

# **An outline of the law of sewers affecting the Metropolitan Commission of Sewers.**

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# Metropolitan Sewers.

*To the Right Honorable and Honorable the Metropolitan Commissioners of Sewers.*

The following Outline is respectfully presented by  
Their faithful humble Servant,

W. WYKE SMITH.

*London, January, 1849.*

## **An Outline of the Law of Sewers affecting the Metropolitan Commission of Sewers.**

As there will necessarily be amongst the new Commissioners many members who will have had but little previous acquaintance with the functions they will be called on to exercise; and as the law of Sewers has lately undergone great alteration, it has appeared to the author that he may render some service in giving a very brief summary of the Law of Sewers affecting the Metropolitan Districts.

The law may be chiefly said to consist of the provisions of the Statute passed at the end of the last Session, cap. 112; but as there are other Statutes in force, it may be convenient to avoid in this paper any reference to Statutes or Provisions in any technical words, but to make a statement in popular language, in the shape of an outline of the substance of the law in force at this moment. In details, and as a guide to the late Statute, valuable assistance will be found in the Analytical Digest of the Metropolitan Sewers Act, prepared with great accuracy by Mr. Hertslet, the Clerk, and printed for the use of the Commission.

We will endeavour to arrange each subject under its proper head:—First, as to the constitution of the Commission. The Commission is issued for the districts formerly known as the Tower Hamlets,—St. Katherine's,—Poplar and Blackwall,—Holborn and Finsbury,—Westminster and part of Middlesex,—Surrey and Kent,—and Regent's Street and Regent's Park districts. The Commission is to endure for two years. The Commissioners require no qualification. In addition to the Commissioners appointed by the Commission there are to be five other persons—viz. the Lord Mayor of London and four persons to be selected from the Court of Aldermen or the Common Council. These five Commissioners, however, are only to act when matters regarding Sewers and Drainage Works and subjects connected with the City are to be dealt with.

Constitution of Commission.

Sec. 1.\*

Commissioners.

Sec. 12.

The disqualifications of the Commissioners are—Bankruptcy, Insolvency, Composition with Creditors, or being concerned in any work or contract relating to the Commission, except where a Commissioner may be a member of a Joint-Stock Company. As to the City Commissioners, there is the additional disqualification of ceasing to be Members of the Municipal body from which they were elected—the penalty for acting after disqualification is £50 for each offence.

Disqualifications.

Sec. 6.

\* These numbers refer to the Metropolitan Sewers Act, 11th and 12th Victoria, cap. 112.

Transfer of  
Property, &c.  
to New Com-  
missioners.  
Secs. 7 to 10.

As to transfer of property and rights of the Commissioners—all rights under any former Statutes are conferred on the Commissioners, in whom all works, sewers, and matters connected with them are to be vested. All former rates, debts, and obligations are to be recovered by the present Commissioners. As to the officers—the former officers are to be retained until they may be removed.

As to the mode of holding the Courts and procedure.

Courts.  
Secs. 11, 12.

The Commissioners are to act at Courts, at which there must be present not less than six Commissioners. A majority is to decide all questions—no Court is to be held for any subject which shall affect the City, without notice to the City Commissioners.

Secs. 13, 14.

At each Court a chairman is to be chosen by the majority. In the case of equal votes, the person proposed and standing first in the Commission is to be chairman; but if the Lord Mayor be present and proposed, he shall take the chair. As appears above, the Lord Mayor will only be present when matters connected with the City Sewers are considered. The Chairman is to have a casting vote.

Special Courts.  
Secs. 16 to 20.

Courts are to be held monthly, except in case of emergency. Special Courts may be called by the Clerk on the request of three Commissioners. No new laws are to be adopted, nor is extraordinary business to be done at the monthly Courts, except notice of such laws or business be previously given. Courts may be adjourned.

Committees.  
Secs. 21 to 23.

Committees may be appointed by the Courts—their acts are to be submitted to the Court, and the Commissioners may appoint one or two of their body to direct or superintend works or other operations, and investigate accounts.

Record and  
Seal, Books,  
Offices.  
Secs. 24 to 26.

The Commissioners proceedings are to be recorded—they are to have a Common Seal, and they are to provide offices and give public notice of them by advertisement. They are to keep a book of complaints, which are to be considered by the proper Officers, and reported on to the Court.

Officers.  
Secs. 27 to 31.

As to the officers and servants of the Commissioners, they are to be continued, appointed, and removed at discretion—the Commissioners may fix the salaries and give pensions for services. The Treasurer, Clerk, and other officers are prohibited from being concerned in contracts, (except as before noticed,) relating to the Commission under penalty. Officers' entrusted with money are to give security, and all accounting officers are compellable to furnish accounts and pay over monies, and summary remedies are given to enforce it.

Survey, Maps.  
Secs. 32, 33.

As to Survey and Maps, the Commissioners are to complete the Survey of the Area within the limits of the Commission, and of any adjoining parts, and to make such Maps, with all additions, shewing House-Drains, &c. as they shall see fit; and they may contract with the Board of Ordnance for these purposes. The Maps may be published and are to be periodically revised.

Jurisdiction.  
Sec. 34.

As to the Jurisdiction. The extent of area has been already alluded to. The Commissioners are to divide or form such levels or districts into separate sewerage districts as they may think fit, and mark them from time to time on a Map—to be kept at the Chief Office.

The boundaries of the districts may be assigned by the Commissioners. Sec. 35.

In agricultural districts and such places the Commissioners may forbear to exercise jurisdiction. Sec. 36.

The subjects of jurisdiction are Sewers, Drains, Watercourses, Weirs, Dams, Banks, Defences, Gratings, Pipes, Conduits, Culverts, Sinks, Vaults, Cesspools, Privies, Reservoirs, Engines, Sluices, Penstocks, and such works connected with not only surface-water, but also water and refuse. Subjects of Jurisdiction. Sec. 37.

The power of the Commissioners as to works to be done, superintended, and repaired by them, is extensive; they are to repair, discontinue, divert, or destroy all Sewers vested in them—they are to make or alter Sewers to drain the area within the limits of the Commission;—to repair Banks of Waters, they may carry Sewers through private lands (making compensation) or across or under public Roads, or Streets, and make any alteration in the drainage; but the public is to be protected by the Commissioners providing proper drainage where any Sewers shall be destroyed or altered. Repair, &c. of Sewers. Sec. 38.

As to any works within or connected with the City of London, the Commissioners may require the City Commissioners of Sewers to make new Sewers, or alter, enlarge, or divert old Sewers so as to make a proper communication with the Sewers of this Commission. When these works shall not be required for the City, the Metropolitan Commissioners are to pay the City the cost—but where the works shall be a mutual benefit to the City and this Commission, the expense is to be apportioned between the City and this Commission according to the benefit derived. Works in the City of London. Secs. 39, 40.

If differences arise as to works or expense between the two bodies of Commissioners, the President of the Board of Trade is to decide them—the City Commissioners may enforce payment of any expense by a distress on the Treasurer of the Metropolitan Commissioners, or by means of a receiver. Should the City Commissioners delay to execute any works required by the Metropolitan Commissioners, the latter may construct them. Secs. 41 to 43.

With reference to the functions of the Commissioners as to cleansing Sewers and Drains, and other measures of this character, they are authorized to cover and empty all Sewers so as to prevent injury to health, and to guard against nuisance—for these purposes the Commissioners may construct works and collect the refuse of the Sewers in any place for sale or otherwise; but Parliament has saved the rights of a Company called "The Metropolitan Sewage Manure Company," which is authorized by two Acts of Parliament to deal with the contents of certain Sewers in Middlesex. Cleansing Sewers, &c. Secs. 45, 58

To secure proper drainage, Parliament has declared that no new house shall be built or house rebuilt, unless the lowest floor be made at such a level as shall admit of proper drainage. If there be within 100 feet of a house a Sewer approved by the Commissioners for the drainage of the premises, the Commissioners are to require the owner or occupier of the house to continue the Sewer along the premises, and to make a drain to the Sewer. But if there be already a proper Sewer along any side, front, or back of any house, the party must make a covered drain into it—where a Sewer shall already be made and a drain only shall be required, the party is to pay a contribution towards the original Prohibition against building and requirement as to drainage. Sec. 46.

expense of the Sewer, if it shall have been made within thirty-five years before the 4th September, 1848, the contribution to be paid to the builder of the Sewer.

Where no  
Sewer.  
Sec. 46.

In cases where there shall be no Sewer into which a drain could be made, the party must make a covered drain to lead into a cesspool or other place (not under a house), as the Commissioners may direct. If the parties infringe this rule, the Commissioners may do the work and throw the cost on them in the nature of an improvement rate, or as charges for default, and levy the amount by distress.

District Sur-  
veyors.  
Sec. 47.

That the Commissioners may know what houses are in course of building, the District Surveyors are to make returns of all notices of building to the Commissioners, and they are also to give information to the Commissioners of any work not in conformity with the law of Sewers. The Building Act, 7 and 8 Victoria, c. 84, is repealed so far as any of its provisions as to drains, sewers, and cesspools are inconsistent with the Metropolitan Sewers Act.

Houses not to  
be built with-  
out water-  
closets, &c.  
Sec. 48.

No houses are to be built or rebuilt (as above) without a proper water-closet or privy, and an ashpit under a penalty of £20; and if the Commissioners, on a Report of the Surveyor, shall find any house without such provision, they are to require the party to provide it, and in default the Commissioners may construct a water-closet, &c. and charge the party with the cost. The law provides that, where a water-closet or privy is used in common for two or more houses, it may be permitted by the Commissioners.

Control of  
Drains, &c.  
Sec. 49.

As to all houses, new or old, the Commissioners are also to provide that all drains, water-closets, sewers, cesspools, and ash-pits be constructed and kept in such a state as not to be prejudicial to health or a nuisance. If found to be so, the Commissioners have power to require parties to amend the defect, and in default the Commissioners may do what may be necessary at the cost of the party. The law provides that compensation be made to parties where their ground may be opened by the Commissioners, and their drains are found in good order.

The Commissioners may, in proper cases, throw a portion of the expense of any works of the above character on the district. Notice is to be given before parties are charged, and disputes as to expenses may be referred to arbitration.

Ditches.  
Sec. 50.

Nearly the same duties are to be executed as to nuisances in ditches, pools, ponds, stagnant waters, &c. these are to be dealt with nearly in the same way as the foregoing.

Nuisances in  
Streets.  
Water.  
Sec. 51.

Where streets, common stairs, passages, and such places, are insufficiently cleansed, it will be the duty of the Commissioners not only to cause all refuse to be removed, but they may lay on water-pipes for the purpose—first calling on the authorities in such matters to do what the Commissioners may require.

Footways.  
Sec. 52.

Where nuisances exist from road-side ditches, bye-ways, footways, &c. the Commissioners are to interfere by ordering proper means of conveying-off water, &c.

Public Con-  
veniences.  
Sec. 53.

A great change is made too in the power given to the Commissioners to provide public water-closets and such like conveniences for the public. The expense is to be paid out of the District Sewer Rate.

To prevent interference with the sewers and means for draining, the Commissioners have power to prohibit, by penalties, the building over Sewers or making vaults near them; but the exclusive control over all gulleys, shoots, grates, and openings in any street or road communicating with any of their sewers is given to the Commissioners, and no Paving Commissioners are to lay down or relay pavement without giving notice to the Commissioners of Sewers, who are to regulate the paving with reference to drainage.

Control over Gulleys.  
Regulation of Pavements.  
Secs. 54 to 58

Power, also, is given to the Commissioners to stop up streets when their works require it—the Commissioners may also require owners of gas and water pipes to raise, sink, or alter them—the Commissioners making proper compensation. In case of non-compliance the Commissioners may do what is necessary.

Stopping up Streets.  
Gas pipes, &c. to be regulated.  
Secs. 63, 64.

The Commissioners may also purchase land and take mills where needful for doing works of drainage.

Land, Mills, &c. to be purchased.  
Secs. 66 to 68  
Sec. 66.

Also, they may take springs, and conduct reservoirs by their machines, and apparatus for any works they may order.

Compensation is to be made in these cases; and in case there be a difference, the matter is to be referred to arbitration.

Compensation.  
Secs. 67 to 75.

There are still subjects on which a jury may be called out, but practically it may rarely occur, the Surveyor of the Commissioners may now make many or most of the presentments as to the necessity for works, and as to nuisances, which a jury would formerly have done; and when the subject of rating shall be hereafter noticed, it will be seen that a jury will not be required, except in the case of a party requiring a traverse.

Surveyor's Presentment.  
Sec. 59.

Protection is given to the public in case of works which are to be done and chargeable to parties in the nature of a special rate. Before any such works are undertaken the Commissioners must give fourteen days notice and also make plans. Within the fourteen days the parties may object and the Commissioners are required to attend on the spot and examine into any objection which may be made, and the Commissioners are to alter their plan or adhere to it, or abandon it as they think right.

Works to be done by Special Rate.  
Sec. 60.

The mode of raising the general funds for the purposes of the Commission have been provided for by Parliament in a much more distinct and detailed manner than formerly.

There are to be several kinds of rate.

The first rate to be noticed is the District Rate.

A separate rate, the district rate, may be made on each Sewerage District within the limits of the Commission, which district shall bear such proportion of the general expenses of maintaining the <sup>Sewers</sup> Survey within the general limits of the Commission, and of officers' salaries, mapping, and the general expenses of all the districts, as the Commissioners shall think are incurred for the benefit of all the Sewerage Districts and also the cost; and of repairing, making, and improving any works of a permanent nature, where such expenses shall be incurred in the judgment of the Commission for the special benefit of a separate district. The District Rate is to include interest and all Mortgages and

District Rate.  
Sec. 76.

liabilities on the district. The District Rate is to be made on the same persons and the same property as are assessed to the Poor Rate—and the rate is not to exceed in any one year one shilling in the pound on the annual rateable value of the property in the district.

Sec. 77. The District Rate is to be in respect of a period not beyond one year. It may be prospective or retrospective, except that as regards all expenses (other than for permanent works, Map and Survey,) the rates are to be prospective, or by rates made not beyond one year after the expenses shall have been incurred; but with reference to permanent works, and Map and Survey of durable benefit, the Commissioners may raise such sums as they think will discharge the amount of such expenses, or the money to be borrowed in respect of them, with interest and incidental charges within such period, not exceeding thirty years, as the Commissioners, having regard to the nature of the works, shall in each case determine.

Sec. 78, 79. The Commissioners may impose the District Rate in one gross sum upon any parishes or places where any poor or other equal pound rate is collected, or may assess the rate on the occupier of the property rateable. Provision is made, as between Landlord and Tenant, that any contract as to payment of Sewers' Rate for deducting or paying Sewers' Rate shall be in force.

Sec. 80. When the District Rate shall not be imposed in gross on parishes or places, it shall be assessed on the net annual value of the property rateable ascertained by the last Poor Rate; but, if there be no Poor Rate, the rate shall be made on the net annual value to be estimated by any Act then in force for regulating parochial assessments.

Sec. 81. A Special Sewers' Rate may be made in respect of expense incurred in the drainage of any street, place, or property, not co-extensive with a separate Sewerage district. It is to be imposed on the occupiers for the expenses incurred, or such portion as the Commissioners shall order, with interest not beyond £5 per cent, within a period not exceeding thirty years—the rate to be made for a specified time not beyond a year, and be assessed according to extent of frontage—the rate is not to exceed in any year 6*d.* per foot frontage, except in a square or wide space where the rate shall not exceed 1*s.* Notice of making the Special Rate must be given. The rate may be prospective or retrospective.

Sec. 82. As to Improvement Rates.—These are in respect of private property, and for works of an individual character. The Commissioners may raise the expenses incurred, with interest, (not beyond £5 per cent,) within a period not exceeding thirty years, and shall be made for a time not beyond one year—provided that the amount shall not in any term of ten successive years, exceed one year's rack-rent of the property charged without the written consent of the owner.

Sec. 83. To prevent confusion as between the several kinds of rates, the Commissioners are to decide on the apportionment, both as to districts and persons, and the certificate of their Surveyor as to the expenses incurred shall be conclusive evidence of the amount of such expense.

Special and Improvement Rates are to be a charge on the owner while unoccupied; but the Commissioners may recover them from any future occupier, who may retain from his landlord all the rate if it accrued before his occupation. Unoccupied Premises. Sec. 84.

Where the value of houses shall not exceed £10 per annum—or where houses are let to weekly or monthly tenants or in separate apartments, the landlord is liable, and compositions for Rates may be made, and powers of enforcing compositions are given by the Statute—the Metropolitan Sewers Act. Composition for Rates. Sec. 85.

To enable the Commissioners to make rates they may call for an inspection of or copies of Poor Rates. Sec. 87.

The law provides that, in cases of Special and Improvement Rates, the occupier may deduct from the owner thus—If let at a rack-rent, three-fourths of amount paid; if less, a sum bearing the same proportion, and mesne lessors may make deductions on the same principle provided they hold the premises for not less than twenty years unexpired. Deduction by Tenant. Sec. 88.

Special and Improvement Rates may be redeemed. Redemption. Sec. 89.

As to the proceeding on making District Rates.—Notice must be given in the newspapers of the intention to make the rate seven days previously; and at the day appointed for making the rate, the Commissioners shall receive any objections in writing before making the rate. A district rate not in gross shall be signed by six Commissioners, and notice thereof and of the appeal days to be held shall be given by the Commissioners. The appeal days are to be held within a month after making the rate. Procedure as to District Rate. Sec. 90.

Notice is to be given of making Special and Improvement Rates.

Rates are to be open to inspection, and they may be amended. Amendment. Secs. 92, 93.

The law provides for appeals against rates—when in gross, the overseers or other officers may appeal, giving fourteen days notice of grounds of appeal, where not in gross, by any person interested. Appeals are to be made at the usual Courts of Sewers by examination of parties and hearing evidence—the Commissioners may alter or quash a rate—there may be a traverse before a jury; but if no complaint be made of a rate for one month, it is to be conclusive. Appeals. Secs. 94, 95.

The mode of collecting rates where they are imposed in gross, is to call on the Treasurer or Officer empowered to levy rates in the parish or place for the sum the Commissioners require. In the case of a parish wholly within the limits of the Commission and comprised in a Poor Law Union, a precept is to be issued to the Guardians to raise the money as they would a Poor Rate—or where no Union to the Overseers or proper parties: or, in case of a place not maintaining its own poor, to the Vestrymen or proper parties. Precepts may be enforced by the Commissioners ordering a levy, or in some cases by application to Justices, and officers paying the money are to be indemnified. Collection of Rates. Secs. 97 to 100. Secs. 103, 104.

When the rate shall not be made in gross, the Commissioners may consolidate it with any poor rate, or equal pound rate, and issue precepts for its collection to the parties who should raise it. Secs. 101, 105.

Loans.  
Secs. 106 to  
115.

An important feature exists in the present law of Sewers, as regards the Metropolitan Commission, viz.: the power to borrow money on mortgage of the Rates for the expenses incurred in the execution of the Commission. Advances may be made by the Commissioners of Public Works: the Mortgages may be varied as to interest, and be paid off as may seem necessary, and further sums be borrowed. Provision is made for the proper form of Mortgage: for registering: for the appointment of a receiver to enforce the debt: for the accounts of the Commissioners being open to Mortgagees, and for transfer of Mortgage in a simple form.

Secs. 116, 117. All monies, which are raised for works within the City of London, may be ordered to be paid by a precept to the Chamberlain.

Sinking Fund.  
Sec. 119. The Commissioners may form a sinking fund to pay off Mortgages.

Inspection and  
Publication of  
Accounts.  
Sec. 120. A very important provision is made by Parliament for enabling the public to be acquainted with the accounts of the Commissioners. The accounts are to be open for the inspection of any person interested, under a penalty of £5 for refusal to produce them. The accounts are to be balanced at the end of each year and an annual statement drawn out, and public notice given thereof, and of the day appointed for their audit. The Secretary of State is to appoint one or more Auditors in January in each year, and the

Sec. 121. Auditor is to examine all accounts relating to the Commission.

Sec. 122. An abstract of the accounts is annually to be laid before Parliament, and a copy sent to each Union or Parish within the limits of the Commission.

Bye-Laws.  
Sec. 123.

An important head of law affecting the Commission consists in the power in the Commissioners to make Bye-Laws; these are to extend to a great many subjects, (*e. g.*) the regulation of business—appointment and control of Officers—regulating drainage, plans, levels, pavement boards, form and character of sewers, pipes, drains, &c. for emptying cesspools and privies, for the disposal of refuse, for regulating assessments and calculation of rates, forms of proceedings on appeal, forms of contracts, and the Commissioners may impose penalties for breach of bye-laws; there is a proviso enabling Justices to remit penalties, and no bye-law shall be of any force unless confirmed at a Court of Sewers, at which not less than ten Commissioners shall be present, and public notice of the intention to submit such bye-law to the Court shall be given a month previously.

Remedies for  
and against  
Commissioners.  
Secs. 125 to  
127.

As to remedies against the Commissioners, they may sue and be sued in the name of their Clerk, who may nevertheless be a witness, and the Clerk is to be indemnified by the Commissioners out of the rates. Notice of every action must be given one month before it shall be brought against the Clerk, and every action must be brought within six months after the accrual of the cause of action, and in the county or place where the causes of action accrued.

The Commissioners are subject to control by the Court of Queen's Bench, like other bodies.