

## **1801 Inclosure Consolidation Act**

### **41 GeoIII cap.109**

Prior to this Act, each Parliamentary Inclosure was authorised by its own individual local Act, each with its own terms and conditions. This 1801 Act provided a common framework and standard conditions for subsequent Inclosures. Each still required a local authorising Act, which could vary the rules, but the 1801 Act greatly standardised the process.

The 1801 Act is quite wordy, in the style of the day. Here I have extracted sections likely to be of interest to highways researchers. Many other sections are represented by their marginal notes (here in italics) which give a good idea of their full effect. Text is taken from Tomlin's 1884 'the Statutes of the UK & GB', Vol I, which volume can be found in Berkshire Record Office.

Ross Kennedy, April 2003

### **An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure ; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts.**

- I. *(No person shall act as a Commissioner under any future Inclosure Act, (except signing Notice of first Meeting and administering Oath,) until he shall have taken the Oath herein prescribed)*
- II. *(Commissioners declining to act shall give Notice to the others; No Commissioner shall purchase Lands within the Parish where Inclosures are made, for five Years after their Award)*
- III. *(Commissioners shall inquire into the Boundaries of Parishes, and if not sufficiently ascertained, they shall fix them, giving previous Notice of their intention so to do. Commissioners shall cause a Description of Boundaries to be delivered to one Churchwarden, &c. of the respective Parishes, and the Lords of the Manors, &c. Persons dissatisfied may appeal to the Quarter Sessions. Decisions at the Sessions shall be final.)*
- IV. *(A Survey, Admeasurement, Plan, and Valuation of the Lands &c. to be inclosed shall be made, and kept by the Commissioners, which shall be verified by the Persons making them.)*  
And be it further enacted, That a true, exact, and particular Survey, Admeasurement, Plan and Valuation, of all the Lands and Grounds to be divided, allotted, and inclosed by any such Act, and also of all the Messuages, Cottages, Orchards, Gardens, Homesteads, ancient inclosed Lands and Grounds, within any such Parish or Manor, shall be made and reduced into Writing, by such Commissioner or Commissioners, or by such other Person or Persons as he or they shall nominate and appoint, as soon as conveniently may be, for the purposes of such Act; and the Number of Acres and decimal Parts of an Acre, in Statute Measure, contained in all the Lands and Grounds directed or authorized to be divided, allotted, and inclosed, and also in all the ancient inclosed Lands, Grounds and Homesteads aforesaid, and of each and every Proprietor's distinct Property in the same respectively, at the Time of making such Survey and Admeasurement, shall be therein set forth and specified; and that the said Survey, Admeasurement, Plan, and Valuation, shall be kept by such Commissioner or Commissioners; and the Person or Persons who shall make such Survey, Admeasurement, Plan, and Valuation, shall verify the same upon Oath or Affirmation, at any meeting to be held after the making thereof (which Oath or Affirmation the Commissioners, or any one of them, are and is hereby empowered and required to administer); and the Proprietors and their respective Agents, and all Persons interested therein, shall at all reasonable Times have Liberty to peruse and inspect such Admeasurement and Plan only, and to take Copies thereof and Extracts therefrom respectively.
- V. *(until the Division shall be completed the Lands may be entered by the Commissioners, or any Persons they may appoint, to make Surveys &c. Maps made at the time of passing Acts may be used, without making new ones, if the Commissioners shall think fit)*

- VI. *(Claimants of Common, &c. in Land to be inclosed, shall deliver to the Commissioners Schedules of Particulars, or shall be excluded, which Claims may be inspected, and Copies taken. Objections to Claims shall be delivered at or before the Meeting appointed for that Purpose, or shall not be received except for special Cause)*
- VII. *(Commissioners are not hereby authorized to determine Disputes touching Title to Lands; but shall assign the Allotments to the Person in actual Seisin or Possession. Disputes as to Title shall not delay Inclosures)*
- VIII. *(Commissioners before making Allotments shall appoint publick Carriage Roads, and prepare a Map thereof to be deposited with their Clerk, and give Notice thereof, and appoint a Meeting, at which, if any Person shall object, the Commissioners, with a Justice of the Division, shall determine the matter. Where Commissioners may be empowered to stop up any old Road, it shall not be done without the Order of two Justices, subject to Appeal, to Quarter Sessions.)*

Be it further enacted, That such Commissioner or Commissioners shall, and he or they is and are hereby authorized and required, in the first Place, before he or they proceed to make any of the Divisions and Allotments directed in and by such Act, to set out and appoint the publick Carriage Roads and Highways, through and over the Lands and Grounds intended to be divided, allotted, and inclosed, and to divert, turn, and stop up, any of the Roads and Tracts, upon or over, all, or any Part of the said Lands and Grounds, as he or they shall judge necessary, so as such Roads and Highways shall be, and remain thirty Feet wide at the least, and so as the same shall be set out out in such Directions as shall, upon the Whole, appear to him or them most commodious to the Publick, and he or they are hereby further required to ascertain the same by Marks and Bounds, and to prepare a Map in which such intended roads shall be accurately laid down and described, and to cause the same, being signed by such Commissioner, if only one, or the major Part of such Commissioners, to be deposited with the Clerk of the said Commissioner or Commissioners, for the Inspection of all Persons concerned; and as soon as may be after such Carriage Roads shall have been so set out, and such Map so deposited, to give Notice in some Newspaper to be named in such Bill, and also by affixing the same upon the Church Door of the Parish, in which any of the Lands so to be inclosed shall lie, of his or their having set out such Roads and deposited such Map, and also of the general Lines of such intended Carriage Roads, and to appoint in and by the same Notice, a Meeting to be held by the said Commissioner or Commissioners, at some convenient Place, in or near to the Parish or Township within which the said Inclosure is to be made, and not sooner than three Weeks from the Date and Publication of such Notice, at which Meeting it shall and may be lawful for any Person who may be injured or aggrieved by the setting out of such roads to attend; and if any such Person shall object to the setting out of the same, then such Commissioner or Commissioners, together with any Justice or Justices of the Peace, acting in and for the Division of the County in which such Inclosure shall be made, and not being interested in the same, who may attend such Meeting, shall hear and determine such Objection, and the Objections of any other such Person, to any Alteration that the said Commissioner or Commissioners, together with such Justice or Justices, may in Consequence propose to make, and shall, and he or they are hereby required, according to the best of their Judgement upon the Whole, to order and finally direct how such Carriage Roads shall be set out, and either to confirm the said Map, or make such Alterations therein as the Case make require : Provided always, That in Case such Commissioner or Commissioners shall by such Bill be empowered to stop up any old or accustomed Road, passing or leading through any Part of the old Inclosures in such Parish, Township, or Place, the same shall in no Case be done without the Concurrence and order of two Justices of the Peace, acting in and for such Division, and not interested in the Repair of such Roads, and which Order shall be subject to Appeal to the Quarter Sessions, in like Manner and under the same Forms and Restrictions as if the same had been originally made by such Justice as aforesaid.

- IX. *(Carriage Roads shall be fenced on both Sides according to Directions of Commissioners. No Person shall erect any Gate across any Road, or plant any Trees on the Sides, at less than 50 Yards distance. Commissioners shall appoint Surveyors, whose Salary and the Expence of making the Road, (above the Statute Duty,) shall be raised as other Expences, and paid before Execution of the Award. Surveyors subject to the Controul of the Justices, and shall account to them for Monies received. Justices may levy Rates. Surveyors neglecting to complete Roads within a limited Time shall forfeit £20 and the Inhabitants shall not be chargeable (except to Statute Duty), till the Roads are declared to be completed at a Special Sessions.)*

And be it further enacted, That such Carriage Roads so to be set out as aforesaid, shall be well and sufficiently fenced on both Sides, by such of the Owners and Proprietors of the Lands and Grounds intended to be divided, allotted, and inclosed, and within such Time as such Commissioner or Commissioners shall, by any Writing under his or their Hands, direct or appoint, and that it shall not be lawful for any Person or Persons to set up or erect any Gate across any such Carriage Road, or to plant any Trees in or near to the Hedges on the Sides thereof, at a less Distance from each other than fifty Yards ; and such Commissioner or Commissioners shall, and he or they is and are hereby empowered and required, by Writing under his or their Hands, to nominate and appoint one or more Surveyor or Surveyors, with or without a Salary, for the First forming and completing such Parts of the said Carriage Roads as shall be newly made, and for putting into complete Repair such Part of the same as shall have been previously made; which Salary (if any) and also the expence of forming, completing, and repairing such Roads respectively, over and above a Proportion of the Statute Duty on the Roads so to be repaired, shall be raised in like Manner as the Charges and Expences of obtaining and passing any such Act, and of carrying the same into Execution, shall thereby directed to be raised, and shall be paid to such Surveyor or Surveyors on or before the Execution of the Award of such Commissioner or Commissioners ; and in case the same shall be thereby provided to be raised by Sale of any Part of the Lands so to be divided and inclosed, that then such Commissioner or Commissioners shall make a conditional Rate upon the Owners and Proprietors of the same, in case the Produce of such Sale should prove insufficient for the Purposes aforesaid; and such Surveyor or Surveyors shall, and he or they is and are hereby directed to be in all Respects subject to the Jurisdiction and Controul of the Justices of the Peace acting in and for the County in which such Roads shall respectively lie, and shall account to such Justices in like Manner for all Monies so to be by him or them received and expended, and for the Re-payment of any Surplus which may remain in his or their Hands to such Persons as shall have been made liable to contribute thereto, according to the Proportion so as above ascertained by such Commissioner or Commissioners ; and such Justices shall have the like Powers of levying any such rate as may by them be thought necessary for the purposes aforesaid, according to the Proportions previously ascertained by such Commissioner or Commissioners, as if such Surveyor or Surveyors had been appointed under or by virtue of the General Highway Act passed in the thirteenth Year of the Reign of his present Majesty ; and in case such Surveyor or Surveyors shall neglect to complete and repair such Roads respectively within the Space of two Years after such Award, unless a further Time, not exceeding one Year, shall for that Purpose be allowed by such Justices, and then within such further Time, he or they shall forfeit the Sum of Twenty Pounds, and the Inhabitants at large of the Parish, Township, or Place wherein such Roads shall be respectively situate, shall be in no wise charged or chargeable towards forming or repairing the said Roads respectively, except such Proportion of such Statute Duty as aforesaid, till such Time as the same shall, by such Justices in their special Sessions, be declared to be fully and sufficiently formed, completed, and repaired, from which Time, and for ever thereafter, the same shall be supported and kept in Repair by such Persons, and in like Manner as the other publick Roads within such Parish, Township, or Place, are by Law to be amended and kept in Repair.

X. *(Commissioners shall appoint private Roads, &c.)*

And be it further enacted, That such Commissioner or Commissioners shall, and he or they is and are hereby empowered and required to set out and appoint such private Roads, Bridleways, Footways, Ditches, Drains, Watercourses, Watering Places, Quarries, Bridges, Gates, Stiles, Mounds, Fences, Banks, Bounds and Land Marks, in, over, upon, and through or by the Sides of the Allotments to be made and set out in pursuance of such Act, as he or they shall think requisite, giving such Notice and subject to such Examination, as to any private Roads or Paths, as are above required in the Case of publick Roads, and the same shall be made, and at all Times for ever thereafter be supported and kept in Repair, by and at the Expence of the Owners and Proprietors for the Time being of the Lands and Grounds directed to be divided and inclosed, in such Shares and Proportions as the Commissioner or Commissioners shall in and by his or their Award order and direct.

XI. *(Grass and herbage on Roads shall belong to the Proprietors of the Lands adjoining ; and all Roads which shall not be set out shall be allocated and inclosed. No Turnpike Road shall be altered without the Consent of the Trustees.)*

And be it further enacted, That after such publick and private Roads and Ways shall have been set out and made, the Grass and Herbage arising thereon shall for ever belong to and be the sole Right of the Proprietors of the Lands and Grounds which shall next adjoin the said Roads and Ways on either Side thereof, as far as the Crown of the Road ; and all Roads, Ways, and Paths, over, through, and upon such Lands and Grounds which shall not be set out as aforesaid, shall for ever be stopped up and

extinguished, and shall be deemed and taken as Part of the Lands and Grounds to be divided, allotted, and inclosed, and shall be divided, allotted, and inclosed accordingly ; Provided, That nothing herein contained shall extend, or be construed to extend, to give such Commissioner or Commissioners any Power or Authority to divert, change, or alter any Turnpike Road that shall or may lead over any such Lands and Grounds, unless the Consent of the Majority of the Trustees of such Turnpike Road, assembled at some publick Meeting called for that purpose on ten Days Notice, be first had and obtained.

XII. (*Commissioners in making Allotments, shall have due regard to the Situation of Houses as well as the Quantity and Quality of Land*)

And be it further enacted, .....

XIII. (*Commissioners may direct small Allotments to be laid together and ring-fenced, and stocked and depastured in Common by the Proprietors.*)

And whereas ...

XIV. (*Allotments shall be in full Compensation for all Rights in the Lands, which shall cease on Notice from the Commissioners affixed on the Church Door.*)

And be it further enacted,

XV. (*Commissioners may exchange Allotments, Messuages, Lands, &c. with the Consent of the Proprietors, or if belonging to Churches, &c. with the Consent of the Bishop and of the Patron.*)

And be it further enacted, ...

XVI. (*Commissioners may make Allotments in Severalty to joint-tenants, or Tenants in common.*)

And be it further enacted, ...

XVII. (*Persons shall accept their Allotments in a limited Time, or forfeit their Right.*)

And be it further enacted, ...

XVIII. (*Guardians, &c. may accept for incapacitated Persons, and Tenants for Life shall accept of Allotments. Non-acceptance of Guardians, &c. shall not prejudice the Rights of incapacitated Persons who shall accept in a limited Time after enabled to do so.*)

Provided Always ...

XIX. (*Before Execution of the Award, Allotments may be ditched and inclosed, with the Consent of the Commissioners.*)

And be it further enacted, ...

XX. (*Trees &c. shall be allotted with the Lands whereon they stand, the Parties paying to the Owners such Sums as the Commissioners shall direct; but in Case of Neglect the Owners may cut them down and take them away.*)

And be it further enacted, ...

XXI. (*Where money is to be paid for Lands, &c. and which ought to be laid out in other Purchases to be settled to the same Uses, the Commissioners may thereout defray a Proportion of the Expences of passing the Act, and putting it in Execution, &c.; and if the Surplus amount to £200 it shall, as soon as may be, be laid out in other Purchases, and in the mean Time be paid into the Bank and applied under the Direction of the Court of Chancery.*)

And be it further enacted, ...

XXII. (*If such money be less than £200, and upwards of £20, it shall at the Option of the Person entitled to the Rents, be paid into the Bank, or to two Trustees to be approved of by the Commissioners, for the same purposes.*)

Provided always ...

XXIII. (*If less than £20 it shall be applied to the Use of the Person entitled to the Rents of the Lands, &c.*)

Provided Also ...

- XXIV. (*If any Person does not accept, inclose and fence his Allotment as the Commissioners shall direct, they may cause it to be inclosed and fenced and let, and receive the Rents until the Expences are satisfied, or they may charge them upon the Proprietor.*)  
And be it further enacted, ...
- XXV. (*During seven Years after fencing Allotments, Fences may be erected on the Outside of the Ditches, and the Materials carried away by the Proprietors.*)  
And be it further enacted, ...
- XXVI. (*No standing Fences or Hedges shall be destroyed till the Execution of the Award, without Consent of Commissioners, and if assigned as a Boundary Fence, shall be left uncut, the Persons entitled to the Allotments making Compensation therefore.*)  
And be it further enacted, ...
- XXVII. (*Where the Boundary of any Common Fields, &c. shall be fenced by any Mound, &c. the Proprietors of adjoining Allotments shall not be compelled to fence them; but such Boundaries shall be maintained by the Proprietors as before, or as the Commissioners may appoint.*)  
Provided always ...
- XXVIII. (*Persons destroying, &c. Fences, &c. put up under the Authority of any Act, shall forfeit £5 and the Proprietor of the Lands, &c. may give Evidence.*)  
And be it further enacted, ...
- XXIX. (*Whole Expences of obtaining and carrying any Act into Execution, shall be to be paid by the Proprietors, the Commissioners may, on neglect, cause the same to be levied by Distress or may take Possession of the Allotments, and receive the Rents, till satisfied*)  
And whereas ...
- XXX. (*Guardians, Tenants for life, &c. may charge Allotments with Expences, if not exceeding £5 per Acre; and if Persons in Possession shall advance the Money, the Commissioners may mortgage the Lands to them for Reimbursement.*)  
And be it further enacted, ...
- XXXI. (*Commissioners may deduct from Allotments or Charity or School Lands, what shall be deemed equal to the proportionable Share of the Expences, and allot the same to Persons undertaking to pay.*)  
And whereas ...
- XXXII. (*Where the Expences of obtaining and carrying any Act into Execution shall be to be paid by sale of Part of the Lands, Commissioners shall set out and sell a Part, and the Purchasers shall immediately make a deposit, which shall be forfeited, if Purchase Money be not duly paid.*)  
And be it further enacted, ...
- XXXIII. (*Commissioners may summon Witnesses; Penalty for Non-attendance, &c. from £10 to £5.*)  
And, for the better enabling ...
- XXXIV. (*Witnesses shall not be obliged to travel above eight miles.*)  
Provided always, ...
- XXXV. (*After Allotment Commissioners shall draw up their Award, which shall be read and executed at a Meeting of the Proprietors, and proclaimed the next Sunday in the Church, and then considered as complete. Award shall be inrolled in one of the Courts at Westminster, or with the Clerk of the Peace, and may be inspected, and Copies obtained. Award and Copies shall be legal Evidence, and Award shall be binding on all Parties interested. Commissioners may annex Maps to the Award, which shall be deemed Part thereof*)  
And be it further enacted, That as soon as conveniently may be after the Division and Allotment of the said Lands and Grounds shall be finished, pursuant to the Purport and Directions of this or any such

Act, the said Commissioner or Commissioners shall form and draw up, or cause to be formed and drawn up, an Award in Writing, which shall express the Quantity of Acres, Roods, and Perches, in Statute Measure, contained in the said Lands and Grounds, and the Quantity of each and every Part and Parcel thereof which shall be so allotted, assigned, or exchanged, and the Situations and Descriptions of the same respectively, and shall also contain a Descriptions of the Roads, Ways, Footpaths, Watercourses, Watering Places, Quarries, Bridges, Fences, and Land Marks, set out and appointed by the said Commissioner or Commissioners respectively as aforesaid, and all such other Rules, Orders, Agreements, Regulations, Directions, and Determinations, as the said Commissioner or Commissioners shall think necessary, proper, or beneficial to the Parties ; which said Award shall be fairly ingrossed or written on Parchment, and shall be read and executed by the Commissioner or Commissioners, in the Presence of the Proprietors who may attend at a special General Meeting called for that Purpose, of which ten Days Notice at least shall be given in some Paper to be named in such Act and circulating in the County, which Execution of such Award shall be proclaimed the next Sunday in the Church of the Parish in which such Lands shall be, from the Time of which Proclamation only and not before, such Award shall be considered as complete ; and shall, within twelve Calendar Months after the same shall be so signed and sealed, or so soon as conveniently may be, be inrolled in one of his Majesty's Courts of Record at Westminster, or with the Clerk of the Peace for the County in which such Lands shall be situated, to the End that Recourse may be had thereto by any Person or Persons interested therein, for the Inspection and Perusal whereof no more than one Shilling shall be paid ; and a Copy of the said Award, or any Part thereof, signed by the proper Officer of the Court wherein the same shall be inrolled, or by the Clerk of the Peace for such County, or his Deputy, purporting the same to be a true Copy, shall from Time to Time be made and delivered by such Officer or Clerk of the Peace for the Time being as aforesaid, to any Person requesting the same, for which no more shall be paid than Two-pence for every Sheet of seventy-two Words ; and the said Award, and each Copy of the same, or of any Part thereof, signed as aforesaid, shall at all Times be admitted and allowed in all Courts whatever as legal Evidence ; and the said Award or Instrument, and the several Allotments, Partitions, Regulations, Agreements, Exchanges, Orders, Directions, Determinations, and all other Matters and Things therein mentioned and contained, shall, to all Intents and Purposes, be binding and conclusive, except where some Provision to the contrary is herein or shall be by any such Act contained, unto and upon the said Proprietors, and all Parties and Persons concerned or interested in the same, or in any of the Lands, Grounds, or Premises aforesaid ; and also that the said respective Commissioners, if they think it necessary, shall form or draw, or cause to be formed and drawn, on Parchment or Vellum, such Maps or Plans of the said Lands and Grounds, the better to describe the several new Allotments or Divisions to be made, and Premises that shall be exchanged by virtue of this Act, and which shall express the Quantity of each Allotment in Acres, Roods, and Perches, together with the Names of the respective Proprietors at the Time of such Division and Allotment ; which said Maps and Plans shall be annexed to and inrolled with the said respective Award, and shall be deemed and construed in every respect as and for Part of the said Award.

XXXVI. *(Commissioners shall keep Account of all Monies, which may be inspected at their Clerks Office gratis. Penalty on neglect from £10 to £5.)*

And be it further enacted, ...

XXXVII. *(Monies raised shall be deposited as directed by a Majority in Value of Proprietors, and not issued without Order from Commissioners.)*

And be it further enacted, ...

XXXVIII. *(The Rector or Vicar with the Consent of the Bishop of the Diocese, and of the Patron of the Living, may lease Allotments for 21 years, upon certain Conditions.)*

And be it further enacted, ...

XXXIX. *(Penalties shall be recoverable before one Justice. And applied according to Direction of the Commissioners.)*

And be it further enacted, ...

XL. *(Saving of the Rights of Lords of Manors.)*

And be it further enacted and declared, that nothing in such Act shall lessen, prejudice, or defeat the Right, Title, or Interest of any Lord or Lady of any Manor or Lordship, or reputed Manor or Lordship, within the Jurisdiction or Limits whereof the Lands and Grounds thereby directed to be divided and allotted are situate, lying, and being, of, in, or to the Seigniories, Rights, and Royalties incident or

belonging to such Manor or Lordship, or reputed Manor or Lordship, or to the Lord or Lady thereof, or to any Person or Persons claiming under him or her, but the same (other than and except the Interest and other Property as is or are meant or intended to be barred by such Act) shall remain, in as full, ample, and beneficial Manner, to all Intents and Purpose, as he or she might or ought to have held or enjoyed such Rights before the passing of such Act, or in case the same had never been made.

*XLI. (General Saving.)*

Saving always to the King's most Excellent Majesty, his Heirs and Successors, and to all and every other Person and Persons, Bodies Politick and Corporate, and his, her, and their Heirs, Successors, Executors, and Administrators, all such Estate, Right, Title, and Interest, (other than and except such as are hereby intended to be barred, destroyed or extinguished) as they, every, or any of them, had or enjoyed of, in, to, or out of, or in respect of the said Lands, Grounds, and Premises so directed to be divided, allotted, and inclosed, or exchanged as aforesaid, before the passing of such Act, or could or might have had or enjoyed in case the same had never been made.

*XLII. (Two Justices may take Affidavits of the Notices required having been given, &c. in the Forms in the Schedule, without Stamps)*

And be it further enacted, ...

*XLIII. (Persons forswearing themselves shall be deemed guilty of perjury.)*

And be it further enacted, ...

*XLIV. (How far this Act shall be binding.)*

Provided always, and be it enacted, That all and every the Powers, Authorities, Directions, and Provisions in this Act contained, shall be only so far effective and binding in each particular Case, as they or any of them shall not be otherwise provided and enacted in any such Act hereafter to be passed as aforesaid.

SCHEDULE to which the ACT refers

- (A) FORM of AFFIDAVIT of NOTICES
- (B) FORM of AFFIDAVIT of CONSENT
- (C) FORM of AFFIDAVIT of ALLEGATIONS in the BILL
- (D) FORM of AFFIDAVIT of ADMEASUREMENT