



The Scottish Parliament  
Pàrlamaid na h-Alba

**POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL  
COMMITTEE**

**AGENDA**

**5th Meeting, 2018 (Session 5)**

**Wednesday 20 June 2018**

The Committee will meet at 10.00 am in the Sir Alexander Fleming Room (CR3).

1. **Pow of Inchaffray Drainage Commission (Scotland) Bill:** The Committee will consider the amendments lodged for Consideration Stage and decide, under Rules 9A.9.7B and 7C, whether any adversely affect private interests and, if so, whether they have sufficient merit that there is a possibility of their being agreed to after further scrutiny.

Nick Hawthorne  
Clerk to the Pow of Inchaffray Drainage Commission (Scotland) Bill Committee  
Room T2.60  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5417  
Email: [private.bills@parliament.scot](mailto:private.bills@parliament.scot)

The papers for this meeting are as follows—

**Agenda item 1**

Clerk's Cover Note

POI/S5/18/5/1

## Pow of Inchaffray Drainage Commission (Scotland) Bill Committee

5th Meeting, 2018 (Session 5), 20 June 2018

### Consideration Stage – phase two

#### Background

1. The Committee published its Preliminary Stage report on 3 November 2017.<sup>1</sup> This report was debated during the Preliminary Stage debate held in the Parliament on 16 November 2017.<sup>2</sup> The Parliament agreed to the general principles of the Pow of Inchaffray Drainage Commission (Scotland) Bill and that it should proceed as a Private Bill. The Bill therefore has proceeded to Consideration Stage.

2. The purpose of Consideration Stage is to consider the detail of the Bill. In this instance, the Stage consists of two distinct phases. The first phase involved the consideration of further evidence submitted and the Committee meeting in a quasi-judicial capacity to consider and dispose of the objections. The second phase will involve the Committee meeting in a legislative capacity to consider and dispose of any amendments lodged to the Bill and to consider each section, schedule, and the long title of the Bill.

3. Once Consideration Stage has been completed the Bill will proceed to Final Stage, which consists of the Parliament considering any further amendments lodged and then deciding whether to pass the Bill.

#### Phase two - amendments and detailed consideration of the Bill

4. Following the consideration and disposal of the three objections, members of the Committee were able to lodge amendments to the Bill, with a deadline of 18 June 2018<sup>3</sup>. At the time of the publication of this paper, 15 amendments<sup>4</sup> have been lodged by the Convener on behalf of the promoters of the Bill. Amendments lodged to date can be found at the Annexe.

5. The subject of the amendments can be categorised as follows—

- Amendments 1, 2, 3 and 14 relate to the increase of the number of commissioners for the Balgowan section from one to three, and the

<sup>1</sup> Pow of Inchaffray Drainage Commission (Scotland) Bill Committee (2017). Preliminary Stage report. Available at:

<https://digitalpublications.parliament.scot/Committees/Report/POI/2017/11/3/Pow-of-Inchaffray-Drainage-Commission--Scotland--Bill---Preliminary-Stage-Report#>

<sup>2</sup> Scottish Parliament. Official Report, 16 November 2017. Pow of Inchaffray Drainage Commission (Scotland) Bill Preliminary Stage debate. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11196&i=102063>.

<sup>3</sup> See details in the Pow of Inchaffray Drainage Commission (Scotland) Bill Committee's Consideration Stage Report. Available at:

<https://digitalpublications.parliament.scot/Committees/Report/POI/2018/5/24/Pow-of-Inchaffray-Drainage-Commission--Scotland--Bill---Consideration-Stage-Report#Introduction>.

<sup>4</sup> These will be published in the Parliament's Business Bulletin on Monday 18 June 2018, which will be available via the Parliament's website: <http://www.scottish.parliament.uk/>.

knock-on effects of that on the overall number of commissioners, the transition arrangements, and the quorum requirements for meetings;

- Amendments 4, 11, 12 and 13 relate to a commissioner of a particular section being able to be dismissed by a majority of heritors in that section, and to a commissioner appointment being terminated if they cease to be a heritor;
- Amendments 5, 10 and 15 relate to the annual assessments and new rights of appeal;
- Amendments 6 and 7 relate to the publication of the land plans and the register of heritors;
- Amendment 8 updates the definition of “assessment year” to reflect the timescale of the Bill; and
- Amendment 9 relates to the new land plans submitted to Parliament in May 2018, replacing those submitted when the Bill was introduced.

*Screening of amendments - process*

6. Before proceedings on amendments can begin (consideration of amendments and agreement of each section of the Bill and the long title), the Committee must first conduct a two-stage screening process. Firstly, it must identify whether any of the amendments lodged adversely affect private interests. If any such amendments are identified then, secondly, it must decide whether the identified amendments have sufficient merit that there is a possibility of their being agreed to after further scrutiny.

*Screening of amendments – adversely affecting private interests*

7. With regard to the first test, it is for the Committee to “calibrate” this in some appropriate way – recognising that almost any amendment has the potential to create some theoretically adverse effect, and recognising that there has to be an actual person who might suffer any such effect. For example, the Committee may determine that an amendment could adversely affect private interests if the effect of the amendment is to—

- substantially disadvantage any existing objector in new ways (such that the objector might reasonably have advanced different arguments or included additional grounds of objection if the provisions made by the amendment had been included in the original Bill);
- substantially disadvantage in new ways anyone who could have objected to the original Bill but chose not to do so; or
- substantially disadvantage anyone who could not have objected to the original Bill but who would have grounds to object if the provisions made by the amendment had been included in that Bill.

*Screening of amendments – merits of the amendment*

8. In terms of the second test, the Committee may determine that an identified amendment does not have sufficient merit that there is a possibility of it being agreed to after further scrutiny because it—

- is hostile to the promoter's aims, and a majority on the Committee supports those aims;
- reflects the view of a particular objector, when the Committee has already rejected the arguments of that objector; or
- it reflects the view of the promoter, when the Committee has already upheld the contrary arguments of objectors.

9. Essentially, the question for the Committee is: if this amendment did not adversely affect private interests, how likely would you be to agree to it? If the answer is "not at all likely", the amendment fails the test; if the answer is "possible" or "I could be persuaded", it should pass the test. But the Committee does not need to have made up its mind to agree to the amendment in order for the amendment to pass the test; even if its answer to the question is "unlikely but possible" it would be reasonable for it to conclude that the amendment passes the test.

*Screening of amendments – outcome and next steps*

10. If the Committee decides that none of the amendments adversely affects private interests – or that some do, but none of them have the merit described above – then the formal proceedings on amendments can take place. Any amendment that is considered to adversely affect private interests but not to have the merit described may not be moved.

11. If the Committee decides that any amendments adversely affect private interests and have the merit described, then the formal proceedings on amendments are put on hold until the holders of those interests have been notified and given an opportunity to object to the Committee.

12. If any amendments identified are lodged on behalf of the promoter, the promoter is responsible for notifying the holders of private interests adversely affected by the amendment of its terms and implications and of how they may lodge an objection to it. However, the Committee may specify the manner in which this should be carried out, including specifying the persons, or classes of persons, who should be notified and the length of any objection period.

**13. In such circumstances the Committee may wish to specify the persons, or classes of persons, who should be notified as all heritors whose private interests would be adversely affected.**

**14. Also, given the next meeting of the Committee is not scheduled until 12 September 2018, it is suggested that the Committee consider allowing a 60 day period for objections (which mirrors the length of the**

**objection period at Preliminary Stage). This would give a closing date for objections of Monday 20 August 2018.**

15. If any such objections are lodged, the Committee will take evidence on them from the objector(s) and the promoters and anyone else the Committee so decides, consider that evidence and then reach a conclusion. It will then begin proceedings on the amendments. If there are no such objections lodged, then the Committee will move straight to beginning proceedings on the amendments.

### **Remaining provisional Consideration Stage timetable**

*The deadline for Members of the Committee to lodge amendments to the Bill is Monday 18 June 2018*

20 June	Consideration of whether any amendments lodged adversely affects private interests and, if so, passes the merits test.
---------	--

*The Parliament is in recess from 30 June – 2 September*

12 September	Evidence from any objectors to particular amendments (should the Committee have determined that any amendments lodged adversely affect private interests and, if so, pass the merits test and have set an objection period for those amendments)*
--------------	---

*\* note that if no amendments are identified, or if they are but there are no objections, then the Committee will move to the business set out under 24 October below*

26 September	Consideration and disposal of any objections lodged to particular amendments.  Possible consideration of a further Consideration Stage report.
--------------	--

*The Parliament is in recess from 6-21 October*

24 October	Consideration of any amendments and consideration of the sections, schedules and Long Title of the Bill.
------------	--

**Clerk  
Pow of Inchaffray Drainage Commission (Scotland) Bill**

**Amendments lodged to the Pow of Inchaffray Drainage Commission (Scotland) Bill at Consideration Stage up to Thursday 14 June 2018**

**Pow of Inchaffray Drainage Commission (Scotland) Bill – Consideration Stage**

**Section 2**

**Tom Arthur (on behalf of the promoters)**

- 1 In section 2, page 1, line 25, leave out <seven> and insert <nine>

**Tom Arthur (on behalf of the promoters)**

- 2 In section 2, page 2, line 2, leave out <one Commissioner> and insert <three Commissioners>

**Section 5**

**Tom Arthur (on behalf of the promoters)**

- 3 In section 5, page 3, leave out lines 7 and 8 and insert—  
<( ) 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.>

**Section 7**

**Tom Arthur (on behalf of the promoters)**

- 4 In section 7, page 3, line 22, at end insert—  
<( ) terminate the appointment of a Commissioner in accordance with paragraph 13(4) of schedule 2.>

**Section 10**

**Tom Arthur (on behalf of the promoters)**

- 5 Leave out section 10 and insert—  
**<Annual budget and assessments**  
(1) Schedule (*Preparation of annual budgets and heritors' rights to require review etc.*) 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.
- (5) The chargeable value of a heritor's land is calculated in accordance with schedule 4.
- (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.>

### **Section 15**

#### **Tom Arthur (on behalf of the promoters)**

- 6 In section 15, page 6, leave out lines 8 to 13 and insert—
  - <( ) 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.>

### **Section 16**

#### **Tom Arthur (on behalf of the promoters)**

- 7 In section 16, page 6, leave out lines 30 to 33 and insert—
  - <( ) 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.>

**Section 27**

**Tom Arthur (on behalf of the promoters)**

- 8 In section 27, page 9, line 7, leave out <2018> and insert <2019>

**Tom Arthur (on behalf of the promoters)**

- 9 In section 27, page 9, line 23, leave out <with the Bill for this Act> and insert <in the Office of the Clerk of the Parliament on 3 May 2018>

**Tom Arthur (on behalf of the promoters)**

- 10 In section 27, page 9, line 28, at end insert—  
 <“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  
 (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,>

**Schedule 2**

**Tom Arthur (on behalf of the promoters)**

- 11 In schedule 2, page 12, leave out lines 33 and 34

**Tom Arthur (on behalf of the promoters)**

- 12 In schedule 2, page 13, line 4, at end insert—  
 <(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.>

**Tom Arthur (on behalf of the promoters)**

- 13 In schedule 2, page 13, line 4, at end insert—  
 <( ) 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**

**Tom Arthur (on behalf of the promoters)**

- 14 In schedule 3, page 13, line 17, leave out <three> and insert <five>

**After schedule 3**

**Tom Arthur (on behalf of the promoters)**

15 After schedule 3, insert—

<SCHEDULE 3A

*(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,
- (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 Chairman of the Association of Drainage Authorities or any successor body,
- (b) where an expert cannot be appointed under sub-paragraph (a), the Chairman of the Royal Institution of Chartered Surveyors in Scotland.

*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.>