

Status: Point in time view as at 18/01/2019.

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SCHEDULE 1

(introduced by section 1(2))

THE POW OF INCHAFFRAY DRAINAGE COMMISSION

Functions

- 1 (1) The functions of the Commission are to—
- (a) maintain, repair and renew the Pow,
 - (b) control fauna and flora within—
 - (i) the Pow,
 - (ii) the affected land,
 - (c) carry out improvements to the Pow and protective works,
- in so far as the Commission considers necessary or desirable to maintain effective drainage of the benefited land.
- (2) Where an improvement to the Pow involves widening, or lowering the bed of, a watercourse under a bridge, the Commission must carry out any works necessary to protect the bridge's foundations.

General powers

- 2 (1) The Commission may do anything which appears to the Commission—
- (a) to be necessary or expedient for the purpose of, or in connection with, the performance of its functions, or
 - (b) to be otherwise conducive to the performance of its functions.
- (2) In particular, the Commission may—
- (a) enter into contracts,
 - (b) borrow money.

Appointment etc. of Clerk

- 3 The Commission—
- (a) must appoint a Clerk of the Commission on such terms as it thinks fit,
 - (b) may appoint a Commissioner as Clerk,
 - (c) may pay the Clerk's fees and expenses, and
 - (d) may replace the Clerk at any time.

Committees

- 4 (1) The Commission may, subject to such conditions and procedures as it determines, delegate any of its functions to a committee comprising Commissioners.
- (2) Where the Commission delegates functions to a committee, a reference in this Act to the “Commission” includes, except where the context otherwise requires, reference to the committee.

Advisers and other services

- 5 The Commission may obtain advice, assistance or any other service from any person who, in the opinion of the Commission, is qualified to give it.

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6 The Commission may pay to that person fees and expenses.

Proceedings etc.

7 Subject to the provisions of this Act, the Commission may regulate its own procedure.

8 The validity of any act of the Commission is not affected by—

- (a) a defect in the appointment of a Commissioner,
- (b) a vacancy in the office of Commissioner.

Finances, accounts and audit

9 The Commission must—

- (a) ensure that the resources of the Commission are used economically, efficiently and effectively,
- (b) keep proper accounts and accounting records, and
- (c) prepare annual accounts for each assessment year and have them audited.

10 If requested by a heritor, the Commission must provide the heritor with a copy of the audited accounts in printed or electronic form.

11 The Commission may charge a reasonable fee for providing a copy of the audited accounts under paragraph 10.

Execution of documents

12 A document is validly executed by the Commission by signature on behalf of the Commission by—

- (a) two Commissioners, or
- (b) one Commissioner and the Clerk.

SCHEDULE 2

(introduced by section 4)

COMMISSIONERS

Appointment

1 A person appointed as a Commissioner for a section of the benefited land must be either—

- (a) a heritor who owns land within that section, or
- (b) the heritor's representative of such heritor.

2 A heritor who owns land in more than one section of the benefited land, or the heritor's representative of that heritor, may only be a Commissioner for one section.

3 Except where this Act provides otherwise, the appointment of a Commissioner is to be made at a heritors' meeting held—

- (a) in the case of a vacancy other than a vacancy under paragraph 6, within three months of the vacancy occurring,

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- (b) in the case of a vacancy under paragraph 6 which is not filled by the Commission under paragraph 7, within 12 months of the vacancy arising, and
 - (c) in any other case not later than one month before the appointment is to take effect.
- 4 Subject to paragraphs 5 and 6, a Commissioner must be appointed by a majority vote of the heritors attending the meeting who own land within the section of the benefited land to which the appointment relates (“the relevant heritors”).
- 5 If only one relevant heritor attends the meeting, the heritor may appoint a Commissioner without a vote.
- 6 Where no Commissioner is appointed under paragraph 4 or 5, the position is to be treated as vacant.
- 7 The Commission may fill a vacancy under paragraph 6 by appointing a Commissioner for a period of up to 12 months.
- 8 A vacancy occurring less than three months before the end of a Commissioner's term is to be left unfilled until the end of that term.
- 9 Except where this Act provides otherwise, a Commissioner is appointed for a term of 10 years.
- 10 A person appointed to fill a vacancy to which paragraphs 3(a) or 3(b) apply holds office for the remainder of the term of appointment of the Commissioner in whose place the person has been appointed.
- 11 Subject to paragraph 12, a person who has served as a Commissioner may be reappointed on any number of occasions.
- 12 A person may not be reappointed as a Commissioner where the person's appointment as a Commissioner has been terminated under paragraph 13(2) unless the Commission is satisfied the grounds for the person's termination no longer apply.

Early termination of appointment as Commissioner

- 13 (1) A Commissioner may resign by giving notice to the Commission.
- (2) The Commission may, by giving notice to the Commissioner, terminate a Commissioner's appointment if—
- (a) the Commissioner has been absent from two or more consecutive meetings of the Commission without the permission of the Commission,
 - (b) the Commission considers that the Commissioner is—
 - (i) unable to perform the functions of a Commissioner, or
 - (ii) unsuitable to continue as a Commissioner.
- (3) For the purposes of sub-paragraph (2)(a)—
- (a) a meeting of the Commission includes a meeting of a committee of the Commission of which the Commissioner is a member, and
 - (b) permission of the Commission includes permission of the committee where the committee meeting consists of three or more Commissioners.

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- (4) A Commissioner's appointment may be terminated with immediate effect by a majority vote of heritors attending a meeting convened under section 7(1)(c)(v) who own land within the section of the benefited land to which the appointment relates.
- (5) The Commission must, by giving notice to the Commissioner, terminate a Commissioner's appointment if the Commissioner or, where the Commissioner is a heritor's representative, the heritor the Commissioner represents, has ceased to be a heritor.

SCHEDULE 3

(introduced by section 6)

MEETINGS OF THE COMMISSION

Meetings

- 1 The Commission must hold at least two general business meetings in any calendar year, and may hold additional meetings as required.
- 2 A Commissioner may authorise another person to attend a meeting and vote on behalf of the Commissioner, having given prior notification to the Clerk.
- 3 (1) The Clerk must give each Commissioner prior notice of each meeting stating the place, date, time and agenda.
- (2) In the case of a general business meeting, notice under sub-paragraph (1) must be given not less than 20 days before the meeting.
- 4 The quorum of a meeting of the Commission is five Commissioners. For this purpose, "Commissioner" includes a person authorised under paragraph 2.
- 5 A decision of the Commission must be made by a resolution passed unanimously by, or by a majority of, the Commissioners attending the meeting. If votes on any resolution are equal, the Commissioner chairing the meeting is to decide whether or not the resolution is passed.

Conflicts of interest

- 6 (1) A Commissioner must avoid a situation in which the Commissioner has, or may have, a direct or indirect interest that conflicts, or may conflict, with the interests of the Commission.
- (2) Sub-paragraph (1) applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the Commission could take advantage of the property, information or opportunity).
- (3) The duty under sub-paragraph (1) is not infringed—
- (a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- (b) if the matter giving rise to a situation under sub-paragraph (1) has been authorised by the Commission.
- (4) Authorisation by the Commission is effective only if—

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- (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the Commissioner in question, and
 - (b) the matter was agreed to without the Commissioner voting or would have been agreed to if the Commissioner's vote had not been counted.
- 7 (1) A Commissioner must not accept a benefit from a third party conferred by reason of the Commissioner—
 - (a) being a Commissioner, or
 - (b) doing (or not doing) anything as Commissioner.
- (2) A “third party” means a person other than the Commission or a person acting on behalf of the Commission.
- (3) Benefits received by a Commissioner from a person by whom the Commissioner's services (as a Commissioner or otherwise) are provided to the Commission are not regarded as conferred by a third party.
- (4) The duty under sub-paragraph (1) is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 8 (1) If a Commissioner is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the Commission, the Commissioner must declare the nature and extent of that interest to the other Commissioners.
- (2) The declaration may (but need not) be made—
 - (a) at a meeting of the Commission, or
 - (b) by notice to the Commission.
- (3) If a declaration of interest under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- (4) Any declaration required by this paragraph must be made before the Commission enters into the transaction or arrangement.
- (5) This paragraph does not require a declaration of an interest of which the Commissioner is not aware. For this purpose, a Commissioner is treated as being aware of matters of which the Commissioner ought reasonably to be aware.
- (6) A Commissioner need not declare an interest under sub-paragraph (1) if it cannot reasonably be regarded as likely to give rise to a conflict of interest.

Records of resolutions

- 9 The Clerk must prepare a record of the resolutions passed at each meeting of the Commission or at a committee of the Commission and must provide a copy of the record to a heritor if requested.

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SCHEDULE 4

(introduced by section 10(1))

PREPARATION OF ANNUAL BUDGETS AND HERITORS' RIGHTS TO REQUIRE REVIEW ETC.

Preparation of draft budget and provisional assessment notice

1 Before the beginning of each assessment year, the Commission must prepare a draft budget of the expenditure it expects to incur in carrying out its functions for, subject to paragraph 2, that assessment year.

2 The budget—

- (a) must allow for any anticipated surplus or shortfall from the previous assessment year, and
- (b) may include provision for a reserve fund to cover extraordinary expenditure.

3 Promotion costs not recovered from heritors through assessments under the 1846 Act are to be included in the budgets for the first three assessment years.

4 “Promotion costs” means costs, fees and expenses incurred by the Commission (whether before or after its incorporation by this Act), in connection with promotion of the Bill for this Act.

5 As soon as practicable after the draft budget is prepared, the Commission must give a provisional assessment notice to each heritor, specifying the amount that would be payable by the heritor for the assessment year under section 10(2) if based on the draft budget.

6 The provisional assessment notice must include—

- (a) a copy of the draft budget,
- (b) the rate poundage and how it is calculated,
- (c) an explanation of how the amount that would be payable by the heritor is calculated, and
- (d) a statement that the heritor may under paragraph 7 make written representations to the Commission on the draft budget and the time limit for doing so.

Right of heritors to make representations and to require a review

7 A heritor may make written representations on the draft budget to the Commission no later than the period of 21 days beginning on the date of service of the provisional assessment notice.

8 If written representations are made under paragraph 7, the Commission must consider the representations and decide—

- (a) not to amend the draft budget, or
- (b) to amend the draft budget.

9 The Commission must notify all heritors of its decision under paragraph 8 and the reasons for its decision.

10 Where the draft budget is amended, the notice must specify the amount that would be payable by the heritor for the assessment year under section 10(2) if based on the amended draft budget and must include—

- (a) a copy of the amended draft budget,

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- (b) the rate poundage and how it is calculated, and
 - (c) an explanation of how the amount that would be payable by the heritor is calculated.
- 11 A notice under paragraph 9 must also include a statement explaining the budget review provisions set out in paragraphs 13 to 15.
- 12 Where a heritor has made representations, the notice to the heritor under paragraph 9 must be accompanied by the Commission's response to the heritor's representations.

Independent review

- 13 No later than 14 days after the date on which heritors have been notified under paragraph 9—
- (a) 10 or more heritors, or
 - (b) one or more heritors (where the amount of the confirmed draft budget exceeds the budget review threshold),
- may notify the Commission in writing that they require the draft budget to be independently reviewed.
- 14 The budget review threshold is—
- (a) for the first assessment year, £60,000,
 - (b) for each subsequent assessment year, the budget review threshold for the previous assessment year, adjusted by the percentage increase in the retail price index during the 12 month period ending on 31 December in the previous assessment year.
- 15 No later than 14 days after service of a notice under paragraph 13, the Commission must refer the draft budget for determination by an expert to be appointed by—
- (a) the Association of Drainage Authorities or any successor body,
 - (b) where an expert cannot be appointed under sub-paragraph (a), the Royal Institution of Chartered Surveyors in Scotland or any successor body.

Confirmed budget

- 16 For the purposes of section 10, the confirmed budget is—
- (a) where no independent review has been carried out, the draft budget notified to heritors—
 - (i) under paragraph 5, or
 - (ii) if amended, under paragraph 9, or
 - (b) where an independent review has been carried out, the draft budget finalised by the Commission in accordance with the expert's determination and including the costs of the reference to the expert.

SCHEDULE 5

(introduced by section 10(5))

CALCULATION OF CHARGEABLE VALUES

- 1 Subject to paragraph 7, in the case of residential property, the chargeable value of a heritor's land is the enhanced acreage value of the land multiplied by the acreage of the heritor's land within the benefited land.

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2 The enhanced acreage value is the assumed value per acre for the relevant category of land less the base value per acre.

3 Subject to sections 11 and 12—

- (a) the base value for a land category is £500 per acre,
 (b) the assumed value for a land category per acre is as shown in the following table—

Land category	Assumed value per acre	Valuation assumptions
Agricultural, Land Class 2	£6,000	Value disregards improvements to land not carried out under the Pow Acts.
Agricultural, Land Class 3.1	£5,500	Value disregards improvements to land not carried out under the Pow Acts.
Agricultural, Land Class 3.2	£4,500	Value disregards improvements to land not carried out under the Pow Acts.
Agricultural, Land Class 4	£3,000	Value disregards improvements to land not carried out under the Pow Acts.
Agricultural, Land Class 5	£2,500	Value disregards improvements to land not carried out under the Pow Acts.
Woodland	£600	Value disregards timber crop and improvements to land not carried under the Pow Acts.
Amenity land	£500	Value disregards improvements to land not carried out under the Pow Acts.
Commercial use	£50,000	Value disregards improvements to land not carried out under the Pow Acts.
Residential use	£300,000	Value assumes unserviced and unbuilt plot with planning consent for residential use.

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- 4 In the table in paragraph 3, “Land Classes” are as provided in the Macaulay Land Capability for Agriculture (LCA) classification or successor land classification system at the date of valuation.
- 5 Where a heritor's land falls into more than one land category, a separate chargeable value calculation is made for each category. The chargeable value of that heritor's land is the total of the individually calculated values.
- 6 Where a residential property is divided into two or more units, each unit is to be treated as a separate unit of heritor's land. The chargeable value for each such unit will be the chargeable value for the land on which the property is built, calculated under paragraph 1, divided by the number of units.
- 7 Where the land category of a heritor's land, or a part of a heritor's land, changes during an assessment year, the new category will apply from the commencement of the next assessment year, irrespective of when the change occurs. If a change occurs as a result of building works, the change will be deemed to have occurred on the date of completion of the building works.
- 8 For the purposes of section 11(2), the valuation assumptions specified in this schedule are—
- (a) in the case of land categories, the valuation assumptions in the table at paragraph 3,
 - (b) in the case of the base value, the assumption that no works have been carried out under the Pow Acts.
- 9 In this schedule, “the Pow Acts” mean this Act, the 1846 Act and the Act of the Parliament of Scotland of 1696 which it repealed, entitled ‘An Act in favours of the Heritors adjacent to the Pow of Inchaffray’.

SCHEDULE 6

(introduced by section 19(2))

CONSENTS: PROCEDURE

- 1 An application for consent must be made in writing to the Commission and must be accompanied by details of the applicant's proposal. The Commission may charge a reasonable fee for considering the application.
- 2 The applicant must supply such further information that the Commission reasonably requires.
- 3 The Commission may either—
- (a) grant the consent on such terms (if any) as it thinks fit, or
 - (b) refuse consent.
- 4 If the Commission has not made a decision on the application within three months from the date on which an application is made, or (if later) the date on which the applicant supplied information requested under paragraph 2, the Commission is to be deemed to have granted consent.

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SCHEDULE 7

(introduced by section 24)

SERVICE OF NOTICE

- 1 A notice to be given to a person for the purposes of this Act (whether the expression “serve”, “give”, “send” or any other expression is used) must be in writing and be sent to the person or the person's agent by—
- (a) personal delivery,
 - (b) post sent to the person's proper address, or
 - (c) in a case where an address for service of a notice of the kind in question (or of notices generally) using electronic means has been given by the person on whom the notice is to be served, electronic transmission to that address.
- 2 For the purposes of paragraph 1(b), the proper address of a person is—
- (a) in the case of a body corporate, the address of the registered or principal office of the body,
 - (b) in the case of a partnership, the address of the principal office of the partnership,
 - (c) in any other case, the last known address of the person.
- 3 A notice is duly served on—
- (a) a body corporate other than a limited liability partnership, if served on the secretary or clerk of that body,
 - (b) a limited liability partnership, if served on a member of the partnership,
 - (c) a partnership other than a limited liability partnership, if served on a member of the partnership or on a person having the control or management of the partnership business.
- 4 Where a notice is to be served on a person as having an interest in, or as the occupier of, land and the person's name or address cannot be ascertained after reasonable inquiry, for the purposes of this Act the notice may be served by—
- (a) addressing it to the person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it), and
 - (b) leaving it either—
 - (i) in the hands of a person who is, or appears to be, resident or employed on the land, or
 - (ii) conspicuously affixed to some building or object on the land.
- 5 A notice is to be taken to have been served—
- (a) if sent by post to an address in the United Kingdom, 48 hours after it is sent, and
 - (b) if sent by electronic transmission, on the day of transmission, unless the contrary is shown.

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