



# Pow of Inchaffray Drainage Commission (Scotland) Act 2019

2019 asp 2

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**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 13th December 2018 and received Royal Assent on 17th January 2019**

An Act of the Scottish Parliament to incorporate and reconstitute the Pow of Inchaffray Drainage Commission; to make provision for its functions and for the appointment of Commissioners; to make provision for the calculation of the annual assessments payable by the owners of land benefited by the Pow; to make provision for meetings of the Commissioners and heritors; to make provision for the Commissioners to have access to the Pow over neighbouring land for necessary purposes and for the Commissioners' consent to be required for activities affecting the Pow and adjacent land etc.; and for connected purposes.

## **PART 1** **S**

### THE COMMISSION

#### *Constitution*

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

- (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.

**Status:** Point in time view as at 18/01/2019. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Pow of Inchaffray Drainage Commission (Scotland) Act 2019. (See end of Document for details)

- (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.

VALID FROM 17/04/2019

## 2 The Commissioners **S**

- (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 **S**

- (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.

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### *Appointment etc. of Commissioners*

#### **4 Appointment of Commissioners etc. S**

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

#### **5 First appointments of Commissioners S**

- (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 S**

Schedule 3 makes provision about meetings of the Commission.

### *Heritors' meetings etc.*

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

- (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.

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- (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 **S**

- (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 **S**

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 **S**

### ANNUAL ASSESSMENTS ETC.

## 10 Annual budget and assessments **S**

- (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.

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- (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** S

- (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** S

- (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.

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- (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** **S**

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** **S**

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** **S**

- (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** **S**

- (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.

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- (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 S**

#### MISCELLANEOUS AND GENERAL

#### **17 Access S**

- (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 S**

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. S**

- (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

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- (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** **S**

- (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** **S**

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** **S**

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** **S**

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** **S**

Schedule 7 makes provision about giving notices.



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## PART 4 S

### FINAL PROVISIONS

#### 25 Transitional S

- (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 S

The 1846 Act is repealed.

#### 27 Interpretation S

In this Act—

- “the 1846 Act” means the Pow of Inchafray 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

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(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 **S**

- (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 **S**

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

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## SCHEDULE 1 **S**

(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 **S**

*(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 S

(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 S

*(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 **S** (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 **S**

(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 S

*(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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**Changes to legislation:**

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