



The Scottish Parliament
Pàrlamaid na h-Alba

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

AGENDA

4th Meeting, 2018 (Session 5)

Wednesday 23 May 2018

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

1. **Pow of Inchaffray Drainage Commission (Scotland) Bill:** The Committee will consider the merits of the three objections to the Bill.
2. **Pow of Inchaffray Drainage Commission (Scotland) Bill (in private):** The Committee will consider a draft Consideration Stage report.

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The papers for this meeting are as follows—

Agenda item 1

Clerk's Cover Note

POI/S5/18/4/1

Agenda item 2

PRIVATE PAPER

POI/S5/18/4/2 (P)

Pow of Inchaffray Drainage Commission (Scotland) Bill Committee**4th Meeting, 2018 (Session 5), 23 May 2018****Consideration Stage – phase one****Background**

1. The Committee published its Preliminary Stage report on 3 November 2017.¹ This report was debated during the Preliminary Stage debate held in the Parliament on 16 November 2017.² The Parliament agreed to the general principles of the Pow of Inchaffray Drainage Commission (Scotland) Bill and that it should proceed as a Private Bill. The Bill therefore has proceeded to Consideration Stage.

2. The purpose of Consideration Stage is to consider the detail of the Bill. In this instance, the Stage will consist of two distinct phases. The first phase includes the Committee meeting in a quasi-judicial capacity to consider and dispose of the objections, as well as a consideration of the further evidence submitted to the Committee, and the second phase will see the Committee meeting in a legislative capacity to consider and dispose of any amendments lodged to the Bill and to consider each section, schedule, and the Long Title of the Bill.

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

Phase one - objections

4. During its Preliminary Stage scrutiny the Committee gave preliminary consideration to the three objections (made by Gareth Bruce, Mr and Mrs Bijum and Tom Davies)³ which had been lodged and agreed not to reject any of them.

5. Accordingly, the first phase of Consideration Stage included taking evidence on the objections in a quasi-judicial setting (which took place on 13 December 2017⁴). The promoters made a written submission⁵ ahead of the meeting, and circulated and referred to a pack of papers⁶ during the meeting.

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

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

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

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

³ The three objections made to the Bill are available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/104909.aspx>.

⁴ Pow of Inchaffray Drainage Commission (Scotland) Bill Committee. Official Report, 13 December 2017. Available at:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11267>.

6. Following the meeting, the Committee contacted the promoters and Scottish Water to ask for clarification on various matters. The responses can be found online⁷.

7. On 24 January 2018 the Committee agreed to defer further consideration and disposal of the objections as the land plans which were submitted when the Bill was introduced were confirmed to be inaccurate. Following further evidence-taking on this issue, a new set of land plans⁸ and accompanying explanatory report⁹ were submitted on 3 May 2018 and were considered by the Committee on 9 May 2018.

8. As the land plans issue has now been resolved, the objections will be considered and disposed of on 23 May 2018. Each objection may be accepted (in whole or in part) or rejected. Acceptance in part could involve, for example, the Committee recommending additional measures the promoter could take (including by seeking to amend the Bill) to offset the adverse impact on the objectors. The Committee will publish a Consideration Stage report to explain its decisions.

9. For ease of reference the three objections are reproduced at the Annexe.

Phase two - amendments and detailed consideration of the Bill

10. Following the consideration and disposal of the three objections, members of the Committee will be able to lodge amendments to the Bill, and a deadline will be set (see below). More information relating to phase two of Consideration Stage can be found in paper POI/S5/17/6/1¹⁰.

Remaining provisional Consideration Stage timetable

23 May Consideration and disposal of the three objections;

⁵ Written submission at Consideration Stage by Anderson Strathern on behalf of the Pow of Inchaffray Commissioners. Available at: http://www.scottish.parliament.uk/S5PrivateBillsProposals/Letter_from_Promoters_6_December_2017.pdf.

⁶ Papers referred to by the promoters at the Pow of Inchaffray Drainage Commission (Scotland) Bill Committee meeting on 13 December 2017. Available at: [http://www.scottish.parliament.uk/Pow%20of%20Inchaffray%20Drainage%20Commission%20\(Scotland\)%20Bill/20171213_Promoters_Papers.pdf](http://www.scottish.parliament.uk/Pow%20of%20Inchaffray%20Drainage%20Commission%20(Scotland)%20Bill/20171213_Promoters_Papers.pdf).

⁷ Pow of Inchaffray Drainage Commission (Scotland) Bill Committee. Written submissions at Consideration Stage. Available at: <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/104907.aspx>.

⁸ Pow of Inchaffray: new land plans, submitted 3 May 2018. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/103888.aspx>.

⁹ Pow of Inchaffray Drainage Commission. Explanatory Report re new land plans. Available at: [http://www.scottish.parliament.uk/S5PrivateBillsProposals/Explanatory_Report_020518.pdf_\(2\).pdf](http://www.scottish.parliament.uk/S5PrivateBillsProposals/Explanatory_Report_020518.pdf_(2).pdf).

¹⁰ Pow of Inchaffray Drainage Commission (Scotland) Bill Committee meeting on 22 November 2017. Paper POI/S5/17/6/1. Available at: http://www.scottish.parliament.uk/S5PrivateBillsProposals/20171122_Public_Pack.pdf.

Consideration of a Consideration Stage report.

The Bill will then be open for amendments with a deadline for lodging of Monday 18 June 2018

20 June Consideration of whether any amendments lodged adversely affect private interests and, if so, pass the merits test*.

The Parliament is in recess from 30 June – 2 September

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

** note that if there are no objections then the Committee will move to the business set out under 24 October below*

26 September Consideration and disposal of any objections lodged to particular amendments.

The Parliament is in recess from 6-21 October

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

**the merits test involves the Committee determining whether the amendments have (in the Committee's opinion) "sufficient merit that there is a possibility of their being agreed to after further scrutiny" (Rule 9A.9.7C of the Parliament's Standing Orders).*

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

POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL

ADMISSABLE OBJECTIONS RECEIVED BY 16 MAY 2017

OBJECTION 1- GARETH GJ BRUCE

I Gareth George James Bruce hereby object to the Pow of Inchaffray Drainage Commission (Scotland) Bill being promoted by The Pow of Inchaffray Commissioners.

My objection is to the whole Bill.

My grounds of objection are as follows:

1. The Bill makes mention of benefitters with the benefitters being properties whose land drains into the burn. My property is too far away from the burn for water to drain into the burn.
2. The Bill makes mention of the Balgowan houses benefitted area and there is a plan showing the properties involved which includes mine which sits at the side of the Perth to Crieff road at the furthest point away from the burn on the plan. Although benefitters are defined as those whose land drains into the burn there is no mention in the Bill of distances from the burn of the properties concerned-clearly my property is such a distance that no water drains into the burn.
3. The Bill makes mention of difference in property values between the value with the burn and the values if the burn was not there to prevent flooding. These values have apparently been given by a surveyor but as my property has never flooded how can fictitious values be used?
4. No account has been taken in the Bill of a drop in property values due to such a Bill being imposed on the residents. Clearly if my house has a levy to pay that will make it harder to sell and will reduce the value. There should be a provision in the Bill for the Commissioners to compensate householders for a fall in the value of their property due to the effects of the Bill.
5. The Bill allows an assessment to be made based on the total forecast costs and the difference in values shown in the document. Surely properties close to the burn who could be flooded by the burn should pay more than properties who have no chance of being flooded by the burn.
6. Why does the Council Tax already being paid by households not pay for maintenance of the burn?

7. There is nothing in the Bill to cap charges. If the Commissioners decide on works which will benefit the inheritors which the inheritors approve large costs could be levied on the benefiteres. There needs to be a cap on charges and a fairer way of calculating them.
8. There needs to be a mechanism to ensure properties like mine are not classed incorrectly as benefiteres.
9. Why is this Bill necessary now after no levies being paid by previous owners of my property?
10. If the households are hit with this levy then flooded there is no provision in the Bill for the Commissioners to compensate households for the failure to prevent the flooding.
11. The feudal system was abolished in Scotland many years ago. If this Bill is passed this will be a return to the feudal system with rich landowners benefiting to the detriment of cash strapped families.

POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL

OBJECTION 2 – RUSSELL AND SUSAN BIJUM

Firstly, we would like to state that we object wholeheartedly to the entire Bill that is being proposed please. The crux and the facts of the matter seems to be that, when people purchased their properties in Manor Kingdom, it is in their deeds that they must contribute a monthly amount to help with the up keep of the pow. This is because the estate is built on a flood risk area and is situated downhill and near the pow, some houses are literally bordering the water way.

The outcome of the meeting that was held in Findo Gask village hall some time ago, was that some home owners have been paying and some have not. This appears on the surface to be completely unfair – and rightly so – that some have been paying and others have not. My understanding is that some people's solicitors 'did not inform them' that they had to pay this, and thus have now become disgruntled, immature and have refused to pay out, as a 'matter of principle'. Again, this is unfair on those that have paid substantially over the last few years. Now, the gripe that we and our neighbours have is that we do not and have never had this monetary contribution in our deeds, we are not liable because of this and we are situated a lot further away from the pow, approximately 120 metres and considerably 'uphill' so there is literally no element of flood risk.

This Bill is to involve our properties along with Manor Kingdom to spread the cost so the farmers don't have to keep footing the Bill. We do not believe this to be fair and just, as we are not legally required due to our deeds not requiring it, and we are a very, very long way from the water. It is my firm belief that this issue would not have arisen if Manor Kingdom residents had paid what they should be paying. Blaming incompetent solicitors is not a

reasonable excuse in our opinion, and if they had been paying their due, the farmers would not be out of pocket and feel the need to bring this to parliament. The age of the Bill and it needing updating is by the by to be honest, Manor kingdom residents should accept their terms and conditions and pay what is due. They need to take responsibility.

Additionally, the proposal is to look at the size of the plot a house is sat on to calculate their contribution if this gets through. We live in a small bungalow on a small household income, however, the garden is quite large, potentially larger than some of the huge detached houses in Manor Kingdom. This means, on an already tight budget we would have to find a larger sum of money than some residents who are closer to the pow, have a house two/three times larger than ours but they could actually pay the same or less than we do.

If we believed it to be a fair and proper process and that we would be impacted by the pow etc. we would put our hand up to help with the costs if reasonable, but it is wholly unfair in our opinion.

Manor Kingdom need to take a responsible and adult approach and 'hold their hands up' and not punish the rest of us.

We understand the commissions' perspective and situation, but I submit that the Bill should be altered to not include ourselves and the row of bungalows we live in, uphill from the pow, and to focus on the Manor Kingdom estate exclusively.

POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL

OBJECTION 3 - TOM DAVIES

Objection to the Pow of Inchaffray Drainage Commission (Scotland) Bill

I am writing to register my objection to 3 parts of the above Bill. The reasons for my objection along with the specific parts of the Bill I object to are detailed below. However, before doing so I will explain briefly my interest in this Bill.

I am a resident of Balgowan estate, a housing estate built immediately adjacent to the Pow and am a Heritor. My home is no more than 20 metres from the Pow and my family and I have lived here for almost 7 years. When we moved to this home, we were unaware of the nature of the watercourse known as the Pow and did not know we were expected to pay towards the maintenance of the Pow until we received our first invoice for payment. I have however, come to understand the purpose of the Pow and its history and I understand and accept I have to contribute towards its maintenance. My request is that this contribution is both fair and appropriate to me, which I don't think the current Bill makes provision for.

My objection is to parts of the Bill, not the whole Bill. The parts of the Bill I object to along with my justification is detailed below:

1. **Objection to Part 1, Section 3:** this part of the Bill refers to the extent of the benefitted land and references the maps which support the Bill. I cannot and have not seen any justification for the areas deemed as benefitting from the Pow. Whilst I agree that the land within the defined area likely benefits from the Pow, there is no evidence to support this that I have seen. Also, there appears to have been no re-assessment of the land which was included or wasn't included as land which benefitted from the Pow under the previous act. This land appears to have been carried forward into the new bill without re-assessment.

When assessing the maps associated with the Bill it appears there are a number of buildings (both private dwellings and agricultural units) along with areas of farmland and forestry which are in close proximity to the Pow and in some cases immediately adjacent to the Pow. How this land has been excluded is unclear to me.

Therefore, I would like a re-assessment of the land to establish which land and properties genuinely benefit from the Pow, so that the cost of maintenance is fairly proportioned and divided equally amongst all those who derive benefit from the Pow. This reassessment must consider how properties benefit from the Pow. For example, my house benefits from the drainage the Pow provides as the treated waste water discharged from the treatment works on the estate flows into the Pow. However, there is no evidence to suggest that my house is protected from flooding by the Pow. Despite my property being immediately adjacent to the Pow, the land has been raised prior to construction of this house. The agricultural land directly opposite is not raised and floods periodically. Therefore, the benefits are different and this must be distinguished in any re-assessment.

2. **Objection to Part 2, Section 10:** this part of the Bill details how the annual charge to heritor's will be calculated. The annual budget prepared by the commissioners is part of the calculation of the annual charge. Therefore, the annual charge may fluctuate according to the budget for works. It also may be influenced by the need to build a financial reserve to account for extraordinary expenditure. I am deeply concerned by this section of the Bill. My concern is that the commissioners, who are unelected, will have the power to raise my annual Bill to whatever they see fit based on their assessment of the needs of the Pow and the potential building of a contingency fund. My ability to veto this payment will be nil. I think this is a short sighted position which relies on the benevolence of the commissioners and I object to this position in the strongest possible terms. I would like there to be a mechanism to restrict annual increases to maintain affordability for home owners like me. I have raised this specific point in the both the public meetings and in writing to the commissioners. Each time my

fears have been rejected. I have been told that as the commissioners also pay the annual charge they are unlikely to increase it significantly*. My response, was and is, if that is the case, please include it in the Bill with a formal mechanism. However, this doesn't appear to have been included.

*See Promotors Memorandum, *Meeting 17 June 2016*, point 56, page 11 & 12.

There is a significant difference between myself and the commissioners. I own a three bedroom semi-detached home, which was built on this estate to provide some smaller homes amongst the 5 bedroom homes which dominate the estate. I am not a landowner who is seeking to derive an income from the farmland around the Pow, or ensure it is maintained in good agricultural condition so it is eligible for Basic Payment (or whatever subsidy will exist post CAP). Essentially, I do not want to be paying substantial amounts of money, which may increase on an annual basis to potentially unaffordable levels, to help pay for maintenance work which doesn't in any way benefit me but is only for the benefit of a farmer whose principle concern is the wetness of his fields - I do not think this is fair. I think this element of the Bill is far from future proofed and needs careful and considered thought to ensure essential maintenance is provided for, but substantial levy charges are restricted.

3. **Objection to Part 2, section 10:** My final reason for objection is the proposal in the Bill to recover any outstanding and unpaid 'promotion costs' as detailed in part 2, section 10, sub point 10 & 11. I consider this proposal unfair on the basis that it is seeking to enforce the terms of the repealed Bill. The previous Bill was outdated and unfit for its intended purpose through the passage of time and new legislation. Therefore, it seem peculiar to attempt to enforce it through this new legislation. The premise for calculating the annual charge is now being revised, how then can the calculations under the previous Bill be seen to be appropriate or fair? This very point is made in the written documentation written by the commissioners prepared for the meeting for the heritor's on the 2nd of March 2015: *'The 1846 actdoes not have any mechanism for revaluation of the land after the initial 1846 improvement scheme. In response to this concern the commissioners are proposing to promote legislation in the Scottish Parliament to enable a revaluation to take place'*. If that is the case, I think it is totally inappropriate for the values under the 1846 to be recovered through the new legislation.

As a final point, for context and background to my concerns I wish to say that I have engaged with the commissioners throughout this process, both at the consultation meetings and through written correspondence. However, I have found no sympathy or recognition for any of the points I

have raised. The consultation was not a formal consultation, in as much it did not adhere to the standard of consultation I would expect of a potential act of parliament. For example, I have requested a note of all the comments received through the consultation with an indication of how these comments were considered and incorporated into the new Bill. I have never received this information. There has also been various comments, both said in the public meeting and in the written communication from the commissioners explaining that the Pow is essential to ensure my home does not flood, yet there was no evidence to support this position, nor has there been any forthcoming. This point is again repeated in the Promoters Memorandum (page 4 section 14). Given the destructive nature of flooding, it is right to carefully consider whether or not it is a risk; however, without any evidence to support these claims it is a surprise to me that it has been repeated. This has also left me wondering if there are any other assumptions surrounding the Pow which are accepted without evidence.

I am by no means an expert on the issues which affect the Pow and the Bill. In that knowledge I entrust my objection to the committee and accept I may have misunderstood the Bill. If so, I would be happy to receive assurances that my fears over unaffordable annual charges are unfounded and there is appropriate provision in the Bill to protect me and my neighbours from such an outcome.