



# Pow of Inchaffray Drainage Commission (Scotland) Act 2019

2019 asp 2

## PART 1

### THE COMMISSION

#### *Constitution*

#### **1 The Pow of Inchaffray Drainage Commission**

- (1) The Commission established by the 1846 Act continues and becomes a body corporate called the Pow of Inchaffray Drainage Commission, referred to in this Act as “the Commission”.
- (2) Schedule 1 makes further provision about the Commission.
- (3) All property, rights, liabilities and obligations of the Commission prior to incorporation are transferred to and vested in the Commission.
- (4) Incorporation of the Commission does not affect the rights or obligations of any person or make defective any legal proceedings that have been raised by or against the Commission prior to incorporation.
- (5) Any reference to the Commissioners or the Commission in any agreement, deed or other instrument is to be read as a reference to the Commission as incorporated, unless the context otherwise requires.

#### **2 The Commissioners**

- (1) Subject to subsection (3), the Commission is to consist of nine members each called a Commissioner.
- (2) There are to be two Commissioners for each of the lower, middle, and upper sections of the benefited land and three Commissioners for the Balgowan section of the benefited land.

- (3) A heritors' meeting may alter the number of Commissioners for a section of the benefited land by a resolution passed in compliance with section 9.

*The Pow and the benefited land*

**3      Extent of the Pow and the benefited land**

- (1) In this Act, “the Pow” means the Pow of Inchaffray shown on the land plans and the associated works.
- (2) Subject to subsection (3), the “associated works” are—
- (a) the ditches shown on the land plans,
  - (b) ditches within the benefited land which the Commission and the heritors on whose land they are situated have agreed in writing to include within the Pow,
  - (c) ditches within the benefited land included by a resolution passed in compliance with section 9,
  - (d) the banks, revetments, dams, culverts, sluices, and other structures associated with, or forming part of—
    - (i) the Pow of Inchaffray,
    - (ii) ditches included within the Pow.
- (3) A heritors' meeting may exclude ditches from the Pow by a resolution passed in compliance with section 9.
- (4) For the purposes of this Act, the benefited land is divided into four sections—
- (a) the lower section,
  - (b) the middle section,
  - (c) the upper section,
  - (d) the Balgowan section.
- (5) The boundaries between sections are shown on the land plans.
- (6) A heritors' meeting may alter the boundaries between sections by a resolution passed in compliance with section 9.

*Appointment etc. of Commissioners*

**4      Appointment of Commissioners etc.**

Schedule 2 makes provision about the appointment of, and holding of office by, the Commissioners.

**5      First appointments of Commissioners**

- (1) The serving Commissioners are to continue in office until the day on which section 2 comes into force.
- (2) Prior to the day on which section 2 comes into force, the Commission is to choose three serving Commissioners to continue as Commissioners, one for each of the lower, middle and upper sections of the benefited land.

- (3) On the day on which section 2 comes into force—
  - (a) the appointments of serving Commissioners not chosen under subsection (2) cease to have effect, and
  - (b) six additional appointments of Commissioners made in accordance with schedule 2 have effect, three for the Balgowan section and one for each of the lower, middle and upper sections of the benefited land.
- (4) The Commissioners chosen under subsection (2) are to continue to hold office for 24 months from the day on which section 2 comes into force.

## **6 Commission meetings**

Schedule 3 makes provision about meetings of the Commission.

*Heritors' meetings etc.*

## **7 Heritors' meetings convened by the Commission**

- (1) The Commission must convene a heritors' meeting—
  - (a) when necessary to appoint a Commissioner in accordance with this Act,
  - (b) before each general business meeting of the Commission,
  - (c) where requested to do so by three or more heritors, to consider a resolution to—
    - (i) alter the number of Commissioners in accordance with section 2(3),
    - (ii) include a ditch in accordance with section 3(2)(c),
    - (iii) exclude a ditch in accordance with section 3(3),
    - (iv) alter the boundaries between sections in accordance with section 3(6),
    - (v) terminate the appointment of a Commissioner in accordance with paragraph 13(4) of schedule 2.
- (2) The Commission may convene a heritors' meeting for any other purpose at any time.
- (3) The Commission is to convene a heritors' meeting by giving not less than 10 days' notice to each heritor.
- (4) A notice convening a heritors' meeting must state the place, date, time and purpose of the meeting.
- (5) A notice convening a heritors' meeting in accordance with subsection (1)(b) must include the agenda for the meeting of the Commission.
- (6) The quorum of a heritors' meeting is three heritors.
- (7) The Clerk may attend a heritors' meeting.

## **8 Heritor's representative**

- (1) A heritor may from time to time appoint a person as the heritor's representative for the purposes of this Act ("a heritor's representative"), by giving notice of the appointment to the Clerk.
- (2) The heritor may terminate the appointment at any time by giving notice to the Clerk.

- (3) References in this Act to a heritor include the heritor’s representative in place of the heritor except—
- (a) in—
    - (i) section 10,
    - (ii) section 16,
    - (iii) the term “heritor’s land”,
  - (b) where the context otherwise requires.

## 9 Alterations by heritors

A resolution is passed in compliance with this section if the heritors who vote for it represent at least 75% of the sum of the chargeable values of all heritors’ land.

## PART 2

### ANNUAL ASSESSMENTS ETC.

## 10 Annual budget and assessments

- (1) Schedule 4 has effect in regard to—
  - (a) the preparation and confirmation of the budget for each assessment year, and
  - (b) heritors’ rights to make representations on, and to require an independent review of, the draft budget.
- (2) As soon as practicable after there is a confirmed budget for an assessment year, the Commission must give an assessment notice to each heritor specifying the amount payable by the heritor for the assessment year.
- (3) The amount payable by a heritor is the rate poundage for the assessment year multiplied by the chargeable value of the heritor’s land.
- (4) The rate poundage for an assessment year is the budget for the assessment year divided by the sum of the chargeable values of each heritor’s land.
- (5) The chargeable value of a heritor’s land is calculated in accordance with schedule 5.
- (6) An assessment notice must include—
  - (a) a copy of the confirmed budget,
  - (b) the rate poundage and how it is calculated, and
  - (c) an explanation of how the amount payable by the heritor is calculated.
- (7) The heritor must pay the assessment to the Commission by the later of—
  - (a) the end of the period of 28 days beginning with receipt of the assessment notice, and
  - (b) the first day of the assessment year to which it applies.
- (8) No later than two months after the date on which this section comes into force, the Commission must give each heritor a valuation notice specifying the chargeable value of the heritor’s land and how it has been calculated.

## **11 Revaluation of assumed values and base value**

- (1) The assumed values, and the base value, per acre used in schedule 5 to calculate the chargeable value of a heritor's land are to be revalued with effect from each tenth anniversary of the commencement of the first assessment year.
- (2) The Commission is to appoint a surveyor to carry out the revaluation on the basis of the valuation assumptions specified in schedule 5.
- (3) The surveyor must give notice to each heritor specifying the surveyor's revaluation proposals ("a revaluation proposal").
- (4) A heritor may make representations in writing to the surveyor on the revaluation proposal within the period of 28 days beginning on the day the revaluation proposal is notified to the heritor.
- (5) The surveyor must have regard to heritors' representations under subsection (4) when carrying out the revaluation.
- (6) Following expiry of the 28-day period, the surveyor is to notify the Commission of the revaluation of the assumed values, and the base value, per acre.
- (7) Revaluations are to take effect from the commencement of the first assessment year following the carrying out of the revaluations.

## **12 Amendments to land categories to meet changed circumstances**

- (1) The Commission may appoint a surveyor at any time to—
  - (a) amend a land category used in schedule 5 to meet changed circumstances,
  - (b) where appropriate, make consequential amendments to the assumed value per acre for that land category.
- (2) Before making an amendment, the surveyor must give notice to each heritor specifying the proposed amendment ("an amendment proposal").
- (3) A heritor may make representations in writing to the surveyor on the amendment proposal within the period of 28 days beginning on the day the amendment proposal is notified to the heritor.
- (4) The surveyor must have regard to heritors' representations under subsection (3) when making the amendment.
- (5) Following expiry of the 28-day period, the surveyor is to notify the Commission of the amendments to the land category and any amendment to the assumed values per acre.
- (6) Amendments are to take effect from the commencement of the first assessment year following the making of the amendments.

## **13 Surveyor's professional requirements**

A surveyor appointed under section 11 or 12 must be a member of the Royal Institution of Chartered Surveyors in Scotland or any successor body.

**14 Commission may act as surveyor's agent**

The Commission may choose to act as the surveyor's agent for the purposes of communications between the surveyor and heritors under section 11 and section 12.

**15 Land plans**

- (1) The Commission must make the land plans available for inspection, free of charge, by any person—
  - (a) at the Clerk's offices during ordinary office hours,
  - (b) by electronic means.
- (2) As soon as practicable after there is a change—
  - (a) relating to ditches in accordance with section 3(2) or section 3(3), or
  - (b) in the boundaries between sections of the benefited land in accordance with section 3(6),the Commission must amend the land plans to show the change.

**16 Register of Heritors**

- (1) The Commission must maintain a Register of Heritors containing, insofar as can be established by reasonable enquiry—
  - (a) the names and addresses of the heritors, and
  - (b) plans of the areas within the benefited land owned by each heritor.
- (2) The following must be notified to the Commission as soon as practicable—
  - (a) a change in a heritor's name or address,
  - (b) a person ceasing to be a heritor.
- (3) Until notice is given under subsection (2)(b), the person who ceased to be a heritor continues to be liable for the amount payable under an assessment notice relating to the benefited land formerly owned by the person.
- (4) The Commission must make the Register of Heritors available for inspection, free of charge, by any person—
  - (a) at the Clerk's office during ordinary office hours,
  - (b) by electronic means.
- (5) Where this Act requires the Commission to give notice to a heritor, the requirement is met if the Commission gives notice to the person named as such in the Register of Heritors.

**PART 3**

## MISCELLANEOUS AND GENERAL

**17 Access**

- (1) The Commission, its agents and its contractors may take access, where necessary with plant and vehicles, over the benefited land and the affected land for any purpose connected with the Commission's functions, rights or obligations under this Act.

- (2) The Commission must—
  - (a) except in the case of an emergency, give not less than seven days' notice to each owner of land over which access is required,
  - (b) make good, or pay compensation for, any resulting damage to land or buildings.
- (3) Access may be taken to a building only with the consent of the owner or occupier of the building.

## **18 Notice of planning applications**

For the purposes of section 35(1) of the Town and Country Planning (Scotland) Act 1997, the Commission is to be treated as an owner of the benefited land and the affected land.

## **19 Consent for activities affecting the Pow and adjacent land etc.**

- (1) A person, other than a local authority, must not do any of the following without first obtaining consent from the Commission—
  - (a) any thing that will or may—
    - (i) obstruct the Pow,
    - (ii) limit or restrict access permitted under section 17(1),
  - (b) discharge any thing into, or abstract water from, the Pow.
- (2) The procedure for seeking consent is in schedule 6.
- (3) If a person contravenes subsection (1), the Commission may by notice require the person to—
  - (a) remedy the contravention within such period as the Commission may specify in the notice,
  - (b) reimburse the Commission for costs, if any, incurred by the Commission as a consequence of such contravention.
- (4) Where a person fails to comply with a notice under subsection (3)(a), the Commission may—
  - (a) remedy the contravention, and
  - (b) by notice require the person to reimburse the Commission for the costs incurred by the Commission in doing so.
- (5) Where a notice under subsection (3)(b) or subsection (4)(b) requires costs to be reimbursed to the Commission—
  - (a) the notice must include a breakdown and explanation of the costs,
  - (b) the person is to make payment to the Commission within 28 days of receipt of the notice.
- (6) Except in the case of an emergency, a local authority must give not less than seven days' prior notice to the Commission before doing anything described in subsection (1)
  - (a). In the case of an emergency, the local authority must notify the Commission as soon as reasonably practicable.

**20 Liability of persons exercising functions**

- (1) A Commissioner is not liable in any civil or criminal proceedings for anything done in the purported exercise of any function of the Commission if acting in good faith.
- (2) Subsection (1) does not affect the liability of any other person in respect of the thing done.

**21 Court proceedings**

An amount that is due and payable to the Commission under this Act may be sued for and recovered from the person liable to pay it as a debt due to the Commission, by proceedings in the sheriff court.

**22 Interest on sums due**

An amount payable to the Commission under this Act that is not paid by the due date carries interest from the due date at—

- (a) the judicial rate, or
- (b) such lower rate as the Commission may determine from time to time.

**23 Certification of land plans**

Copies of the land plans certified a true copy by the Clerk shall be admissible in any proceedings as sufficient evidence of the contents of the land plans.

**24 Service of notices**

Schedule 7 makes provision about giving notices.

**PART 4**

## FINAL PROVISIONS

**25 Transitional**

- (1) The Clerk appointed under the 1846 Act who was serving immediately before this Act receives Royal Assent is to continue as Clerk until replaced by the Commission.
- (2) Where this Act requires the giving of notice to a heritor at a time before the Register of Heritors has been prepared in accordance with section 16, the Commission is to give the notice to the person who, after reasonable enquiry, it believes to be the heritor.

**26 Repeal of the 1846 Act**

The 1846 Act is repealed.

**27 Interpretation**

In this Act—

“the 1846 Act” means the Pow of Inchaffray Drainage Act 1846,

“affected land” means land within six metres of the top of a bank of any part of the Pow,

“assessment year” means a period of 12 months commencing on 1 April in any year, the first assessment year commencing on the later of 1 April 2019 and the 1 April immediately following the date on which section 2 comes into force,

“associated works” has the meaning given by section 3(2),

“attend”, in the context of a meeting, includes attendance by telephone, by video conference or by such other electronic means as the Clerk may from time to time notify to heritors,

“benefited land” is the land drained by the Pow shown coloured on the land plans,

“chargeable value” of a heritor’s land means the value calculated as provided in schedule 5,

“the Clerk” means, subject to section 25(1), the Clerk appointed in accordance with paragraph 3 of schedule 1,

“heritor” means an owner of any part of the benefited land,

“heritor’s land” means the benefited land owned by a heritor,

“heritor’s representative” has the meaning given in section 8,

“judicial rate” means the rate of interest from time to time prescribed by the Court of Session as being payable under a decree,

“the land plans” means the plans deposited in the Office of the Clerk of the Parliament on 3 May 2018 or such revised plans as the Commission may from time to time prepare in accordance with this Act,

“the Pow” has the meaning given by section 3(1),

“Register of Heritors” means the register maintained by the Commission in accordance with section 16,

“retail price index” means—

(a) the monthly index of retail prices (all items including mortgage interest rates) published by the Office for National Statistics, or

(b) in the absence of a monthly index of retail prices, an alternative comparable index determined by an expert appointed by the Chairman of the Royal Institution of Chartered Surveyors in Scotland, or successor body, at the request of the Commission,

“section” of the benefited land means a section described in section 3(4) as shown on the land plans,

“serving Commissioner” means a Commissioner appointed under the 1846 Act who was serving as such immediately before this Act receives Royal Assent.

## **28 Commencement**

- (1) This Act, except for section 2, comes into force on the day after Royal Assent.
- (2) Section 2 comes into force at the end of the period of three months beginning with the day of Royal Assent.

## **29 Short title**

The short title of this Act is the Pow of Inchaffray Drainage Commission (Scotland) Act 2019.