

Malvern Hills Act 1995



The Malvern
Hills ACT
1995

CHAPTER iii

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ELIZABETH II

1995 CHAPTER iii

An Act to amend certain enactments relating to the Malvern Hills Conservators and the management of the Malvern Hills; to confer further powers on the Malvern Hills Conservators; to make further provision in relation to the Malvern Hills; and for other purposes. [2 8th June 1995]

WHEREAS

1. By the Malvern Hills Act 1884 the Malvern Hills Conservators (in this Act called "the Conservators") were incorporated and were invested with certain powers of protection, control and management with regard to the lands in that Act specified and provision was made for restricting the user and enjoyment of the said lands:
2. By the Malvern Hills Act 1909, the Malvern Hills Act 1924 and the Malvern Hills Act 1930 further powers were conferred upon the Conservators and further provision was made in relation to the lands under the Conservators jurisdiction and commonly known as the Malvern Hills:
3. Under the Malvern Hills Act 1930 it is the general duty of the Conservators except as otherwise provided in the Malvern Hills Acts 1884 to 1930 to keep the Malvern Hills unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public:
4. The Malvern Hills have been widely known and admired for their natural beauty and have formed a centre of attraction to the inhabitants of the county of Hereford and Worcester and to visitors coming from all parts of the country for the purposes of health, recreation and enjoyment:
5. The area of land under the Conservators jurisdiction has increased as has the number of visitors resorting to the Malvern Hills:
6. The existing powers of the Conservators are insufficient to enable the Conservators to make suitable provision to meet the convenience and requirements of the public, and to carry out their functions and to manage and deal with the Malvern Hills effectively and appropriately in the light of present day circumstances:
7. It is desirable that further provision should be made enabling certain facilities to be constructed or provided on the Malvern Hills:
8. It is expedient that further powers of protecting, controlling, regulating, managing and dealing with the Malvern Hills should be conferred upon the Conservators as in this Act provided:
9. It is expedient that the other powers of this Act should be conferred upon the Conservators and that the other provisions contained in this Act should be enacted:
10. The purposes of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1.

1. This Act may be cited as the Malvern Hills Act 1995.
2. The Malvern Hills Acts 1884 to 1930 and this Act may be cited together as the Malvern Hills Acts 1884 to 1995.

2.

In this Act

"the Act of 1884" means the Malvern Hills Act 1884;
"the Act of 1909" means the Malvern Hills Act 1909;
"the Act of 1924" means the Malvern Hills Act 1924;
"the Act of 1930" means the Malvern Hills Act 1930;
"the Board" means the Board of the Conservators;
"the Conservators" means the Malvern Hills Conservators as defined in the Act of 1930;

"domestic fowl" includes turkeys, geese, ducks, guinea fowl, peacocks and quails;
"the existing Malvern Hills" means the lands under the jurisdiction of the Conservators for the purposes of the existing Malvern Hills Acts at the time of the passing of this Act;
"the existing Malvern Hills Acts" means the Malvern Hills Acts 1884 to 1930;
"horse" includes any mare, gelding, pony, foal, colt, filly or stallion and also any ass, mule or jennet;
"the Malvern Hills" means the lands from time to time under the jurisdiction of the Conservators for the purposes of the Malvern Hills Acts;
"the Malvern Hills Acts" means the Malvern Hills Acts 1884 to 1930 and this Act.

3.

1.
 - a. In the event of damage to or the destruction of the building known as St. Anne s Well the Conservators may repair, reconstruct or replace that building provided that any reconstruction or replacement shall be on the site of, and of a similar size and external character to, the existing building.
 - b. The powers of this subsection shall extend in relation to any reconstruction or replacement building constructed under paragraph (a) above.
2. The Conservators may maintain and operate a building constructed under this section and may at such a building sell meals and refreshments and provide such services and facilities as are reasonably ancillary to the use of the building as a restaurant or cafeteria.
3. The Conservators may let a building constructed under this section and may enter into and carry into effect agreements with respect to the exercise of the powers contained in subsections (1) and (2) above by any other person including the defraying of, or the making of contributions towards, the costs of the Conservators or any other person in connection with the exercise of such powers.

Provision of
refreshment facilities

4.

The following paragraph is hereby substituted for paragraph (g) of section 4 (Powers exercisable over the Malvern Hills) of the Act of 1930 and the provisos thereto: □

"(g) They may grant leave or licence for any period not exceeding one year upon such terms and conditions and subject to such restrictions as they think fit to any person or persons to erect, maintain and operate temporary or mobile stalls not exceeding six in all at any one time on the Malvern Hills for the purpose of purveying food and refreshment to the public, and without prejudice to the generality of the foregoing such restrictions may relate to locations on the Malvern Hills where such a stall may be erected or from where it may be operated and the display of advertisements of any kind visible from outside the stall whether relating to any trade or business carried on at the stall or not."

5.

1. Subject to subsection (2) below, the Conservators may, without other sanction or authority □
 - a. place or erect temporary lavatories in such positions and places on the Malvern Hills as they think fit;
 - b. grant licence for any period not exceeding 14 days upon such terms and conditions as they think fit to any person to place or erect temporary lavatories in such positions and places on the Malvern Hills as the Conservators think fit and as may be specified in the licence.
2. The powers of this section may only be exercised if the temporary lavatories are to be provided in connection with an event authorised by the Conservators which in their opinion is likely to attract such a number of people onto the Malvern Hills that such facilities will be required.
3. Temporary lavatories placed or erected on the Malvern Hills under this section shall be removed from the Malvern Hills as soon as reasonably practicable after the event in connection with which they are provided has ended and in any case shall not remain on the Malvern Hills for a period exceeding 14 days.

6.

1. Without prejudice to any other powers the Conservators have to sell, exchange, let, charge or otherwise dispose of land, and notwithstanding anything in the existing Malvern Hills Acts the Conservators may, with the consent of the Secretary of State, in respect of any land which
 - a. is owned by them but has not been so owned for a continuous period of more than five years;
 - b. does not form part of the existing Malvern Hills;
 - c. is not registered as common land or a town or village green; and
 - d. the Conservators have not later than two years after the date of acquisition of it by them decided it is not desirable to retain for the benefit or recreation of the public as part of the Malvern Hills;

do any of the following:

- i. sell the whole or any part of or the whole or any part of any interest in any such land which is not required by them;
- ii. exchange any such land which is not required by them for other land either with or without paying or receiving any money by way of equality of exchange;
- iii. let any such land subject to such terms and conditions, covenants and arrangements as they think fit;

and the provisions of section 9 (Power to adjust boundaries) of the Act of 1930 shall not apply as respects any such sale or exchange.

2. Where land has become vested in the Conservators by virtue of a gift or bequest the powers conferred by this section shall not be exercisable as respects that land in any manner inconsistent with any condition attached to the gift or bequest, except with the consent of the donor or the personal representatives or trustees of the donor.
3. Where the Conservators exercise their powers under subsection (1) above in relation to any land by letting it, all the powers under that subsection shall continue to be available to them in relation to that land on the termination of the letting whether or not, at that termination, they have owned the land for more than five years.

7.

1. Capital money received by the Conservators from the sale, letting, grant or other disposal of land or interests in land under the provisions of this Act may be applied by them for any purpose for which capital money may be properly applied.
2. Any sums received by the Conservators from the sale, letting, grant or other disposal of land or interests in land under the terms of this Act other than capital money shall be treated as income of the Board and shall be used in defraying expenses incurred by the Conservators in the execution of their powers and duties.

8.

The following sections are hereby substituted for section 7 (Power to grant easements) of the Act of 1930:

7.

1. Subject to subsection (5) below, the Conservators easements. may grant upon such terms and conditions and for such a period as they think fit easements, rights, privileges or licences in, under or over the Malvern Hills for the provision of public or private underground or overground services relating to water, electricity, gas, oil, telecommunications, drainage and sewerage:

Provided that it shall be a term of any such grant that the surface of any part of the Malvern Hills that may be disturbed in connection with the exercise of any easement, right, privilege or licence so granted shall be restored as soon as practicable by and at the expense of the person to whom the easement, right, privilege or licence is granted.

2. Subject to subsection (3) below, the Conservators may with the consent of the owner exercise the powers of this section in relation to any land forming part of the Malvern Hills not owned by them as though they were the owners of that land.
3. The consent of the owner under subsection (2) above shall not be required in any case where the owner is not known.
4. For the purposes of this section and section 7A below the owner of land is not known where after diligent enquiry the Conservators are unable to discover his identity.
5.
 - a. The Conservators shall not exercise the powers of this section for the provision of any service, other than a temporary service, overground unless
 - i. in the opinion of the Conservators it is not reasonably practicable for the service to be other than overground;
 - ii. the service is to be provided to a domestic property in existence at the time of the passing of this Act; and
 - iii. in the opinion of the Conservators and the local planning authority the provision of the service overground is reasonable.
 - b. The Conservators shall not exercise the powers of this section for the provision of any service overground except by way of determinable licence.

7A.

1. Subject to subsection (2) below, the Conservators may on such terms and conditions as they think fit (including terms and conditions as to the provision and maintenance of cattle grids and other works) authorise in writing any person to construct, maintain, alter or improve roads or ways over the Malvern Hills affording vehicular or other access from any highway to land being land lying within or adjacent to any part of the Malvern Hills and appearing to the Conservators to lack satisfactory access.
2. In granting authorisation under subsection (1) above the Conservators shall have regard to the effect of the works being so authorised on the natural aspect of the Malvern Hills and shall impose such terms and conditions as are necessary to ensure that any adverse effect is minimised.
3. The Conservators may, on such terms and conditions as they think fit, for the purpose of or in connection with the provision of roads or ways, grant licence to use and grant easements and rights in, under or over lands forming part of the Malvern Hills and on which roads or ways are authorised to be constructed pursuant to subsection (1) above.
4. Subject to subsection (5) below, the Conservators may with the consent of the owner exercise the powers of this section in relation to any land forming part of the Malvern Hills not owned by them as though they were the owners of that land.
5. The consent of the owner under subsection (4) above shall not be required in any case where the owner is not known.

1. The Conservators may acquire by means of purchase, lease or otherwise buildings (with or without the adjacent land) for use as their offices, for use as information centres, for the purpose of storage in connection with the carrying out of their functions and for the purpose of residential occupation by an employee of the Conservators in the interests of security of any building used by the Conservators and may furnish and equip such buildings for such purposes.
2. At buildings acquired under this section the Conservators may sell such goods, including books, maps, souvenirs and other goods as may be reasonably ancillary to the use of the Malvern Hills by the public for enjoyment and recreation or education.
3. Notwithstanding anything in subsection (1) (a) of section 6 (As to disposal of land) of this Act the Conservators may at any time sell, exchange or otherwise dispose of any buildings and land acquired under this section or (prior to the passing of this Act) section 53 of the Commissioners Clauses Act 1847 (power to provide offices, etc.).
4. Residential accommodation acquired under subsection (1) above may be made available to the employee of the Conservators on such terms and conditions as the Conservators think fit.
5. The Conservators may repair and maintain or reconstruct or extend buildings acquired under this section and may execute such works as may be necessary or expedient in connection with the furnishing and equipping of the buildings.
6. The Conservators may let parts of buildings acquired under this section which parts are surplus to their requirements on such terms and conditions as the Conservators think fit.

10.

1. The Conservators may from time to time, with the consent of the Secretary of State and upon and subject to such terms and conditions and for such period as the Secretary of State may direct~ borrow by any method or methods such sums of money as may be required by them for the purposes of this Act and the Act of 1930.
2. Money borrowed by the Conservators may be borrowed upon the security of all or any of the revenues and property of the Conservators and the Conservators may mortgage or assign over to the persons by or on behalf of whom such money is advanced the said revenues and property or any part thereof.
3. Notwithstanding section 101 of the Law of Property Act 1925 (powers incident to estate or interest of mortgage) or anything in any deed, where the Conservators mortgage or assign over to any person any relevant land after the passing of this Act under the powers of this section, or of section 11 of the Act of 1909 or section 32 of the Act of 1924 (powers to borrow), the mortgagee or, as the case may be, the assignee shall not have a power to sell the land or a power to cut and sell, or to contract for the cutting and sale of, timber or other trees on the land.
4. For the purposes of this section "relevant land" means the existing Malvern Hills and any other land owned by the Conservators, other than any land and buildings acquired under section 9 (Power to provide buildings for use by the Conservators) of this Act or (prior to the passing of this Act) section 53 of the Commissioners Clauses Act 1847 (power to provide offices, etc.).

11.

Notwithstanding anything in the Act of 1884, the Act of 1909, or the Act of 1924, the Conservators may include in any precept or other demand which they may be authorised to levy or make on any local authority, or in any sum which they may request any local authority or other body to pay in any particular year, an amount for contingencies of up to 10 per cent. of the estimated expenditure for the year in respect of which the precept, demand or request is made.

12.

1. The Conservators may create and form a land acquisition fund and may in any particular year set aside, for credit to the land acquisition fund, from the general fund maintained by them such sum standing to the credit of the general fund as has been paid to them as a result of any precept or demand levied or made on any local authority or request made of any local authority or other body

for the purpose of land acquisition during that year but which has not been required for such purpose provided that such sum set aside shall not exceed 5 per cent. of the total precept, demand or request for the Conservators purposes generally including land acquisition in that year.

2. Any sums so set apart for the maintenance of a land acquisition fund may from time to time be invested in any manner prescribed for the investment of trust funds and the dividends and interest arising from such investment may also be invested in the same manner so as to accumulate at compound interest for the credit of the fund.

13.

Section 10 (Byelaws) of the Act of 1930 is hereby amended by the addition after subsection (3) of the following subsections: "

(4) Before making any byelaws under this section the Conservators shall give notice to and consult the Central Council of Physical Recreation.

(5) Subsections (3) to (8) and (11) of section 236 and section 238 of the Local Government Act 1972 (which relate to the procedure for making, and evidence of, byelaws) shall apply to any byelaws made by the Conservators under this section as if the Conservators were a local authority and the Clerk to the Conservators were the proper officer (within the meaning of the said Act of 1972) of that local authority but, subject to subsection (6) below, the Secretary of State may confirm the byelaws with such modifications as he thinks fit.

(6) Where the Secretary of State proposes to make a modification which appears to him to be substantial, he shall inform the Conservators and require them to take any steps he considers necessary for informing persons likely to be concerned with the modification, and shall not confirm the byelaws until such period has elapsed as he thinks reasonable for consideration of, and comment upon, the proposed modification by the Conservators and by other persons who have been informed of it.

(7) Byelaws made by the Conservators under this section may provide that persons contravening the byelaws shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale and, in the case of a continuing offence, a daily fine not exceeding one-tenth of the amount which is equivalent to that level.

(8) Nothing in subsection (5) above shall affect the continuance in effect of the byelaws of the Conservators made on 11th November 1982 and which came into force on 19th January 1983, and byelaw 36 thereof (which relates to fines for offences) shall have effect as from the passing into law of the Malvern Hills Act 1995 as if for the words "twenty pounds" there were substituted the words "level 2 on the standard scale" and for the words "two pounds" there were substituted the words "one-tenth of the amount which is equivalent to that level":

Provided that the amendment so made to the said byelaw 36 shall not have effect in relation to any offence committed before the passing into law of the Malvern Hills Act 1995."

14.

1. Where the driver of a vehicle is alleged to be guilty of an offence against any byelaw made by the Conservators which relates to the driving or parking of vehicles on the Malvern Hills
 - a. the person keeping the vehicle shall give such information as to the identity of the driver as he may be required in writing by or on behalf of the Conservators to give; and
 - b. any other person shall, if required as mentioned in paragraph (a) above, give any information which it is in his power to give and which may lead to the identification of the driver.
2. A person who fails to comply with the requirements of subsection (1) (a) above shall be guilty of an offence unless he shows to the satisfaction of the court that he did not know, and could not with reasonable diligence have ascertained, who was the driver of the vehicle; and a person who fails to comply with the requirements of subsection (1) (b) above shall be guilty of an offence.
3. A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

15.

1. Subject to the provisions of the Malvern Hills Acts and compliance with all rules, regulations or byelaws relating to the Malvern Hills and for the time being in force, the public shall have a right of access to the Malvern Hills on foot and on horseback for the purpose of open-air recreation; and a person who enters on the Malvern Hills for that purpose without breaking or damaging any wall, fence, hedge, gate or other thing, or who is on the Malvern Hills for that purpose having so entered, shall not be treated as a trespasser on the Malvern Hills or incur any other liability by reason only of so entering or being on the Malvern Hills.
2. A person entering upon the Malvern Hills in accordance with subsection (1) above is not, for the purposes of the Occupiers Liability Act 1957, a visitor of any occupier of the Malvern Hills.
3. Nothing in this section shall prejudice or affect the exercise of powers under any enactment whereby access to the Malvern Hills may be regulated or prohibited; and, subject to subsections (4) and (6) below, the Conservators may by notices posted in such places on the Malvern Hills as they think fit regulate or prohibit for such period as may be reasonably necessary access by all, or any part of, the public to any part of the Malvern Hills
 - a. after consultation with the Historic Buildings and Monuments Commission for England, for the protection, so far as is reasonably necessary, of any ancient monument or any area of archaeological or historical interest;
 - b. for the protection and restoration of the natural beauty of the Malvern Hills and their suitability for rough grazing or recreation;
 - c. for the preservation of trees on the Malvern Hills;
 - d. if advised by the Nature Conservancy Council for England that regulation or prohibition of access would be desirable in the interests of protection or preservation of flora or fauna or any area of scientific interest on the Malvern Hills, for such protection or preservation, so far as is reasonably necessary;
 - e. after consultation with the chief officer of police and the chief fire officer of the fire authority, for the prevention of the risk of fire on the Malvern Hills;
 - f. for the prevention of accidents or injury or other damage to health at any place, which is in the opinion of the Conservators a source of danger, on the Malvern Hills;

and notwithstanding anything in the existing Malvern Hills Acts, the Conservators may post such notices and for the purposes of paragraphs (a), (b), (c), (d) and (f) above, may fence and enclose parts of the Malvern Hills for so long as may appear necessary for the attainment of the purposes of the regulation or prohibition of access; and during the currency of any such regulation or prohibition the right of access of the public shall be subject to the regulation or prohibition.

4. In exercise of the powers of paragraphs (e) and U) of subsection (3) above the Conservators may regulate or prohibit access by the public to, over or along any footpath or bridleway on or over the Malvern Hills but the Conservators shall not in exercise of the powers of paragraphs (a) to (d) of that subsection regulate or prohibit such access.
5. A notice posted in accordance with this section shall include a statement of the reasons for that regulation or prohibition and of its duration.
6. Nothing in subsection (3) above shall authorise the Conservators to regulate or prohibit access to any part of the Malvern Hills by any person bona fide going to or from any land which is accessible only over that part of the Malvern Hills.
7. Except in case of emergency or in any case where the regulation or prohibition of access is for a period not exceeding 28 days, the Conservators shall, before exercising any of the powers conferred on them by subsection (3) above, consult with the Central Council of Physical Recreation and at least one local association, authority or other body having a substantial interest in the area to be affected by the exercise of those powers and the use of the Malvern Hills for recreational purposes.
8. Except in case of emergency or in any case where the regulation or prohibition of access is for a period not exceeding 28 days, not less than 28 days before in any case exercising the powers of

paragraph (a), (b) or (c) of subsection (3) above, the Conservators shall give notice by advertisement of the proposed regulation or prohibition of access by the public, its intended duration and the reasons for which it is proposed to be made and stating that written representations relative thereto may be notified to them within 28 days after the date of the publication of the notice, and, before giving effect to their proposals for regulating or prohibiting access, the Conservators shall consider all representations so made.

9. The notice required by subsection (8) above shall be given in one or more newspapers which individually or together circulate throughout the county of Hereford and Worcester.
10. The Conservators shall, on or before the date on which it is published, send a copy of any notice which is to be published in pursuance of subsection (8) above during a specified period, of a specified description and relating to land comprised in a specified area to any person who has previously
 - a. requested the Conservators to send him copies of all such notices as so specified; and
 - b. paid to the Conservators such reasonable charges as the Conservators may have specified.
11. The Conservators may make byelaws providing that any person who, without reasonable excuse, contravenes a notice posted under subsection (3) above shall be guilty of an offence and subsections (4) to (7) of section 10 (Byelaws) of the Act of 1930 shall apply to byelaws made under this subsection as if references in the said subsections (4) to (7) to "this section" included references to this subsection.
12. Where the Conservators have exercised their powers under subsection (3) above they shall
 - a. review any continuing regulation or prohibition of access no later than one year after the regulation or prohibition was first implemented and thereafter at intervals of no more than a year;
 - b. in the case of a continuing regulation or prohibition of access under paragraph (e) of that subsection, review that regulation or prohibition no later than two months after the regulation or prohibition was first implemented and thereafter at intervals of no more than two months;
 - c. describe the nature and extent of the exercise of the powers in the form of an annual written report, copies of which shall be made available at the offices of the Conservators and a copy of which shall be delivered to all local authorities within whose areas the Malvern Hills lie.

16.

1. If, in the opinion of the Conservators, it is necessary to do so to preserve the natural aspect of the Malvern Hills, or to prevent the injury or disfigurement thereof, or to protect the use of the Malvern Hills as an open space for the recreation and enjoyment of the public, they may from time to time
 - a. by notices or direction signs posted at such places on the Malvern Hills as they think fit, restrict or prohibit the riding or exercising of horses on the Malvern Hills or any part or parts of the Malvern Hills for such period as may be reasonably necessary; and
 - b. give directions to the owners of horses which are, or are intended to be, let to members of the public for hire or reward as to the tracks on the Malvern Hills which those horses may use, whilst being so let, and those owners shall take all reasonable steps to ensure that only those tracks are so used.
2. The Conservators may make byelaws providing that any person who, without the authority of the Conservators and without reasonable excuse, contravenes a notice or direction sign posted in pursuance of paragraph (a) of subsection (1) above or, without reasonable excuse, fails to comply with a direction given under paragraph (b) of the said subsection shall be guilty of an offence and subsections (4) to (7) of section 10 (Byelaws) of the Act of 1930 shall apply to byelaws made under this subsection as if references in the said subsections (4) to (7) to "this section" included references to this subsection.
3.
 - a. Nothing in this section shall authorise the Conservators to restrict or prohibit the lawful use of

any bridleway shown on the definitive map and statement for any area of the county of Hereford and Worcester which includes any part of the Malvern Hills.

- b. In this subsection "bridleway" shall have the meaning given by section 66 of the Wildlife and Countryside Act 1981 and "definitive map and statement" means the definitive map and statement operative under Part III of that Act.

17.

1. The Conservators may designate ways on the Malvern Hills suitable for the riding or exercising of horses and any way so designated shall be marked in such manner as shall, in the opinion of the Conservators, be necessary to give notice of the designation.
2. A designation of a way as suitable for the riding or exercising of horses may from time to time be varied or rescinded by the Conservators.
3. The Conservators shall consult with the Central Council of Physical Recreation
 - a. before designating a way under subsection (1) above where the Conservators propose that the designation should have effect for a period exceeding six months; and
 - b. before extending any designation of a way, or making a successive designation, such that the total duration of the period for which the way will be designated will exceed six months.

18.

1. The Conservators may, after consultation with the Central Council of Physical Recreation, make and maintain new ways and facilities on the Malvern Hills for the riding or exercising of horses and shall have power to make reasonable charges for the use of such new ways and facilities.
2. Charges made under this section shall be computed by reference to
 - a. the reasonable cost of the construction and maintenance of the new ways and facilities; and
 - b. the reasonable cost of the regulation of the use of the new ways and facilities.
3. The amount raised by any charges made under subsection (1) above shall be wholly applied by the Conservators in undertaking the activities referred to in that subsection.
4. Charges made under subsection (1) above may make different provision for different cases or circumstances.

19.

1. The Conservators may seize and impound any animal to which this section applies, which is on the Malvern Hills in contravention of any byelaw duly made by the Conservators.
2. The Conservators shall, within 24 hours after impounding any animal under this section, give notice of the impounding to the officer in charge of a police station and also to the owner of the animal if his identity be known to them or can reasonably be ascertained.
3. The Conservators shall
 - a. keep a register of all animals seized by them under this section containing a brief description of each animal, the date of seizure and a statement as to whether the animal was sold or otherwise disposed of or destroyed;
 - b. make the register available for public inspection at all reasonable times.
4. If after seven clear days from the date of impounding the owner has not claimed an animal and paid

all expenses incurred in seizing, impounding and maintaining it, the Conservators may sell or otherwise dispose of the animal otherwise than by destruction, and if after 14 clear days from the said date the owner has not claimed the animal and paid all such expenses the Conservators may destroy the animal in a manner to cause as little pain or distress as possible.

5. Whilst any animal is impounded by the Conservators under this section the Conservators shall cause it to be properly fed and maintained.
6. If any sums received on disposal of the animal are less than the expenses of the Conservators in seizing and maintaining the animal the Conservators may recover from the owner of the animal the difference.
7. Where the Conservators dispose of any animal under subsection (4) above, they shall be accountable to the owner of the animal for any money arising from the disposal after deducting all expenses incurred by reason of its seizure, impounding, maintenance and disposal; but nothing in this subsection shall render the Conservators so accountable if they have accounted to any other person whom they reasonably believed to be the owner.
8. The animals to which this section applies are cattle, horses, sheep, goats, pigs and domestic fowl.

20.

1. The Conservators may remove bills, placards and signs posted or placed on any wall, railing, fence, tree, lamp post, walk, pavement or seat or elsewhere within the Malvern Hills and any other articles or things, including without prejudice to the generality of the foregoing, farm machinery placed or left on the Malvern Hills without proper authority or in contravention of any byelaw duly made by the Conservators or which appears to the Conservators to have been abandoned.
2.
 - a. This subsection applies in relation to items removed under subsection (1) above other than vehicles.
 - b.
 - i. On removal the Conservators shall impound such items as are capable of impoundment in a convenient place and if on expiry of a period of 14 days beginning with the day of removal the owner has not claimed the item and paid all expenses incurred by reason of its removal, impoundment and storage the Conservators may dispose of the item in such a manner as they think fit.
 - ii. In the case of farm machinery the Conservators shall give notice of the impounding to the officer in charge of a police station and also to the owner of the machinery if his identity be known to them or can reasonably be ascertained and shall not dispose of it in accordance with sub-paragraph (i) above until the expiry of a period of 28 days beginning with the day of removal
3.
 - a. In the case of vehicles, the power of removal under this section applies only to relevant vehicles.
 - b. Not less than 7 days before removing a relevant vehicle the Conservators shall cause to be affixed to the vehicle a notice stating that they propose to remove it when that period expires for disposal pursuant to subsections (5) and (6) below.
4. On removal the Conservators may impound a relevant vehicle in a convenient place and on such impoundment shall give notice of the impounding to the officer in charge of a police station and also to the owner of the vehicle if his identity be known to them or can reasonably be ascertained.
5. Subject to the following provisions of this section, the Conservators may, in such manner as they think fit, dispose of a relevant vehicle which has been removed under this section.
6. The time at which the Conservators may dispose of a vehicle under subsection (5) above is as follows:
 - a. in the case of a motor vehicle on which no current licence was displayed at the time of its removal, any time after its removal;

- b. in the case of a motor vehicle on which a current licence was so displayed, any time after the licence expires;
 - c. in the case of a vehicle other than a motor vehicle, any time after the expiration of a period of 28 days beginning with the day of removal.
7. If, before the vehicle is disposed of by the Conservators in pursuance of subsections (5) and (6) above, the vehicle is claimed by a person who satisfies the Conservators that he is its owner and pays the Conservators all expenses incurred by reason of its removal, impoundment and storage, the Conservators shall permit him to remove the vehicle from their custody within the prescribed period.
8. If in the case of any vehicle it appears to the Conservators that more than one person is or was its owner at the relevant time, such one of them as the Conservators think fit shall be treated as its owner for the purposes of subsection (7) above.
9. The Conservators shall, in relation to the disposal, give to such persons as are prescribed by regulations under subsection (7) of section 101 of the Act of 1984 such information as is so prescribed, as if the Conservators were a competent authority within the meaning of that section and the disposal were a disposal in pursuance of that section.
10. For the purposes of this section

"the Act of 1984" means the Road Traffic Regulation Act 1984;

"licence", "owner" and "vehicle" have the same respective meanings as in section 101 of the Act of 1984 and "motor vehicle" has the same meaning as in section 136 of that Act;

"prescribed period", in relation to removal of a vehicle from the Conservators custody, means the period commencing on the day on which the Conservators became satisfied that the person claiming the vehicle was its owner and ending on the expiration of the seventh day after that day, or at the time when the vehicle is disposed of, whichever is the later;

"relevant vehicle" means a vehicle which appears to the Conservators to be abandoned on the Malvern Hills and which, in the case of a motor vehicle, is in their opinion in such a condition that it ought to be destroyed.

21.

1. Subsection (4) of section 194 of the Law of Property Act 1925 (restrictions on the enclosure of commons) shall not operate to disapply the other provisions, of that section from any building or fence erected or work constructed under or by virtue of this Act.
2. For the purposes of the said section 194, land to which this Act applies which is registered under the Commons Registration Act 1965 shall be deemed
 - a. to have been subject to rights of common at the commencement of the said Act of 1925; and
 - b. to remain subject to section 194 notwithstanding any express or implied extinguishment of rights of common since that date.

22.

1. The Secretary of State may cause such local inquiries to be held as he may consider necessary for the purpose of any of his functions under this Act.
2. Subsections (2) to (5) of section 250 of the Local Government Act 1972 shall apply in relation to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Conservators were a local authority.

23.

For the purposes of Regulation 6 of, and Class 1A of Schedule 3 to, the Town and Country Planning (Control of Advertisements) Regulations 1992 the Conservators shall, as respects their functions under sections 15 to 17 of this Act, be deemed to be a local authority.

24.

Any development authorised by this Act shall not be deemed for the purposes of the Town and Country Planning General Development Order 1988 (or any general order superseding that order made under section 59 of the Town and Country Planning Act 1990, or any corresponding provision of an Act repealing that section), to be development authorised by an Act which designates specifically both the nature of the development and the land upon which it may be carried out.

25.

Nothing in this Act shall prejudice or affect the property or rights of the British Railways Board.

26.

The enactments specified in column 1 of Schedule I to this Act shall apply to the Conservators in the manner specified in column 2 of that Schedule.

27.

1. The provisions of the Act of 1884 specified in column 1 of Part I of Schedule 2 to this Act are hereby amended as specified in column 2 of that Part.
2. The provisions of the Act of 1924 specified in column 1 of Part II of Schedule 2 to this Act are hereby amended as specified in column 2 of that Part.
3. The provisions of the Act of 1930 specified in column 1 of Part III of Schedule 2 to this Act are hereby amended as specified in column 2 of that Part.
4. The provisions of the existing Malvern Hills Acts specified in Schedule 3 to this Act are hereby repealed to the extent therein specified.

28.

All costs, charges and expenses of the Conservators preliminary to and of and incidental to the preparing for, obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Conservators out of any moneys for the time being in their hands and not exclusively applicable to any other purposes in pursuance of existing obligations of the Conservators or out of moneys borrowed or to be borrowed by them under the provisions of the Malvern Hills Acts.

Malvern Hills Act 1995

SCHEDULES

SCHEDULE 1

Name of enactment
(1)

Manner in which applied to the Conservators
(2)

Part VA of and Schedule 12A to the Local Government Act 1972

Whole of Part and Schedule to apply as though the Conservators were a principal council within the meaning of Part VA and references to a committee or sub-committee of a principal council included references to any committee or sub-committee appointed by the Conservators but subject to the following modifications, namely:

- a. The reference in section 100A (6) (c) to premises not belonging to a principal council shall be construed as a reference to premises not used as the offices of the Conservators, unless and until the Conservators acquire a building for use as their offices under section 9 of this Act.
- b. The proper officer for the purposes of sections 100B, 1 100C and 1 100D shall be the Clerk to the Conservators.
- c. Section 100G (1) (a) shall apply as though after the word "ward" there was inserted the word ", parish" and after the word "represents" there were inserted the words "or body by which he was appointed".

Section 228 of the Local Government Act 1972

Section to apply with the omission of the reference to any proper officer as though the Conservators were a parish or Community Council and references in the section to a local government elector for the area of the authority shall be construed as references to a local government elector for the area of any of the local authorities from which members of the Conservators are elected or nominated.

Schedule 13 to the Defamation Act 1952

Schedule to apply as though the Conservators were a local authority and any committee or sub-committee of the Conservators were a committee of a local authority.

SCHEDULE 2

PART I PROVISIONS OF THE ACT OF 1884 AMENDED

Provision
(1)

Amendment
(2)

The Second Schedule

In the list of exceptions after the words "sections 12 to 35 inclusive" there shall be inserted "53,".

PART II PROVISIONS OF THE ACT OF 1924 AMENDED

Provision
(1)

Amendment
(2)

Section 7 (Constitution of Board of Conservators)

In subsection (3) after the words "three years" where they appear for the first time there shall be inserted "or such other term, not exceeding four years, as the Board of Conservators may by resolution determine" and after the words "three years" where they appear for the second time there shall be inserted "or such other period determined by the Board of Conservators".

Section 25 (Bye-laws to restrict and regulate quarrying, &c.)

In subsection (1) for the words "Section 18 (Bye-laws and proceedings) of the Act of 1884 as amended by section 13. of the Act of 1909 shall apply to any such bye-laws as if such section had been re-enacted in this Act" there shall be substituted "and subsections (4) to (8) of section 10 (Byelaws) of the Malvern Hills Act 1930 shall apply in relation to any such byelaws as if they were byelaws made under that section".

PART III PROVISIONS OF THE ACT OF 1930 AMENDED

Provision
(1)

Amendment
(2)

Section 6 (Parking places for vehicles)

In subsection (1) after the words "and other vehicles" there shall be inserted "for use by persons resorting to the Malvern Hills for the purpose of recreation and enjoyment".

Section 10 (Byelaws)

In subsection (1) after paragraph () there shall be inserted "(k) For preventing or regulating vehicles, including cycles, being parked, driven or ridden on any part of the Malvern Hills not set apart for that purpose; and for regulating the use of parking places on any part of the Malvern Hills set apart for parking;".

Malvern Hills Act 1995

SCHEDULE 3 Repeals

Chapter / Enactment

Extent of repeal

1884 c. clxxv. / Malvern Hills Act 1884.
1909 c. xxxvii. / Malvern Hills Act 1909

Section 18.
Section 13.

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