



Inclosure Act 1846

1846 CHAPTER 70 9 and 10 Vict

An Act to amend the Act to facilitate the Inclosure and Improvement of Commons. [26th August 1846]

Modifications etc. (not altering text)

- C1 Short title given by [Short Titles Act 1896 \(c. 14\)](#)
- C2 “The commissioners” means the Inclosure Commissioners for England and Wales whose functions are now exercisable by Secretary of State: [Settled Land Act 1882 \(c. 38\), s. 48\(1\)](#), [Board of Agriculture Act 1889 \(c. 30\), s. 2\(1\)\(b\) Sch. 1 Pt. II](#), [Board of Agriculture and Fisheries Act 1903 \(c. 31\), s. 1\(1\)](#), [Ministry of Agriculture and Fisheries Act 1919 \(c. 91\), s. 1, S.I. 1955/554 \(1955 I, p. 1200\)](#), 1965/143, 1967/156 and 1970/1681
- C3 Preamble (which recites [Inclosure Act 1845 \(c. 118\)](#)) omitted under authority of [Statute Law Revision Act 1891 \(c. 67\)](#)
Act: powers transferred (1.7.1999) by virtue of [S.I. 1999/672, art. 2, Sch.1](#)

[1.] Provisional orders of commissioners may be varied or amended. Copy of supplementary orders to be deposited for inspection.

Where it shall appear to the commissioners that the terms and conditions of any provisional order^{F1} which shall hereafter be issued by the commissioners in the matter of an inclosure ought to be varied or amended, it shall be lawful for the commissioners, at any time before they shall have certified in their annual general report their opinion that the proposed inclosure would be expedient,^{F1} whether the requisite consents shall or shall not have been taken to such provisional order, to make void and cancel the same, and to issue in lieu thereof such varied or amended provisional order as they shall think fit; and such deposit shall be made, and notice given, and other proceedings had thereupon, as by the said Act would have been required in respect of an original provisional order in the like matter; and in case any consents shall have been taken to a provisional order, and it shall not appear necessary to the commissioners wholly to cancel the same, then it shall be lawful for the commissioners, at any time before they shall have certified in their annual general report their opinion that the proposed inclosure would be expedient,^{F1} to vary or amend the terms and conditions of such provisional order, or any of them,

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by a supplemental provisional order: Provided always, that in every case in which a supplemental provisional order shall be made the commissioners shall cause a copy thereof to be deposited for inspection in the same manner as by the said Act required in reference to a provisional order, and shall cause notice to be given of such deposit, and shall by such notice specify the time within which dissents may be signified to such supplemental order; and unless persons the aggregate amount of whose interests in the land proposed to be inclosed shall exceed one third in value of the whole interest in such land shall, within the time so limited, signify in writing to the commissioners their dissent from such supplemental order, such order shall, for all the purposes of the inclosure, be deemed part of the provisional order.

Textual Amendments

F1 Words repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

2 Supplemental order not to take effect unless consent of certain parties be obtained.

Provided always, that where under the said Act the consent of the person interested in such land in right of a manor is required to an inclosure, or the dissent of any person or persons so interested might, in respect of his or their interest in right of a manor, have prevented an inclosure, such supplemental order shall not take effect in case such person or persons respectively shall, within the time so limited, signify in writing to the commissioners his or their dissent from such order; and where the freemen, burgesses, or inhabitant householders of any city, borough, or town shall be entitled to rights of common or other interests in such land, no supplemental provisional order shall take effect without the like consents of the like number of such freemen, burgesses, and inhabitant householders as would have been required to the provisional order.

3 If orders do not take effect, commissioners may suspend proceedings.

In case any supplemental provisional order so issued shall not take effect by reason of dissents having been signified as aforesaid, the commissioners may, at their discretion, proceed as if such supplemental provisional order had not been issued, or may suspend all proceedings in the inclosure.

4 As to allotments for exercise, and recreation, &c.;

Where allotments for exercise and recreation, or for the labouring poor, or for any other public purpose, shall have been made the condition of any provisional or any supplemental provisional order, it shall be lawful for the commissioners, on the application in writing of the valuer, at any time before such valuer shall have made his award, under their seal, to allow an equal quantity of the land proposed to be inclosed to be allotted for either or both of the purposes aforesaid, or for any other public purpose, in lieu of that which may have been directed to have been allotted by the original or any supplemental provisional order.

Modifications etc. (not altering text)

C4 S. 4 amended by [Commons Act 1876 \(c. 56\), s. 22](#)

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5 And allotments to lord of manor for right of soil, etc.

It shall be lawful for the commissioners by their provisional order in the matter of any inclosure, to make it a condition that there shall be awarded to the lord of the manor, instead of the whole or any part of the share or proportion of the residue of the land to which it shall be thereby declared he would have been otherwise entitled in respect of his right and interest as lord in the soil, and also, if they shall think fit, in lieu of any other allotment or allotments to which he may be found entitled, in respect of any other rights or interests in the land proposed to be inclosed, such perpetual rent-charge or rent-charges of such aggregate amount as shall in the judgment of the valuer be equal to such share or proportion of the residue and such other allotment or allotments as aforesaid, as the case may be, and such rent-charge or rent-charges shall be awarded accordingly, and shall be recoverable by the same means as are by the Tithe ^{M1}Act, 1836, or any Act amending the same, given for recovering rent-charges charged under the last-mentioned Act; and the aggregate amount of rent-charge to which the lord shall be found entitled under this provision shall be charged by the valuer, as he shall deem convenient, as separate rent-charges or as one rent-charge, on the allotments or allotment to be allotted and awarded to any persons or person who shall consent thereto; and the valuer shall award to the person whose allotment shall be made liable to any such rent-charge, and as a portion of his allotment so charged, such addition in land as the valuer shall deem equivalent to such rent-charge; but in case such aggregate amount of rent-charge shall not be so charged with consent as aforesaid, the valuer shall charge separate rent-charges, making together the aggregate amount of rent-charge, on all the allotments except the allotments for public purposes, in proportion to the value, in the judgment of the valuer, of the respective allotments.

Marginal Citations

M1 1836 c. 71.

6 Award may be made by assistant commissioner, subject to approval of commissioners, in certain cases of intermixed copyhold or customary and freehold lands, whether subject or not to be inclosed, and whether inclosure is or is not pending, determining which lands shall be held as copyhold or customary and which as freehold.

..... ^{F2} such assistant commissioner ^{F2} shall frame a draft award, ^{F2} with a map or plan annexed thereto; and the commissioners may, if they think fit make such inquiries in relation to the matter of such draft award or any part thereof, and cause the same to be revised by such assistant commissioner or other person; and in case such draft award, without or after such revision as aforesaid, shall appear satisfactory to the commissioners, they shall cause the same to be engrossed, and to be signed by such assistant commissioner or other person, and shall approve the same under their seal, ^{F2}

Textual Amendments

F2 Words repealed by [Statute Law \(Repeals\) Act 1969 \(c. 52\)](#), [Sch. Pt. III](#)

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Modifications etc. (not altering text)

C5 “Such assistant commissioner” means an assistant commissioner or any other person appointed by the commissioners for the purpose of making an award where copyhold or customary land is intermixed with land of freehold tenure

7 F3

Textual Amendments

F3 Ss. 7, 9 repealed by Statute Law (Repeals) Act 1969 (c. 52), Sch. Pt. III

8 Boundaries of leaseholds may be declared in award setting out boundaries of copyhold on customary lands. Proviso.

Where any land held by lease for years or for life or lives shall be intermixed with or held or occupied together with, or shall be alleged to be intermixed with or to be held or occupied together with, other land, and by reason of the description of the parcels in such lease being general and indefinite, or inapplicable to the actual condition of the property, or otherwise, the quantity, situation, or boundaries of such leasehold land cannot be ascertained, or differences or disputes shall have arisen concerning such quantity, situation, or boundaries, (whether such land shall or shall not be subject to be inclosed under the said recited Act, and whether any proceedings for an inclosure shall or shall not be pending,) it shall be lawful for the commissioners, upon such application as herein-after mentioned, in and by any order under their seal to authorize or to appoint and authorize any assistant commissioner or other person to award and declare what part of the lands so intermixed or held or occupied together, or alleged to be intermixed or held or occupied together, shall be and be deemed to be the land held under such lease, or to determine and declare the quantity, situation, and boundaries thereof, as the case may require; F4, and the assistant commissioner or other person so authorized F4 shall frame a draft award, F4, in like manner as herein-before provided in the case of copyhold or customary land being intermixed or held or occupied as aforesaid; and the provisions herein-before contained for inquiries in the matter of a draft award concerning copyhold or customary land, and the revision thereof, and the engrossment, execution, and approval thereof, shall apply to a draft award and the declarations in a draft award concerning such leasehold land as aforesaid; and from and after the approval of the award concerning such leasehold land the land which shall be thereby declared to be or to be deemed leasehold land shall be and be deemed to be held under such lease, according to the intent of the declaration therein contained: Provided always, that every such order which shall authorize such assistant commissioner or other person to proceed as aforesaid in relation to any such leasehold land shall be made upon the application in writing of the person who if the lease had not been granted would have been the person interested in the land therein comprised, and also of the lessee or assignee of such lease, and of such sub-lessees and other persons as would have been persons (alone or jointly with any other person) interested in the land comprised in such lease, and upon the application also of the person interested in the land with which such leasehold land shall be intermixed or held or occupied, or alleged to be intermixed or held or occupied.

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Textual Amendments

F4 Words repealed by [Statute Law \(Repeals\) Act 1969 \(c. 52\)](#), [Sch. Pt. III](#)

9 ^{F5}

Textual Amendments

F5 [Ss. 7, 9](#) repealed by [Statute Law \(Repeals\) Act 1969 \(c. 52\)](#), [Sch. Pt. III](#)

10 Steward or deputy may consent in writing on behalf of lord.

In every case where the consent of the lord of a manor is required under this Act a declaration or statement in writing under the hand of the steward or his deputy^{F6}, signifying that the lord has consented, shall be evidence of such consent for all the purposes of this Act; and a recital or statement of the consent of the lord of a manor contained in an award which shall be approved or in an order which shall be confirmed by the commissioners shall, so far as respects the validity of such award or order, be conclusive evidence of such consent.

Textual Amendments

F6 Words repealed by [Statute Law \(Repeals\) Act 1969 \(c. 52\)](#), [Sch. Pt. III](#)

11 Shares of land, and cattle gates and stints, may be exchanged.

Where a person interested in any undivided share, or any cattle gate or other gate, or any right of common defined by numbers or stints, in or to be exercised over any land, and a person interested in any undivided share or gate or right (so defined) in or to be exercised over any other land, shall be desirous of exchanging their respective shares, gates, or rights, whether such respective lands or either of them shall or shall not be subject to be inclosed under the said recited Act, and whether any proceedings for an inclosure of such respective lands or either of them shall or shall not be pending, it shall be lawful for the commissioners, upon the application in writing of the persons interested in such shares, gates, or rights which they shall be so desirous of exchanging, or in such lands in respect of such shares, gates, or rights, to make an order of exchange of such respective shares, gates, or rights without requiring the concurrence in such application of the other persons interested in such lands; and all the provisions of the said recited Act and this Act respecting the exchange of lands shall extend and be applicable to the exchange of such respective shares, gates, or rights; provided that, instead of the map or plan by the said recited Act directed to be annexed to an order of exchange, the commissioners may cause to be therein inserted of thereunto annexed such descriptions as may appear to them sufficiently to ascertain such respective shares, gates, or rights, and such respective lands as aforesaid.

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12 Accuracy of maps may be certified.

.....^{F7} Every new survey, map, or plan which is used for the purposes of any inclosure under the said Act shall be signed by the said Inclosure Commissioners, after examination of the accuracy thereof under their direction, and sealed with their official seal in testimony of such examination.

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Textual Amendments
F7 Recital omitted under authority of [Statute Law Revision Act 1891 \(c. 67\)](#)

13^{F8}

.....
Textual Amendments
F8 [Ss. 13, 15](#) repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

14 Act deemed part of recited Act.

This Act shall be taken to be a part of the said recited Act, and be construed accordingly.

15^{F9}

.....
Textual Amendments
F9 [Ss. 13, 15](#) repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

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