

House of Representatives, 26 August 1955

Words struck out by Local Bills Committee are shown in italics within bold brackets or in roman enclosed in panel; words inserted are shown in black or in roman with rule down side.

Hon. Mr Smith

IMPOUNDING

ANALYSIS

<p>Title.</p> <p>1. Short Title and commencement.</p> <p>2. Interpretation.</p> <p style="text-align: center;">PART I</p> <p style="text-align: center;">ESTABLISHMENT OF POUNDS</p> <p>3. Establishment of public pounds.</p> <p>4. Provisions as to joint pounds.</p> <p>5. Location of pound to be publicly notified.</p> <p>6. Notice to be placed on pound.</p> <p>7. Local authority may acquire land for establishment of pounds.</p> <p style="text-align: center;">PART II</p> <p style="text-align: center;">POUNDKEEPERS AND OTHER STAFF</p> <p>8. Appointment of poundkeepers, etc.</p> <p>9. Appointment of deputies.</p> <p>10. Local authority may remove or suspend poundkeeper, etc.</p> <p>11. Appointment, etc., of poundkeeper to be publicly notified.</p> <p style="text-align: center;">PART III</p> <p style="text-align: center;">CONDUCT OF POUNDS</p> <p>12. Provisions for health of impounded stock.</p> <p>13. Records to be kept by local authority.</p> <p style="text-align: center;">PART IV</p> <p style="text-align: center;">FEES, RATES, AND CHARGES</p> <p>14. Poundage fees.</p> <p>15. Charges for delivering stock to the pound or to owner.</p> <p>16. Trespass rates.</p> <p>17. Special trespass rates for entire animals.</p>	<p>18. Fees, rates, and charges to be paid into ordinary general fund.</p> <p>19. Local authority to pay trespass rates and driving charges to persons entitled thereto.</p> <p>20. Copy of Act and table of fees to be available for inspection.</p> <p style="text-align: center;">PART V</p> <p style="text-align: center;">REMEDIES FOR STOCK TRESPASSING</p> <p style="text-align: center;"><i>Impounding Trespassing Stock</i></p> <p>21. Occupier may impound trespassing stock.</p> <p>22. Mode of impounding trespassing stock.</p> <p>23. Stock to be released if trespass rates and driving charges tendered.</p> <p>24. Occupier may impound on his own land stock trespassing thereon.</p> <p>25. Occupier may restore trespassing stock to owner.</p> <p style="text-align: center;"><i>Damages for Trespass and Trespass Rates</i></p> <p>26. Damages for trespass.</p> <p>27. Claiming trespass rates instead of damages.</p> <p>28. Occupier whose fence is damaged may recover damages as trespass rate.</p> <p>29. If impounding illegal or excessive trespass rates claimed, owner may pay under protest.</p> <p>30. Jurisdiction of Magistrate's Court.</p> <p>31. Special remedies for trespass by pigs, goats, or poultry.</p>
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PART VI
PROVISIONS FOR STOCK FOUND
STRAYING OR WANDERING ON
ROADS, AND FOR WILD STOCK

Temporary Pounds

32. Temporary pounds.

*Stock Straying or Wandering on
Roads*

33. Stock straying or wandering on roads.

34. Section 33 not to apply in certain cases.

35. Stock straying on roads may be impounded in a temporary pound.

36. Recovery of stock that escapes while being taken to a pound.

37. Stock to be delivered up on payment of expenses before impounding.

*Special Provisions as to Stock too
Wild to Impound*

38. Wild stock trespassing on land.

39. Purchaser of wild stock may pursue and take the same.

40. Occupier may destroy wild stock unsold or not removed by purchaser.

41. Stray stock not to be taken away without notice.

42. Disposal of wild stock straying on roads.

PART VII

PROCEDURE FOR IMPOUNDING STOCK
IN A POUND

43. Poundkeeper to receive stock tendered for impounding.

44. Provision where pound is of insufficient size.

45. Occupier or other person to supply particulars of stock impounded.

46. Notice to owner of stock impounded.

47. Poundkeeper to detain stock until all charges paid.

48. Hours for release of stock.

PART VIII

PROCEDURE FOR DISPOSING OF UN-
CLAIMED, SUFFERING, OR WORTH-
LESS IMPOUNDED STOCK

49. Stock not claimed to be sold at auction.

50. Sales of impounded stock.

51. Purchaser of stock not bound to prove regularity of sale.

52. Destruction of suffering or worthless animals.

53. Disposal of unsold stock.

54. Application of proceeds of sale of impounded stock.

55. Recovery of damages or trespass rates from residue of proceeds.

56. Deficiency of fees, charges, and trespass rates recoverable from owner.

PART IX

OFFENCES AND PENALTIES

57. Offences by poundkeepers.

58. Offences by other persons.

59. Burden of proof in certain cases on poundkeeper.

60. Person using stock without consent of owner.

61. Offences punishable on summary conviction.

62. Application of fines.

PART X

MISCELLANEOUS

63. Delegation of local authority's powers.

64. Service of notices.

65. Unclaimed trespass rates, charges, and residue of sale.

66. Cost of administration of Act.

67. Regulations.

68. Repeals, savings, and consequential amendments.
Schedules.

A BILL INTITULED

Title.

AN ACT to consolidate and amend the law relating to the establishment and management of public pounds, trespassing and wandering stock, and the impounding of stock.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. (1) This Act may be cited as the Impounding Act 1955. Short Title and commencement.

(2) This Act shall come into force on the *first* day of *January*, nineteen hundred and fifty-six.

5 2. (1) In this Act, unless the context otherwise requires,— Interpretation.
1908, No. 79,
s. 2

“Borough” includes a city:

“District” means the district under the administration of a local authority:

10 “Driving charges” means the charges for leading, driving, or conveying stock as set out in the *Second* Schedule to this Act:

“Entire”, in relation to any animal, means a male animal not completely castrated:

15 “Fence” and “fenced land” respectively mean a sufficient fence and land enclosed within such a fence within the meaning of the Fencing Act 1908: Reprinted 1954,
Vol. II, p. 1367

20 “Local authority” means a City Council, Borough Council, Town Council, or Road Board; and, in relation to a county (except any part of the county that is included in a town district or road district) means the County Council; and, in relation to any part of New Zealand that is not under the jurisdiction of any such local authority, means the Governor-General:

25 “Nearest accessible pound” means the pound which is most easily accessible having regard to distance and facilities of access at the time of seizure for impounding:

30 “Occupier”—

(a) In relation to any land, other than land of the Crown, includes any owner of the land; and also includes any tenant, licensee, agent, bailiff, or overseer of any owner or occupier:

35 (b) In relation to unoccupied land of the Crown, means the Minister for the time being charged with the administration of the Department of State that has the control of the land:

(c) In relation to any other land of the Crown, means any person occupying the land under lease, licence, or other authority granted by or on behalf of the Crown:

- “Ordinary general fund” means the District Fund 5
of a borough or town district, the County Fund
of a county, the Road Board Fund of a road
district, and the Consolidated Fund where the
Governor-General is the local authority:
- “Owner”, in relation to any stock, includes the 10
person having the charge of the stock or the
management thereof; and “owned” has a corres-
ponding meaning:
- “Poultry” includes turkeys, geese, ducks, and domes- 15
tic fowls of all descriptions:
- “Pound” or “public pound” means a public pound
established under this Act; and for the purposes
of Part VI of this Act includes a temporary
pound:
- “Poundkeeper” means the person for the time being 20
in the authorized charge of any pound:
- “Public notice” and “publicly notify” mean the
insertion of a notice in one or more newspapers
having general circulation in the district affected
by the matter of the notice: 25
- “Ranger” means any person appointed by the local
authority to keep roads clear of straying or
wandering stock:
- “Road” includes a street, a private street, a State 30
highway, a main highway, an access way, a
service lane, any other public highway (whether
a carriage way, bridle path, or footpath), and
any public place where the public have general
access; and also includes all bridges and culverts 35
thereon; and also includes a river bed and
riparian land under the control of any local
authority:
- “Stock” includes any horse, mare, gelding, colt, filly,
or foal; any bull, cow, ox, steer, heifer, or calf;
any ram, ewe, wether, or lamb; any ass or mule; 40
any boar, sow, or other pig; or any goat:

“Straying” or “wandering”, in relation to any stock on or near a road, includes being on or near the road without being under [*effective*] **proper guidance and control**; and also includes being herded or drafted or grazed upon or near the road other than in the course of being driven:

“Temporary pound” means a pound established under section *thirty-two* of this Act:

“Trespass rates” means the rates specified in the *Third Schedule* to this Act.

(2) For the purposes of this Act a suckling of any species under six months old and its mother are to be considered as one animal.

(3) A local authority may exercise its powers under this Act in respect of any State highway or main highway in its district whether or not that highway is under the control of the local authority.

PART I

ESTABLISHMENT OF POUNDS

3. Every local authority shall provide and maintain a public pound, which shall be properly fenced and enclosed and so adapted as to keep stock infected with any contagious disease separate and apart from other stock:

Provided that—

(a) Any two or more local authorities may jointly provide and maintain a public pound upon such terms and conditions as may be agreed upon:

(b) Any local authority may, if it so desires, provide and maintain more than one public pound:

(c) Where the Governor-General is the local authority, nothing in this section shall be deemed to impose on the the Governor-General any obligation to provide and maintain a public pound.

4. (1) Where any local authority has entered into an agreement to provide a joint pound, that local authority may make contributions in accordance with the agreement towards the cost of establishing, maintaining, and operating the joint pound.

Establishment of public pounds.
1908, No. 79,
ss. 29, 30
1941, No. 26,
s. 33 (2)

Provisions as to joint pounds.
1941, No. 26,
s. 33 (3) (4)

(2) All rates, charges, fees, and other money collected by a local authority in respect of the joint pound and not otherwise appropriated by this Act shall be held by the local authority on behalf of the parties to the agreement and, subject to the deduction or payment of such amount as remuneration or costs as may be agreed upon, shall be handed over to such local authorities as are entitled to receive the same in terms of the agreement. 5

Location of pound to be publicly notified.
1908, No. 79, s. 31

5. The location of any new pound, or a change in the location of any pound, or the abolition of any pound shall be publicly notified, and a copy of the notice shall be *prima facie* evidence of the establishment or change in location or abolition of any pound. 10

Notice to be placed on pound.
1908, No. 79, s. 34

6. The local authority shall erect and maintain on some conspicuous part of every pound a notice board on which shall be printed or otherwise affixed in some permanent manner a notice to the effect that the area is a public pound, and showing the name of the local authority having jurisdiction over the pound and the name and address of the poundkeeper. 15 20

Local authority may acquire land for establishment of pounds.
See Reprint of Statutes, Vol. VII, p. 622

7. A local authority may take or otherwise acquire under the Public Works Act 1928 or purchase or otherwise acquire land or any interest in land for the purpose of establishing a public pound or a temporary pound. 20

PART II

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POUNDKEEPERS AND OTHER STAFF

Appointment of poundkeepers, etc.
1908, No. 79, s. 29

8. The local authority shall appoint a [*separate*] poundkeeper for each public pound under its control, and may appoint rangers and such other persons as are necessary for the proper carrying out of the provisions of this Act. 30

Appointment of deputies.

9. (1) The local authority may from time to time appoint a deputy of any poundkeeper.

(2) On the occurrence from any cause of a vacancy in the office of poundkeeper (whether by reason of death, resignation, dismissal, or otherwise), and in case of the illness, absence, suspension, or temporary incapacity of the poundkeeper (from whatever cause arising), and so long as the vacancy, illness, absence, suspension, or temporary incapacity continues, the deputy shall have and may exercise all the powers, duties, and functions of the poundkeeper whose deputy he is. 35 40

(3) The fact that the deputy of any poundkeeper exercises any power, duty, or function as aforesaid shall be conclusive evidence of his authority to do so, and no person shall be concerned to inquire whether the occasion has arisen requiring or authorizing him to do so.

10. The local authority may at any time remove or suspend from duty any poundkeeper or deputy poundkeeper or any ranger or other person appointed for the purposes of this Act.

Local authority may remove or suspend poundkeeper, etc.
1908, No. 79, s. 29

11. Every appointment, or suspension, or removal from office of any poundkeeper or any deputy poundkeeper shall be publicly notified, and a copy of the notice shall be *prima facie* evidence of any such appointment, suspension, or removal.

Appointment, etc., of poundkeeper to be publicly notified.
1908, No. 79, ss. 29, 31

PART III

CONDUCT OF POUNDS

12. (1) The local authority shall cause every pound under its jurisdiction to be kept clean and in good order, and all stock from time to time impounded therein to be supplied with sufficient food and water and given all necessary care and attention.

Provisions for health of impounded stock.
1908, No. 79, s. 32

(2) The local authority shall cause any stock known to be infected with any contagious disease to be kept in a separate enclosure from stock not so infected, and any person for the time being in charge of a pound who knowingly allows any diseased stock to be confined in the same enclosure with other stock commits an offence under this Act.

13. (1) The local authority shall keep or cause to be kept in respect of all stock impounded—

Records to be kept by local authority.
1908, No. 79, s. 33

(a) A Pound Book in the prescribed form in respect of each pound in its district:

(b) An Impounding Register in the prescribed form.

(2) The Pound Book shall be the initial record of stock impounded in the pound, and shall be kept by the poundkeeper, who, as soon as possible after stock has been impounded, shall make in duplicate all such entries as are required to be made therein, and forward a copy of those entries to the Clerk of the local authority for entry in the Impounding Register.

(3) The Impounding Register shall be kept at the office of the local authority, and shall be a record of all stock impounded, and of all fees, rates, and charges received in respect of that stock, and all disbursements required to be made therefrom under this Act. 5

(4) The Pound Book and the Impounding Register shall at all reasonable times be open to inspection by any person free of charge.

PART IV

FEEs, RATES, AND CHARGES 10

Poundage fees.
1908, No. 79,
ss. 4, 24

14. (1) The fees for poundage and sustenance and for giving notice of impounding set out in the *First* Schedule to this Act shall be recoverable from the owner of stock impounded in a pound, and the local authority is hereby authorized to charge and receive those fees: 15

Provided that the local authority may at any time by resolution publicly notified alter the scale of fees payable under this section, but so as not to exceed those prescribed in the said *First* Schedule.

(2) The person impounding stock shall not be liable to pay to the local authority any fees under this section. 20

Charges for
delivering stock
to the pound
or to owner.
1908, No. 79,
ss. 24, 26, 27

15. The charges set out in the *Second* Schedule to this Act shall be the charges for leading, driving, or conveying stock from the place where they are found trespassing or straying or wandering to the pound, or, in the case of stock seized for trespass but not impounded, to the place where it is delivered to the owner or other person acting on his behalf; and those charges shall be payable by the owner of the stock to the local authority in the first instance if the stock is impounded, or direct to the person having charge of the stock in any other case. 25 30

Trespass rates.
1908, No. 79,
ss. 24, 26, 27

16. Where trespass rates are payable under this Act, the owner of the stock trespassing shall pay the rates set out in the *Third* Schedule to this Act (or at double those rates where double rates are payable) according to the description of the stock trespassing and according to the description of land or crop trespassed on; and those rates shall be payable to the local authority in the first instance where the stock is impounded in a pound, or direct to the occupier or person having charge of the stock in any other case. 35 40

17. In any case where trespass rates are payable in respect of the trespass of any entire animal, there shall be payable to the occupier of the land trespassed upon, as a special trespass rate in addition to any other trespass rate fixed by this Act, such sum not exceeding [ten] twenty pounds as the Court thinks fit to award, to be recoverable by action in a Magistrate's Court.

Special trespass rates for entire animals.
1908, No. 79, s. 8

18. All fees, rates, and charges paid to a local authority under this Act shall be paid into its ordinary general fund.

Fees, rates, and charges to be paid into ordinary general fund.
1908, No. 79, ss. 25, 52

19. Subject to the provisions of section *twenty-nine* of this Act, all trespass rates and driving charges received by a local authority (not being driving charges which the local authority is entitled to retain) shall as soon as possible be paid to the persons entitled thereto.

Local authority to pay trespass rates and driving charges to persons entitled thereto.
1908, No. 79, s. 27

20. There shall be available for inspection by any person at all reasonable times at the office of the local authority and at the office or residence of the pound-keeper a copy of this Act and a table of the fees, rates, and charges that the local authority is authorized by this Act to receive.

Copy of Act and table of fees to be available for inspection.
1908, No. 79, ss. 33, 34

PART V

REMEDIES FOR STOCK TRESPASSING

Impounding Trespassing Stock

21. The occupier of any land may seize and impound any stock trespassing on the land.

Occupier may impound trespassing stock.
1908, No. 79, s. 5

22. (1) Except as hereinafter provided, stock shall be impounded in the nearest accessible pound to the place where the stock was found trespassing.

Mode of impounding trespassing stock.

(2) The stock may be led, driven, or conveyed to the pound by the occupier of the land trespassed upon or his agent or, if so requested by the occupier and approved by the local authority, by a ranger.

1908, No. 79, s. 11

(3) Where the stock, while being taken to a pound, escapes on to any unfenced land, the person taking the stock to the pound or any other person on his behalf may enter upon the land and remove the stock therefrom.

Stock to be released if trespass rates and driving charges tendered. 1908, No. 79, s. 28

23. Where stock has been seized for trespass by any occupier for the purpose of impounding the same, the owner of the stock or some person on his behalf may pay or tender the trespass rates (where trespass rates are payable) and driving charges to the person seizing or having charge of the stock before it has actually been impounded, and the person having charge of the stock shall on that payment or tender forthwith deliver up the stock to the owner or to the person acting on his behalf. 5

Occupier may impound on his own land stock trespassing thereon. 1908, No. 79, s. 12

24. (1) The occupier of any land trespassed upon by stock may, where the owner of the stock is known to him, impound and detain the stock in any convenient place upon his own land; and in that case he shall, within twenty-four hours of the impounding, notify the owner of the stock, either personally or by means of a written notice delivered to his usual or last-known place of abode, of the number, description, brands or apparent brands and earmarks of the stock, the place where the stock was found, and details of any trespass rates claimed. 10 15

(2) The occupier shall feed and maintain and give all necessary care and attention to the stock so impounded and shall not keep it impounded longer than two whole days of twenty-four hours each, and at the expiration of that time, unless the stock is sooner released pursuant to subsection *three* of this section, he shall cause the stock to be led, driven, or conveyed to the nearest accessible pound. 20 25

(3) Where stock has been impounded in accordance with subsection *one* of this section and the owner or any person acting on his behalf pays or tenders the sustenance fees that would have been payable if the stock had been impounded in the nearest accessible pound and any trespass rates that may be payable, the occupier of the land shall release the stock to the owner or to the person acting on his behalf. 30 35

Occupier may restore trespassing stock to owner. 1908, No. 79, s. 13

25. The occupier of any land trespassed on by stock may restore the stock to its owner, and in such a case may demand, and in case of non-payment recover as a debt, from the owner of the stock the amount of any trespass rates that would be payable if the stock was impounded for trespass, together with the charges for leading, driving, or conveying the stock to the residence of the owner. 40

Damages for Trespass and Trespass Rates

26. (1) Except as otherwise provided in this Act, the occupier of land trespassed upon by stock shall not be entitled to demand or recover any damages whatsoever on account of the trespass thereon of any stock unless—
- (a) The land or the portion of the land trespassed upon is fenced; or
- (b) He proves that the trespass on to his land was not wholly or partly due to the fact that his land or the portion trespassed upon was not fenced; or
- (c) In any case where stock trespassing on any land adjoining his land and not fenced therefrom has trespassed on to his land from that adjoining land, he proves that the trespass on to the adjoining land was not wholly or partly due to the fact that that adjoining land was not fenced; or
- (d) The land (whether fenced or unfenced) is situated in a borough or town district.
- (2) In any case where damages are payable under this section the amount of any damage shall be recoverable by action from the owner of the stock.
- (3) Where stock has been impounded for trespass and the occupier of the land trespassed upon notifies the poundkeeper that he intends to claim actual damages instead of trespass rates pursuant to section *twenty-seven* of this Act, the poundkeeper shall, on payment of all other authorized fees and charges, release the stock to the owner.
27. Where in any of the cases specified in paragraphs (a) to (d) of subsection *one* of section *twenty-six* of this Act the occupier of the land has impounded stock for trespass thereon, he may claim from the owner of the stock on account of the trespass the trespass rates provided under this Act, and in that case he shall not be entitled to recover the actual damage sustained by him on account of the trespass.
28. The occupier of any land trespassed upon by stock whose fence has been damaged by the stock may, when the estimated cost of the repair of the fence does not exceed five pounds, demand and charge that cost as if it were a trespass rate.

Damages for trespass.
1908, No. 79, ss. 5, 6
1939, No. 39, s. 32

Claiming trespass rates instead of damages.
1908, No. 79, ss. 5, 6
1939, No. 39, s. 32

Occupier whose fence is damaged may recover damages as trespass rate.
1908, No. 79, s. 16

If impounding illegal or excessive trespass rates claimed, owner may pay under protest.
1908, No. 79, s. 9

29. The owner of impounded stock may give notice in writing to the local authority that he intends to apply to a Magistrate's Court for an order declaring that the impounding was illegal under this Act or that the trespass rates demanded exceed the amount payable under this Act; and on the giving of that notice and on payment of trespass rates (where trespass rates are demanded), together with all other authorized fees and charges, the poundkeeper shall release the stock, and the local authority shall retain the trespass rates to abide the order of a Magistrate's Court as provided in section *thirty* of this Act. 5 10

Jurisdiction of Magistrate's Court.
1908, No. 79, s. 10

30. (1) Every application under section *twenty-nine* of this Act shall be made within two months after the giving of the notice in writing to the local authority, and shall be made by way of originating application to a Magistrate's Court in accordance with the rules of that Court, and the fees prescribed by those rules in respect of originating applications shall be payable. 15

(2) If the Court finds that the stock was not trespassing, or that the impounding was illegal under this Act, or that the trespass rates demanded are in excess of the amount payable under this Act, it may make an order against the defendant for the amount of damages sustained by the owner of the stock in consequence of the illegal impounding or excessive demand, and for the amount of all other authorized fees and charges paid by the owner to the local authority; and that order shall also be an authority to the local authority to pay the trespass rates retained by it in accordance with the order. 20 25 30

(3) The Court may hear and determine the application notwithstanding any question of title to the property or suggestion of right that may be involved therein.

Special remedies for trespass by pigs, goats, or poultry.
1908, No. 79, s. 14

31. (1) Notwithstanding anything in section *twenty-seven* of this Act, the occupier of any fenced or unfenced land trespassed on by pigs or goats may recover from the owner of those pigs or goats trespass rates at the rates specified in the *Third* Schedule to this Act; and, if any pigs or goats the property of the same owner trespass upon that land within three months after the first trespass, the occupier may recover from the owner thereof, in respect of every separate time they so trespass, trespass rates at double the rates specified in the said *Third* Schedule. 35 40

(2) The occupier of any fenced land sown in grass or under cultivation may destroy any poultry or pigs or goats, other than branded Angora or Saanen or Toggenburg goats, found trespassing upon the land.

5 (3) The occupier so destroying any such animal or bird shall within twenty-four hours send in writing a description of the animal or bird so destroyed, and of the place where it was destroyed, to the owner thereof if he is known, and, if he is unknown, then to the nearest police
10 station, and if he makes default in so doing he is liable to a fine not exceeding ten pounds:

Provided that it shall not be necessary to send any description in the case of any wild animal or wild bird so destroyed.

15 (4) If the carcass of any animal or bird so destroyed is not claimed and removed by its owner within forty-eight hours after being destroyed, the occupier shall bury or otherwise dispose of the carcass, and if he makes default in so doing he is liable to a fine not exceeding ten pounds.

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PART VI

PROVISIONS FOR STOCK FOUND STRAYING OR WANDERING ON ROADS, AND FOR WILD STOCK

Temporary Pounds

25 32. (1) The local authority may from time to time, with the consent of the occupier thereof, declare any fenced paddock or yard adjacent to a road to be a temporary pound for use as a place for impounding stock
[*found straying or wandering on a road and impounded under the provisions of this Part of this Act.*] seized for
30 **impounding under the provisions of section *thirty-three* of this Act.**

Temporary pounds.

(2) No stock other than stock [*found straying or wandering on a road*] seized for impounding under the provisions of section *thirty-three* of this Act shall be
35 impounded in a temporary pound.

(3) The local authority shall appoint a keeper for each temporary pound.

(4) The local authority shall cause to be affixed on
40 some conspicuous part of the temporary pound a notice to the effect that it is a temporary pound, and showing the name of the local authority having jurisdiction over that temporary pound, and the name and address of the person appointed by the local authority to act as keeper thereof.

(5) The provisions of Parts III and IV and Parts VII to X of this Act shall, as far as they are applicable and with the necessary modifications, apply with respect to every temporary pound as if references therein to a pound were references to a temporary pound and as if references therein to a poundkeeper were references to the keeper of a temporary pound. 5

Stock Straying or Wandering on Roads

Stock straying
or wandering
on roads.
1908, No. 79,
ss. 17, 18

33. (1) Where at any time of the day or night any stock is found straying or wandering [*or tethered on any road, or so near the road*] **on any road, or tethered on any road in such a manner** as to obstruct or be reasonably likely to obstruct the road, any person may seize the stock, and may either impound it or, where the owner thereof is known to him, return it to the owner; and in any such case the owner of the stock, in the case of entire animals, is liable to a fine not exceeding ten pounds for every head thereof and, in the case of other animals, to a fine not exceeding five pounds for every head thereof, in addition to any other rates and charges payable under this Act. 10 15 20

(2) Where any stock is found so straying or wandering or tethered between sunset and sunrise, any person may, with the consent of the owner of the yard or paddock, place it in any yard or fenced paddock for the night and shall, as soon as possible after sunrise, either return it to the owner or remove it or cause it to be removed to the nearest accessible pound. 25

(3) Any expenses, not exceeding five shillings per head for the first twenty head and two shillings and sixpence per head for all over that number, incurred by any person impounding or otherwise dealing with stock under this section, shall be recoverable by action from the owner of the stock over and above any other fees, charges, and fines payable under this Act. 30 35

New

(4) For the purposes of this section stock straying or wandering or tethered so near a road as to be reasonably likely to stray on to the road shall be deemed to be straying or wandering or tethered on the road. 40

Section 33 not
to apply in
certain cases.
1908, No. 79,
s. 17 (4)

34. (1) Where—

(a) A local authority is satisfied that any road or any portion of a road within its district is so infrequently used by motor traffic that stock depasturing on or near the road will not constitute an inconvenience or danger to the users thereof; and 45

(b) The road or portion thereof is unfenced or only partially fenced on one side only or on both sides; [and]

Struck out

5 (c) The stock depasturing thereon or on the adjoining land is owned by the occupier of the land on both sides of the road,—

the local authority may, by resolution publicly notified, declare that the provisions of section *thirty-three* of this Act shall not apply with respect to that road or portion thereof.

(2) Where any such declaration is made under this section, the occupier of the land by which the road or portion thereof is bounded shall—

15 (a) Erect and maintain in some permanent manner and in some conspicuous place at each entrance to the road or, as the case may be, at each end of the portion thereof, a warning notice in a form approved by the local authority to the effect that stock is depasturing on or adjacent to the road; and

(b) If the local authority so requires, erect cattle stops or swing gates under the provisions of the Public Works Act 1928 in that behalf at such places on the road or portion thereof, as the case may be, as the local authority specifies,—

See Reprint of Statutes, Vol. VII, p. 622

and the declaration shall have effect only so long as those notices and the cattle stops and swing gates required by the local authority are so erected and maintained.

30 (3) The provisions of paragraph (i) of subsection one of section four of the Police Offences Act 1927 (except in so far as it relates to the offence of obstructing or preventing the driving of cattle) shall not apply with respect to any road or portion of a road in respect of which a declaration under this section is for the time being in force.

See Reprint of Statutes, Vol. II, p. 505

35 35. Where any ranger seizes stock for impounding under the provisions of section *thirty-three* of this Act, he may, instead of taking the stock to the nearest accessible pound, impound it in a temporary pound.

Stock straying on roads may be impounded in a temporary pound.

40 36. Where any person has seized any stock for impounding under section *thirty-three* of this Act and the stock, while being taken to a pound or temporary pound, escapes on to any unfenced land, that person or any other person on his behalf may enter upon the land and remove the stock therefrom.

Recovery of stock that escapes while being taken to a pound.

Stock to be delivered up on payment of expenses before impounding. 1908, No. 223, s. 2

37. Where stock has been seized by any person for impounding under section *thirty-three* of this Act, and, before the stock has been actually impounded, the owner of the stock or any person on his behalf pays or tenders to the person in charge of the stock the driving charges that would have been payable if the stock had been impounded in the nearest accessible pound, together with the amount of any expenses incurred under subsection *three* of section *thirty-three* of this Act, that person shall forthwith deliver up the stock to the owner or to the person so paying or tendering on his behalf: 5 10

Provided that no such delivery shall exempt any person from any penalty for which he is liable under the said section *thirty-three*.

Special Provisions as to Stock too Wild to Impound 15

Wild stock trespassing on land. 1908, No. 79, s. 21

38. (1) Where stock is trespassing on land, and cannot be impounded because of its wildness, the local authority within whose district the land is situated shall, at the request of the occupier of the land, and the tender of the cost and expense of the advertisement, forthwith cause a public notice to be advertised calling on the owner of the stock to remove the same from the land where it is trespassing, and warning him that if it is not removed within seven days from the date of the advertisement of the notice it will be sold by public auction at the time and place specified in the notice. 20 25

(2) Where the stock has not been removed within the said seven days the local authority may cause it to be sold by public auction at the time and place so specified, and every such sale shall be conducted, and the proceeds of the sale shall be applied, in the same manner as provided in this Act in respect of the sale of impounded stock not released from the pound. 30

Purchaser of wild stock may pursue and take the same. 1908, No. 79, s. 22

39. (1) Where stock is sold in accordance with the provisions of subsection *two* of section *thirty-eight* of this Act, the purchaser shall as soon as possible take possession of the stock, and for that purpose may, with necessary and proper assistance, enter upon the land where the stock is depasturing and may destroy any of the stock that by its wildness prevents or impedes him in the recovery of the remainder. 35 40

(2) Any such purchaser shall be liable for any damage occasioned to any property of the occupier incurred while recovering or mustering his stock in accordance with subsection *one* of this section. 45

Occupier may destroy wild stock unsold or not removed by purchaser. 1908, No. 79, s. 21

40. Where any wild stock has been offered for sale pursuant to subsection *two* of section *thirty-eight* of this Act and has not been sold, or where the stock has been sold but not removed by the purchaser from the land

where it is trespassing within seven days from the date of the sale, the occupier of the land may destroy the stock without being answerable for damage occasioned thereby.

5 41. (1) Except as provided in subsection *three* of section *twenty-two* or in section *thirty-six* of this Act, no person shall drive any stock from the land or out of the herds of any other person without first giving not less than twenty-four hours' notice in writing to the last-mentioned person, his overseer, or person in charge, of the time he intends to drive away the stock.

Stray stock not to be taken away without notice. 1908, No. 79, s. 23

10 (2) Every person who fails to give that notice, or who enters upon any other person's land for the purpose of driving any such stock, or attempts to drive any such stock without giving that notice, commits an offence against this Act.

(3) Nothing in this section shall affect the provisions of any Act relating to the removal of sheep.

15 42. (1) Where stock is found straying or wandering on any road, or so near any road as to be reasonably likely to **[obstruct]** **stray on to** the road, not being a road in respect of which a declaration under section *thirty-four* of this Act is for the time being in force, and—

Disposal of wild stock straying on roads.

20 (a) The stock cannot be impounded or otherwise dealt with as provided in section *thirty-three* of this Act because of its wildness; and

25 (b) The ownership of the stock is not known to the local authority and cannot reasonably be ascertained,—

30 then, on obtaining a written authority signed by any two members of the local authority, or, where the Governor-General is the local authority, signed by the Commissioner of Crown Lands for the district, or, where a Commissioner appointed under any Act is the local authority, signed by that Commissioner, any poundkeeper or ranger employed by the local authority may forthwith destroy the stock.

New

35 (1A) Where stock is found straying or wandering on any road or so near any road as to be reasonably likely to stray on to the road, and any constable has reasonable cause to believe that—

40 (a) By reason of its fierceness the stock is a danger to persons using the road; and

45 (b) The danger is so immediate that it is not possible or practicable for the stock to be impounded or to be dealt with under subsection *one* of this section,—

the constable may forthwith destroy the stock.

(2) In this section the term "stock" means any horse, mare, gelding, colt, filly, or foal; and bull, cow, ox, steer, heifer, or calf; or any ass or mule.

(3) Where any stock is destroyed in accordance with subsection *one* or subsection *one A* of this section, the local authority or any member or servant thereof or the constable, as the case may be, shall not be liable for any damages which may subsequently be claimed by any owner or reputed owner of the stock. 5

(4) The local authority may dispose in such manner as it thinks fit of the carcass of any stock destroyed in accordance with subsection *one* or subsection *one A* of this section. The proceeds (if any) of the disposal of any such carcass shall form part of the funds of the local authority. 10

PART VII 15

PROCEDURE FOR IMPOUNDING STOCK IN A POUND

Poundkeeper to receive stock tendered for impounding. 1908, No. 79, s. 35 (1)

43. The poundkeeper of any public pound shall receive all stock tendered for lodgment therein and shall allow the stock to be impounded at any time of the day or night.

Provision where pound is of insufficient size. 1908, No. 79, s. 15

44. Where a pound is too small to hold conveniently the number of stock required to be impounded therein, the poundkeeper may place any such stock in some paddock or convenient place near the pound to be approved by the local authority; and every such paddock or place while so used shall be deemed to be part of the pound. 20 25

Occupier or other person to supply particulars of stock impounded. 1908, No. 79, s. 11

45. The person by whom or by whose order any stock is delivered to a pound shall specify in writing to the poundkeeper of that pound the description, number, brands or apparent brands and earmarks of the stock, the name of the owner (if known to him), the place where the stock was found, and details of any trespass rates and driving charges claimed. 30

Notice to owner of stock impounded. 1908, No. 79, ss. 36, 37, 38

46. (1) As soon as possible after any stock has been impounded in a pound the local authority shall, if the owner is known or the stock is branded or marked with any registered brand or mark, cause to be delivered at or posted to the address of the owner or, as the case may be, the person in whose name the brands or marks are registered, a notice in the prescribed form that the stock has been impounded and unless claimed by the owner will be sold under the provisions of this Act. 35 40

(2) If the owner of the stock is not known, or cannot be identified from the brands or earmarks on the stock, or if following the delivery or posting of a notice as required in subsection *one* of this section the stock is not claimed
 5 within forty-eight hours, the local authority shall insert a notice in the prescribed form in one or more newspapers circulating in the district that the stock has been impounded and unless claimed by the owner will be sold under the provisions of this Act at the time and place
 10 specified in the notice, being not less than seven days after the date of the first publication of the notice in a newspaper.

47. The poundkeeper shall detain in his custody all stock impounded until the fees, rates, and charges payable
 15 under this Act and any expenses incurred by the local authority in connection with the proposed sale have been paid:
 Poundkeeper to detain stock until all charges paid. 1908, No. 79, s. 35 (1)

Provided that he shall not detain the stock pending payment of any trespass rates or driving charges where
 20 he has received an order in writing signed by the person by whose order the stock was impounded for its release without payment of the trespass rates or driving charges.

48. The poundkeeper shall not be obliged to release stock from the pound **on any Sunday, or on any other day**
 25 except between the hours of eight o'clock in the morning and five o'clock in the afternoon.
 Hours for release of stock. 1908, No. 79, s. 35 (2)

PART VIII

PROCEDURE FOR DISPOSING OF UNCLAIMED, SUFFERING, OR WORTHLESS IMPOUNDED STOCK

30 49. Where stock has not been released from the pound before the time fixed for the sale thereof in the notice referred to in subsection *two* of section *forty-six* of this Act, the stock shall be sold by public auction.
 Stock not claimed to be sold at auction. 1908, No. 79, s. 38

35 50. (1) Sales of impounded stock shall be held at the time and place specified in the notice referred to in subsection *two* of section *forty-six* of this Act, and at any such sale not more than ten sheep or goats nor more than five pigs nor more than one head of any other kind of stock shall be sold in one lot.
 Sales of impounded stock. 1908, No. 79, s. 41

40 (2) At every such sale the poundkeeper or any other person authorized by the local authority shall act as auctioneer, but in respect of the sale shall not be required to take out an auctioneer's licence.

(3) The local authority or any poundkeeper employed by the local authority or any person conducting the sale on its behalf shall not either in person or through an agent purchase any stock at any such sale, or have any interest of any kind in the stock so purchased. 5

Purchaser of stock not bound to prove regularity of sale.
1908, No. 79, s. 45

51. A purchaser of stock sold under the provisions of this Act shall not be bound to prove that the sale was regular, or that the terms and conditions required by this Act were complied with, or be affected by any default or irregularity in respect of the sale; and no poundkeeper or other person authorized to conduct the sale shall be liable for any penalties for selling by auction as herein provided. 10

Destruction of suffering or worthless animals.
1908, No. 79, ss. 39, 40

52. (1) Notwithstanding anything in section *forty-six* of this Act, on the certificate of any Justice, constable, Inspector of Stock, or registered veterinary surgeon (being a person not interested in the matter) that any impounded animal is so diseased, injured, or disabled that its existence involves continual suffering or is of insufficient value to defray the poundage and sustenance fees of keeping the same during the time prescribed by this Act, the local authority may arrange for the destruction of the animal and the disposal of the carcass in any manner it deems fit: 15 20

Provided that no animal whose owner is known to the local authority shall be destroyed under this section on the ground that it is of insufficient value to defray the aforesaid fees, unless the local authority has given written notice to the owner of its intention to destroy the animal and the owner has not within forty-eight hours after the giving of the notice paid to the local authority all fees, trespass rates, and charges necessary to secure the release of the animal from the pound. 25 30

(2) Any proceeds from the disposal of any such carcass shall be dealt with in the same manner as is provided in sections *fifty-four*, *fifty-five*, and *sixty-five* of this Act in respect of the proceeds from the sale of impounded stock. 35

Disposal of unsold stock.
1908, No. 79, s. 42

53. Where any stock has been offered for sale in accordance with the provisions of this Act, and has not been sold, the local authority may sell or otherwise dispose of the stock as it deems fit, and any proceeds resulting therefrom shall be dealt with in the same manner as is provided in sections *fifty-four*, *fifty-five*, and *sixty-five* of this Act in respect of the proceeds from the sale of impounded stock. 40

54. The proceeds of the sale of impounded stock sold under this Act shall be applied in payment—firstly, of any costs and charges incidental to the sale; secondly, of all poundage and sustenance fees payable in respect of the stock; thirdly, to the impounder of the stock of rates due to him for the trespass thereof, and the driving charges due to him; and fourthly, to the owner of the stock of any residue.

Application of proceeds of sale of impounded stock.
1908, No. 79,
s. 43

55. (1) Where the residue of the proceeds of any sale of impounded stock under this Act is not claimed by any person entitled thereto and the owner of the impounded stock is not known to the local authority or to the impounder of the stock or cannot be found, the impounder of the stock, if he has not claimed any trespass rates, may at any time within six months after the sale apply to a Magistrate's Court of civil jurisdiction for an order that the amount of any damages sustained by him in consequence of the trespass be paid to him out of the residue of the proceeds of the sale.

Recovery of damages or trespass rates from residue of proceeds.
1943, No. 20,
s. 16

(2) Notice of the application shall be published by the applicant in some newspaper circulating in the locality not less than fourteen clear days before the time appointed for the hearing thereof, and a copy of the application shall be served by the applicant on the local authority.

(3) On the hearing of the application the Court shall determine the amount of the damage sustained by the applicant in consequence of the trespass, and may make an order that that amount, together with the costs and disbursements, or such smaller amount as may have been paid into the ordinary general fund of the local authority as the residue of the proceeds of the sale, shall be paid by the local authority to the applicant.

(4) Every application to a Magistrate's Court under this section shall be made by way of originating application in accordance with the rules of that Court, and the fees prescribed by those rules in respect of originating applications shall be payable.

56. If the proceeds of the sale of any stock sold under this Act are insufficient to satisfy the fees and charges of the local authority relating thereto and the trespass rates and driving charges payable to any other person, the deficiency shall be recoverable by the local authority or by

Deficiency of fees, charges, and trespass rates recoverable from owner.
1908, No. 79,
s. 46

that other person, as the case may be, by action from the owner of the stock, and if the stock has been destroyed under the provisions of section *fifty-two* of this Act, the local authority or other person shall in like manner be entitled to recover from the owner of the stock any such deficiency. 5

PART IX

OFFENCES AND PENALTIES

Offences by
poundkeepers.
1908, No. 79,
s. 47

57. (1) Every poundkeeper is liable to a fine not exceeding fifty pounds who— 10

- (a) Illegally impounds or assists or incites any person, illegally to impound any stock; or
- (b) Purchases, in person or by his agent, unclaimed impounded stock caused to be sold by the local authority by which he is employed; or 15
- (c) Demands or receives any fees, charges, rates, or other sums of money knowing the same not to be authorized by or under this Act.

(2) Every poundkeeper is liable to a fine not exceeding ten pounds who— 20

- (a) Neglects to provide sustenance for stock impounded, or loses any such stock through wilful and culpable negligence, or uses the same while so impounded in any manner not authorized by this Act; or 25
- (b) Omits or neglects to make entries in the Pound Book as required by this Act or wilfully makes any incorrect or untrue entry in that book; or
- (c) Fails to comply with or commits any offence against the provisions of this Act in respect of which no fine is specifically provided herein. 30

Offences by
other persons.
1908, No. 79,
s. 48

58. (1) Every person other than a poundkeeper is liable to a fine not exceeding fifty pounds who—

- (a) Rescues or attempts to rescue or interferes with stock impounded or seized for the purpose of being impounded; or 35
- (b) Destroys or injures or attempts to destroy or injure any pound, or any lock or bolt belonging thereto, whether any stock is impounded therein or not; or 40

- (c) Illegally impounds any stock; or
- (d) Illegally removes stock from any one place to any other place for the purpose of impounding the stock from the last-mentioned place; or
- 5 (e) Purchases, in person or by his agent, unclaimed impounded stock at a sale conducted by him on behalf of the local authority.

(2) Every such person is liable to a fine not exceeding ten pounds who—

- 10 (a) Refuses to disclose or states untruly the name and address of the owner of any stock of which he is in charge or assisting in driving, or the name of the agent or overseer of the owner, on demand by any constable or ranger or by or on behalf of
- 15 any person upon whose land the stock is trespassing; or
- (b) Illegally drives stock from any land not in his occupation on to the land of any other person or on to any road; or
- 20 (c) Wilfully leaves open any gate or slip panel, or makes a gap in any fence, for the purpose of permitting or causing any stock to trespass or to stray or wander on to any road or otherwise wilfully causes any stock to trespass or to stray
- 25 or wander on to any road; or
- (d) Fails to comply with or commits any offence against the provisions of this Act in respect of which no penalty is herein specifically provided.

30 **59.** (1) Where a poundkeeper is charged with neglecting to provide sustenance for stock impounded, the burden of proving that proper sustenance was provided for the stock shall be on the poundkeeper.

Burden of proof in certain cases on poundkeeper. 1908, No. 79, s. 49

35 (2) Where a poundkeeper is charged with losing any impounded stock through wilful and culpable negligence, and it is proved that any stock impounded was in the custody of the poundkeeper, the stock shall be deemed to have been so lost unless the poundkeeper proves the contrary.

40 **60.** Every poundkeeper and every other person who, without the authority or consent of the owner thereof, works or uses any horse, mare, gelding, ass, mule, bull, bullock, steer, or heifer while it is impounded is liable to a fine not exceeding twenty pounds, together with such

Person using stock without consent of owner. 1908, No. 79, s. 50

sum as the convicting Court considers reasonable and adjudges to be paid to the owner for his compensation and costs in that behalf.

Offences punishable on summary conviction.

61. Every offence against this Act shall be punishable on summary conviction. 5

Application of fines.
1908, No. 79, s. 51
1953, No. 74

62. Subject to subsection two of section one hundred and nine of the Public Revenues Act 1953, all fines recovered under this Act shall, in the case of fines recovered on the information of an officer of the local authority, be paid into and form part of the ordinary general fund of the local authority. 10

PART X

MISCELLANEOUS

Delegation of local authority's powers.

63. (1) Any local authority may from time to time delegate any of its powers under this Act (not being powers conferred by subsection *one* of section *fourteen* of this Act) to any member or officer of the local authority or, in any case where the Governor-General is the local authority, to any person in the employment of the Crown. 15

(2) Subject to any general or special directions given or conditions attached by the local authority, the person to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation. 20 25

(3) Every person purporting to act pursuant to a delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(4) Any delegation under this section may be made to a specified person or persons or to the holder or holders for the time being of a specified office or offices. 30

(5) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the local authority making the delegation. 35

Service of notices.

64. Any notice required or authorized to be given to any person under this Act may be served by delivering it personally to that person, or by leaving it addressed to him at his usual or last known address, or by sending it by post in a letter addressed to that person at his usual 40

or last known address, and in the last-mentioned case it shall be deemed to have been received when in the ordinary course of post it would be delivered.

5 **65.** If within one year after any sale of impounded stock, or, where the owner of any stock has obtained the release of the stock on payment of fees and any trespass rates or charges, within one year after that payment, any person entitled to any trespass rates or driving charges or the residue of the proceeds of the sale has not claimed
10 payment thereof, the same shall form part of the ordinary general fund of the local authority.

Unclaimed trespass rates, charges, and residue of sale. 1908, No. 79, s. 44

66. All expenses and costs incurred by a local authority in the administration of this Act shall be defrayed out of the ordinary general fund of the local authority.

Cost of administration of Act. 1908, No. 79, s. 53

15 **67.** (1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

Regulations.

20 (2) All regulations made under this Act shall be laid before Parliament within twenty-eight days after the date of the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the date of the commencement
25 of the next ensuing session.

68. (1) The enactments specified in the *Fourth* Schedule to this Act are hereby repealed.

Repeals, savings, and consequential amendments.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal
30 of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have
35 been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

See Reprint of Statutes, Vol. VIII, p. 568

40 (3) Section one hundred and nine of the Public Works Act 1928 is hereby amended by omitting the words "one hundred and seventy eight".

See Reprint of Statutes, Vol. VII, p. 668

Schedules.

SCHEDULES

Section 14 (1)

FIRST SCHEDULE

FEES FOR POUNDAGE AND SUSTENANCE AND FOR GIVING NOTICE OF
IMPOUNDING PAYABLE TO THE LOCAL AUTHORITY IN RESPECT
OF STOCK IMPOUNDED IN A POUND

	For Each Day or Part of a Day	
	Fees for Poundage	Fees for Sustenance
<i>Struck out</i>		
For every entire horse above the age of nine months	s. d. 5 0	s. d. 5 0
For every horse, mare, gelding, colt, filly, or foal	2 6	5 0
For every mule or ass	2 6	3 0
For every bull above the age of nine months	5 0	3 0
For every ox, cow, steer, heifer, or calf	1 0	3 0
<i>New</i>		
For every entire horse above the age of nine months	10 0	7 6
For every horse, mare, gelding, colt, filly, or foal	5 0	7 6
For every mule or ass	5 0	7 6
For every bull above the age of nine months	10 0	7 6
For every ox, cow, steer, heifer, or calf	5 0	7 6
For every ram above the age of four months	1 0	0 6
For every ewe, wether, or lamb	0 6	0 6
For every goat	2 6	0 6
For every boar, sow, or pig	2 6	2 6
	Fees for Giving Notice of Impounding	
For writing and delivering of any notice or sending any notice by post	s. d. 7 6	
For inserting any notice in one or more newspapers, in addition to the actual cost of insertion	7 6	

SECOND SCHEDULE

Section 15

CHARGES FOR LEADING, DRIVING, OR CONVEYING STOCK

For any number of stock, not exceeding ten in number, for every mile or fractional part of a mile from the place where the stock was trespassing or was seized for impounding to the residence of the owner of the same or to the pound or (in the case of stock seized for trespass but not impounded) to the place where it is delivered to the owner or to some person on his behalf s. d.
 3 0
 For any number exceeding ten, but not exceeding twenty-five, for every mile or fractional part of a mile 5 0
 For any number exceeding twenty-five, for every mile or fractional part of a mile 7 6
 Provided that in no case shall the charges for so leading, driving, or conveying stock be less than the sum of £1 or exceed the sum of £5.

THIRD SCHEDULE

Section 16

TRESPASS RATES

	Trespass on any Paddock or Meadow of Grass or Stubble	Trespass on any Land Having Thereon any Growing Crop or from which the Crop has not Been Removed, or in any Cemetery
	s. d.	s. d.
For every horse, mare, gelding, colt, filly, foal, bull, cow, ox, steer, heifer, calf, ass, or mule	2 0	5 0
For every ram, ewe, wether, or lamb	0 6	1 0
For every goat, or boar, sow, or other pig	5 0	10 0

FOURTH SCHEDULE
ENACTMENTS REPEALED

Section 68 (1)

1908, No. 79—

The Impounding Act 1908. (Reprint of Statutes, Vol. I, p. 213.)

1908, No. 223—

The Impounding Amendment Act 1908. (Reprint of Statutes, Vol. I, p. 234.)

1928, No. 21—

The Public Works Act 1928: Paragraphs (c) and (o) of section 176 and section 178. (Reprint of Statutes, Vol. VII, pp. 715, 716.)

1939, No. 39—

The Statutes Amendment Act 1939: Section 32.

1941, No. 26—

The Statutes Amendment Act 1941: Section 33.

1943, No. 20—

The Statutes Amendment Act 1943: Section 16.

1954, No. 76—

The Municipal Corporations Act 1954: Section 205.