

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

Pow of Inchaffray Drainage Commission (Scotland) Bill

Promoter's memorandum

Introduction

1. This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill introduced in the Scottish Parliament on 17 March 2017. It has been prepared by Anderson Strathern on behalf of the promoter, the Pow of Inchaffray Commissioners, to satisfy Rule 9A.2.3(b) of the Parliament's Standing Orders. The contents are entirely the responsibility of the promoter and have not been endorsed by the Parliament.

2. The following other accompanying documents are published separately by the Parliament:

- statements on legislative competence by the Presiding Officer and the promoter (SP Bill 9–LC);
- Explanatory Notes (SP Bill 9–EN);
- a Promoter's Statement (SP Bill 9–PS).

3. The Promoter's Statement includes information about where you can inspect or purchase these documents and other documents that are relevant to the Bill (but are not accompanying documents).

Objectives of the Bill

Summary

4. The Pow of Inchaffray ("the Pow") is a drainage channel that provides drainage to its surrounding lands in the local authority area of Perth and Kinross. It originates at Methven Moss and meanders in a south-westerly direction for approximately nine miles until it reaches the River Earn, about

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

two and a half miles south east of Crieff. Together with its 10 main tributaries the Pow is the equivalent of 13.7 miles long. The function of the Pow is to drain a total area of surrounding land of approximately 1,930 acres.

5. The origins of the Pow as a drainage channel can be traced back over hundreds of years having been originally dug by Augustinian canons around 1200AD with further work carried out on the orders of King Robert the Bruce following the Battle of Bannockburn in 1314. The responsibility for draining and maintaining the Pow was given statutory footing in 1696, when the old Parliament of Scotland passed an ‘Act in favours of the Heritors adjacent to the Pow of Inchaffray’ (the “1696 Act”). This was then repealed by the Pow of Inchaffray Drainage Act 1846 (“the 1846 Act”) which gave greater powers to the Commissioners to enable them to carry out works and improvements on the Pow and provided for the cost of carrying out the improvements and subsequently maintaining the Pow to be shared among the owners of the land benefited by the Pow and therefore the work of the Commissioners.

6. The arrangements laid down by the 1846 Act need to be updated to take account of changing circumstances, including the construction of houses on part of the land benefited by the Pow (the “benefited land”) which was not envisaged in the 1846 Act. In particular, this requires an updated mechanism for calculating the share of the Commission’s annual expenditure payable by each owner of the benefited land (a “heritor”) and provision for house owners to also be represented on the Commission.

7. In addition, the bulk of the 1846 Act is no longer relevant. Much of it authorised the construction of improvement works that have long since been completed. The language of the few provisions of the 1846 Act that are still relevant is archaic and difficult to follow. As a Bill would be required anyway to update the 1846 Act, the Commissioners wish to take the opportunity to modernise and simplify the whole statutory basis for managing the Pow. The proposed Bill therefore replaces the 1846 Act and includes updated versions of those provisions from the 1846 Act that are still relevant. Accordingly, the Bill is free standing and does not require to be read alongside, or to include numerous amendments to, the 1846 Act.

8. The Bill provides for—

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

- (a) incorporation of the Commission as a body corporate;
- (b) the Commission's functions and powers;
- (c) the procedures for appointment of Commissioners and their terms of office;
- (d) the extent of the Pow and the benefited land;
- (e) heritors' meetings and Commissioners' meetings;
- (f) calculation of the annual assessments payable by each heritor;
- (g) access by the Commissioners over benefited land and land adjacent to the Pow for necessary purposes (subject to reinstating any damage);
- (h) the Commission to be treated as an owner of Pow for the purposes of notification under planning legislation;
- (i) a requirement that any person must obtain consent from the Commission to—
 - obstruct the Pow,
 - restrict access to the Pow,
 - discharge into, or abstract water from, the Pow;
- (j) recovery of unpaid sums due to the Commission by way of court proceedings; and
- (k) repeal of the 1846 Act.

Background

The origins of the Pow

9. Much of the area of land which the Pow of Inchaffray drains was marsh land in ancient times and probably impassable during winter months. A few patches of land rising above floodwater level formed 'islands' and it was on one such island, six miles east of Crieff, that the Abbey of Inchaffray in the parish of Madderty was founded as an Augustinian House around 1200AD on what is thought to be the site of an old Celtic church. At that time, the monastery of Augustinian canons began reclaiming the marshy ground around by digging a drainage channel. Historical accounts also indicate that Abbot Maurice of Inchaffray was the man who led the celebration of mass for the Scottish troops before the Battle of Bannockburn in 1314 and that King Robert the Bruce ordered the further draining of the marshy ground as a token of his thanks to the Abbot.

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

An “Act in favours of the Heritors adjacent to the Pow of Inchaffray 1696”

10. In the Post-Reformation period, as the Abbey fell into decay, responsibility for draining the Pow fell to the great houses emerging in Scotland at that time. In 1696, following pressure from prominent local landowners, the Parliament of Scotland passed *An Act in favours of the Heritors adjacent to the Pow of Inchaffray* (“the 1696 Act”). The 1696 Act authorised the cutting of a channel for the waters of the Pow and required that neighbouring heritors were to provide for drainage of the channel. Eleven Commissioners were appointed to tax adjacent heritors for this work.

11. However, by the mid-1800s, the 1696 Act arrangements were considered to be insufficient for the required purposes, so a further Act of Parliament, the ‘Pow of Inchaffray Drainage Act 1846’ (“the 1846 Act”) was passed, repealing the 1696 Act. The 1846 Act gave greater powers to the Commissioners which allowed them to carry out works and improvements on the Pow and provided for the cost of carrying out the improvements and subsequently maintaining the Pow to be shared among the owners of the land which would benefit from the work.

The main purpose of the Pow of Inchaffray Drainage Act 1846

12. From the source of the Pow at Methven Moss down to Dollerie Bridge, the Pow runs through a very flat valley bottom, with minimal gradients being achievable along this section. The soils on this upstream section include peat, sandy clay loams and unstable soils, with a significant content of running sand. However, from Dollerie downstream to Southwood, the Pow passes over shallow sandstone. The sandstone is more difficult to excavate and, prior to 1846, this prevented the bed of the Pow at Dollerie being lowered to benefit the Pow upstream due to limitations in technology.

13. By 1846, this limitation was able to be overcome and the main purpose of the 1846 Act was to enable the sandstone bed at Dollerie to be lowered so that the land upstream could be better drained. The 1846 Act gave the Commissioners the necessary powers to carry out the work and provided for the considerable cost of carrying out the improvements and subsequently maintaining the Pow to be shared among the owners of the land which would benefit from the work. Other improvements to the Pow

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

were carried out at the time, but the lowering of the bed of the Pow at Dollerie was fundamental to the scheme.

The work of the Commission

14. The Commission's role in preventing the floods which had blighted the low lying land in Strathearn for centuries means that the land drained is among the most fertile agricultural acreage in Scotland. In addition, the Commission's work has made residential development possible in some areas such as the former Balgowan Sawmill Site. It is therefore vitally important that the Pow is maintained to prevent flooding in this area.

The scope of the Bill

Incorporation, constitution, powers, functions and composition of the Commission

15. The 1846 Act does not detail the corporate structure or status of the Commission or Commissioners. It simply enables a group of affected landowners to take certain steps to safeguard their property. As a result, the Commissioners' activities are not carried out by the Commission as a separate entity but are in fact acts of the individual Commissioners. Under these arrangements, even though Commissioners are unpaid and receive no expenses, they have a measure of personal liability for acts carried out as Commissioners.

16. Although there is a level of protection offered by the 1846 Act, there is a danger that it is not all-inclusive and Commissioners would be better protected if the Commission was constituted as a body corporate with legal personality distinct from that of the Commissioners. Possible corporate structures include a conventional limited company that is given statutory powers and a statutory company. However these are not really appropriate to the Commissioners' not-for-profit status as quasi-trustees. A better statutory structure is the corporate body created by the Bill, which sets out the body's constitution, governance, powers and accountability.

17. The Bill therefore provides for the constitution of a body corporate called the Pow of Inchaffray Drainage Commission. The Commission is to have perpetual succession, which means the Commission will continue despite changes to the Commissioners in the future.

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

18. The Commission is to consist of seven Commissioners appointed by the heritors. For this purpose, the benefited land will be divided into four sections: the lower section, the middle section, the upper section and the Balgowan section, all to be shown on the deposited land plans. There are to be two Commissioners for each of the lower, middle and upper sections, and one for the Balgowan section. The heritors can vary the number for each section by resolution (see paragraph 30).

19. The functions and powers of the Commission are set out in the Bill, building on and updating those of the 1846 Act and drawing on appropriate modern precedents. The Commission's core function is to maintain, repair and renew the Pow in so far as the Commission considers necessary to maintain effective drainage of the benefited land. The Commission's functions also include controlling fauna and flora and carrying out improvements and protective works to the Pow. The Commission's powers include the power to borrow money, enter into contracts, appoint a Clerk and advisers. The Commission must keep accounts and have them audited.

Extent of the Pow and benefited land

20. The Bill defines the Pow and the benefited land by reference to deposited plans. The Pow includes "associated works" which are—

- ditches shown on the deposited plans;
- ditches which the Commission and the owner of that land have agreed should be included within the benefited land;
- ditches which the heritors have agreed by way of resolution to include;
- the banks, revetments, dams, culverts, sluices and other structures associated with Pow of Inchaffray and the ditches.

The heritors will also have the power to exclude or include further ditches within the benefited land as necessary (see paragraph 30).

Heritors' meetings

21. The Bill provides for heritors' meetings, the notice that must be given and the procedure to be followed at meetings. A heritor may appoint a representative for the purposes of the Bill, with some exceptions, provided that prior notice is given to the Clerk.

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

22. The Commission must call a heritors' meeting—
- when necessary to appoint a Commissioner;
 - before each general business meeting of the Commission;
 - if requested to do so by three or more heritors to consider a resolution.

The Commission will also have the option to call a heritors' meeting for any other purpose at any time. The quorum for a heritors' meeting is to be three heritors. Ten days' notice is to be given for a heritors' meeting.

Appointment of Commissioners

23. Only heritors or their authorised representative can be appointed as Commissioners. In the interests of greater transparency and in order to ensure that all the heritors are properly represented by the Commission, the Bill makes new provisions in respect of the appointment of Commissioners and associated matters.

24. As noted above, it is proposed that the Commission should comprise seven Commissioners: two for each of the upper, middle and lower sections, and one for the Balgowan section. A Commissioner appointed for a section must be a heritor (or a heritor's authorised representative) whose benefited land is wholly or mostly within that section. Commissioners are to 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.

25. Heritors are to appoint Commissioners not later than one month before the appointment takes effect and each Commissioner will then hold office for 10 years, or until he or she dies, resigns or the office is declared vacant. A person who has already served as a Commissioner may be reappointed on more than one occasion.

26. The Bill includes transitional provisions for what is to happen to the serving Commissioners who were appointed under the 1846 Act. Prior to the relevant provisions of the Bill coming into force, the serving Commissioners must designate three serving Commissioners as the Commissioners for the lower, middle and upper sections. These three (one for each section) are to continue in office and the others will cease to be Commissioners. Four further Commissioners must then be appointed under

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

the procedures set out in the Bill, one for each of the lower, middle, upper and Balgowan sections. After two years, the three Commissioners who had continued in office must then resign and three new Commissioners must be appointed for the lower, middle and upper sections.

27. The Bill sets out specific provisions relating to the appointment procedure, including the filling of casual vacancies, the making of appointments and failure to appoint. The Bill also provides for the removal from office and resignation of Commissioners. The Commission may declare a Commissioner's office to be vacant—

- where a Commissioner ceases to be a heritor;
- where a Commissioner has been absent from two consecutive meetings of the Commission or more without the permission of the Commission; or
- where the Commission considers that the Commissioner is unable to perform the functions or unsuitable to continue as a Commissioner.

A Commissioner may resign at any time by giving notice in writing.

28. The Bill provides that a person appointed as a Commissioner will not be held personally liable in any civil or criminal proceedings for anything done in the exercise of any function of the Commission if acting in good faith.

Meetings of the Commission

29. The Bill sets out the procedure for meetings of the Commission. The Commission must hold meetings to conduct general business not less than twice a year and has the power to call additional meetings as required. The Bill provides for—

- the quorum for meetings;
- what is to happen where there is no quorum;
- the chair of a meeting to have a casting vote;
- the disclosure of interests of the Commissioners;
- the circulation of minutes;
- the delegation of functions to a committee of the Commissioners.

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

Alterations by heritors

30. The Bill allows heritors to alter by resolution—

- the number of Commissioners for each section of the benefited land,
- the boundaries between sections of the benefited land,
- ditches included within or excluded from the Pow.

31. A resolution of this type may only be passed with the support of heritors representing no less than 75% of the chargeable value of all heritors' land.

Calculation of annual assessment payable by heritors

32. Assessment years will run from 1 April. Prior to the commencement of each assessment year the Commission must prepare a budget for that assessment year. The budget will be the anticipated expenditure by the Commission for that assessment year and allow for any anticipated surplus or shortfall for the previous assessment year. The Bill sets out what may be included in the budget.

33. Each heritor must pay a share of the budget based on an annual assessment made around 1 April each year. In designing the methodology for calculating each heritor's annual assessment, the Commissioners have aimed to create a process that—

- is fair to all heritors;
- is transparent;
- avoids unnecessary valuation costs;
- relates payment to the value of the Pow works to each heritor;
- has flexibility to meet changing circumstances (e.g. construction of additional houses);
- is future proofed as much as possible (to maximise time before further legislation is required);
- minimises the risk of disputes.

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

34. The Commissioners considered three principal options. These are shown in the Annex. The Commissioners initially concluded that Option 1 was the option that best met the objectives of—

- directly relating payments to the value of the benefit of the Pow works; and
- ensuring fairness to all the different categories of heritors.

In addition, Option 1 is essentially the tried and tested methodology used to date for agricultural land assessments.

35. However, the Commissioners were concerned that the requirement under Option 1 for individual valuations of each heritor's property could become complex and expensive for all involved, and could give rise to disputes between the Commission and individual heritors. Also, for any given proposed annual budget, individual heritors would be unable to work out from the provisions in the Bill what they could be expected to pay.

36. On further consideration, the Commissioners concluded that these concerns with Option 1 could all be avoided if valuations (per acre) for each type of land usage were fixed in the Bill. This variation of Option 1 is the Commissioners' preferred option and is reflected in the Bill. It works as follows—

- Each heritor pays a share of the annual budget based on the assumed value of the benefit to the heritor's land of the Pow works (the "chargeable value");
- The chargeable value will be the difference between the current market value of the heritor's land (excluding works carried out by the heritor or predecessors – e.g. building a house) and the value of the land had no works ever been carried out by the Commission (the "base value");
- The current market value and the base value will be calculated by applying fixed values per acre for specified categories of land use, initially fixed in a schedule to the Bill;
- These fixed values per acre will be reassessed every 10 years by an independent valuer appointed by the Commissioners, and heritors will have the right to comment on the proposed revaluations before they are finalised. The Bill also provides for a

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

similar process if, as a result of changing circumstances, the specified categories of land use need to be changed.

Recovery of arrears by Commissioners

37. The Bill clarifies the mechanism for the Commissioners to collect unpaid sums due to the Commission. The 1846 Act provides for recovery of arrears by warrant to be levied by way of poinding and sale of the goods and effects of the debtor. However, debt recovery by poinding or warrant sale was abolished by section 58 of the Debt Arrangement and Attachment (Scotland) Act 2002.

38. The Bill therefore clarifies that sums due and payable to the Commission may be sued for and recovered as a debt due to the Commission by raising proceedings in the Sheriff Court.

Access to the Pow

39. From time to time the Commission will require access to the Pow in order to carry out its functions, for example, to assess what repair/improvement work needs to be undertaken or carry out works to strengthen the banks of the Pow. The Bill gives the Commission a statutory right of access to the Pow over the benefited land and land within six metres of the top of a bank of any part of the Pow (“affected land”), for any purpose connected with the Commission’s functions, rights or obligations under the Bill. The Bill provides that, except in the case of an emergency, the Commission must give at least seven days’ notice to the owner of the land. The Commission can only take access to a building with the consent of the owner or occupier. The Commission must make good, or pay compensation for, any resulting damage.

Notice of planning applications

40. It is important for the Commissioners to be aware of, and consulted on, proposals which might compromise their ability to maintain the Pow and also to be able properly to regulate discharges into the Pow which could affect its drainage. The Bill therefore deems the Commission to be an owner of the benefited land for (and only for) the purposes of section 35(1) of the Town and Country Planning (Scotland) Act 1997. Accordingly, the Commission will be entitled to receive notice of any application for planning permission that relates to the benefited land. This will facilitate a more effective assessment of new development proposals that are likely to affect

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

the operation of the Pow, especially significant ones, including any drainage services sought.

Consent for works

41. The Bill requires any person, except a local authority, to obtain the Commission's consent before—

- doing anything that will or may obstruct the Pow or limit the Commission's access to the benefited or affected land; or
- discharging any thing into, or abstracting water from, the Pow.

42. If a person contravenes this requirement, the Commission may (on giving notice) require the person to remedy the contravention and/or reimburse the Commission for costs incurred as a consequence. If the person fails to comply with a notice to remedy the contravention, the Commission may remedy it and recover its costs from that person.

43. The Bill sets out the process for seeking consent from the Commission. An application for consent must be made in writing to the Commission and be accompanied by full particulars of the proposal. The Commission may charge a reasonable fee for considering the application and may require the applicant to supply further information. The Commission may grant consent on such terms as it thinks fit. If within three months from the date on which the application is made the Commission has not granted consent, the Commission shall be deemed to have granted consent.

Repeal of the 1846 Act

44. The Bill repeals the 1846 Act.

Alternative approaches

45. The Commissioners and their legal advisers have been involved in a detailed exercise of considering the provisions of the 1846 Act, of identifying deficiencies and of agreeing a new statutory framework to govern the administration and management of the Pow. The measures contained in the Bill are considered to be necessary, for the reasons set out above, to enable the Commissioners to continue to carry out their functions effectively.

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

46. The Commissioners have, however, also given careful consideration to other arrangements that might be made to ensure the proper maintenance and improvement of the Pow and to address the flooding risk to adjacent land, as less costly alternatives to promoting a Private Bill in the Scottish Parliament to update the current statutory framework provided by the 1846 Act. The Commissioners have made approaches to the following bodies asking them whether they would be willing to take over responsibility for administering and maintaining the Pow.

Scottish water

47. The Commissioners approached Scottish Water in 2014 to ascertain whether it would be willing to take over the administration and maintenance of the Pow. The Commissioners did not receive a response. The Commissioners followed up with a telephone call and despite being told that there would be a response have heard nothing from Scottish Water since then. In the absence of a response and taking into account Scottish Water's remit, the Commissioners have concluded that Scottish Water has no intention / interest in taking on responsibility for the Pow.

Perth and Kinross Council ("PKC")

48. The Commissioners approached Perth and Kinross Council in 2014 to ascertain whether it would be willing to take over the administration and maintenance of the Pow. The Council responded in the following terms—

“In this time of austerity and reducing budget/resources, PKC would not be willing to take on the administration/maintenance of the Inchaffray pow. I would imagine Scottish Water would give the same response.”

Scottish environment protection agency ("SEPA")

49. The Commissioners approached SEPA in 2014 to explore whether SEPA would be willing to take over the administration and maintenance of the Pow. It responded in the following terms—

“As you may be aware in England and Wales the equivalent body to SEPA, the Environment Agency carries out certain works on rivers and watercourses. SEPA does not have the same remit as the EA and SEPA does not carry out the kinds of works referred to

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

in your email. As such SEPA could not take over the works carried out by the commission.”

50. The Commissioners consider that, in light of the responses (or lack of response) they have received from the above bodies, the only way to ensure that proper administration and maintenance of the Pow can be assured in the future is through amendments to the 1846 Act.

Consultation

Consultation meetings

51. The Commissioners have held meetings with those whose land is benefited by the Pow, to discuss the promotion of a Private Bill to update the statutory framework for the administration and maintenance of the Pow:

52. Details of meetings—

- Meeting at Gask Village Hall on 2 March 2015;
- Meeting at Gask Village Hall on 11 May 2015;
- Meeting at Gask Village Hall on 17 June 2016.

Meeting of 2 March 2015

53. Around 25 heritors attended the meeting on 2 March 2015, along with six Commissioners. The contractor who has been carrying out maintenance work on the Pow for over 30 years was also present at the meeting given his detailed and valuable knowledge of the Pow. The need for amending legislation was explained by one of the Commissioners and the contractor provided a report on works that had been carried out to the Pow. The main point arising at the meeting was the need for transparency in respect of the annual maintenance programme and how the funds for that were raised. The heritors had the opportunity to ask a range of questions, which the Commissioners present responded to.

54. A report was given to the next meeting of the Commissioners, on 9 March 2015, of the matters raised at the 2 March meeting. Two of the heritors who had been at the 2 March meeting attended the meeting on 9 March and questions and comments were invited from them by the Commissioners. At the 9 March meeting, various steps were agreed to enhance communications between the heritors and the Commissioners and

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

it was agreed that a further meeting with the heritors would take place on 11 May 2015.

Meeting of 11 May 2015

55. The consultation meeting of 11 May 2015 was attended by five Commissioners and 11 heritors. Agreement was reached on the most effective way to communicate with heritors (email) and a range of issues were discussed, including the 2015 maintenance programme and the proposed timetable for introduction of a Private Bill in the Scottish Parliament to amend the 1846 Act. It was proposed that a seventh Commissioner be appointed, under the arrangements contained in the proposed Private Bill, to represent the interests of the Balgowan householders. It was also proposed that Commissioner appointments should be limited to 10 years, but with no restriction on reappointments beyond that period. The election of a chairman of the Commissioners was also discussed. Topics for further meetings were discussed, including a meeting to discuss the Private Bill once it was available in draft form.

Meeting of 17 June 2016

56. The meeting of 17 June 2016 was attended by four Commissioners, a representative from Anderson Strathern and 18 heritors or their representatives. Questions were asked concerning the basis on which the benefited land had been defined and the inclusion of certain properties in the benefited land. It was explained that, as shown on the plan circulated with the Consultation Paper, this was based on the plan showing the area benefiting from the works carried out as a result of the 1846 Act. Questions were raised by various heritors as to how the assessments for the individual properties were proposed to be calculated and the proposed methodology was explained. It was also explained that all the Commissioners are heritors and therefore strongly incentivised to control the budget and minimise any increase in the annual assessment. One heritor enquired whether the Commission carried any insurance cover against claims for flooding to individual properties. It was explained that the Commission had no insurance cover and accepted no liability for flooding. Another heritor enquired whether the Bill would comprise an amendment of the 1846 Act or whether the 1846 Act would be repealed and the latter was confirmed to be the intention.

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

Notices/Information Sheets provided to heritors

57. A detailed information note was provided to heritors for the meeting on 2 March 2015. It outlined the history of the Pow of Inchaffray, explained the work of the Commissioners, explained the purpose behind the existing Act of 1846, identified the areas where reform of the 1846 was considered necessary and explained the proposed amendments to the 1846 Act, to be sought through a Private Bill in the Scottish Parliament as the appropriate procedure for legislative change. The note contained an explanation of the Private Bill process, possible timescales for progress of a Private Bill and timescales for objections to the Bill.

58. A copy of the plan of the Pow from 1846 was also made available for inspection at the meeting, together with a current draft plan of the benefited areas along the Pow and several photographs of works that had been carried out at Dollerie in 1995.

Consultation paper

59. The Commissioners issued a consultation paper on the proposals for the Bill to heritors on 18 May 2016 with responses due by 12 July 2016.

60. Seven written responses were received. The responses were considered carefully by the Commissioners and responded to. Where the responses questioned the assertion that properties benefit from the Pow, the Commissioner responded explaining the significance of the topography of the land and the criteria for inclusion on the list of the properties within the benefited land, namely drainage and risk of flooding. Where responses highlighted that the owners had been under no previous requirement to pay, it was explained that this was due to residential development being very recent and the difficulties of adding 'new heritors' under the 1846 Act. The Commissioners responded on a number of other points raised, including explaining the reasoning behind the proposed method of calculation of the annual assessment and explaining why the banks of the Pow require periodic repair, reshaping and revetting.

Conclusion

61. The Commissioners consider that, in light of –

- the arrangements laid down by the 1846 Act needing to be updated to take account changing circumstances, including the

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

construction of houses on part of benefited land which was not envisaged in the 1846 Act;

- the bulk of the 1846 Act being no longer being relevant, much of it having authorised the construction of improvement works that have long since been completed;
- the language of the very few provisions of the 1846 Act that are still relevant being archaic and difficult to follow; and
- there being no public bodies prepared to take over the functions of the Commission;

ensuring the proper future administration and maintenance of the Pow in a fair and transparent manner can only be achieved through a Private Bill that replaces the 1846 Act in its entirety.

Annex: Options considered by Commissioners for calculating each heritor's share of annual budget

Option	Description	Pros	Cons	Comments
1	Individual assessments for each Heritor based on individual valuation of "benefit" of Pow works to that Heritor, being the difference between current market value of the Heritor's land and its value had Pow works never been done	<ul style="list-style-type: none"> Fair to all Heritors Conceptually simple 	<ul style="list-style-type: none"> Heritors cannot determine what they are likely to pay from wording of Bill In theory requires individual valuation for each property (including 70 houses) Significant potential for disputes as to value of uplift in each case Requires very careful drafting 	<ul style="list-style-type: none"> In effect this is the method used to date for agricultural land assessment
2	Fixed rate for houses (index linked). Farms (and any new commercial or other uses) would share the balance using option 1 methodology	<ul style="list-style-type: none"> Clear on face of Bill what house owners will pay; No valuations required for houses; No potential for disputes with house owners. 	<ul style="list-style-type: none"> Non house owners take cost risk (subject to indexation); House owners may be concerned that they won't share any savings; House owners' payments unrelated to "benefit" of Pow works 	<ul style="list-style-type: none"> Rates would require indexation (Does not need to be Retail Price Index) Unrelated to house values – may require simple banding (e.g. based on number of rooms)
3	All Heritors pay share simply based on current open market values	<ul style="list-style-type: none"> Potential disputes limited to current market values Simpler to draft 	<ul style="list-style-type: none"> Takes no account of benefit of Pow, and as such may not be fair to farmers if significant change from historic shares Individual valuations still required for all 	

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

Option	Description	Pros	Cons	Comments
			properties (but much simpler and less potential opportunity for disputes than option 1 valuation)	

This document relates to the Pow of Inchaffray Drainage Commission (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 17 March 2017

Pow of Inchaffray Drainage Commission (Scotland) Bill

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