

POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL

Written Submission by Scottish Government 16 May 2017

Introduction

1. This Bill is, of course, a Private Bill. The Scottish Government does not plan to take a position on it although we are, of course, happy to help the Committee and Parliament if required, insofar as we are able to do so.
2. There are some points which have occurred to the Scottish Government and to Registers of Scotland in relation to the Bill which the Committee may wish to consider. We offer the points below to be helpful, rather than to express a view on the Bill generally. We would highlight in particular the point in paragraph 8 below on appeal mechanisms against decisions of the Pow of Inchaffray Drainage Commission (“the Commission”).

Powers of the Pow of Inchaffray Drainage Commission

3. Paragraphs 1 and 2 of schedule 1 outline the functions and general powers in relation to the Commission. This includes controlling fauna and flora in so far as the Commission considers this necessary or desirable to maintain effective drainage of the benefited land. Section 17 makes provision on access, section 18 on being notified of planning applications and section 19 about consents.
4. We assume the powers given to the Commission under the Bill are without prejudice to any regulatory functions of statutory bodies or statutory controls or protections. For example, we assume the requirement for Commission consent for functions mentioned under section 19 of the Bill are without prejudice to the need to obtain any statutory consents from regulators and that powers for the Commission to control flora and fauna are without prejudice to any statutory controls and protections. It is intended, for example, that beavers will become a protected species within the course of this year.
5. It might be helpful for the promoters to outline in more detail the rationale for the various powers under the Bill

Taking decisions on the required work

6. It is not immediately clear to the Scottish Government from the Bill exactly who decides what work needs to be undertaken by the Commission.
7. The Bill makes provision on heritors’ meetings – section 7 and schedule 3, for example, refer. However, it does not seem certain that the purpose of these meetings is to discuss and agree the work to be carried out.
8. It does not appear that there are any statutory appeal mechanisms, as there are in some cases to the sheriff under the Pow of Inchaffray Drainage Act 1846: please see, for example, section 29, or section 48 which provides a right of appeal to the sheriff in relation to costs attributed to an owner covering improvement works. The Scottish Government considers it important to be clear whether appeal mechanisms are needed in relation to Commission decisions and if appeal mechanisms are not needed, why they are not needed. It would seem preferable to replicate existing appeal rights in the new Bill. The Committee may wish to seek the promoters’ views on removal of the existing statutory appeal mechanism.

9. It may be helpful for the promoters to clarify these points.

Costs to home-owners and landowners

10. There does not appear to be much information in the Bill and its accompanying documents on the annual expenditure by the Pow of Inchaffray Drainage Commission. As a result, it is not clear how much home-owners and other landowners can expect to pay each year.

11. Section 10 of the Bill and schedule 4 make provision on calculation of annual assessments. It might be helpful for the promoters of the Bill to provide further information on how the assumed values per acre of the various land categories in schedule 4 have been arrived at.

12. Initial calculations carried out by the Scottish Government on costs are outlined in the attached appendix. These calculations are based on a large number of assumptions (eg in relation to the annual budget of the Commission; the size of the houses on the benefited land; and the split between the various land categories). **This is not, of course, a Government Bill and more reliable estimates and calculations should be obtainable from the promoters of the Bill.**

Revaluation of assumed values and base values

13. Section 11 provides that the Commission must have the assumed value and base value used to calculate chargeable values revalued every 10 years. The revaluation is to be carried out by a surveyor appointed by the Commission. Before finalising it, the surveyor must notify each heritor of the proposed revaluation. The heritor then has 28 days to make representations to the surveyor on the proposed revaluation and the surveyor must have regard to any such representations.

14. It might be helpful for the promoters to outline whether there is a need for a more formal dispute resolution process to be put in place, if there should continue to be disagreements between relevant parties about a revaluation.

Prospective purchasers being aware of obligation

15. It is not clear how a prospective purchaser of a house or land in the benefited area will know there is an obligation to pay the Commission.

16. It appears to the Scottish Government, and to Registers of Scotland, that the Bill seems to propose a form of obligation that is intended to "run with the land". However, it is not clear from the terms of the Bill that it would be publicised by registration in the Land Register.

17. Essentially, the obligation appears to be a form of statutory overriding interest which, under the Land Registration etc. (Scotland) Act 2012, can only be noted on the Land Register if it is an encumbrance inclusion of which in the Register is permitted or required, expressly or impliedly, by an enactment or unless the Bill is amended for it otherwise to be made registrable, e.g. to provide either a form of registrable document or to add it to the list of burdens on land in section 9(1) of the 2012 Act. Even if an amendment were made to add it to the list of burdens on land in section 9(1) of the 2012 Act, this would not allow

publicity in respect of any affected land the titles to which are still held in the Register of Sasines.

18. As an alternative to registration, it might be preferable to publicise the obligation through ScotLIS. More information on ScotLIS is at <https://www.ros.gov.uk/about-us/scotlis>

19. In relation to residential property, it is possible that paragraph 11(a) of the property questionnaire for the Home Report <http://www.gov.scot/Resource/Doc/1125/0065334.pdf> could be a place for an owner to flag up the obligation. However:

- ◆ this only applies to residential property;
- ◆ as 11(a) is a “yes/no/don’t know” question it won’t always flag the obligation up;
- ◆ there are exceptions to the need to have a home report - so it wouldn’t be a route for providing information if, for example, a house is new build when it is bought or if the house is derelict when it is bought.

Terminology

20. The promoters may wish to outline why the Bill refers to acres, rather than hectares.

Conclusion

21. The Scottish Government is happy to help the Committee and Parliament if required, insofar as we are able to do so.

Yours sincerely

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APPENDIX

Calculation of costs

Section 10 provides:

- Commission must prepare budget for “assessment year.” [Section 10(1)].
- Must tell heritor amount due [Section 10(3)].
- Amount is “rate poundage” multiplied by “chargeable value”. [Section 10(4)].
- “Rate poundage” is budget for assessment year divided by the sum of “chargeable values” of each heritor’s land. [Section 10(5)].
- Chargeable value is calculated in accordance with schedule 4. [Section 10(6)].
- Under paragraph 1 of schedule 4, “chargeable value” is the “enhanced acreage value” multiplied by acreage.
- “Enhanced acreage value” is “assumed value” [as per paragraph 3 of schedule 4] less base value of £500 per acre.

Example (with assumptions)

Budget

Assume budget is £0.1 million a year. [£100,000].

In practice, annual expenditure may be less than this. The Scottish Government’s understanding, from a Statement of Account for the Commission lodged in Perth Sheriff Court under the 1846 Act and held in a Register of Entail Accounts, is that the Commission’s annual expenditure is under £25,000 a year. The Scottish Government has obtained from Perth Sheriff Court a copy of the most recent Statement of Account lodged there. This Statement of Account is attached.

Acreage

Total acreage is 1,930 acres. [Paragraph 5 of Explanatory Notes to Bill]

Houses

There appear to be 70 houses. [See annex to promoter’s memorandum].

Assume houses take up 0.25 acre each.

So for each house, enhanced acreage value is: £300,000 [assumed value, as per schedule 4] less £500 [base value] = £299,500.

Chargeable value is £299,500 [enhanced acreage value] multiplied by 0.25 [acreage – assumption being made is each house is 0.25 acre] = £74,875 per house.

Other land

Commercial

Assume 10 acres of land is for commercial use

Enhanced acreage value is: £50,000 [assumed value, as per schedule 4] less £500 [base value] = £49,500.

Chargeable value is £49,500 [enhanced acreage value] multiplied by 10 [acreage – assumption being made 10 acres of land is for commercial use] = £495,000.

Agricultural

Assume remainder of land is agricultural.

Remainder of land under these assumptions would be 1,930 acres [total land] less 17.5 acres for housing [70 houses at 0.25 per acre] less 10 acres for commercial use = 1,902.5

The Scottish Government's understanding is that the land around the Pow is mainly Class 3.1 with some Class 3.2.

Assume 1,500 acres are Class 3.1 and 402.5 acres are Class 3.2.

Agricultural land Class 3.1

Enhanced acreage value is: £5,500 [assumed value, as per schedule 4] less £500 [base value] = £5,000.

Chargeable value is £5,000 [enhanced acreage value] multiplied by 1,500 [assumed acreage] = £7,500,000.

Agricultural land Class 3.2

Enhanced acreage value is: £4,500 [assumed value, as per schedule 4] less £500 [base value] = £4,000.

Chargeable value is £4,000 [enhanced acreage value] multiplied by 402.5 [assumed acreage] = £1,610,000

Actual amounts payable

Amount payable is the “rate poundage” for the assessment year multiplied by the sum of the chargeable values [section 10(5)].

The “rate poundage” is the budget divided by the sum of the chargeable values.

Assumed budget is £0.1 million.

Sum of chargeable values is:

70 x £74,875 = £5,241,250 [for all of the houses]; plus

£495,000 [for the commercial property]; plus

£7,500,000 [for the agricultural land class 3.1]; plus

£1,610,000 [for the agricultural land class 3.2]

Total = £14,846,250

Rate poundage is £0.1 million divided £14,846,250 = 0.0067357

So amount per house is rate poundage [0.0067357 x chargeable value [£74,875] = **£504.34** [section 10[4]]. Total for housing is **£35,303.80** [£504.34 x 70 houses].

Amount for commercial land is rate poundage [0.0067357] x chargeable value [£495,000, for all ten assumed acres] = **£3,334.17**

Amount for agricultural land class 3.1 is rate poundage [0.0067357] x chargeable value [£7,500,000] = **£50,517.75**

Amount for agricultural land class 3.2 is rate poundage [0.0067357] x chargeable value [£1,610,000] = **£10,844.48**

Assumed table of costs (if annual budget is £100,000)

Land use	Assumed total acreage	Cost per house £	Total £
Residential	17.5 [0.25 acres per house. 70 houses]	504.34	35,303.80
Commercial	10	Not applicable	3,334.17
Agricultural land 3.1	1,500	Not applicable	50,517.75
Agricultural land 3.2	402.5	Not applicable	10,844.48
All – grand total	1,930	504.34	100,000.20

Note

Table above does not take account of VAT.

**Scottish Government
May 2017**