ELIZABETH II



1985 CHAPTER xxxviii

An Act to re-enact with amendments certain local enactments in force within the city of Lincoln; to make further provision with regard to the Commons and fairs of the city, the seizing of stray horses, the prevention of flooding and for the maintenance of the omnibus undertaking; and for other purposes.

[30th October 1985]

WHEREAS—

(1) The city of Lincoln (hereinafter referred to as "the city") is under the management and local government of the Lincoln City Council (hereinafter referred to as "the Council"):

(2) By virtue of the Local Government Act 1972 (hereinafter referred to as "the Act of 1972") the city was constituted on 1st April 1974 and comprises the former county borough of Lincoln: 1972 c. 70.

(3) Certain local enactments were in force in the said county borough and by section 262 of the Act of 1972 it was provided

that, subject to certain modifications, certain local statutory provisions should continue to apply to the area, things or persons to which or to whom they applied before that date:

(4) It was further provided by the said section 262 that certain local statutory provisions should cease to have effect at the end of 1984; but the Non-metropolitan and Welsh Counties (Local Statutory Provisions) Order 1983 has subsequently provided that such local statutory provisions shall cease to have effect at the end of 1986:

S.I. 1983/619.

(5) It is expedient that certain of the said local statutory provisions should be re-enacted with amendments:

(6) It is expedient to confer further powers on the Council and that the other provisions contained in this Act should be enacted:

(7) The purposes of this Act cannot be effected without the authority of Parliament:

(8) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Act of 1972 have been observed:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Citation.

1. This Act may be cited as the Lincoln City Council Act 1985.

Commencement.

2. This Act shall come into operation on the expiry of a period of three months beginning with the date on which it is passed.

Interpretation.

3. In this Act unless the context otherwise requires—

"the city" means the city of Lincoln;

"the Commons" means the lands shown edged red on the Commons Plan;

"the Commons Plan" means the plan showing the lands known as the Commons marked "Commons Plan" and prepared in triplicate, one copy of which has been deposited in the office of the Clerk of the Parliaments, House of Lords, one in the Private Bill Office, House of Commons and one in the office of the City Solicitor of the city;

"the Council" means the Lincoln City Council;

"horse" includes any mare, gelding, pony, foal, colt, filly or stallion and also any ass, mule or jennet;

"the racecourse" means so much of the Commons as is shown edged green on the Commons Plan;

"race meeting" means a meeting for the competitive racing of animals and includes the racing of horses from point to point; and

"race undertaking" means the undertaking authorised by section 8 (Race meetings) of this Act.

Duty to maintain Commons.

4.—(1) The Council shall, subject to the provisions of this Act, have a duty to maintain and to preserve the aspect of the Commons as an open space.

(2) Notwithstanding section 123 of the Local Government Act 1972 or any other enactment the Council shall not dispose in any manner of any part of the Commons except in accordance with the provisions of this Act. 1972 c. 70.

Access to Commons.

5. The inhabitants of the city shall have free access to and a right at all times of enjoying recreation upon the Commons without payment but subject to the provisions of this Act.

Commons to be free from encroachments.

6.—(1) The Council shall maintain the Commons free from all encroachments save for—

(*a*) such permanent enclosures as exist at the commencement of this Act;

(*b*) temporary encroachments for the preservation of trees and shrubs or for the regeneration of the vegetation on the Commons;

(*c*) temporary encroachments which result from the exercise of powers under section 7 (Closure for activities) of this Act; and

(*d*) such further encroachments as are authorised by this Act.

(2) The Council may by resolution dedicate any part of the Commons for the purpose of making or widening carriageways and footways.

(3) If the Council propose to make a temporary encroachment which would exceed an area of 1 hectare under paragraph (*b*) of subsection (1) above they shall publish in a newspaper circulating in the city notice of their intention to make the enclosure.

(4) The notice given under subsection (3) above shall state that objections may be made in writing to the Council within 10 days of the date of publication of the notice.

(5) The Council may after considering the objections made under subsection (4) above determine—

(*a*) to make the enclosure; or

(*b*) not to make the enclosure; or

(*c*) to make the enclosure subject to such conditions or modifications as appear to the Council reasonable.

Closure for activities.

7.—(1) The Council may—

(*a*) close the racecourse or any part thereof to the public or restrict public access to any part of the racecourse for a period not exceeding 4 days before any race meeting and for the duration of any race meeting held on the racecourse; and

(*b*) enclose any part of the Commons not forming part of the racecourse but not exceeding an area of 1 hectare for the purpose of erecting and maintaining enclosures, stands, stalls, booths or other buildings for use in connection with the holding of race meetings on the racecourse; and

(*c*) enclose any part of the Commons not exceeding 40 hectares other than the racecourse and land used for the purposes of section 11 (Golf courses) of this Act for the purposes of an agricultural or horticultural show or fair, circus or other public entertainment; and

(*d*) set aside a part of the Commons other than the racecourse for the purpose of playing any sport or game or of any athletic activity.

(2) The total area closed or set aside under subsection (1) (*c*) and (*d*) above shall not exceed 40 hectares.

(3) With respect to any part of the Commons closed under subsection (1) (*a*) to (*c*) above only such fences shall be erected as shall be reasonably necessary to achieve the purposes for which such part is so set apart or let.

Race meetings.

8. The Council may undertake the holding of race meetings on the racecourse.

Closing of Saxilby Road.

9.—(1) During any time in which a race meeting is held on the racecourse the Council may by notice restrict or prohibit the use of Saxilby Road in the city or any part thereof by vehicles or by vehicles of any class to such extent and subject to such conditions or exceptions as they may consider necessary.

(2) When issuing a notice under this section the Council shall have regard to the existence of alternative routes suitable for traffic which will be affected by the notice.

(3) Before issuing a notice under this section, the Council shall notify the highway authority and the chief officer of police in writing of their intention to issue such a notice.

(4) A notice issued under this section shall not continue in force for a longer period than 48 hours from the commencement thereof.

(5) Saxilby Road shall not be closed under this section for a total period exceeding 20 days in any 12 month period.

(6) So long as any notice issued under subsection (1) above is in force, a notice stating the effect of the notice, and describing the alternative route or routes available for traffic, shall be kept posted in a conspicuous manner at each end of the part of the road to which the notice relates, and at the points at which it will be necessary for vehicles to diverge from the road.

(7) Where a notice is posted under and in accordance with subsection (6) above it shall be indicated by a traffic sign (as defined by section 64 of the Road Traffic Regulation Act 1984) and subsection (1) of section 65 of the said Act of 1984 shall have effect as respects the erection and display of the notice by the Council as if it were a notice by a highway authority. 1984 c. 27.

10.—(1) The Council may demand and recover charges— Charges.

(*a*) for admission to any race meeting held under section 8 (Race meetings) of this Act; or

(*b*) for admission to any agricultural or horticultural show or other public entertainment for which the Commons are closed under subsection (1) (*c*) of section 7 (Closure for activities) of this Act.

(2) It shall be lawful for any person to whom part of the Commons is let or licensed for the purposes of a race meeting or to whom any part of the Commons is let for the purposes of, or who is authorised by the Council to hold on the Commons, agricultural or horticultural shows, fairs, circuses or other public entertainments to charge for admission to the racecourse or, as the case may be, that part of the Commons closed under subsection (1) (*c*) of section 7 (Closure for activities) of this Act for such purposes.

11.—(1) The Council may maintain the golf courses which are at the commencement of this Act laid out on the Commons. Golf courses.

(2) The Council may make the facilities of the golf courses maintained by them under subsection (1) above available for use by the inhabitants of the city or such other persons as the Council think fit on payment of such charges as the Council determine.

(3) The Council may let a golf course maintained under subsection (1) above for a term not exceeding 21 years for the purpose of a golf course or license a golf course for use as a golf course for such term.

(4) A person to whom a golf course is let or licensed under subsection (3) above may charge for the use of the golf course.

(5) The use of land as a golf course under this section is without prejudice to the right to graze or pasture horses on the Commons under section 15 (Pasturing) of this Act.

Power to lease.

12.—(1) The Council may lease or license—

(*a*) the racecourse for a term not exceeding 21 years for the purposes of holding race meetings;

(*b*) any part of the Commons not forming part of the racecourse, but not exceeding an area of 1 hectare, for a term not exceeding 21 years, for the purpose of erecting and maintaining enclosures, stands, stalls, booths or other buildings for use in connection with the holding of race meetings on the racecourse;

(*c*) any part of the Commons not exceeding 8 hectares for a period not exceeding 6 weeks in any year for the purposes of fairs, circuses or other public entertainment;

(*d*) any part of the Commons not exceeding 40 hectares for periods not exceeding 3 months in any 1 year for the purposes of agricultural or horticultural shows; and

(*e*) any part of the Commons for a term not exceeding 1 year for the purposes of playing any sports, games or of any athletic activity.

(2) The total area leased or licensed under this section shall not, when aggregated with the total area enclosed under section 7 (Closure for activities) of this Act, exceed the total area which may be enclosed under that section.

Management agreements for undertaking.

13.—(1) Without prejudice to the provisions of section 12 (Power to lease) of this Act the Council may enter into an agreement with any person for the right to manage the race undertaking or part thereof for a term not exceeding 21 years.

(2) Without prejudice to subsection (1) above during the term of the agreement persons with whom the agreement is made, to the extent and upon the terms specified in the agreement—

(*a*) shall have and may exercise in relation to the undertaking all or any of the powers conferred upon the Council by subsection (1) (*a*) and (*b*) of section 7 (Closure for activities) of this Act;

(*b*) shall be subject to all the restrictions, liabilities and obligations in respect thereof to which the Council are subject and shall be under a duty to perform (or pay to the Council the cost of performing) all of the duties of the Council in respect thereof.

Byelaws.

14. The Council may make byelaws in respect of the Commons for all or any of the following purposes:—

(*a*) for the improvement and management of the Commons and the preservation of good order and conduct among persons frequenting them;

(*b*) for the prevention of nuisances and annoyances;

(*c*) for the regulation of sports and games;

(*d*) for the prevention of vehicles, including bicycles, being parked or driven on any part of the Commons not set apart for the purpose;

(*e*) for the prevention of the posting of bills or placards on any wall, railing, fence, tree, lamp-post, walk, pavement or seat or elsewhere and the prevention of the removal or displacement of any such wall, railing, fence, tree, lamp-post, walk, pavement or seat;

(*f*) for the prevention of all acts and things tending to the disfigurement of the Commons or the interference with the use thereof by the persons frequenting them for purposes of exercise and recreation;

(*g*) for regulating the hiring of horses and other animals;

(*h*) for preventing the racing of animals except on the race-course;

(*i*) for regulating traffic upon any footpath.

Pasturing.

15.—(1) An inhabitant householder of the city shall enjoy a right to graze or pasture 1 horse upon the Commons subject to the restrictions specified in subsection (2) below and any requirements or prohibitions imposed by the Council in the exercise of their powers under subsection (5) below.

(2) A person shall not graze or pasture on the Commons any horse which is—

(*a*) not registered under this section; or

(*b*) used for commercial purposes.

(3) The Council shall not charge for the right to graze or pasture horses on the Commons.

(4) The Council shall keep a register for the purposes of this section containing a brief description of each horse registered under this section and of the name and address of its owner.

(5) The Council may—

(*a*) require the owner of any horse which is registered with them to cause that horse to be branded on the hoof with a mark authorised by the Council;

(*b*) demand and recover such reasonable fee to cover the expenses of the Council in relation to the registration and branding of horses permitted to graze or pasture on the Commons as the Council may by resolution prescribe;

(*c*) by notice prohibit a person from causing any horse to be upon the racecourse for any specified period not exceeding 14 days prior to a race meeting;

(*d*) by notice prohibit, for the purposes of protecting the sward, the grazing or pasturing of horses on the Commons between 31st March and 14th May in any year; and

(*e*) by notice prohibit any person from grazing or pasturing a horse upon the Commons if the grazing or pasturing of that horse causes the total number of horses grazing or pasturing on the Commons at any time to exceed a number specified in the notice as the maximum number of horses which may be grazed or pastured on the Commons at any one time.

(6) A notice made under paragraphs (*c*) to (*e*) of subsection (5) above shall be conspicuously displayed at each carriageway or bridleway entrance to the Commons.

(7) Before making a prohibition under paragraph (*e*) of subsection (5) above the Council shall—

(*a*) publish notice of their intention to do so in a newspaper circulating in the city not later than 1 month before the date on which the prohibition is to come into force; and

(*b*) take into account any representations made to them by users of the Commons in that period and if appropriate amend the number of horses which it is intended shall be permitted to graze or pasture upon the Commons.

(8) Any person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale if without reasonable excuse he grazes or pastures or without reasonable excuse causes to be grazed or pastured on the Commons a horse—

(*a*) in contravention of subsection (2) above; or

(*b*) in contravention of a requirement of paragraph (*a*) of subsection (5) above; or

(*c*) in contravention of a notice under paragraphs (*c*) to (*e*) of subsection (5) above.

(9) If any person without reasonable excuse contravenes paragraph (*b*) of subsection (2) above, the Council may in addition or without prejudice to any penalty which may be imposed upon that person under subsection (8) above revoke the registration of that person's horse.

(10) In this section "inhabitant householder" means in respect of each dwelling in the city one person who normally resides therein.

Provision of car parks.

16.—(1) In the interests of persons resorting to the Commons and for other recreational purposes, the Council may set apart on the parts of the Commons specified in subsection (3) below sites, not exceeding in area the areas so specified below, for the parking of vehicles and provide parking places and facilities in connection therewith.

(2) The Council shall have the power to make reasonable charges for the use of any facilities provided by them under this section and may make arrangements for any such facilities to be provided by some other person, including arrangements authorising that person to make reasonable charges.

(3) The parts and areas of the Commons referred to in subsection (1) above are respectively as follows:—

(*a*) on that part known as West Common, 0.4 hectares;
(*b*) on that part known as South Common, 0.4 hectares;
(*c*) on that part known as Cowpaddle, 0.2 hectares.

(4) In this section "West Common", "South Common" and "Cowpaddle" mean respectively those parts so named and delineated on the Commons Plan.

Seizure of horses.

17.—(1) The Council may seize and impound any horse which is—

(*a*) on the Commons contrary to the provision of section 15 (Pasturing) of this Act; or

(*b*) on land other than the Commons in the city without the consent of the occupier of the land;

but they shall not seize and impound any horse falling within paragraph (*b*) above unless they are themselves the occupier, except at the request or with the consent of the occupier of the land.

(2) The Council shall, within 24 hours after impounding any horse under this section, give notice of the impounding to the officer in charge of a police station in the city and also to the owner of the horse if his identity be known to them.

(3) The Council shall keep a register of all horses seized by them under this section containing a brief description of each horse, the date of seizure and particulars as to the manner in which each such horse is disposed of and the register shall be open to public inspection at all reasonable times.

(4) If after 21 clear days from the date of impounding the owner has not claimed a horse and paid all expenses incurred in seizing, impounding and maintaining it, the Council may sell or otherwise dispose of the horse.

(5) Whilst any horse is impounded by the Council under this section the Council shall cause it to be properly fed and maintained.

(6) Where the Council dispose of any horse under subsection (4) above, they shall be accountable to the owner of the horse for any money arising from the disposal after deducting all expenses incurred by reason of its seizure, impounding, maintenance and disposal; but nothing in this subsection shall render the Council so accountable if the Council have accounted to any other person whom they reasonably believed to be the owner.

Removal of fairs.

18.—(1) Notwithstanding any other enactment, the Council may by resolution remove each of the horse, pleasure or other fairs held in the city to a site or sites upon any land vested in the Council specified in the said resolution.

(2) Before resolving to remove a pleasure or other fair under subsection (1) above the Council shall consult with such associations as appear to them to represent the interests of those providing entertainments at any of the pleasure or other fairs held in the city.

(3) Upon the coming into force of a resolution made under subsection (1) above the Council shall not be under any obligation to hold a horse, pleasure or other fair on any site on which such horse, pleasure or other fair is held at the commencement of this Act, and all market rights appurtenant thereto shall cease.

(4) A resolution passed under subsection (1) above shall not come into force—

(*a*) until the expiry of a period of 13 months commencing with the date of the passing of the resolution; and

(*b*) unless the Council have—

(i) published within 1 month of the passing of the resolution notice stating the effect of the proposal in a newspaper circulating in the city; and

(ii) posted copies of the resolution in a conspicuous position—

(A) outside the Guildhall in the city; and

(B) at the site from which the fair is to be removed.

As to pumping of flood-waters.

19.—(1) The Council may, whenever in their opinion it is necessary or expedient so to do in order to prevent flooding in the city or to carry away flood-waters from lands or streets in the city, pump such flood-waters from such lands or streets into any river, watercourse or drain in or adjacent to the city.

(2) In the exercise of the power conferred by this section the Council shall cause as little damage as possible and shall if damage is caused by them pay compensation to all persons for such damage.

Omnibus undertaking.

1915 c. lxxvii.

1930 c. 43.

20. Notwithstanding the repeal by this Act of section 43 (Power to run omnibuses) of the Lincoln Corporation Act 1915 the Council shall continue to be a local authority authorised to run public service vehicles under Part V of the Road Traffic Act 1930 (which authorises the running of public service vehicles by local authorities).

Restriction on right to prosecute.

21. The written consent of the Director of Public Prosecutions is needed for the laying of an information of an offence created by or under this Act by any person other than a party aggrieved, the Council or a constable.

Liability of directors, etc.

22.—(1) Where an offence under this Act, or against any byelaw made under this Act committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Penalty for obstruction.

23. Any person who intentionally obstructs any officer of the Council acting in execution of this Act or of any byelaws made under this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Application of general provisions of Public Health Act 1936.
1936 c. 49.

24. Section 304 (judges and justices not to be disqualified by liability to rates) and section 328 (powers of Act to be cumulative) of the Public Health Act 1936 shall have effect as if references therein to that Act included references to this Act.

Repeals.

25. The enactments specified in column (2) of Schedule 1 to this Act are repealed to the extent specified in column (3) of that Schedule.

Transitional provisions.

26.—(1) (*a*) Anything begun under an enactment repealed by this Act may be continued under any enactment in this Act relating to the same matter as if begun under that last-mentioned provision.

(*b*) Where any period of time specified in, or having effect in relation to, an enactment repealed by this Act is current at the date of the coming into operation under this Act of any provision thereof relating to the same matter, that provision of this Act shall have effect as if it were in force when that period began to run.

(2) References in this Act to things done, left undone, suffered or occurring in the past shall, so far as the context requires for the continuity of operation between an enactment in force in any area which is repealed by this Act and any enactment in this Act relating to the same matter in the same area, be construed as including reference to things done, left undone, suffered or occurring before the coming into operation of that provision of this Act.

1978 c. 30.
1972 c. 70.

(3) Nothing in this section shall affect the operation of the Interpretation Act 1978 or of section 254 of the Local Government Act 1972.

Continuance of certain enactments.

27.—(1) The enactments specified in column (2) of Schedule 2 to this Act shall continue to have effect to the extent specified in column (3) of that Schedule and to that extent section 262 (9) of the Local Government Act 1972 shall not apply to those enactments.

(2) Where any enactment referred to in Schedule 1 to this Act is material for the purposes of interpreting any enactment referred to in subsection (1) above the repeal of the first-mentioned enactment shall not affect the interpretation of the other enactment.

SCHEDULES

Section 25.

SCHEDULE 1

ENACTMENTS REPEALED

Chapter (1)	Title or short title (2)	Extent of repeal (3)
43 Geo. 3 c. cxx (1803).	An Act for inclosing Lands in the Parishes of Saint Nicholas and Saint John in Newport, Saint Peter in Eastgate, Saint Mary le Wigford, Saint Martin, and Saint Swithin, in the City of Lincoln, and in that Part of the Parish of Saint Margaret which lies within the said City; and for setting out and appropriating certain Lands within the said City, as a Common Pasture, for the Purposes therein mentioned.	The whole Act except section xxii.
1 & 2 Geo 4 c. xlix (1821).	An Act to amend and render more effectual an Act passed in the Thirty-sixth Year of the Reign of His late Majesty King George the Third, intituled An Act for the better Relief and Employment of the Poor of the several Parishes within the City of Lincoln, and County of the same City, and of the Parish of Saint Margaret, Part whereof lies within the said City and the other Part in the Close of Lincoln, in the County of Lincoln.	The whole Act.
31 & 32 Vict. c. xxii.	Lincoln Corporation (Canwick Common) Act 1868.	The whole Act except section 20.
33 & 34 Vict. c. lxxxvii.	Lincoln City Commons Act 1870.	The whole Act except sections 9 to 13, 33 to 42 and 67 to 70.
37 & 38 Vict. c. xix.	Local Government Board's Provisional Orders Confirmation Act 1874 (No.2).	The Order relating to Lincoln dated 13th May 1874.
41 & 42 Vict. c. xxxvii.	Local Government Board's Provisional Orders Confirmation (Abingdon, &c.) Act 1878.	The Order relating to Lincoln dated 28th March 1878.
51 & 52 Vict. c. xcviii.	Lincoln Corporation Act 1888.	The whole Act except Part III.

SCH. 1 —*cont.*

Chapter (1)	Title or short title (2)	Extent of repeal (3)
55 & 56 Vict. c. lxx.	Local Government Board's Provisional Orders Confirmation (No. 3) Act 1892.	The Order relating to Lincoln dated 2nd April 1892.
63 & 64 Vict. c. lxxxvii.	Lincoln Corporation (Tramways &c.) Act 1900.	The whole Act except section 35 (10) to (14), (18) and (19).
7 Edw. 7 c. clii.	Local Government Board's Provisional Orders Confirmation (No. 2) Act 1907.	The Lincoln Order 1907.
8 Edw. 7 c. xxxiii.	Lincoln Corporation (Water &c.) Act 1908.	The whole Act except Part II.
5 & 6 Geo. 5 c. lxxvii.	Lincoln Corporation Act 1915.	The whole Act except Parts V and VI.
10 & 11 Geo. 5 c. cxvii.	Ministry of Health Provisional Order Confirmation (Lincoln Extension) Act 1920.	The whole Act.
22 & 23 Geo. 5 c. xxv.	Ministry of Health Provisional Orders Confirmation (Lindsey and Lincoln Joint Smallpox Hospital District and Wandle Valley Joint Sewerage District) Act 1932.	The Lindsey and Lincoln Joint Smallpox Hospital Order 1932.

Section 27.

SCHEDULE 2

ENACTMENTS CONTINUED

Chapter (1)	Enactment (2)	Extent of provisions saved (3)
31 & 32 Vict. c. xxii.	Lincoln Corporation (Canwick Common) Act 1868.	Section 20.
33 & 34 Vict. c. lxxxvii.	Lincoln City Commons Act 1870.	Sections 9 to 13, 33 to 42 and 67 to 70.
51 & 52 Vict. c. xcviii.	Lincoln Corporation Act 1888.	Part III.

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CHAPTER xxxviii

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