel stone, or otherwise interfering with the soil of the common, being waste land of a manor,—the determination of the persons by whom, and the mode and place or places in which, and the times at which such rights are to be exercised, also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction modification or abolition of all or any of such rights which may permanently injure the common;
- (3) As respects rights of common in land which is not waste land of a manor,—the stinting or other determination of such rights, and the persons by whom, and the mode in

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

which, and the times at which such rights are to be exercised, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction modification or abolition of all or any of such rights which may be injurious to the general body of the commoners or to the proper cultivation of the land:

- (4) As respects any common whether it is or is not waste land of a manor,—the determination of the rights and obligations of the lord of the manor, severalty owners or other person or persons entitled to the soil of such common, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction modification or abolition of all or any of such rights, and in particular in the case of severalty owners of all or any of such rights which may be injurious to the general body of the severalty owners or to the proper cultivation of the land; and
- (5) Generally as respects any common, whether it is or is not waste land of a manor,—the determination of any rights and settlement of any disputes relating to boundaries, rights in the soil or in the produce of the soil, or otherwise, whether arising between the commoners themselves, or between the commoners in relation to the lords of the manors, severalty owners, or other person or persons entitled to the soil of the common, which settlement may be conducive to the interests of all or any class of persons interested in the common.

5 Explanation of improvement.

The improvement of a common comprises for the purposes of this Act all or any of the following things; that is to say,

- (1) The draining, manuring, or levelling the common; and
- (2) The planting trees on parts of such common, or in any other way improving or adding to the beauty of the common; and
- (3) The making or causing to be made byelaws and regulations for the prevention of or protection from nuisances or for keeping order on the common; and
- (4) The general management of such common;
- (5) The appointment from time to time of conservators of the common for the purposes aforesaid.

6 Meaning of provisional order for inclosure of commons.

A provisional order for the inclosure of a common means a provisional order for inclosing the common, as provided by the Inclosure Acts 1845 to 1868, as amended by this Act.

7 Provisions for the benefit of a neighbourhood applicable alike to orders for regulation and orders for inclosure.

In any provisional order in relation to a common, the Inclosure Commissioners shall, in considering the expediency of the application, take into consideration the question whether such application will be for the benefit of the neighbourhood, and shall, with a view to such benefit, insert in any such order such of the following terms

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

and conditions (in this Act referred to as statutory provisions for the benefit of the neighbourhood) as are applicable to the case; that is to say,

- (1) That free access is to be secured to any particular points of view; and
- (2) That particular trees or objects of historical interest are to be preserved; and
- (3) That there is to be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times and in such manner and on such parts of the common as may be thought suitable, care being taken to cause the least possible injury to the persons interested in the common; and
- (4) That carriage roads, bridle paths, and footpaths over such common are to be set out in such directions as may appear most commodious; and
- (5) That any other specified thing is to be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

Suburban Commons

8 F1

Textual Amendments

F1 S. 8 repealed by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 81:1, 2\)](#), s. 194, **Sch. 34 Pt. III**

Procedure

9 Issue of forms by Commissioners.

The Inclosure Commissioners shall from time to time, upon application made by the persons interested in any common, issue in such form as they may deem expedient information and directions as to the mode in which applications for the regulation or inclosure of commons under the Inclosure Acts 1845 to 1868, as amended by this Act are to be made to the Commissioners, with such explanations as they may think fit with respect to the law for the regulation and inclosure of commons, and the persons so interested may apply accordingly in manner directed by the Inclosure Commissioners.

Modifications etc. (not altering text)

C5 S. 9 extended (E.W.) by [Local Government Act 1894 \(c. 73, SIF 81:1\)](#), s. 8(1)(c)

10 Rules as to application to Commissioners. Publication of notices of application. Manner of application. Evidence to be furnished in support of application.

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

Evidence in relation to benefit of neighbourhood. Evidence in relation to private interests. Duty of Commissioners on application.

The following rules shall be observed with respect to an application to the Inclosure Commissioners for a provisional order for the regulation or inclosure of a common; that is to say,

- (1) The applicants previously to making their application shall publish, in such manner as the Inclosure Commissioners may from time to time, by general or special order, direct, an advertisement giving notice of their intention to apply for such provisional order, and shall also serve a like notice on any [^{F2}district council] entitled under this Act to receive such notice: Provided, that such advertisement as aforesaid shall always be inserted in at least one paper circulating in the neighbourhood of the common to which the application relates:
- (2) The application shall be in writing, accompanied with a map of the common, or part thereof, and, if for the regulation of a common, shall express whether the applicants propose that all or certain specified provisions only of this Act for the adjustment of rights or improvement of commons should be put in force in relation to such common, and whether to apply to the whole or part of such common, but, subject as aforesaid, an application for the regulation or inclosure of a common shall be in such form and be made in such manner as the Inclosure Commissioners may from time to time direct:
- (3) On making their application in respect of any common, the applicants shall furnish the Inclosure Commissioners, in answer to questions previously submitted or otherwise in such manner as the said Commissioners may from time to time direct, with information bearing on the expediency of the application considered in relation to the benefit of the neighbourhood as well as to private interests:
- (4) The information to be furnished as bearing on the expediency of the application, considered in relation to the benefit of the neighbourhood, shall comprise statements as to the particulars following; that is to say, as to the number and occupation of the inhabitants of the parish or place in which the common is situate; as to the population of the neighbourhood, and the distance of the common from any neighbouring towns and villages; as to the intention of the applicants to propose the adoption of all or any of the statutory provisions as defined by this Act for the benefit of the neighbourhood; as to the circumstance of any ground other than the common to which the application relates being available for the recreation of the neighbourhood; and in the case of a common being waste land of a manor, as to the site extent and suitability of the allotments, if any, proposed to be made for recreation grounds and field gardens, or for either of such purposes; and as to any other matter which in the judgment of the Inclosure Commissioners may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to the benefit of the neighbourhood, and if acceded to, as to what statutory provisions as defined by this Act ought to be inserted in the provisional order for the benefit of the neighbourhood:

The Inclosure Commissioners shall also require, in the case of an application for inclosure, special information as to the advantages the applicants anticipate to be derivable from the inclosure of a common as compared with the regulation of a common, also the reasons why an enclosure is expedient when viewed in relation to the benefit of the neighbourhood:

- (5) The information to be furnished as bearing on the expediency of the application considered in relation to private interests shall comprise statements as to the several particulars following; that is to say, as to the extent and nature of the common to which

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

the application relates; as to the mines minerals or valuable strata (if any) under the same; as to the questions of boundary (if any) concerning such common, or such mines minerals or strata; as to the parties interested in such common, and the numbers and proportion in value of interest who have consented to or dissented from the application; as to the nature of the rights requiring the intervention of the Inclosure Commissioners or the interference of Parliament; as to the supposed advantages of the application being acceded to; as to (in cases where the interest of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the provisional order applied for) the allotment (if any) or compensation agreed on or proposed to be made to such lord of the manor in respect of his interest so affected; and as to any other matter which in the judgment of the Inclosure Commissioners may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to private interests, and if acceded to as to what provisions ought to be inserted in the provisional order for the protection of private interests:

- (6) The Inclosure Commissioners shall take into consideration any application made to them as in this Act provided, and if satisfied by the information furnished to them as aforesaid, or by any further inquiries made by themselves or an Assistant Commissioner, that a prima facie case has been made out, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further in the matter, they shall order a local enquiry to be held by an Assistant Commissioner.

Textual Amendments

- F2** Words substituted by virtue of [Local Government Act 1894 \(c. 73\), s. 21\(1\)](#) and [Local Government Act 1972 \(c. 70\), s. 179\(3\)](#)

11 **Rules as to local inquiry. Inspection and public meeting. Notice of meeting. Contents of notice. Publication of notice. Conduct of meeting. Personal inquiries by Assistant Commissioner. Report of Assistant Commissioner to Inclosure Commissioners. Map to accompany report.**

The following rules shall be observed with respect to a local inquiry held by order of the Inclosure Commissioners:

- (1) The Assistant Commissioner appointed to hold such inquiry shall inspect the common to which the application relates, and shall convene one or more public meetings at a suitable time and place for securing the attendance of the neighbouring inhabitants, and of all persons claiming interest in the common: Provided always, that one at least of such public meetings shall be held in the evening between the hours of seven and ten of the clock.
- (2) The Assistant Commissioner shall give not less than twenty-one days notice of his intention to hold the first of such meetings.
- (3) The notice shall, in such form as the Inclosure Commissioners from time to time direct, state the nature of the application made, the objects of the meeting, that the meeting is a public one and held for the purpose of enabling the Assistant Commissioner to hear all persons desirous of being heard on the subject matter of the application, whether considered in relation to the benefit of the neighbourhood or to private interests, and the desirability of the attendance of all persons interested in the subject matter of the inquiry.

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

- (4) The notice shall be given—
- (a) By affixing a copy thereof on the principal door of the church of the parish in which the common to which the application relates, or the greater part thereof is situate; and
 - (b) By posting copies of the same on or near the common to which it relates at the post office or post offices of the parish or district in which the common to which the application relates is situate, at any town hall, or vestry hall, or other building or room the expense of maintaining which is payable out of any local rate, situate in the parish or district, and at all places therein where notices are usually posted; and
 - (c) By advertising in such manner as the Inclosure Commissioners may direct, or otherwise giving notice of the meetings in such manner as they think best calculated to ensure publicity in the locality.
- (5) The Assistant Commissioner shall preside and regulate the proceedings at such meetings, and shall hear all persons desirous of being heard in relation to the subject matter of the inquiry. He may adjourn any such meeting from time to time, or from place to place, on giving such notice of adjournment as he thinks best calculated to ensure publicity.
- (6) The Assistant Commissioner shall also make any inquiries and do any other acts which he may be instructed by the Inclosure Commissioners or may think it advisable to do, for the purpose of enabling the Commissioners to judge as to the expediency of making the provisional order applied for, also as to the nature of the provisions to be inserted in any such provisional order if made.
- (7) The Assistant Commissioner shall report in writing to the Inclosure Commissioners the result of the local inquiry, and of the public meeting or meetings held by him (in such form and with such details as the Inclosure Commissioners may from time to time direct), and specially shall report to the Inclosure Commissioners the information obtained by him as to the several particulars in respect of which the applicants for a provisional order are by this Act required to furnish information to the Inclosure Commissioners.
- He shall also report the number of persons who attended the meetings held by him, the objections (if any) made to the application, and the suggestions (if any) made in relation to the provisions to be inserted in the provisional order for the benefit of the neighbourhood or for the protection of private interests, and any other circumstances which he may think expedient, with a view to enable the Inclosure Commissioners to judge of the expediency of making the provisional order, having regard as aforesaid, and also, if the order be made, of the provisions to be inserted therein.
- (8) The report shall be accompanied by an outline or other map on such scale and of such a description as may be directed by the Inclosure Commissioners, with a sketch in the case of an inclosure of a common being waste of land of a manor, of the allotments (if any) proposed to be made for recreation grounds and field gardens, or for either of such purposes.

Modifications etc. (not altering text)

- C6** Reference to local rate except in application of s. 11(4)(b) to City of London and Temples to be construed as reference to general rate: [General Rate Act 1967 \(c. 9\), s. 116\(2\)](#)

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

12 Rules as to provisional orders. Draft provisional order to be framed. Provisions for benefit of neighbourhood. Provisions for protection of private interests. Deposit of draft order for consideration of parties interested. Consents before provisional order certified to be expedient. Reservation in favour of freemen interested in common. Means of obtaining consents. Power to modify provisional order before expediency certified. Certificate of expediency of provisional order. Confirmation of provisional order. Supplemental power to modify provisional order after expediency certified.

The following rules shall be observed with respect to provisional orders to be made by the Inclosure Commissioners; that is to say,

- (1) With Inclosure Commissioners, if satisfied by the report of the Assistant Commissioner or by further inquiries to be made by themselves or an Assistant Commissioner, that, having regard to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further in the matter, shall frame in such form and with such provisions as they, having regard as aforesaid, may think expedient, and as are consistent with law and the description of provisional order applied for, a draft provisional order for the consideration of the persons interested in the common, specifying, if such application is for the regulation of a common, whether all or any one or more of the provisions of this Act for the adjustment of rights and the improvement of a common are to be put in force:
- (2) With respect to provisions for the benefit of the neighbourhood, there shall be inserted in such draft provisional order all such of the statutory provisions as defined by this Act for the benefit of the neighbourhood as are applicable to the case; also, if the order is an inclosure order in the case of a common being waste land of a manor, the quantity and situation of the allotments (if any) to be made for recreation grounds and field gardens:
- (3) With respect to private interests, there shall be inserted in such draft provisional orders, (1) where the interest of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the order, a statement of the allotment (if any) or other compensation to be allotted or made to the lord of such manor in respect of his interest so affected; and (2) where there is any mineral property or other rights in relation thereto belonging to persons other than the lord of the manor which may be affected by the order, such provisions and reservations as are required to be inserted by the Inclosure Acts 1845 to 1868, or as may appear to the Inclosure Commissioners proper to be inserted; also, if there are any other rights which appear to the Commissioners proper to be specially provided for or to be excepted from the operation of the order, there shall be specified the provisions or exceptions to be made in that behalf:
- (4) As soon as may be after making their draft provisional order, the Inclosure Commissioners shall cause a copy thereof to be deposited in the parish or parishes in which the common is situate to which such order relates, in order that the same may be considered by the parties interested therein, and they shall give notice, in such manner as they think best calculated to secure publicity, of such deposit having been made, and of their intention to certify the expediency of such order if the necessary consents are obtained thereto:
- (5) The Inclosure Commissioners shall not certify the expediency of a draft provisional order unless they are satisfied that persons representing at least two thirds in value of such interests in the common as are affected by the order consent thereto; and when the common to which the order relates is the waste land of any manor, or land within any manor to the soil of which the lord of such manor is entitled in right of his

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

manor, then, unless there is more than one person interested in such manor according to the definition of the ^{M1}Inclosure Act 1845, the Commissioners shall not certify the expediency of the same, unless the person interested in the common in right of such manor, or his substitute under the said Inclosure Act 1845, consent to such order; and where there is more than one person interested in such manor the Commissioners shall not certify the expediency of the order, in case such persons or the majority of such persons in respect of interest signify their dissent within a time to be limited by the Commissioners:

- (6) Where the freemen, burgesses, or inhabitant householders of any city borough or town are entitled to rights of common or other interest in the common to which the draft provisional order relates, the Inclosure Commissioners shall not certify the expediency of such order unless it appears to the Commissioners that two thirds in number of such of the freemen and burgesses so entitled as may be resident in such city borough or town, or within seven miles thereof, or of such inhabitant householders, as the case may be, have consented to the order; and in case two thirds in number of such resident freemen and burgesses, or of such inhabitant householders, have so consented, such consent shall be deemed the consent of the class of freemen, burgesses, or inhabitant householders, as the case may be, so entitled:
- (7) The Inclosure Commissioners may cause a meeting or meetings to be held by an Assistant Commissioner for the purpose of obtaining the necessary consents, or of ascertaining the interests of consenting or dissenting parties, or they may cause such consents or dissents to be ascertained in such other manner as they may think fit:
- (8) The Inclosure Commissioners may, at any time before certifying the expediency of a draft provisional order, modify the same of their own mere motion, or on the suggestion of any parties interested, but such modifications shall not be of any validity unless they are consented to in the same manner as if they formed part of the draft provisional order originally deposited by the Commissioners:
- (9) When the necessary consents have been obtained to any draft provisional order as originally deposited, or as modified in pursuance of this Act, such order shall be deemed to be final; and the Inclosure Commissioners shall in a report or reports to be made from time to time, as respects each provisional order which has become final as aforesaid, certify that it is expedient that such provisional order should be confirmed by Parliament, together with their reasons for certifying such expediency, and specially, as respects each provisional order, they shall, in such manner as they think best adapted to enable Parliament to judge of the expediency of such order, state the information furnished to them as to the several particulars in respect of which the applicants for a provisional order are by this Act required to furnish information to the Commissioners; also the result of the local inquiry, and of the number and description of the persons who attended the meetings held during such inquiry, and the nature of the objections (if any) made to the application, and the suggestions (if any) made in relation to the provisions to be inserted for the benefit of the neighbourhood or for the protection of private interests by the persons so attending, and any other circumstances which the Commissioners may think it expedient to state for such purposes as aforesaid:
- (10) Every report made by the Inclosure Commissioners certifying the expediency of any provisional order under this Act shall be presented to Parliament, and if at any time thereafter it is enacted by Act of Parliament that any order for the regulation or inclosure of a common, the expediency of which has been so certified by the Commissioners, shall be confirmed, the regulation or inclosure of any common to which any such order relates shall be proceeded with and completed according to

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

the terms of the provisional order relating to such common, and to the provisions of the Inclosure Acts 1845 to 1868, as amended by this Act, and any Act of Parliament containing such enactments as aforesaid shall be deemed to be a public general Act, but a provisional order, until such Act of Parliament as aforesaid has been passed in relation thereto, shall not be of any validity whatever:

- (11) If, after the presentation to Parliament of a report made by the Inclosure Commissioners certifying the expediency of any provisional order for the regulation or inclosure of a common, and before a Bill has been brought in for the confirmation of such order, such report is referred to a committee of either House of Parliament for consideration, and such committee recommend that such provisional order should not be confirmed by Parliament except subject to certain modifications, the Inclosure Commissioners may modify the provisional order accordingly, but such modifications, shall not be of any validity unless they are consented to in the same manner as if they had formed part of the draft provisional order originally deposited by the Commissioners:

And it shall be the duty of the Commissioners to take the necessary steps for ascertaining whether such consent as aforesaid can be obtained or not, and if such consent be obtained, the Commissioners shall make a special report to the effect that the order has been modified as aforesaid and such consent duly obtained, and such report shall be presented to Parliament; and thereupon the order so modified shall be deemed to be in the same position in all respects as if it were an order in respect of which a report had been made by the Commissioners certifying the expediency thereof, and such report had been presented to Parliament.

Marginal Citations

M1 1845 c. 118.

13 Partial application of procedure under Inclosure Acts.

The Inclosure Commissioners may insert in any provisional order for the regulation of a common any provisions they may deem necessary for the purpose of carrying such order into effect; but, subject as aforesaid, when an Act of Parliament has been passed as aforesaid, enacting that the regulation of a common shall be proceeded with, the subsequent proceedings for carrying into effect the regulation of such common shall be the same, so far as is practicable, as they would be in case such common were to be inclosed instead of being regulated, and the provisions of the Inclosure Acts 1845 to 1868, as amended by this Act shall apply accordingly.

14 Power to raise money for improvement of common.

A provisional order for the regulation of a common may provide for the raising from time to time by such persons interested in the common, and for such amounts as the Commissioners think fit, of money to be applied towards the improvement or protection of such common, either by means of rates to be levied on the persons and in respect of the property who and which respectively will be benefited or principally benefited by such improvement or regulation, or by means of the sale of any outlying or other small portion not exceeding in the whole one fortieth part of the total area of such common.

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

Modifications etc. (not altering text)

C7 S. 14 amended by [Commons \(Expenses\) Act 1878 \(c. 56\)](#), s. 3

Supplemental Provisions

15 Owners may make byelaws.

The majority in value of the owners of skirts or rights of pasture in any regulated pasture created under the provisions of the ^{M2}General Inclosure Act 1845, in addition to the powers they now possess are hereby authorised at any annual meeting for the election of field reeves to make byelaws and regulations for the prevention of or protection from nuisances or for keeping order on the regulated pasture, and for general management, occupation, and enjoyment of the regulated pasture, provided the consent of the lord of the manor is given to such byelaws.

Marginal Citations

M2 1845 c. 118.

16 Provision as to byelaws.

Any byelaw made in pursuance of this Act, and any alteration made therein, and any revocation of a byelaw, shall not be of any validity until it has been confirmed by one of Her Majesty's Principal Secretaries of State.

Pecuniary penalties (to be recovered summarily before any two justices) may be imposed by any such byelaws on persons breaking the same, provided that no penalty exceeds for any one offence the sum of [^{F3F4}£10.][^{F4}level 1 on the standard scale]

Textual Amendments

F3 Words substituted by [Criminal Justice Act 1967 \(c. 80\)](#), s. 92, [Sch. 3 Pt. II](#)

F4 “level 1 on the standard scale” substituted (E.W.) for “£10” by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#)

17 Notice of application for confirmation of byelaws.

No such confirmation shall take place unless notice of the intention to apply therefor, stating the effect of this section, has been published by the conservators one month at least before the application.

During one month at least before the application a copy of every byelaw, the making, alteration, or revocation of which is submitted for confirmation, shall be kept at the office of the person or body of persons making, altering, or revoking such byelaw open for inspection by persons interested, and such person or body of persons shall furnish a printed copy thereof to every person applying for the same on payment of a sum not exceeding [^{F5}5p] for each copy.

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

Textual Amendments

F5 Words substituted by virtue of [Decimal Currency Act 1969 \(c. 19\), s. 10\(1\)](#)

18 Provision as to certain expenses under order for regulation of a common.

Subject to the terms of the provisional order the amount of any compensation to be paid for any restriction modification or abolition of rights in pursuance of an order for the regulation of a common shall be deemed to be expenses of and incidental to the regulation of the common, and may be defrayed accordingly.

19 Definition of power of Charity Commissioners in certain cases.

Whereas by several awards made under the authority of Inclosure Acts prior to the year one thousand eight hundred and forty-five, fuel allotments for the poor have been set out and awarded, and vested in divers persons and bodies of persons as trustees of such allotments:

And whereas under the provisions of the Inclosure Acts 1845 to 1868, and the several Acts of Parliament and awards made thereunder, allotments for recreation grounds and field gardens have been set out and awarded to the churchwardens and overseers of parishes and other persons:

And whereas power exists or is claimed under divers Acts of Parliament, to divert such allotments from the uses declared by Parliament respecting the same: Notwithstanding anything in any other Act contained, it shall not be lawful (save as herein-after mentioned) to authorise the use of or to use any such allotment, or any part thereof, for any other purpose than those declared concerning the same by the Act of Parliament and award, or either of them, under which the same has been set out:^{F6}

Textual Amendments

F6 Words repealed by [Charities \(Fuel Allotments\) Act 1939 \(c. 26\), s. 1\(3\)](#)

Modifications etc. (not altering text)

C8 [S. 19](#) excluded by [Charities Act 1960 \(c. 58\), s. 15\(3\)](#), [Sch. 4 para. 2](#)
[S. 19](#) excluded (E.W.)(1.8.1993) by [1993 \(c. 10\), s. 15, Sch. 4 para.2](#)

20 Gravel digging.

Where any common is regulated pursuant to this Act by a provisional order of the Inclosure Commissioners confirmed by Parliament, or is the subject of a scheme confirmed by Parliament under the provisions of the ^{M3}Metropolitan Commons Act 1866, or the ^{M4}Metropolitan Commons Amendment Act 1869, or (being situate within the metropolitan police district) is the subject of any private or local Act of Parliament having for its object the preservation of such common as an open space, no surveyor of highways or highway board constituted in pursuance of the Highway Acts,^{F7} shall search for, dig, or carry away gravel, sand, stone or other materials in or from any part of such common which has not been set apart for that purpose with the sanction of Parliament, without the consent of the person or persons having the regulation or management of the same, or in default of such consent, without an order of two or more

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

justices in petty sessions assembled, and acting in and for the petty sessional division in which such common is situate, who may in their order prescribe such conditions as to mode of working and restitution of the surface as to them shall seem expedient.

Textual Amendments

F7 Words repealed by [Statute Law Revision Act 1898 \(c. 22\)](#)

Modifications etc. (not altering text)

C9 [S. 20](#) extended by [Commons Act 1899 \(c. 30\)](#), [s. 8](#)

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](#)

Marginal Citations

M3 [1866 c. 122](#).

M4 [1869 c. 107](#).

PART II

AMENDMENT OF THE INCLOSURE ACTS

Field Gardens and Recreation Grounds

21 Expenses of clearing, draining, and fencing field gardens.

Whereas it is expedient that the expenses of clearing any allotments made for field gardens may be included in the expenses of an inclosure: The valuer shall, unless the Inclosure Commissioners otherwise direct, cause every allotment made for a field garden to be cleared drained fenced levelled and otherwise made fit for immediate use and occupation; and the expenses incurred by the valuer under this section shall be paid as part of the general expenses of the inclosure.

22 Substituted allotments for recreation grounds and field gardens.

The provisions of the Inclosure Acts 1845 to 1868, which authorise the Inclosure Commissioners to allow an equal quantity of the land proposed to be inclosed to be allotted for the purpose of a recreation ground or field garden, or for any other public purpose, in lieu of that directed to be allotted by any provisional order, shall extend to authorise them to allow the allotment of land of equal value although it may not be of equal quantity.

23 Situation of allotments for recreation grounds and field gardens.

Every allotment made for the purpose of a recreation ground or field garden shall be in such part of the land proposed to be inclosed as is best suited for the purpose for which it is appropriated; and where any land proposed to be inclosed consists partly of common being waste land of a manor (in this section referred to as the first-mentioned land), and partly of common not being waste land of a manor (in this section referred to as the second-mentioned land), and the Commissioners are satisfied that it would be advantageous that the allotment for a recreation ground or a field garden, or

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

any part thereof, should be made out of the second-mentioned land instead of out of the first-mentioned land, the Commissioners may, in the provisional order relating to such land, specify as one of the terms and conditions of the inclosure thereof that the said allotments or the said part thereof shall be made accordingly out of the second-mentioned land, and shall out of the first-mentioned land allot land of equal value by way of exchange to the persons interested in the second-mentioned land.

24 F8

Textual Amendments
F8 S. 24 repealed by Statute Law (Repeals) Act 1977 (c. 18), Sch. 1 Pt. XVI

25 F9

Textual Amendments
F9 S. 25 repealed by Statute Law Revision Act 1894 (c. 56)

26 **Amendment of law as to letting field gardens.**

.....^{F10} Allotment wardens, if they are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, may let the same, or any unlet portion thereof, in gardens not exceeding an acre each to such inhabitants as aforesaid: Further, it shall be the duty of allotment wardens to offer the gardens under their management to the poor inhabitants of the parish at a fair agricultural rent, if from time to time sufficient to satisfy all rates, taxes, tithes, tithe rentcharge and the rentcharge charged on the said allotments under the provisions of the ^{M5}General Inclosure Act 1845, but not otherwise, instead of at such rent as is required by the said Act. Moreover, if in any parish the allotment wardens are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in such quantities and at such rents as aforesaid, they may let the same, or such portion as may be unlet to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable the allotment wardens to resume possession thereof within a period not exceeding twelve months, if it should at any time be required for such poor inhabitants as aforesaid.

This section shall apply to all land allotted to the poor for the purpose of cultivation under any Inclosure Act whatever, whether public or private, whether under the management of allotment wardens, feoffees, trustees, rector, or vicar and churchwardens, overseers, managers, or any other person or persons whatever, and whether at present cultivated or uncultivated, so that all such persons as aforesaid shall have like powers and duties as are herein-before given to and imposed upon allotment wardens.

Textual Amendments
F10 Recital omitted under authority of Statute Law Revision Act 1894 (c. 56)

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

Marginal Citations

M5 1845 c. 118.

27 Application of surplus rents of recreation grounds and field gardens.

.....^{F11} The surplus rents arising from recreation grounds shall^{F12} be applied to all or any of the following purposes, and to no other purpose; that is to say in improving the recreation grounds or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for recreation grounds in the same parish or neighbourhood; and the surplus rents arising from field gardens shall^{F12} be applied to all or any of the following purposes, and to no other purpose; that is to say, in improving the field gardens or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for field gardens in the same parish or neighbourhood.

The trustees of any recreation ground and the allotment wardens of any field gardens may, with the approval of the Inclosure Commissioners, sell all or any part of the allotment vested in them, and out of the proceeds of such sale purchase any fit and suitable land in the same parish or neighbourhood: Provided, that the land so purchased shall be held in trust for the purposes for which the allotment so sold as aforesaid was allotted, and for no others; and provided, that the Inclosure Commissioners shall not sanction any such sale as aforesaid unless and until it shall be proved to their satisfaction that land more suitable for the purposes for which the allotment proposed to be sold was allotted may and will be forthwith purchased; and the proceeds of any such sale shall be paid to the Inclosure Commissioners, and shall remain in their hands until such purchase of other land as aforesaid.

Textual Amendments

F11 Recital omitted under authority of [Statute Law Revision Act 1894 \(c. 56\)](#)

F12 Words repealed by [Statute Law Revision Act 1894 \(c. 56\)](#)

Modifications etc. (not altering text)

C11 [S. 27](#) amended by [Commons Act 1879 \(c. 37\)](#) and [Commons Act 1899 \(c. 30\)](#), [s. 16](#)

28 Reports to be made by managers of recreation grounds and field gardens.

The trustees of recreation grounds, where such trustees are the overseers or churchwardens of a parish, and the allotment wardens of field gardens shall, from time to time, and at such intervals of not less than three years nor more than five years, as the Inclosure Commissioners direct, make such reports to the said Commissioners in respect of the recreation grounds and field gardens under their management, with such particulars of the rents received by them, as the Commissioners may require.

29 Amendment of law as to town and village greens.

.....^{F13} An encroachment on or inclosure of a town or village green, also any erection thereon or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, shall be deemed to be a public nuisance, and if any

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

person does any act in respect of which he is liable to pay damages or a penalty under section twelve of the ^{M6}Inclosure Act 1857, he may be summarily convicted thereof upon the information of any inhabitant of the parish in which such town or village green or recreation ground is situate, as well as upon the information of such persons as in the said section mentioned.

This section shall apply only in cases where a town or village green or recreation ground has a known and defined boundary.

Textual Amendments

F13 Recital omitted under authority of [Statute Law Revision Act 1894 \(c. 56\)](#)

Marginal Citations

M6 1857 c. 31.

30 Jurisdiction of county court in respect of illegal inclosures.

A county court within whose jurisdiction any common or part of a common is situate shall have jurisdiction to hear any case relating to any illegal inclosure or encroachment of or upon such common or part of a common respectively made after the passing of this Act, or to any nuisance impeding the exercise of any right of common arising after the passing of this Act, and to grant an injunction against such inclosure, encroachment or nuisance, or to make an order for the removal or abatement of such inclosure encroachment or nuisance.

Any person aggrieved by any injunction granted or order made or refusal to grant an injunction or make an order by a county court in pursuance of this section may, on giving security for costs to the satisfaction of the county court, appeal to the [^{F14}Court of Appeal] in a summary manner, or by special case or otherwise, as may be prescribed by rules of court to be made by the Supreme Court of Judicature in manner provided by the seventeenth section of the ^{M7}Supreme Court of Judicature Act 1875.

The appellate court may on hearing the appeal reverse modify or confirm the injunction or order complained of, or remit the case to the county court from which the appeal lay, with instructions to deal with the case according to the directions given by the appellate court.

Where an appeal is lodged against the order of a county court directing the removal or abatement of any inclosure encroachment or nuisance, such order shall be suspended during such time as such appeal is pending.

Nothing in this Act contained shall abridge or interfere with any existing right of abating or otherwise preventing any illegal inclosure of or encroachment on any common, or any nuisance interfering with any right of common.

Until rules of court are made for the purposes of this section, an appeal may be had from the decision of any county court under this section in the same manner in which an appeal from the decision of a county court may be had in a case within its ordinary jurisdiction.

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

Textual Amendments

F14 Words substituted by [Administration of Justice \(Appeals\) Act 1934 \(c. 40\)](#), [Sch. Pt. I](#)

Modifications etc. (not altering text)

C12 [S. 30](#) extended by [Metropolitan Commons Act 1878 \(c. 71\)](#), [s. 3](#)

Marginal Citations

M7 [1875 c. 77](#).

31 Three months notice of claim to inclose to be given in the local papers.

Any person intending to inclose or approve a common or part of a common otherwise than under the provisions of this Act shall give notice to all persons claiming any legal right in such common or part of a common, by publishing, at least three months beforehand, a statement of his intention to make such inclosure, for three successive times, and in two or more of the principal local newspapers in the county, town, or district in which the common or part of a common proposed to be inclosed is situate; but the provisions of this section shall not apply to any commons or waste lands whereon the rights of common are vested solely in the lord of the manor.

A production of a newspaper containing such advertisement as aforesaid shall be evidence of the same having been issued, and the inclosure shall, until the contrary is proved, be deemed to have taken place at the time specified in such advertisement.

Modifications etc. (not altering text)

C13 [S. 31](#) extended by [Metropolitan Commons Act 1878 \(c. 71\)](#), [s. 3](#)

32 Appointment of valuer to be confirmed by Commissioners.

An appointment of a valuer shall not be valid until it has been confirmed by the Commissioners. The Commissioners may disapprove of a valuer on the ground of his incompetency, interest, want of impartiality, or any reasonable cause, and where they so disapprove of a valuer may call a meeting, and a meeting may be held to appoint, and another person appointed (subject to the approval of the Commissioners) to be valuer in like manner as if no previous meeting had been held and no valuer had been previously appointed, and so on until a valuer approved by the Commissioners is appointed.

General Amendment

33 Extension of sec. 105 of the Inclosure Act 1845, as to exchanges and partitions.

The provisions of section one hundred and five of the ^{M8}Inclosure Act 1845, relating to the validity after confirmation of an award of inclosure of the exchanges, and partitions set forth in such award, shall apply to orders of exchange partition and division of intermixed lands carried into effect in pursuance of the Inclosure Acts 1845 to 1868, by separate orders, and not included in an award of Inclosure.

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

Marginal Citations

M8 1845 c. 118.

PART III

Miscellaneous

34 F15

Textual Amendments

F15 S. 34 repealed by Statute Law Revision Act 1953 c. 5 (2 & 3 Eliz. 2)

35 **Act not to apply to metropolitan commons.**

This Act, save as herein expressly provided, shall not apply to any metropolitan common within the meaning of the ^{M9}Metropolitan Commons Acts 1866 ^{M10} and 1869.

Marginal Citations

M9 1866 c. 122.

M10 1869 c. 107.

36 **A common regulated under Act not to be inclosed without sanction of Parliament.**

Where an Act of Parliament has been passed confirming a provisional order under this Act for the regulation of a common, then, subject to and without prejudice to the provisions of that order, such common shall not, nor shall any part thereof, be inclosed without the sanction of Parliament subsequently obtained.

Definitions

37 **Definitions.**

In this Act, unless the context otherwise requires,—

“A common” means any land subject to be inclosed under the Inclosure Acts 1845 to 1868:

“Waste land of a manor” means and includes any land consisting of waste land of any manor on which the tenants of such manor have rights of common, or of any land subject to any rights of common which may be exercised at all times of the year for cattle levant and couchant, or to any rights of common which may be exercised at all times of the year, and are not limited by number of stints:

“Person” includes a body corporate:

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

..... **F16**
..... **F17**
..... **F17**
..... **F17**

.....
Textual Amendments

F16 Words repealed by [Statute Law Revision Act 1894 \(c. 56\)](#)

F17 Definitions of “municipal borough”, “improvement Act district” and “local government district” repealed by [Statute Law \(Repeals\) Act 1989 \(c. 43\)](#), s. 1(1), [Sch. 1 Pt. IV](#)

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

Changes to legislation: There are currently no known outstanding effects for the Commons Act 1876. (See end of Document for details)

F18F18 SCHEDULE

.....
Textual Amendments

F18 Sch. repealed by [Statute Law Revision Act 1894 \(c. 56\)](#)

.....
F18

Status:

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

Changes to legislation:

There are currently no known outstanding effects for the Commons Act 1876.