

POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) ACT 2019

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Miscellaneous and General

Section 17 – Access to the Pow

35. **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. 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 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

36. **Section 18** provides that the Commission will be treated as 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.

37. **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.
38. The procedure for seeking consent is set out in schedule 6.
39. 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

40. **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 Commission if acting in good faith.

Section 21 – Court proceedings

41. [Section 21](#) provides that the Commission may raise court proceedings to recover payments due.

Section 22 – Interest on sums due

42. 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

43. [Section 23](#) provides that the Clerk to the Commission may certify copies of the land plans as true copies.

Section 24 – Service of notices

44. [Section 24](#) introduces schedule 7 which contains the provisions for the service of notices.