

POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) ACT 2019

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Final Provisions

The Schedules

50. **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;
 - 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 Act;
 - 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.
51. **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.
52. 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.

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Act 2019 (asp 2) which received Royal Assent on 17 January 2019*

53. 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.
54. The Commission must terminate a Commissioner's appointment if the Commissioner ceases to be a heritor. The Commission may terminate a Commissioner's appointment 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. A Commissioner's appointment may also be terminated by a majority vote of heritors owning land within the relevant section.
55. **Schedule 3** sets out provisions governing the meetings of the Commission.
56. 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 five 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.
57. **Paragraphs 6, 7 and 8** provide that Commissioners have duties to: avoid conflicts of interest; decline to accept benefits from third parties; and declare any interest in a proposed transaction or arrangement with the Commission. The duty of a Commissioner to avoid a conflict of interest is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or if the matter has been authorised by the Commission. If a Commissioner is aware of, or ought reasonably to be aware of, such an interest, the nature and extent of that interest must be declared unless such interest cannot reasonably be regarded as likely to give rise to a conflict of interest.
58. 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.
59. **Schedule 4** sets out how annual budgets are to be prepared and how heritors may require a review of the draft budget.
60. **Paragraphs 1 to 6** set out the process for the preparation of the draft budget and the issuing of provisional assessment notices. Prior to the commencement of each assessment year the Commission is to prepare a draft budget of anticipated expenditure for that assessment year. The budget is adjusted to take account of any anticipated surplus or shortfall from the current year and may also include provision for a reserve fund to cover extraordinary expenditure.
61. The fees and expenses incurred by the Commission in promoting the Bill (so far as not recovered in assessments made under the 1846 Act) may be recovered through the first three annual assessments.
62. After the draft budget is prepared, the Commission must issue a provisional assessment notice to each heritor setting out the amount payable in accordance with the draft budget. Provisional assessment notices must include: a copy of the draft budget; the rate poundage and an explanation of how it is calculated; an explanation of how the amount of the assessment has been calculated; and details of how heritors can make representations on the draft budget.

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63. **Paragraphs 7 to 12** set out the right of heritors to make representations on, and to require a review of, the draft budget. Heritors can make written representation to the Commission on the draft budget no later than 21 days following the date of the provisional assessment notice. The Commission must consider and respond to any such representations made, decide whether to amend the draft budget, and notify all heritors of its decisions, and the reasons for them.
64. **Paragraphs 13 to 15** set out heritors' rights to require an independent review of the draft budget and the procedures involved. If the amount of the confirmed draft budget exceeds the "budget review threshold", then a single heritor has the right to require a review, but if the budget is below the threshold, a minimum of 10 heritors is required. The budget review threshold is £60,000 in the first assessment year, and is then adjusted in line with the retail price index in subsequent years. Where the Commission is required to review the draft budget, it must refer the budget to an independent expert within 14 days for a decision. The independent expert must be appointed by the Association of Drainage Authorities (or any successor body) or, where that is not possible, by the Royal Institute of Chartered Surveyors in Scotland (or any successor body).
65. The confirmed budget (for the purposes of section 10) is: the original (un-amended) budget; the budget as amended after representation; or the budget determined by an independent expert following review (this will include the costs of the review process).
66. **Schedule 5** 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.
67. 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.
68. 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).
69. 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.
70. **Paragraph 8** sets out the valuation assumptions that are to be used for the purpose of a revaluation under section 11.
71. **Schedule 6** 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.
72. **Schedule 7** 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.