

Pow of Inchaffray Drainage Commission (Scotland) Bill

Explanatory notes

Introduction

1. These Explanatory Notes have been prepared by Anderson Strathern LLP, on behalf of the promoter, The Pow of Inchaffray Commissioners, in order to assist the reader of the Pow of Inchaffray Drainage Commission (Scotland) Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation, none is given.
3. The following other accompanying documents are published separately by the Parliament:
 - statements on legislative competence by the Presiding Officer and the promoter (SP Bill 9–LC);
 - a Promoter’s Memorandum (SP Bill 9–PM);
 - a Promoter’s Statement (SP Bill 9–PS).
4. The Promoter’s Statement includes information about where you can inspect or purchase these documents and other documents that are relevant to the Bill (but are not accompanying documents).

Background to the Bill

5. The Pow of Inchaffray (“the Pow”) is a drainage channel that provides drainage to surrounding lands in the local authority area of Perth and

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Kinross. It originates at Methven Moss and meanders in a south-westerly direction for approximately nine miles until it reaches the River Earn, about two and a half miles south east of Crieff. Together with its 10 main tributaries the Pow is the equivalent of 13.7 miles long. The function of the Pow is to drain a total area of surrounding land of approximately 1,930 acres. The arrangements for the management, maintenance and improvement of the Pow and appointment of Commissioners with responsibility for this are currently set out in the Pow of Inchaffray Drainage Act 1846 (“the 1846 Act”). The 1846 Act repealed an Act of the old Scottish Parliament 1696 titled ‘An Act in favours of the Heritors adjacent to the Pow of Inchaffray’ and provided for new and more extensive powers to be given to Commissioners.

6. The Pow of Inchaffray Commissioners need the arrangements laid down by the 1846 Act to be updated in order that the Commissioners can effectively carry out their responsibilities to administer and maintain the Pow in the future. This requires a Private Bill.

7. In addition, the bulk of the 1846 Act is no longer relevant (much of it authorised the construction of improvement works that have long since been completed). As a Bill would be required anyway to update the 1846 Act, the Commissioners wish to take the opportunity to modernise and simplify the whole statutory basis for managing the Pow by replacing the 1846 Act with a new Act that will include updated versions of those provisions from the 1846 Act that are still relevant.

Structure of the Bill

8. Part 1 focuses on the Commission. It incorporates the Commission, sets out the number of Commissioners, defines the Pow and makes provisions in relation to the appointment of Commissioners.

9. Part 2 covers the calculation of the annual assessments payable to the Commission by the owners of land which benefits from the Pow (the “heritors”) and related matters.

10. Part 3 includes miscellaneous and general provisions.

11. Part 4 covers final provisions including interpretation and repeal of the 1846 Act.

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12. The Bill has six schedules. These include schedules setting out the Commission's functions and powers, procedures for appointment of Commissioners and the detailed calculation of each heritor's annual assessment.

Commentary on sections

Part 1 – The Commission

Constitution

Section 1 – The Pow of Inchaffray Drainage Commission

13. Section 1 incorporates the Commission as a body corporate called the Pow of Inchaffray Drainage Commission and, by applying schedule 1, provides for the Commission's functions.

Section 2 – The Commissioners

14. Section 2 provides that the Commission is to consist of seven Commissioners representing the different sections of land benefited by the Pow ("benefited land"). The number of Commissioners for a section of the benefited land can be amended by a resolution of heritors passed in compliance with section 9.

The Pow and benefited land

Section 3 – Extent of the Pow and benefited land

15. Section 3 defines the Pow as the Pow of Inchaffray shown on the land plans deposited with the Scottish Parliament and the "associated works". The associated works comprise ditches shown on the plans, further ditches within the benefited land included by agreement or by a resolution of heritors passed in compliance with section 9, and banks and other structures associated with the Pow. Ditches within the Pow may be excluded by a resolution passed in compliance with section 9.

16. Section 3(4) divides the Pow into four sections for the purpose of appointing Commissioners. The boundaries between each section may be altered by a resolution of heritors passed in compliance with section 9.

Appointment of Commissioners etc.

Section 4 – Appointment of Commissioners etc.

17. Section 4 provides for the appointment of Commissioners in accordance with schedule 2.

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Section 5 – First appointments of Commissioners

18. Section 5 sets out the provisions for the transition from the existing serving Commissioners appointed under the 1846 Act to seven Commissioners under section 2. Prior to section 2 coming into force, the serving Commissioners must choose three serving Commissioners as the Commissioners for the lower, middle and upper sections. These three Commissioners are to continue in office for 24 months and the others will cease to be Commissioners. Four further Commissioners must then be appointed under schedule 2, one for each of the lower, middle, upper and Balgowan sections. These Commissioners are to be appointed at a heritors' meeting within two months of the Act coming into force. This means that the Commissioners will be appointed by the time section 2 comes into force (three months after the rest of the Act) and because, in accordance with paragraph 3(c) of schedule 2, a Commissioner is to be appointed one month before that Commissioner's appointment takes effect.

Section 6 – Commission meetings

19. Section 6 provides for meetings of the Commission in accordance with schedule 3.

Heritors' meetings etc.

Section 7 - Heritors' meetings convened by the Commission

20. Section 7 sets out when and how the Commission must call a meeting of heritors and provides for a quorum of three heritors. The Commission must call a heritors' meeting when necessary to appoint a Commissioner, before each general business meeting of the Commission (held twice a year) and where requested to do so by three or more heritors, to consider a resolution that complies with the provisions of section 9. A resolution in accordance with section 9 can be to: change the number of Commissioners for each section of the benefited land; alter the boundaries of each section; or to include or exclude a ditch from the Pow. Before the Commission convenes a heritors' meeting it must give not less than 10 days' notice to heritors and provide them with the details of the meeting, including the agenda.

Section 8 – Heritor's representative

21. Section 8 provides that a heritor may, by giving notice to the Clerk, appoint a person to represent the heritor for the purposes of the Act. For example, a heritor who does not live in the Pow area can appoint a local

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representative to attend meetings and vote for a resolution on the heritor's behalf.

Section 9 – Alterations by heritors

22. Section 9 provides that for a resolution to comply with this section it must be voted for by heritors representing at least 75% of the sum of the chargeable values of all heritors' land.

Part 2 – Annual Assessments

Section 10 – Calculation of annual assessments

23. Section 10 provides for the calculation of the annual assessment payable by each heritor. Assessment years will run from 1 April.

24. Prior to the commencement of each assessment year the Commission will prepare a budget for that assessment year. The budget will be the anticipated expenditure by the Commission for that assessment year, adjusted to take account of any anticipated surplus or shortfall from the current year. The budget may also include provision for a reserve fund to cover extraordinary expenditure.

25. Each heritor is to pay a share of the annual budget based on the assumed value of the benefit to the heritor's land of the work carried out under the 1846 and 1696 Pow Acts (the "chargeable value"). The chargeable value is calculated in accordance with schedule 4 and is to be the difference between the current market value of the heritor's land (excluding works carried out by the heritor or predecessors – e.g. building a house) and the land value, had no works ever been carried out by the Commission (the "base value").

26. The current market value and base value are calculated by applying fixed values per acre for specified categories of land use, initially fixed in schedule 4.

27. Heritors will be notified by the Commission of the amount payable by way of an assessment notice. The assessment is payable within 28 days of receipt of the assessment notice, unless the assessment notice is given before the first day of the assessment year. In that case the assessment is payable within 28 days of the first day of the assessment year.

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28. The Commission must notify each heritor of the chargeable value of the heritor's land, and how it has been calculated, within 2 months of the day after the Act receives Royal Assent.

29. The fees and expenses incurred by the Commission in promoting the Bill not recovered in assessments made under the 1846 Act, may be recovered through the first three annual assessments.

Section 11 – Revaluation of assumed values and base value

30. Section 11 provides that the Commission must have the assumed value and base value per acre used to calculate chargeable values revalued every 10 years. The revaluation is to be carried out by a surveyor appointed by the Commission.

31. Before finalising a revaluation, the surveyor must notify each heritor of the proposed revaluation. Heritors then have 28 days to make representations to the surveyor on the proposed revaluation, and the surveyor must have regard to any such representations in making the revaluation.

32. The Bill provides for revaluations to take effect from the commencement of the first assessment year following completion of the revaluation. The intention is that in practice this will be every 10th anniversary of the commencement of the first assessment year, but this provision ensures that, if there are delays, any resulting changes in chargeable values will not be retrospective.

Section 12 – Amendments to land categories to meet changed circumstances

33. Section 12 sets out the circumstances in which the Commission may appoint a surveyor to amend the land categories in schedule 4 and the procedure for doing so.

34. Before making an amendment, the surveyor must notify each heritor of the proposed amendment. Heritors then have 28 days to make representations to the surveyor on the proposed amendment, and the surveyor must have regard to any such representations in making the revaluation.

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35. Amendments are to take effect from the commencement of the first assessment year following the making of the amendment.

Section 13 – Surveyor’s professional requirements

36. Section 13 requires a surveyor appointed by the Commission for the purposes of sections 11 and 12 to be a member of the Royal Institution of Chartered Surveyors or any successor body.

Section 14 – Commission may act as surveyor’s agent

37. Where the Commission has appointed a surveyor under section 11 or 12, the Commission may act as the surveyor’s agent for the purpose of communicating between the surveyor and the heritors.

Section 15 - Land Plans

38. Section 15 sets out the Commission’s duties to make the land plans available for inspection, provide copies of them on request and keep them up to date. The Commission is to amend the land plans where a change is made following a resolution by heritors in accordance with section 9 to include ditches or exclude ditches from the Pow or alter the boundaries of the sections of the benefited land.

Section 16 – Register of Heritors

39. The Commission must maintain a register with particulars of the heritors and plans showing the benefited land owned by each heritor. Heritors or persons ceasing to be heritors must notify the Commission of changes. Heritors are entitled to inspect and request copies of their entries in the register.

Part 3 – Miscellaneous and General

Section 17 – Access to the Pow

40. Section 17 gives the Commission a statutory right of access to the benefited land and affected land for any purpose connected with the Commission’s functions, rights and obligations. Affected land, as defined in section 27, is land within six metres of the top of a bank of any part of the Pow. The Commission is to receive planning notices under section 18 in respect of affected land and to control fauna and flora within the affected land as set out in schedule 1. In terms of the Commission’s right of access, unless it is an emergency, the Commission is to give not less than seven days’ notice to the owner of the land over which access is required. The

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Commission can take access to a building only with the consent of the owner or occupier. The Commission must make good or compensate for any damage caused.

Section 18 – Notice of planning applications

41. Section 18 provides that the Commission will be deemed to be an owner of the benefited land and affected land for (and only for) the purposes of section 35(1) of the Town and Country Planning (Scotland) Act 1997. Accordingly, the Commission will be entitled to receive notice of any planning application that relates to the benefited land or the affected land.

Section 19 – Consent for activities affecting the Pow and adjacent land etc.

42. Section 19 requires any person, other than a local authority, to obtain the consent of the Commission before doing any thing that may obstruct the Pow or limit or restrict the Commission's access under section 17; or before discharging anything into the Pow or abstracting water from it. A local authority must give notice, but does not require the Commission's consent.

43. The procedure for seeking consent is set out in schedule 5.

44. If a person carries out such an activity without the consent of the Commission, the Commission can require the person by way of notice to remedy the contravention or reimburse the Commission for costs incurred as a consequence. If a person fails to comply with such a notice the Commission may remedy the contravention and by a further notice require the person to reimburse the Commission for the costs of doing so.

Section 20 – Liability of persons exercising functions

45. Section 20 clarifies that that a person appointed as a Commissioner will not be held personally liable in any civil or criminal proceedings for anything done in the exercise of a function of the Commissioners if acting in good faith.

Section 21 – Court proceedings

46. Section 21 provides that the Commission may raise court proceedings to recover payments due.

Section 22 – Interest on sums due

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47. Any debts due to the Commission carry interest at the judicial rate or a lower rate determined by the Commission.

Section 23 – Certification of land plans.

48. Section 23 provides that the Clerk to the Commission may certify copies of the land plans as true copies.

Section 24 – Service of notices

49. Section 24 introduces schedule 6 which contains the provisions for the service of notices.

Part 4 – Final Provisions

50. Section 25 provides for the Clerk appointed under the 1846 Act to continue until replaced by the Commission. It also provides that if the Commission needs to give notice to a heritor before the Register of Heritors has been prepared, it must give notice to the person it believes, after reasonable enquiry, to be the heritor.

51. Section 26 repeals the 1846 Act.

52. Section 27 provides definitions for certain terms used in the Bill.

53. Section 28 provides that the Act is to come into force the day after Royal Assent, except for section 2 (which provides for seven Commissioners), which comes into force three months after Royal Assent.

54. Section 29 provides for the short title.

The Schedules

55. **Schedule 1** sets out the functions and powers of the Commission:

- Paragraph 1 sets out the functions of the Commission. Broadly, these are to maintain, renew and improve the Pow insofar as the Commission considers necessary or desirable to maintain effective drainage of the benefited land;
- Paragraph 2 sets out the Commission's general powers including the power to borrow money;
- Paragraph 3 provides for appointment of a Clerk;

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- Paragraph 4 provides for the Commission to delegate functions to a committee of Commissioners;
- Paragraphs 5 and 6 provides for the Commission to employ advisers;
- Paragraph 7 provides for the Commission to regulate its own procedures except where these are set out in the Bill;
- Paragraph 8 provides that an act of the Commission is not invalid by virtue of there being a defect in the appointment of a Commissioner or a vacancy in the office of Commissioner;
- Paragraphs 9, 10 and 11 make provision for finances, account and audit. Heritors are entitled to copies of audited accounts for which the Commission may charge a reasonable fee;
- Paragraph 12 provides how documents are to be executed by the Commission.

56. **Schedule 2** sets out the procedure for appointing Commissioners for each section of the Pow and the grounds for early termination of appointment as a Commissioner.

57. A Commissioner must be either a heritor in that section or such a heritor's representative. Commissioners for a section are appointed at a heritors' meeting by the heritors who own land within that section. Except in specific circumstances, heritors must appoint a new Commissioner not later than one month before the appointment is to take effect. If no Commissioner is appointed at a meeting (for example if no-one is prepared to stand) the Commission may fill the vacancy by appointing a Commissioner for up to 12 months.

58. Except where the Act provides otherwise, a Commissioner is appointed for a 10 year term. Commissioners may be reappointed on any number of occasions. However, a person may not be reappointed as a Commissioner where that person's appointment as a Commissioner has been terminated under paragraph 13(2), unless the Commission is satisfied that the grounds for that person's previous termination as a Commissioner no longer apply.

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59. The Commission may terminate a Commissioner's appointment if the Commissioner ceases to be a heritor, if the Commissioner is absent from two or more consecutive meetings without permission or, if in the Commission's view, is unable to continue or is otherwise unsuitable.

60. **Schedule 3** sets out provisions governing the meetings of the Commission.

61. The Commission must hold at least two general business meetings per year and may hold additional meetings if required. If a Commissioner cannot attend a meeting, the Commissioner can authorise another person to attend and vote on that Commissioner's behalf provided prior notification is given to the Clerk. The quorum for a meeting is three Commissioners and a decision of the Commission is to be made by a resolution passed unanimously by, or by a majority of, the Commissioners in attendance at the meeting. Where necessary, the Chair of the meeting is to have the casting vote. The Clerk must prepare a record of resolutions passed by the Commission and provide a copy to a heritor if requested.

62. Paragraphs 6, 7 and 8 provide that Commissioners have duties to: avoid conflicts of interest; not accept benefits from third parties; and declare any interest in a proposed transaction or arrangement with the Commission. In a situation which could reasonably be regarded as giving rise to a conflict of interest, the duty of the Commissioner is not infringed if the matter giving rise to the situation has been authorised by the Commission. Commissioners need only declare an interest or refuse a benefit if the interest or acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest. **Schedule 4** sets out how the chargeable value of each heritor's land is to be calculated for the purposes of calculating annual assessments under section 10.

63. The chargeable value of a heritor's land is the "enhanced acreage value" multiplied by the acreage of the heritor's land. The enhanced acreage value is the "assumed value per acre" for the relevant land category less the "base value per acre" (£500). The land categories and assumed values per acre are set out in the table in paragraph 3.

64. Provision is made for land falling into more than one land category and for residential properties that are split into two or more units (e.g. flats).

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65. If the category of a heritor's land changes during an assessment year (other than as consequence of building works), the change applies from the commencement of the next assessment year. If the change occurs as a consequence of building works, the change applies from the date the building works are completed.

66. Paragraph 8 sets out the valuation assumptions that are to be used for the purpose of a revaluation under section 11.

67. **Schedule 5** sets out the procedure for applying for the consent of the Commission in terms of section 19. Under section 19, a person must obtain the consent of the Commission if the person wishes to obstruct the Pow, limit or restrict access to the Pow by the Commission or discharge any thing into, or abstract water from the Pow. The person wishing to carry out such an activity must first make an application to the Commission in writing, providing details of the proposal. The Commission may charge a reasonable fee for considering the application and may require the person to provide more information in support of the application. Following consideration of the proposal, the Commission may either grant consent on such terms (if any) as the Commission thinks fit or refuse consent. Where the Commission has not made a decision on an application within three months of receipt of the application or further information, the Commission is deemed to have granted consent. **Schedule 6** sets out the procedure for serving notices. Notice will be valid if in writing and sent by personal delivery, post or electronically. If a name or address cannot be ascertained after reasonable enquiry, a notice may be delivered to the person who appears to be resident or employed on the relevant land or affixed to a building or object on the land, for example, conspicuously attached to a door or a gate.

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