



Inclosure Act 1846

1846 CHAPTER 70

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

WHEREAS an Act was passed in the Eighth and Ninth Years of the Reign of Her present Majesty, intituled *An Act to facilitate the Inclosure and Improvement of Commons and Lands held in common, the Exchange of Lands, and the Division of intermixed Lands ; to provide Remedies for defective or incomplete Executions, and. for the Non-execution of the Powers of general and local Inclosure Acts; and to provide for the Revival of such. Powers in certain Cases ;* and it is expedient that the said Act should. be amended as herein-after mentioned :

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,

Provisional Orders of Commissioners may be varied or amended.

That where it shall appear to the Commissioners that the Terms and Conditions of any Provisional Order heretofore issued or 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, or, in case the Land proposed to be inclosed shall be Land to the Inclosure of which the previous Authority of Parliament shall, not be necessary before they shall have caused Notice to be given of their Intention to proceed with such Inclosure, 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, or in case the Land proposed to be inclosed

shall be Land to the Inclosure of which the previous Authority of Parliament shall not be necessary at any Time before they shall have caused Notice to be given of their Intention to proceed with such Inclosure, to vary or amend the Terms and Conditions of such Provisional Order, or any of them, by a Supplemental Provisional Order :

Copy of Supplementary Orders to be deposited for Inspection.

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.

II Supplemental Order not to take effect unless Consent of certain Parties be obtained.

Provided always, and be it enacted, 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.

III If Orders do not take effect, Commissioners may suspend Proceedings.

And be it enacted, That 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.

IV As to Allotments for Exercise and Recreation, &c. ;

And be it enacted, That 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.

V and Allotments to Lord of Manor for Right of Soil, &c.

And be it enacted, That 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 Act of the Seventh Year of King *William* the Fourth, for the Commutation of Tithes in *England* and *Wales*, 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.

VI Award may be made by Assistant Commissioner, subject to Approval of Commissioners, in certain Cases of intermixed Copyhold, Customary, or Freehold Lands.

And be it enacted, That where any Copyhold or Customary Land shall be intermixed or held or occupied together with Land, of Freehold Tenure, or with Copyhold or Customary Land held of another Manor, or under other Customs or Titles, and such Copyhold or Customary Land cannot be identified by the Description thereof on the Rolls of the Manor, and the Situation or Boundaries of such Freehold and Copyhold or Customary Land respectively shall be unknown or unascertained, whether such Lands 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 the Application in Writing of the Persons interested in such Lands, and with the Consent of the Lord or Lords of the Manor or respective Manors of which such Copyhold or Customary Land shall be holden, by Order under their Seal, to appoint and authorize an Assistant Commissioner or any other Person to award and declare what Part of the Lands so intermixed or held or occupied together shall be and be deemed Copyhold or Customary Land and Freehold Land respectively, or shall respectively be held of each such Manor or under each of such Customs or Titles respectively, or to determine and declare the Situation and Boundary thereof, as the Case may require ; and such Assistant Commissioner or other Person shall frame a Draft Award, declaring which Parts of such Lands so intermixed or occupied should in his Judgment be or be deemed Copyhold or Customary Lands, for or in lieu of the Copyhold or Customary Land or several Copyhold or Customary Lands passed by the Description or several Descriptions in the Court Rolls, and for and in lieu

Status: This is the original version (as it was originally enacted).

of such Freehold Land respectively, 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; and from and after such Approval the Land described in such Award shall be and be deemed of such Tenures, and to be held of such Manor and under such of the said respective Customs or Titles, as therein declared, and shall be subject to the same Services, Uses, Trusts, and Charges as the Lands in respect of which they shall be awarded respectively; and a Copy of such Award shall be delivered to the Lord of the Manor or of each Manor to which the same may relate, or his Steward, and shall be kept with and deemed Part of the Court Rolls.

VII Application of Provisions of recited Act as to Notices and Dissents.

And be it enacted, That the Provisions of the said recited Act concerning Notices and Dissents in the Case of an Order of Exchange shall apply to and have the same Effect respectively in the Case of such Award as aforesaid as if the Approval of such Award were the Confirmation of an Order of Exchange.

VIII Boundaries of Leaseholds may be declared in Award setting out Boundaries of Copyhold or Customary Lands. Proviso.

And be it enacted, That 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; and any such Authority) or Appointment and Authority, as last aforesaid, may be inserted in any Order which, shall also relate to Copyhold or Customary Land, or may be made and given by separate Order, as the Case may require; and the Assistant Commissioner or other Person so authorized shall insert a Declaration in his Draft Award, or shall frame a Draft Award, as the Case may require, 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 Ingrossment, 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 Indent 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.

IX Copyhold and Customary Lands may be exchanged. Consent of Lord of the Manor required.

And be it enacted, That the Provisions of the said recited Act respecting the Exchange of Lands, and respecting the Division into convenient Parcels and Allotment of Lands intermixed or divided into Parcels of inconvenient Form or Quantity, (and respectively applicable to Land not subject to be inclosed under the said Act, and to Land so subject as to which no Proceedings for an Inclosure shall be pending,) shall extend and be applicable to Lands in Copyhold or Customary Tenure and the Land taken in exchange under any Order of Exchange; and the Land allotted under any Order of Division and Allotment in respect of any Copyhold or Customary Land shall be deemed Copyhold or Customary Land, and shall be held of the Lord of the same Manor, under the same Rent, Custom, and Services as the Copyhold or Customary Land in respect of which it may be so taken and allotted respectively was or ought to have been held, without any new Admittance in respect of Land so taken and allotted ; and the Land taken in exchange and the Land allotted under such Orders respectively in respect of Freehold Land shall be of Freehold Tenure : Provided always, that no such Order of Exchange or of Division and Allotment of or affecting any Copyhold or Customary Land shall be confirmed by the Commissioners unless the Consent of the Lord of the Manor of which such Copyhold or Customary Land shall be holden shall have been given, either to the Application of the Persons interested for such Exchange or Division and Allotment, or to the Exchange or Division and Allotment to which such Order shall relate ; and a Copy of every such Order, when confirmed, shall be delivered to the Lord of such Manor or his Steward, and shall be kept with and deemed Part of the Court Rolls of such Manor.

X Steward or Deputy may consent in Writing on behalf of the Lord.

And be it enacted, That 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 authorized to take Surrenders or grant Admittances of or to Copyhold or Customary Lands in such Manor, 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.

XI Shares of Land and Cattle Gates and Stints may be exchanged.

And be it enacted, That 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 or thereunto annexed such Descriptions as may appear to them sufficiently to ascertain such respective Shares, Gates, or Rights, and such respective Lands as aforesaid.

XII Accuracy of Maps to be certified.

And Whereas by the said Act Provision is made for the Adoption and Use for the Purposes of any Inclosure under the said Act of a Copy of any Map or Plan which shall have been confirmed under the Hands and Seal of the Tithe Commissioners, or of any other Map or Plan of the Accuracy of which the Inclosure Commissioners shall be satisfied, or for making a new Survey, Map, or Plan; be it enacted, That 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,

XIII An Assistant Commissioner may be appointed Assessor.

And whereas by the said recited Act it is provided that the Valuer may in the Cases therein mentioned be assisted by an Assistant Commissioner specially appointed as an Assessor, who shall be a practising Barrister at Law of Five Years standing at the least; be it enacted, That any Assistant Commissioner under the said Act may be specially appointed as an Assessor for the Purpose aforesaid.

XIV Act deemed Par of recited Act.

And be it enacted. That this Act shall be taken to be a Part of the said recited Act, and be construed accordingly.

XV Act may be amended, &c.

And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present Session.