



OFFICIAL REPORT
AITHISG OIFIGEIL

Pow of Inchaffray Drainage Commission (Scotland) Bill Committee

Wednesday 24 May 2017

Session 5



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Pàrlamaid na h-Alba

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**POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL COMMITTEE
2nd Meeting 2017, Session 5**

CONVENER

*Tom Arthur (Renfrewshire South) (SNP)

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)

*Alison Harris (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ailidh Callander (Anderson Strathern)

Shirley Davidson (McCash & Hunter)

Hugh Grierson (Pow of Inchaffray Commission)

Jonathan Guest (Pow of Inchaffray Commission)

Alastair McKie (Anderson Strathern)

CLERK TO THE COMMITTEE

Nick Hawthorne

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament
Pow of Inchaffray Drainage
Commission (Scotland) Bill
Committee

Wednesday 24 May 2017

[The Convener opened the meeting at 10:07]

Decision on Taking Business in
Private

The Convener (Tom Arthur): Welcome to the second meeting of the Pow of Inchaffray Drainage Commission (Scotland) Bill Committee. Agenda item 1 is a decision on whether to take item 3 and all future consideration of evidence in private.

Members *indicated agreement.*

Pow of Inchaffray Drainage
Commission (Scotland) Bill:
Preliminary Stage

10:07

The Convener: Today we take evidence from the promoter of the bill, the Pow of Inchaffray commissioners, and their representatives. I welcome Jonathan Guest, commissioner; Hugh Grierson, commissioner; Alastair McKie, partner, Anderson Strathern; Ailidh Callander, senior solicitor, Anderson Strathern; and Shirley Davidson, solicitor, McCash and Hunter. I invite the commissioners to make an opening statement.

Alastair McKie (Anderson Strathern): Good morning to committee members, clerks, officials and members of the public. John McKenzie and Bill Drummond Murray, who are also commissioners, are observing today's proceedings. Our parliamentary draftsman is unable to attend today so, although we will endeavour to answer your questions to the best of our abilities, if there are particular technical matters that arise, we may have to respond in writing.

I have circulated copies of the original survey plan, to which Mr Guest will make reference in his opening statement. It provides some important historical context and is also relevant for identifying the benefited land under the pow bill. I have circulated copies of the parliamentary bill plans, which are up to date and match the benefited areas shown on the original survey plan.

Commissioner Jonathan Guest will make a short opening statement.

Jonathan Guest (Pow of Inchaffray Commission): Good morning, ladies and gentlemen. My name is Jonathan Guest and I am a rural surveyor with over 40 years' experience. I am a fellow of the Royal Institution of Chartered Surveyors and a director of Savills (UK) Ltd, based in the Perth office. I am also a farmer with land situated within the area that is drained by the Pow of Inchaffray. I have been the surveyor to the pow commission for 30 years and one of the six commissioners for over 20 years. I walk the pow every year and I am very familiar with its operation and the land that it benefits. My professional experience as a surveyor has included designing and organising land drainage schemes and building construction.

I refer committee members to the location plan, which is in your papers. Before the pow and its side ditches were constructed, the low-lying land between Dollerie and Methven Moss, which extends to approximately 1,930 acres, was a

boggy marsh. If you look at the plan, you will see Methven Moss on the right-hand side. Immediately to the right of that, there is a number 3 on the minor road. I am afraid that the plan has been slightly clipped. It should be 38. That is the height in metres above sea level of the ground at that point.

If you look to the west, about halfway along the plan, along the blue dotted line, you will see Inchaffray abbey, which is where the Pow of Inchaffray gets its name from—of which, more later. A little bit further to the left, you will see Quarterbank. There is a bridge there called Auchlone bridge, and you will see another number: 39. Again, that is the height in metres above sea level. That tells us that, between Methven Moss and Auchlone bridge, the land is flat or even rises slightly.

If you follow the blue dotted line further along, you will see Tuchethill. The line goes across a road there, and that is Dollerie bridge. You will see another number there: 37. That is the height in metres above sea level there, so there is a 2m drop between Auchlone bridge and Dollerie bridge. If you follow the blue dotted line, you will see that it goes round and joins the River Earn. There is a contour there, just to the right, that is labelled 30m. The ground level where the pow joins the Earn is slightly lower than that, so there is a fall of more than 7m in the last short distance.

The drainage of the land, particularly down to Dollerie, is crucial from the point of view of the pow. The reason why there are such different gradients above and below Dollerie is that, at Dollerie, there is large area of hard sandstone bedrock, which in effect acts as a plug that prevents water from draining from the flat valley bottom upstream to Methven Moss.

In the middle of what was a boggy marsh was a small island of dry land on which the monks built Inchaffray abbey. The story goes that the abbot of Inchaffray blessed the troops before Bannockburn and, in recognition of that, Robert the Bruce enabled the monks to commence work to form the pow and drain the valley. With the dissolution of the monastery as a consequence of the reformation, operation of the pow fell to the local landowners. That was first regulated in the 1696 Act in favour of the Heritors adjacent to the Pow of Inchaffray, which I understand was one of the last acts passed by the Scottish Parliament before the Act of Union in 1707.

In the 1840s, the landowner proposed a significant further improvement to the pow. Once again, the scheme was based on lowering the level of the sandstone plug at Dollerie, so that drainage of the land upstream could be improved. The scheme's high cost necessitated the introduction of an equitable means of sharing the

cost between the owners of the benefiting land, hence the Pow of Inchaffray Drainage Act 1846.

10:15

The central feature of the act was a detailed survey of the land that benefited from the pow. Alastair McKie has handed to members a photograph of the original plan, which is about 10 feet long and is a fairly fragile document belonging to Tony Murray, who used to live at Dollerie. The survey was conducted before the improvements were carried out and then repeated on completion of the work after the 1846 act. The surveyors assessed the value of the resulting improvement to each field within the benefited land, and that 1846 valuation forms the basis of the annual assessment that each heritor—which is what the act calls anyone who owns land within the benefited area—has paid ever since.

The rateable values for United Kingdom business rates are revalued every five years; by comparison, the 1846 pow act made no provision for any revaluation, so the annual assessments that are levied by the commission today are still based on the 1846 valuation. Whereas the rate in the pound for business rates is 46.6p, the rate for the pow is £17.50. That means that the current assessments are 17.5 times the amount of the valuation, which in itself demonstrates the historical nature of the valuations that are still used. In 1846, there were no buildings on the benefited area. The 1846 improvements enabled the Perth to Crieff railway to be constructed—if members look at the map, they will see a dotted line saying “dismantled railway” that runs adjacent to the pow for a considerable distance. That could not have been built without the 1846 improvements.

At Balgowan, a station, and a limited number of houses associated with it, were built at that time. Since then, a few more houses have been built within the benefited area, but a revaluation, although desirable, could be achieved only by legislation. The commissioners have always had a policy of economical budgets and the very high cost of promoting a new act at Westminster, which we looked into 25 years ago, was way beyond the means of the commission, so the idea was dropped.

In the early 1990s, the Manor Kingdom development of an additional 54 houses at Balgowan increased the pressure for a revaluation and, opportunely, the re-establishment of the Scottish Parliament meant that promoting a bill might just be within the means of the commission. Here we are.

All the residential properties rely on the pow and its tributaries for drainage of surface water

and foul water. Many administrative features of the 1846 act have become out of date and impractical. The drafting of the new bill has been debated and discussed at great length by the commissioners and their legal advisers over the past three years. One recurring theme has been that the administration of the commission must be as simple and straightforward as possible, so that administrative costs continue to be kept to the minimum and the policy of economical budgets continues. The aim is that the proportion of the budget that is spent to maintain the pow is maximised, so as to give the heritors good value for their money.

The cost of introducing the bill has placed a huge strain on the commission's finances, so that very limited work has been carried out on the pow for the past three years.

The 1696 act operated for 150 years and the 1846 act has operated for 170 years. It is hoped that, by having simple, future-proofed procedures, the pow can continue to be run economically and that the bill, if enacted, will provide to be as durable as its two predecessors.

I submit that the success of the bill is vital to all those who benefit from the Pow of Inchaffray. However, I suggest that the bill is of much more than just local interest. There are many pows and man-made arterial watercourses in Scotland and throughout the United Kingdom. With flooding a topic of national interest, the maintenance and administration of those watercourses is an important topic. The bill has the potential to influence the administration of other watercourses and to become a template where a statutory commission is appropriate in other situations.

The Convener: Thank you very much. Fundamental to the bill and the 1846 act is the concept of benefited land. Will you outline to the committee what evidence-based considerations and precedents have informed the designation of benefited land as outlined in the bill?

Jonathan Guest: The starting point is the 1846 survey. You have been presented with a photograph of that plan, which is a detailed document. All the land on either side of the pow was surveyed. Some of the land floods or flooded; some of the land—probably two thirds of it—could not have been improved without the pow and its side ditches being there. The land could be improved only by installing drains. Drains must have a minimum cover of 2 to 3 feet and they must have a gradient, or the water will not run. That means that the drains must have an outfall. Without the pow and the side ditches, there would be no outfall, and the drains could not have been installed. That is the basis of the survey.

The commissioners are all people who own and are familiar with the land in the benefited area. From long, practical experience, we know that the plan is fundamentally correct.

The Convener: The definition of benefited land is predicated on a survey that was carried out in 1846, combined with the local experience and knowledge of existing heritors and commissioners. Have you utilised any other resources, such as Scottish Environment Protection Agency modelled maps of flood risk area?

Jonathan Guest: From what I have seen of them in other situations, SEPA's flood risk maps are pretty crude. They are not the result of anyone going to look on the ground; rather, they are the result of someone looking at a plan. I do not think that they would have anything to add to the detail of the 1846 survey and the commissioners' practical experience.

Hugh Grierson (Pow of Inchaffray Commission): The advantage of the 1846 survey was that it could look at the ground before the improvements were carried out. The land was surveyed before and after the major improvements, which is something that we cannot recreate. We cannot go back and see what the land looked like before the improvements were made, so it seems appropriate to keep using those results.

The Convener: Will you clarify what the fundamental reasons are for the inconsistency between the SEPA flood assessments and the 1846 survey?

Jonathan Guest: From what I have seen of SEPA maps in other situations, they are broad-brush plans that show the potential for flooding in an area. When the plans are produced, the next piece of work that is called for is a detailed flood risk assessment. They are not definitive; they are an indication of a potential problem.

The Convener: Given your experience with the land, would you say that, within the benefited land, there is a spectrum of flood risk and that some areas of benefited land are more at risk of flood than others?

Jonathan Guest: Definitely. Some land floods and other land does not flood, but none of the land within the benefited area could be improved if drains could not be installed. If drains cannot be installed because there is no outfall for them, land cannot be improved so, even if it does not flood, it will at best be only rough grazing.

The Convener: Even so, given the differentiation in risks for benefited land, is it correct that some properties benefit more than others as a result of the pow?

Jonathan Guest: The differences are fairly marginal. If we took away the 1846 improvements, the benefited land would be either land that would flood or land that would at best be rough grazing, because it could not be drained, and if it could not be drained, it could not be improved.

The Convener: So you contend that, without the pow, none of the areas that are designated as benefited land would, for example, be able to have property situated on it.

Jonathan Guest: No, it could not. A property has to have surface water drains and foul drains. If there is nowhere for those drains to run, you cannot build a house.

Alastair McKie: The pow fulfils a flood alleviation function and it also enables properties to have surface water and foul drainage. Our position is that the residential properties could not have been consented without the opportunity for surface water and foul drainage, which ultimately goes into the pow.

Jonathan Guest: When you come on your inspection, we can go down and look at the waste water treatment works that serve the whole of the Balgowan Manor Kingdom development. You will see the outfall, which is not far above the bed of the pow. If the pow was not maintained, the waste water treatment works would not work. It is as simple as that.

The Convener: Reference has been made to substantial improvement works after the 1846 act. For the record, when were the last substantial improvement works carried out? Was that following the 1846 act?

Jonathan Guest: During my tenure, three things have fundamentally changed with the pow. First, with the introduction of 360° excavators, we had to have an excavator track alongside the pow. The machine digs stuff out and then has to put it down. So that the spoil does not have to be carted away immediately, alongside most of the pow, we have an excavator track and beside that a strip of land where we can dump the spoil. Periodically, it is then loaded and tipped into low spots in the adjacent fields.

The next thing that happened was that, in the 1980s, there was scope to regrade the pow between Redhills and just upstream of Balgowan, past the Balgowan development. That was regraded and we managed to drop the bed of the pow by about 2 feet there. When you come on your inspection, you will be able to see the Balgowan bridge, which is in the middle of the section that was regraded. The foundations of that bridge had to be underpinned with concrete, which shows what was done.

The next major regrading was in about 1995, when we got a grant from the Scottish Office agriculture department. We lowered the whole bed of sandstone all the way through Dollerie by about 2 feet. That does not sound like much but, considering the gradients of the pow upstream of that, it is actually very significant. That necessitated the underpinning of two bridges, and the scheme cost about £40,000. We got a grant of £20,000 from the agriculture department. That enabled the pow upstream to be regraded in the course of the annual clean.

Another improvement that we have made is in the section upstream from Dollerie bridge, where the soils were very unstable and the banks tended to slip in. When we cleaned it out, we would come back a week later and find that the banks had slipped in. We have therefore revetted the banks with a steel crash barrier, which basically involved putting a little crash barrier along the toe of the bank to stop it slipping in. That has been a major improvement, as it means that the pow does not have to be cleaned out as often as it used to.

10:30

Mary Fee (West Scotland) (Lab): I seek a bit of clarification on the map that you have helpfully provided. At one point, it is marked "dismantled railway". Will you explain the length of the land that includes the dismantled railway? Has that been added to the pow? Why does part of the pow contain a dismantled railway? I seek a bit of background information. Is the pow the same depth all the way along, or was it dug deeper to include the dismantled railway?

Jonathan Guest: The dismantled railway is parallel to the pow. The 1846 plan, as well as showing the benefited land, defines the sections of the pow and the side ditches that the pow commissioners are obliged to maintain. They are marked in red on the current plan. The blue squares on the plan are square kilometres, so that gives you an idea of the lengths involved. The main pow channel is just over 9 miles long, and the side ditches are about another 4 miles, so there are 13 miles of ditches to be maintained. Following discussions, in particular with the Balgowan residents, the bill proposes to extend the ditches that the commission will maintain to include the ditch that runs along the east side of the Balgowan development and part of the way along the south side, to alleviate flood risk there. Otherwise, it is proposed that the sections of ditch that the commission will have a statutory obligation to maintain will stay the same.

Alison Harris (Central Scotland) (Con): I have a question about the number of new heritors. There has been a net increase of 15 residential and commercial heritors. Is that as a result of the

provisions in the bill? Were all 15 new heritors obliged to pay for the pow previously in their title deeds?

Jonathan Guest: I will explain the history behind the new heritors. As I said, in 1846, there was a station at Balgowan. Some time after that, a sawmill was constructed, and there was a series of little houses. Hugh Grierson knows more about that than I do.

Hugh Grierson: To start with, they were wooden shacks that people used on a temporary basis and the landowner continued to pay the bill for that area of land. At some stage, they were sold off; for a while, they were used by members of the Traveller community. The commission lost the information on who owned the plots of land, although the area of land was always in the benefited land. The landowners should always have been heritors, but their names were lost so they were not sent invoices.

The bill should make it fair and get everyone who is on benefited land back on the register. We are going to form an official register of names to make sure that it does not happen again. If the area of land that a house is built on was defined as benefited land under the 1846 act, the landowner should be a heritor. We lost track of the heritors' names, which meant that they did not get invoices, so it is a surprise to them that they are on the new register.

Alison Harris: You say that you lost the list over the years. Does that mean that there is nothing in their title deeds?

Hugh Grierson: Those people will not have anything in their title deeds. Only those in the new Manor Kingdom development have something in their title deeds.

The Convener: To clarify, when was the Manor Kingdom development constructed?

Jonathan Guest: It was in the early 1990s, although, obviously, not all the properties were built at once. Ove Arup came to see me in the late 1980s—it was doing the flood risk assessment for Manor Kingdom in the course of the planning application.

The Convener: So the lacuna emerged between 1846 and 1990—the lack of knowledge of the names.

Jonathan Guest: Yes. There are various other properties near Balgowan—the houses around the lime store would have been built about then too.

Hugh Grierson: Yes, they are the same.

The Convener: Are there any further comments on why the names were lost? Was it as a result of something in the act?

Jonathan Guest: Originally, the properties would have been part of the Ross farm and then little bits of land must have been sold off where the lime store is.

Hugh Grierson: There are some properties at the lime store, but most of them are around the sawmill. The sawmill continued to pay the levy for some time, but it did not pay forever.

The Convener: Are you confident that if the provisions of the bill are enacted, the situation will not be repeated for any subsequent developments?

Jonathan Guest: Yes.

Hugh Grierson: Yes.

Mary Fee: I want to ask about the function and powers of the commission. The bill defines the commission's functions as to do whatever is "necessary or desirable" and gives you the ability to "repair, maintain and renew" the pow and carry out "improvements" as necessary. Is there a risk associated with the bill that the heritors will have to pay significant costs towards those?

Jonathan Guest: The short answer is no. The commissioners are all heritors and we would be turkeys voting for Christmas if we did that. We have maintained modest budgets ever since I have been involved. The rate in the pound has not been increased for more than 30 years. I assure you that there is no interest from the pow commissioners' point of view in increasing the assessments.

Mary Fee: Not all heritors will be part of the commission.

Jonathan Guest: All the heritors will be represented.

Mary Fee: A group of commissioners will take decisions on behalf of all the heritors.

Jonathan Guest: That is true enough. Under the current arrangements, there is no rush of volunteers to be commissioners and people have to be more or less dragooned into it. The bill proposes that the pow be divided into four sections with commissioners for each section, so that each section is fairly represented.

Alastair McKie: For the first time, Balgowan will be included as one of the commission areas. That is not the case at the moment.

Jonathan Guest: Yes, the bill proposes that there will be a commissioner representing Balgowan.

Mary Fee: Will the costs of maintaining the pow be the same, regardless of how near the pow one lives? Is there a standard charge across the whole of the pow?

Jonathan Guest: The rate in the pound will be the same—we are proposing a uniform rate in the pound.

Mary Fee: Okay. Are you content that there are enough safeguards in the bill for heritors, such that the costs will not be difficult for some people to pay?

Jonathan Guest: We have debated that issue a lot. Promoting a bill such as this is hugely expensive. The two bills have been more than 150 years apart. We are not going to be able to come running back in 10 years' time to say that we need amending legislation—it is just not affordable. Therefore, we are trying to make this bill as simple as possible, so that if it has to last for another 150 years, it will.

If we start introducing retail prices index limits or some sort of artificial means of cost control, I can see that causing problems in the years ahead, and then we would be back in the situation of having a structural problem in the act that we are using that we cannot afford to get changed.

Mary Fee: Under the bill, you will have a new list of all the heritors drawn up, so you will know exactly who the heritors are along the pow. How are you explaining to the heritors that you did not know were there, who will now be on the list, what the costs are, why they will be paying and what will be done on their behalf? What proposal is being put to them?

Jonathan Guest: First, we have had a series of public meetings with them to explain the whole process. There will also be heritors' meetings, where things will be explained to them. That is the main thing that will happen.

Shirley Davidson (McCash & Hunter): A consultation paper with details of the proposals was sent out to all the people who were identified by reference to the land register, the register of sasines and local knowledge.

Jonathan Guest: There is a community body at Balgowan and two of the people who run that organisation have attended commissioners meetings to hear the debates and what we are trying to do.

Shirley Davidson: To be clear, there is the Manor Kingdom development and the Balgowan development, and then, I think, you are also talking about the piecemeal sawmill shacks and houses here and there, so there are different categories. On the Balgowan development, there is reference in the title deeds to an annual assessment. You are probably focusing on the few other people whom, in the context of the bill, it was felt reasonable to include because their houses are on benefited land. They have had a free ride in the meantime.

Mary Fee: You said that you carried out a consultation. Did every single person who lives on the benefited land take part in that?

Jonathan Guest: They were all invited.

Shirley Davidson: Yes.

Mary Fee: How many took part?

Jonathan Guest: There were maybe 30 or 40 people at the meetings—so they were well attended. They were held in Gask village hall, which is only half a mile from Balgowan. Everyone was invited and we had good, lively discussions.

Hugh Grierson: As we mentioned earlier, the residents association took the minutes and put them on the web for people to see.

Mary Fee: Are you confident that every single person who lives on the benefited land was aware of the consultation?

Jonathan Guest: Yes. They were all written to and invited to attend.

Mary Fee: So the consultation was not a document that people could read and give their views on; it was an invitation to come to a meeting.

Hugh Grierson: It was both.

Mary Fee: Did you take and publish any minutes of those meetings? Is there any record of the discussion?

Hugh Grierson: We took minutes and considered the points that were raised.

Mary Fee: Were the minutes made public?

Jonathan Guest: I am not sure.

Shirley Davidson: Not as such.

Mary Fee: What do you mean by "Not as such"?

Shirley Davidson: The minutes were not sent out to the consultees.

Mary Fee: Was there a reason for that?

Shirley Davidson: It was not felt necessary.

Mary Fee: Why? These people are all on benefited land and they all have a vested interest. You want to be as open and accountable as you can be. If not everyone has attended a meeting and you have taken a record of that meeting, it would seem logical to me to send every single person on the benefited land a copy of the record of the discussions that took place and the outcomes.

Alastair McKie: Might it help if the promoter provides a written answer giving the detail of the consultation exercises that were undertaken and how feedback was taken into account in defining

the various options, which became the option to take the matter forward under the bill?

Mary Fee: That would be helpful.

Alastair McKie: Okay.

The Convener: Would it also be possible for the committee to see the consultation documents, the responses and the minutes of the meetings?

Alastair McKie: Of course.

The Convener: That is fine.

I want to follow up on something. Given that, in the interest of simplicity, there are not going to be safeguards, am I correct in understanding that a heritor's ability to pay will not be taken into consideration?

Jonathan Guest: Yes, but what is the difference between that and paying an electricity bill, a water bill or any other bill?

The Convener: There are differences in terms of state support. The situation is that if someone is asset rich but income poor, they are still going to be charged the same rate.

Jonathan Guest: The same applies to farmers, and they have to pay.

Hugh Grierson: Yes—that is the situation that farmers are in.

10:45

Alison Harris: Resolutions can be passed by heritors if they

“represent ... 75% of the sum of the chargeable values of ... heritors' land.”

Given that the system is really based on land acreage rather than one vote per heritor, does it give large agricultural landowners disproportionate power over residential landowners? What are your thoughts on the system?

Hugh Grierson: It seemed proportionate on the basis of paying the bills. It seemed like the right way to go.

Alison Harris: Was it the right way to go because, as they own more of the land, they get more benefit from the land and therefore ought to pay a higher bill? Is that what you mean?

Hugh Grierson: I suppose that they pay a higher bill because they get the cumulative benefit from it. I suppose that it was on a pay-as-you-go basis.

Alison Harris: Okay.

Ailidh Callander (Anderson Strathern): On alterations by heritors and the reference in section 9 to

“75% of the sum of ... chargeable values”,

it is worth bearing in mind that such alterations relate only to very specific sections in the bill. Not every decision would be affected.

Alison Harris: So does the 75 per cent provision relate only to section 9?

Ailidh Callander: I was mentioning section 9 in relation to the land that is taken into account. Alterations are very specific to certain parts of the bill.

Alison Harris: So that provision is not applicable to other sections.

Ailidh Callander: I was referring to those particular alterations.

Jonathan Guest: I think that it applies when we want to change the boundaries between the lower, middle and upper sections; it relates to structural changes.

Hugh Grierson: Or very large parts of our function. It would not be for an everyday vote.

Alastair McKie: Section 9 would come into play in relation to sections 3(3), on excluding ditches, and 3(6). Section 3(3) says:

“A heritors' meeting may exclude ditches from the Pow by a resolution passed in”

accordance

“with section 9.”

Similarly, section 3(6) says:

“A heritors' meeting may alter the boundaries between sections”

of the pow under section 9. That is how section 9 operates.

Hugh Grierson: Such decisions would alter the costs borne by people quite considerably, if they were about big structural changes.

Alastair McKie: I should also say for the sake of completeness that section 9 also applies to section 2(3), which relates to

“A heritors' meeting”

that alters

“the number of Commissioners for a section of ... benefited land”.

It is more to do with the administration of the pow in a physical sense.

The Convener: Why do heritors have a role in appointing but not dismissing commissioners?

Ailidh Callander: It is a continuation of the position under the 1846 act. In practice, heritors would have a number of opportunities through heritors' meetings to convey any issues that they might have. Thereafter, under the bill, it would be

for the other commissioners to take a decision on whether it was necessary to terminate a commissioner's position. Under the 1846 act, the circumstances under which a commissioner stops being a commissioner are limited, essentially, to a change in land ownership or death. With the termination provisions in the bill, the intention is to bring the situation for the commission as a statutory body more in line with that for other statutory commissions. In practice, however, heritors would meet commissioners and have an opportunity to express any concerns that they might have.

The Convener: They can express concerns, but how can heritors hold commissioners to account? You talked about a continuation of the 1846 act, but that was a concept of democracy from a few years after the great reform act. We have moved on somewhat in 170 years.

Jonathan Guest: In the 30 years in which I have been involved, heritors have been invited but, until the consultation period, I recall only two heritors ever turning up to a heritors' meeting—that is two heritors in 30 years. There is huge excitement now because of the bill and the changes, but once that is over, I can tell you that apathy will reign again.

The Convener: If the heritors start getting bills dropping through their doors that they were not expecting, you might get a few more attendees.

Alastair McKie: In light of the questioning, we can think about that provision and respond.

The Convener: Does the bill give any alternative tools or means for heritors who are unhappy about commissioners' performance to hold them to account or to remove them?

Jonathan Guest: No.

Hugh Grierson: There is no provision to remove them at present. It was intended that the bill would provide the way to hold the commissioners to account. It defines fairly closely what the commissioners can and cannot do, and it would be illegal for the commissioners not to follow the bill.

The Convener: I want to clarify another point. For a person to become a commissioner, they have to be a heritor, but can a commissioner who ceases to be a heritor continue to be a commissioner? Are there provisions in the bill to remove a commissioner in that situation?

Jonathan Guest: A commissioner must be a heritor.

The Convener: If someone is a heritor and becomes a commissioner but subsequently moves when they are a commissioner and is no longer a heritor—

Jonathan Guest: That person cannot be a commissioner.

The Convener: Does the bill make that clear?

Jonathan Guest: It is absolutely clear in the bill that commissioners have to be heritors.

Mary Fee: It seems to me that the ultimate sanction for heritors in relation to commissioners would be the ability to dismiss a commissioner if the heritors felt that a commissioner was not carrying out their function correctly. I accept what you have said about there having been a degree of apathy in the past 20 or 30 years while you have been involved with the pow, but you do not know that that will be the case in the future. You have produced a bill that gives heritors no right of sanction.

Alastair McKie: That may be something that we have to think about.

Hugh Grierson: I assure you that that is a provision that we will consider carefully.

Shirley Davidson: There is a 10-year cycle.

Mary Fee: I am sure that you will agree that ten years is a long time for something that heritors are not happy about to be in place.

Jonathan Guest: It is, honestly, quite difficult to find people to be commissioners: we do not have a waiting list of people who want to do the job

The Convener: What work have you undertaken to publicise the role of the commission to heritors to try to engage with them and encourage them to become involved?

Hugh Grierson: Communication publicising our annual accounts and what we have done in the year has been done by letter up until now. I suppose that that constitutes notice to anyone who wants to get involved.

Mary Fee: Was the rolling function of the commissioners part of your consultation exercise?

Hugh Grierson: I suppose that it was; everything was available for consultation.

Mary Fee: That is not what I asked. Was the rolling function of the commissioners part of the consultation? Did you specifically ask about it in the consultation or explain the role of the commissioners, including who appoints them and who has the power of sanction?

Hugh Grierson: That was definitely explained at the public meetings. I cannot remember it being put on paper, but it was certainly explained. It is now in the bill, about which heritors have had communications. The paper that they got explains quite clearly how we intend the bill to work.

The Convener: I ask you to remind me what the average attendance was at the public meetings.

Hugh Grierson: The attendance in the hall was 30 to 40 people.

The Convener: Out of a total of how many heritors was that?

Hugh Grierson: What number are we now? Are there 150 heritors?

Jonathan Guest: No—there are not as many as that.

Hugh Grierson: Is that the case even with the new houses? I will have to look up the number.

Jonathan Guest: It is nothing like as many as 150.

Hugh Grierson: On this list—on the schedule of heritors—the numbering on the left goes to 106.

Ailidh Callander: The number of agricultural heritors is 29, and there are currently 58 residential and commercial heritors, which will increase to 73 on incorporation of the heritors who have previously not been charged.

Jonathan Guest: So, there are fewer than 106 heritors.

Alastair McKie: I am reading the consultation paper, which we will give to the committee after the meeting. The appointment of the commissioners is mentioned specifically in the paper. It states:

“It is proposed that the Commission should comprise seven Commissioners who own Benefited Land representing the upper, middle, lower and Balgowan sections of the Benefited Land. Commissioners would be appointed by a majority of the relevant Heritors (voting at the Heritors’ meeting) in relation to the section of the Benefited Land to which the appointment relates.”

There was therefore discussion of the matter, although I grant that it was not about the particular point that has been raised about rights of dismissal. From my preliminary reading of the consultation paper, I do not see that that was included. However, the purpose, function and role of the new commissioners is a specific matter on which views were sought.

The Convener: Was the consultation document discussed only at the town hall meetings, or was it issued to every heritor?

Ailidh Callander: The document was issued to everyone whom the commission had identified as being a heritor; it was posted out to them.

The Convener: Okay. That is useful.

Alastair McKie: The document is dated May 2016, and is quite large.

The Convener: How many responses did you get?

Alastair McKie: I will need to check that. I am sorry, convener—we will come back with a written response on that.

The Convener: That is fine.

Mary Fee: I have a question on maintenance and repair of the pow, because the two largest categories of spend in the total spend, of just under £190,000 by the commission between 2004 and 2016, were cleaning and repairs. Can you give us a bit more detail about what the cleaning and repairs involve?

Jonathan Guest: The budget for the pow for the past two years has been around £18,000 a year. The total budget for the assessments was about £20,000, was it not, Shirley?

Shirley Davidson: Yes.

Jonathan Guest: If we take off the administration costs, which we keep to the minimum—about £3,000—that leaves us with £17,000 to spend on the pow. Basically, what happens is that I walk the pow, generally in February, and inspect it all. We look at what needs to be done and I draw up a list of things that we could do. We usually have a commissioners meeting in March or April, at which we decide what the priorities are. We then instruct the work, while always trying to keep it within the amount of money that is available. A mixture of cleaning sections of the main channel, cleaning side ditches and repairing and reveting is done.

Mary Fee: Okay.

According to the accounts chart, there was no expenditure in 2015 and 2016 on cleaning and repairs. Is that correct?

Jonathan Guest: Yes. The money was spent on developing the bill.

Mary Fee: What are the implications for the pow of there having been no maintenance or repairs done for two years?

Jonathan Guest: There will be a backlog. One of the reasons for deciding that the time was right to promote the bill was that we had got the pow into a good state of repair and could take a break from the maintenance. We had done a lot of reveting on the section between Dollerie bridge and Woodend, where we have soft banks. We used to have to clean that section every year, but because of reveting we now need to clean it only every three or four years. Obviously, the bill process has taken longer than we thought it would, but we thought that we could have a couple of years off from maintenance, have the legislation updated and then get back to maintaining the pow.

Mary Fee: Will the individuals who live on the benefited land be given an annual schedule of work for the pow? I appreciate that you walk the pow and the commission decides what work needs to be done, but how will that be communicated to the people who will pay for it?

11:00

Hugh Grierson: It will be communicated primarily as a budget for the work that needs to be done and how much we think that it will cost.

Jonathan Guest: Heritors write to us periodically or contact us if there is a problem in an area. We go and look at the area, and if the matter needs to be dealt with, it is dealt with.

Mary Fee: Do you have a specific method of communicating the on-going annual work to all the heritors?

Jonathan Guest: We have not done that in the past, but it is probably something that we should do.

Ailidh Callander: Section 10 of the bill explains what has to be included in the annual assessment. Part of that requirement is to include the budget breakdown. When heritors receive that assessment, they will understand how the budget has been determined.

Mary Fee: Okay. That is fine.

Ailidh Callander: I can answer your previous question about the consultation responses, which you might find helpful. The promoter's memorandum, which explains a little bit about the consultation paper, sets out that seven responses were received.

Mary Fee: Seven?

Ailidh Callander: Yes.

Mary Fee: How many people was the consultation sent to?

Ailidh Callander: I would need to double-check how many people it was sent to—it was everyone on the commission's list. Obviously, the number of people to whom it was sent was greater than the number who responded, and would be more in line with the number of heritors that I have set out.

Mary Fee: Are you aware of whether any further work was done to contact the people who had not responded? Seven seems to be a fairly low number to respond to a consultation.

Shirley Davidson: One interpretation for why that is could be that the explanation that was provided in the consultation paper and at the public meetings was, by and large, satisfactory.

Mary Fee: But you have no way of knowing that.

Shirley Davidson: When people do not make objections, one assumes that they are, by and large, happy.

Mary Fee: I will move on to the topic of the beaver barriers on the pow. Are you confident that the barriers are effective enough? Given that no maintenance was done between 2015 and 2016, what has been the impact on the beaver barriers?

Jonathan Guest: If the beavers were allowed free rein on the pow, that would have a devastating impact for everybody because it would undo the work of the pow in the land above Dollerie bridge. I have a personal interest—I have about 80 acres of land that would be wrecked if the beavers were uncontrolled.

Last December, I went to see Roseanna Cunningham, because she is our constituency MSP, and I explained the problem to her. She kindly contacted Scottish Natural Heritage. It has a beaver expert, Róisín Campbell-Palmer, who came to see me. I took her around the pow and explained the problem to her. She came up with the idea that there should be a barrier to stop the beavers coming up from the Earn. She also suggested that there needs to be another barrier at the other end because Methven Moss is a watershed. The water drains westwards down the Pow of Inchaffray and eastwards down another pow, which goes into the River Almond. We could get beavers coming up the Almond, as well as coming up the Earn.

Therefore, Ms Campbell-Palmer thought that there should be a beaver barrier on the east pow—the one that runs to the River Almond—to stop them coming up the Almond, because they could come up that pow, trot across Methven Moss, and be in our pow. I have since had a meeting with John Burrow, who is the SNH officer who deals with beavers in the area. SNH is interested in the pow being a trial beaver exclusion area.

There is as, yet, no design for a beaver barrier; in effect, Ms Campbell-Palmer has asked us to produce one, which we are looking into. We have a very capable contractor who has looked after the pow for many years. I am discussing with him how the thing might be constructed and where it would be situated, after which we will go to SNH with proposals. That is where we are. Róisín Campbell-Palmer has told me that she and her team are licensed to handle beavers; basically, the plan is that they would catch the beavers between the two barriers and remove them.

Mary Fee: Are there any other wildlife issues affecting the pow?

Jonathan Guest: There are none that I can immediately think of. There might be an invasive weed that could choke the pow, or rabbits could

burrow into its banks. I suppose that beavers and vegetation are the two main issues.

Mary Fee: Before we move on to other members and their questions, I want, for the sake of completeness, to go back to the cost of maintenance. Are you considering putting a cap on the bills that heritors receive? Will there be a maximum charge that you will be allowed to levy?

Jonathan Guest: As I see it, that would be very difficult to do. How can one define in a bill a cap that has to last for another 150 years? The system is self-regulating. What if some unforeseen calamity happened and we had to sort it out? How could we draft a bill that would allow for that while at the same time imposing a meaningful cap? I struggle to see how one could do that if the bill is meant to endure for a long time.

Mary Fee: So, if something quite catastrophic were to happen, heritors could be faced with an extremely large bill.

Jonathan Guest: If whatever happened meant that the drains at the Balgowan houses were not going to work, for example, I am sure that the owners would be very keen for us to do something about it or their houses would be uninhabitable. I struggle to see how one would draft that.

Hugh Grierson: Again, the bill tries to restrict our spending to what is necessary for drainage. That is the main point: we will do only what is necessary, and we cannot control what might be necessary.

Jonathan Guest: Another small thing that has happened over the past few years which we did not know would happen is the Scottish Environment Protection Agency coming in and the need for us to get a controlled activities regulations licence and do the various things that are associated with that. What if SEPA suddenly puts up its charges? How can we control that?

The Convener: I believe that Alison Harris has some questions on the charging scheme.

Alison Harris: I was going to ask about assumed values. What year or years were used in the analysis of sale prices for comparable land? Does the £300,000 figure for residential land take account of the recent economic downturn, which obviously created difficulties for housing developments?

Jonathan Guest: To be honest, I suppose that it does not. It has taken us quite a while to draft the bill. I note that the value of agricultural land has also dipped in the past year or two, which is not reflected in the bill, either. One could argue that the whole bill needs to be updated, although perhaps it is a case of swings and roundabouts—we would probably get much the same answer at the end.

Alison Harris: Does the fact that the charging scheme is based on acreage rather than the value of buildings not unfairly penalise someone with a modest house on a rural plot, compared with someone who might live in a large house on a more compact plot—say, on a housing estate?

Jonathan Guest: I suppose that what we are trying to value is the potential to build houses, which is what the improvement to the pow has created. Whether someone builds a small house or big house on the plot is up to them; they could have a plot with a small house and then build another house in the garden. It is not up to us.

One thought occurred to me about a possible refinement, which might be a way of making the approach a bit more sophisticated. You will see that there is a category for amenity land, which has a nil value. The reason why we put that in was because, at the Balgowan development, the houses all sit on individual plots and, in the middle, there is common land, which is a sort of green. Obviously, that is benefited land, because it is within the benefited area, but it has no value. That is why we put a nil value on it—although actually, the value is £500, based on the fact that the value of the land before the 1846 agreement was £500, and £500 minus £500 is nothing. To refine the system, we could say—just for the sake of argument—that the ground that goes with a house can be three times the footprint of a house and that anything over that is amenity land. Therefore, for a small house on a large plot, only part of the plot would be treated as development ground and the rest would be treated as amenity land. We could make that refinement.

Alison Harris: I have not seen the area and I will not see it until we go on our walkabout. Are there places that could, in five, 10 or 15 years, become another Manor Kingdom development? My concern is that, if there are two or three developments in the area, that will put further strain on the pow. What are your thoughts on that? Could that happen?

Hugh Grierson: We do not see any such specific sites, but we, too, have a concern that that could happen. I hope that the bill future proofs for that. It allows for a revaluation in the event of a major change of land use, so we could revalue again if there was another development. We do not have powers to prevent development; if the planning office gives a development planning permission, it will happen.

Alastair McKie: The bill provides that a notice of all new development has to be served on the commissioners, so that they become aware of new developments being proposed.

Alison Harris: I am sorry; I digressed slightly because that issue came into my mind.

As the promoter, will you place on record the impact of the new assessment system on the residential and agricultural heritors?

Jonathan Guest: Do you mean by how much their assessments will change?

Alison Harris: Yes.

Jonathan Guest: I think that we have circulated those figures.

Ailidh Callander: We have not but, after the meeting, we can provide the figures to the Parliament to put in the public domain.

Jonathan Guest: Most of the differences are pretty small. A lot of the residential assessments will go down from the current assessments and some of the agricultural ones will go up. The differences are fairly minor.

Alison Harris: Why does the bill not provide for payment by instalments, as is done with council tax?

Jonathan Guest: I suppose that that question is for Shirley Davidson, but the basic reason is that we are always trying to minimise administration costs, as we want to spend the money on the pow and not on complicated administration.

The Convener: On the terminology, why do you talk about acreage and not hectares?

Jonathan Guest: That is just common usage. I work as a surveyor. If somebody is asked how much their farm is worth, they will not say that it is worth £X per hectare—people talk about values per acre, and the same is the case with land for building. That is just how people speak.

Alastair McKie: I do not think that the promoter would have any difficulty with updating the wording to provide the figures in both hectares and acres, if that would be helpful. I know that we are in the metric age.

The Convener: To move on slightly, what levels of historical debt are owed to the commission?

Shirley Davidson: I do not have the accounts with me, but we can provide that information.

The Convener: Have you had challenges with debt collection?

Jonathan Guest: We have had unpaid bills; Shirley Davidson is more expert than me on that. The issue has always been the cost of recovering very small sums—usually, that cost is a lot more than the sum that is at stake.

11:15

Hugh Grierson: The issue was not very big until the Manor Kingdom houses came along. The committee of the commission decided to build

unity and move forward to a new bill. It decided that pursuing debts would not help our case and that it would be better to build agreement on a way forward. Unfortunately, it has taken us longer than we thought it would to get this far, but we have not been pursuing those debts recently.

The Convener: I understand that the Balgowan estate has been problematic. How did that come about, given that the owners had relevant legal obligations in the title deeds?

Jonathan Guest: I am straying on to Shirley Davidson's territory. When the Manor Kingdom development started, Ove Arup came to see me and then the developers came to see me. We discussed and agreed the assessment that would apply to the houses. The plan was to have a deed of conditions. To be honest, we hoped that we would not have to send out 54 assessments to the 54 houses. Our preference was that somebody would factor the development, with a factoring charge to the 54 houses that included the assessment. We would have sent out one bill—that would have been administratively far preferable for us. It ended up that that did not happen; there is a deed of conditions, about which the householders were all notified. We are not a legal party to that deed.

Shirley Davidson: The deed of conditions refers to the householders having an obligation to pay a share—I think that it is a one fifty-fourth share—of the levy that is payable to the Pow of Inchaffray commissioners. The householders have been alerted to the charge, so it should not have come as too much of a surprise when they got their bill.

The Convener: Does section 21 empower the commission to recover from owners historical debts that are associated with the 1846 act and relevant title conditions?

Hugh Grierson: Jo Guest and I understood that that section was to allow recovery of future debts, rather than past debts.

Alastair McKie: That is the case. The section relates to powers to go to the sheriff court to recover unpaid sums under the bill, should it be passed.

Hugh Grierson: The section does not cover debts under the 1846 act. We would have to use the powers under the 1846 act to recover such debts.

The Convener: Are you writing off the debts under the 1846 act?

Jonathan Guest: I think that we will do that—we will just move forward.

Hugh Grierson: We will have to consult on that, but I do not think that they will be officially written off.

The Convener: What do you intend to do under the bill to pursue the historical debts under the 1846 act?

Hugh Grierson: We do not intend to have any powers under the new bill to pursue historical debts.

Shirley Davidson: Section 1(3) of the bill retains the debts. It says that

“All property, rights, liabilities and obligations of the Commission prior to incorporation are transferred to and vested in the Commission”,

so we have not wiped everything out. We do not propose to wipe all the debts that are due to the commission or all the obligations of the commission that are under the 1846 act.

The Convener: So the bill makes provision for pursuing the historical debts.

Shirley Davidson: Yes—in effect.

Hugh Grierson: The bill puts the debts on to our books, but it does not give us new powers.

Shirley Davidson: There are no new powers. The bill just updates what was there before, which included poinding and other such historic methods of debt recovery under the 1846 act.

The Convener: So the bill transfers debts, but you do not intend to use the powers under the bill to pursue and recover those debts.

Jonathan Guest: No. We want to have a clean sheet of paper and move on.

Shirley Davidson: The commission has not taken that decision. The subject has not been on an agenda for a meeting of the commissioners.

Mary Fee: If you do not intend to use the power, why have you included it in the bill?

Jonathan Guest: That is one for David Nash.

Alastair McKie: That is one for our parliamentary draftsman, but section 1(3) of the bill includes a saving provision for the potential to pursue debts under the old act.

On the convener’s question about whether the debt will be written off, the commissioners need to consider that and reach a view in a meeting as to what their policy position will be.

Mary Fee: Given that the provision will be part of the bill, a different set of commissioners could in the future decide to use the power and collect historical debts.

Alastair McKie: There is that power. I would like the opportunity to come back to the committee

on that in writing when I have discussed it further with the commissioners and their parliamentary draftsman.

Mary Fee: That is fine.

I will ask you about appeal mechanisms. Under sections 10 and 12 of the bill, there is no third-party right of appeal if people are unhappy about the annual budget or the proposed amendment to the land categories. There was a right of appeal under the 1846 act, but there is no such right in the bill. Why is that?

Jonathan Guest: It is because the surveyor’s valuations can be challenged by heritors during the revaluation process. However, once the values for each category of land are decided, the actual valuation is a mechanical process—it is the area times the value for each category.

Mary Fee: Having a right of appeal in a bill is slightly different from a heritor being able to make representations to a surveyor.

Jonathan Guest: The thinking was that, if an appeal on a valuation matter was taken to court, the court would refer it to a surveyor, and you would be back to square 1.

Mary Fee: There is also no right of appeal on the budget and the amount that people will have to pay annually.

Jonathan Guest: There is not.

Mary Fee: Is there a reason for that?

Jonathan Guest: That would amount to a cap, in effect, would it not?

Mary Fee: Yes, but if a heritor is unhappy about the proposed budget and the proposed expenditure for the year, they will have no right of appeal and no method of disputing that.

Alastair McKie: The only remaining method is judicial review, which would involve going to court on a point of law if the trustees had not fulfilled their duties and powers properly under the eventual act—for example, if they set a budget that was unnecessary for achieving effective drainage. That inherent mechanism will always be available to any third party to challenge the commissioners’ decisions.

If we look at things in the round, a decision has been taken to keep costs down. It was felt that the costs of appeal mechanisms would build up in relation to the cost of the work that the commissioners are intended to do, which is to maintain and improve drainage. As Jonathan Guest indicated, protection mechanisms are included, because the assumed values are fixed in the bill. The £300,000 that was mentioned is in the bill. The only issue that third-party objectors might have involves challenging the budget.

I accept that there may be tensions in that. The surveyor who is appointed to deal with the assumed value must act independently and he must be a member of the RICS—that is in the bill. As you have pointed out, the heritors can make representations against that. Furthermore,

“The surveyor must have regard to heritors’ representations”.

It is felt that, if a court type of appeal to the sheriff was available, the sheriff would defer to what a surveyor said anyway. That would come almost to the same thing.

Mary Fee: You are basing a lot of what you say on supposition—you are presuming. You are saying one thing and then making a leap to something else. The bill seems to weaken heritors’ ability to bring up disputes and get resolution for any problem that they have. It weakens what the 1846 act provided for. It would be helpful if you absolutely clarified the reasoning behind that.

Alastair McKie: We will respond in writing. The issue is quite detailed and was considered in some depth during the bill’s evolution.

Mary Fee: That is helpful—thank you.

Alison Harris: I will go back to the debts that we discussed earlier. I am looking for some legal clarification because I am a little confused. How historical are the debts that we are talking about? If you issue an invoice to somebody and they do not pay, surely you are time barred from chasing that debt after a few years.

Alastair McKie: After five years.

Alison Harris: Have I missed the page that shows this information? What is the value of what has not been paid within five years? Can you provide that?

Shirley Davidson: We can provide that.

Alison Harris: Thank you.

Mary Fee: We discussed the spend on maintenance and repair. In 2015-16, no cleaning or maintenance was done but money was still collected.

Hugh Grierson: Yes.

Mary Fee: The majority of the money that was collected went into preparing the bill.

Jonathan Guest: That is right.

Mary Fee: Did all the heritors agree that the money that they paid was to go to that cost? Did they know that the money that they were paying for the cleaning and maintenance of the pow was going towards the bill?

Jonathan Guest: They were not told directly, but it was pretty obvious.

Hugh Grierson: They were not all sent letters that said that that decision had been made. Only those who took an interest would have known.

Mary Fee: How many people paid in 2015-16?

Jonathan Guest: All the agricultural people paid.

Hugh Grierson: At least half the houses also paid.

Mary Fee: What are the numbers?

Jonathan Guest: All the farmers and at least half the houses paid, so—

Mary Fee: Was the figure 60 or 70 people?

Jonathan Guest: Something like that.

Mary Fee: How many of those 60 or 70 people knew that the money that they were paying for maintenance and repair was going towards the bill?

Jonathan Guest: All the ones who came to the meeting would have known.

Hugh Grierson: That was widely known but, if someone was completely cut off from their neighbours and from what was going on, they might not have known.

Mary Fee: You had no method for contacting all the individuals to tell them that you were charging them X amount this year for maintenance but you were not spending any money on maintenance because of the bill. You did not communicate that to the people who live on the land.

Hugh Grierson: No.

Jonathan Guest: Not directly, but they all knew.

Mary Fee: How can you be sure that they all knew?

Jonathan Guest: I talk to them when I see them. They are all my neighbours.

Mary Fee: Are you confident that every person who lives on the benefited land knew that the money that they were paying was not being used for maintenance because it was being used for the bill?

Jonathan Guest: I cannot say that, but I can say that an awful lot of them did, because I spoke to them.

Mary Fee: Did every single one of them agree to the money being used for the bill?

Jonathan Guest: Nobody objected. Everybody thought that it was a good idea.

Mary Fee: Did they say that?

Jonathan Guest: They said it to me.

Mary Fee: Thank you.

The Convener: Seven heritors responded to the consultation. We know that not everyone who lives on the benefited land was necessarily aware of the commission's plans regarding the bill. If someone wants to move on to benefited land in the area, at what point between deciding to move to the area and purchasing the property would they be notified of their obligations?

11:30

Jonathan Guest: Someone who was buying farmland would be told straight away. I am sure that the house people here will know about the conveyancing of houses.

Shirley Davidson: There are probably a number of ways in which purchasers would be put on notice of an obligation to pay an assessment to the pow. Particularly in rural areas, it cannot be taken for granted that a property is connected to the public sewerage system, so drainage is an issue that solicitors acting for purchasers pay particular attention to.

As Jo Guest has said, drainage of agricultural land would be subject to due diligence by the surveyor acting for the purchaser and their solicitor, and the matter would be set out in the missives—the contract for the sale and the purchase—which cover drainage of agricultural land and residential property. For a house purchase, the prospective purchaser would generally see the home report. The seller should disclose the pow assessment as a joint cost in the property questionnaire section, and the survey report should reveal the private nature of the drainage. The property questionnaire is a standard form prescribed by the Housing (Scotland) Act 2006 and the regulations that come under that act.

There are also the Scottish standard clauses, which are now used throughout Scotland in residential conveyancing. The offer of purchase from the solicitor will refer to the Scottish standard clauses, second edition—or whatever it is called—which include a clause that states:

“The Seller warrants that:—

EITHER

The Property is connected to the public sewer and drainage system

OR

The Property is connected to a private drainage system”, which would be the case here. The clause then refers to septic tanks, compliance with SEPA requirements and all that sort of thing.

Another clause in the standard clauses makes provision for the production of a property inquiry certificate as part of the normal sale process, and that, again, will disclose whether a property is

connected to a public drainage system. If not, as is the case for the properties located on the benefited land, the purchaser is put on notice to seek additional information about the arrangements for drainage. Property inquiry certificates already report that the subjects are connected to a public sewerage system that is maintained by Scottish Water. The intention is that, once the bill goes through, McCash & Hunter as clerk to the commission will write to the private companies that provide property inquiry certificates to make them aware of the new act and ask them to make specific reference to it in the search report. As I have said, the title deeds for the houses built by Manor Kingdom make specific reference to the annual levy, so the situation should be clear from their title deeds and deeds of conditions.

Moreover, the commission will make the land plans publicly available—indeed, I think that they already are—as part of the bill. We will make a small amendment to the bill to put public access to the land plans on a statutory footing.

The Convener: Given all of that, why is the first contact between the people who have moved in and the commission a bill popping through their door?

Hugh Grierson: I am sorry—could you say that again?

The Convener: Given all the measures that have been highlighted, why is the first contact between those who have moved into residential property and the commission—indeed, their first awareness of the commission—a charge arriving through their letter box?

Shirley Davidson: There might be a number of explanations for that. Their solicitor might not have told them, or they might not have read the letter from the solicitor. It is not unknown for people to hear what they want to hear.

The Convener: Do you think that the commission has an obligation to ensure that prospective purchasers of land or residential property on benefited land are aware that they will be subject to this burden?

Shirley Davidson: Quite often, people or their solicitors will phone us up and say, “We’re in the process of buying, and we understand that McCash & Hunter is clerk to the commission. Can you tell us the current position?” They are then told what the position is.

The Convener: You have referred to a number of documents, and from the evidence that we received, I am not satisfied that they actually give prospective purchasers enough clarity and information. We have received a written submission from Professor Robert Rennie, who

says that he does not think that schemes such as the pow scheme would be disclosed in a property inquiry certificate. Moreover, with regard to the property questionnaire that you mentioned and the connection to Scottish Water's sewerage and drainage network, Professor Rennie states:

"There is a detailed question relating to a private sewerage connection to a septic tank but that is different to a restricted statutory scheme".

Do you therefore accept that the existing information that is provided to prospective purchasers of property on benefited land is not comprehensive enough to inform them of their obligations?

Shirley Davidson: What you are saying is that some people do not know, so de facto there might be some gaps—

The Convener: So how will you address those gaps?

Shirley Davidson: As I have said, looking ahead, we will contact the companies that provide property inquiry certificates with a view to their making specific reference to the Pow of Inchaffray. Right now, all the householders know about this, and under the act, they will be under an obligation to tell the commissioners when they sell their house. Moreover, I believe that a new digital and land property information service—the Scottish land and information system, or ScotLIS—is being developed by Registers of Scotland, and that would definitely seem to be the place where the pow's arrangements could be flagged up in future.

Again, looking to the future, there has been some talk of the commission developing a website to promote transparency, set out notice of meetings and agendas and so on, and it might also contain easy ways—via, say, an email link—to tell the commission clerk when a house changes hands. That will be looked at, but it is probably not appropriate to put that sort of thing in statute. I certainly think that the commission intends to make things as public as possible.

Mary Fee: But the bill makes no provision to allow land plans to be publicly inspected.

Shirley Davidson: I think that we would amend the bill to include that, if that was felt to be useful and helpful.

The Convener: Would you also consider amending the bill to make the register of heritors publicly accessible?

Mary Fee: That is not included in the bill, either.

Ailidh Callander: Consideration would need to be given to what information in the register of heritors one would feel necessary to make available to ensure that it was completely compliant with data protection requirements.

Mary Fee: Will you look at that?

Ailidh Callander: The commission can consider that if it is felt necessary for the register of heritors to be made available. However, with regard to the land plans, there is definitely consensus that, in practice, they would be made available. There is absolutely no problem with that; indeed, they are publicly available at the moment.

Mary Fee: So you will make changes to the bill.

Ailidh Callander: Yes, in terms of the land plans.

The Convener: Finally, what cartographic standards do the land plans adhere to?

Jonathan Guest: They are all based on Ordnance Survey material. They were drawn up in my office using MapInfo software, so all the boundaries are accurately shown and the areas accurately calculated.

The Convener: That is excellent. As there are no further questions, on behalf of the committee I thank the commissioners and their officials for their attendance.

We decided under agenda item 1 to take the next item in private, so we now move into private session.

11:39

Meeting continued in private until 12:04.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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