

MALVERN HILLS BILL

RESPONSE TO MATTERS RAISED IN THE WRITTEN MATERIAL OF DAVID CAMERON

NOTE

Commoners' Rights

Regulation

1. At pages 25-27 of the documents submitted for Mr Cameron, reference is made to the Commons Act 2006 and to commons councils. It is not entirely clear what reliance is placed on these matters, or what amendments (if any) to the Bill they are considered to support.
2. Regulation of the exercise of rights of common on the Malvern Hills is not governed by either the Commons Registration Act 1965 (save to the extent that s.1 of that Act requires rights of common to be registered in order to be exercisable) or under Part 2 of the Commons Act 2006, which provides for the establishment of Commons Councils.
3. As set out in Gadsen & Cousins on Commons and Greens (3rd Edn, 2020) at 13-01- 13-03:
 - a. Historically commons in agricultural use had been *"managed under traditional structures, generally founded in the manorial courts"*, with the manorial systems being in decline during the 19th century, and effectively brought to an end during the 20th century, with some exceptions (13-01);
 - b. *"Historically, an Act of Parliament was required for the establishment of a body with powers to manage and regulate common land. In the late 19th and early 20th centuries, a number of boards of conservators were established by provisional orders confirmed by Acts made under Pt 1 of the Commons Act 1876, by schemes made under the Metropolitan Commons Act 1866 to 1898, or by local Acts of Parliament"* (13-02);
 - c. More recently, statutory organisations such as the Dartmoor Commoners' Council have been established by statute. *"However, the costs incurred by parties in seeking a local Act of Parliament mean that such ventures are few in recent times, and unaffordable for the majority of commoners"* (para 13-02);
 - d. *"It is in this context that Part 2 of the 2006 Act has been enacted"* (para 13-03).

4. Further, and contrary to what is suggested on page 27 of Mr Cameron’s document, s.36(2)(e) of the Commons Act 2006 does not give a commons council a power to “vary or revoke any local or personal Act... which relates to the management or maintenance of, or the exercise of the rights of common over, the land”. S.36 specifies matters which “the appropriate national authority” (in England, the Secretary of State) may include in an order under s.26 of the Commons Act 2006 constituting a commons council for a particular area.
5. The regulation of the exercise of rights of commons on the Malvern Hills is thus provided for through the existing Malvern Hills Acts (and, going forward, under the Bill if it receives Royal Assent) not under ‘custom’, the Commons Registration Act 1965 or the Commons Act 2006. Further, there is no need for any commons council to be established in circumstances where management and control of the Malvern Hills, and regulation of rights of common thereon, are vested in the Malvern Hills Conservators.

Estovers

6. As set out in para 2 of the Promoter’s ‘Commoners’ rights and fencing powers’ Note (1 March 2026, Bundle 7 Tab 19 page 114) clause 56 of the Bill clarifies the position regarding estovers in respect of trees planted by the Malvern Hills Trust, whether prior to or after the date the Act is passed.
7. At present (and contrary to what is suggested at page 29 of Mr Cameron’s documents), s.12 of the Malvern Hills Act 1884 provides:

“The Conservators may upon any part of the lands described in the Third Schedule to this Act and coloured upon the deposited map dark green and brown ... from time to time plant protect manage and maintain trees and shrubs which trees and shrubs shall not be subject to estovers or commonable rights ... The powers of this section may from time to time be exercised by the Conservators upon and with respect to any other land which may have been made subject to this Act under the provisions in that behalf hereinafter contained.”

8. Estovers are also addressed in s.6 of the Malvern Hills Act 1909 which provides that:

“The Conservators may purchase or acquire and plant trees and shrubs upon any part of the land subject to the Act of 1884 ... Such trees and shrubs if planted elsewhere other than upon any part of the lands described in the Third Schedule to the Act of 1884 shall be deemed to be

subject to estovers as regulated by the Conservators but shall not be liable to be cut down until they reach eighteen feet in girth according to the ancient rules of the Forest or Chase of Malvern”.

9. As referred to in submissions 5th March 2026, whilst rights of common are required to be registered on the register of common land, the register is not necessarily conclusive of the particulars of or any limitations on the right enjoyed (save, in respect of grazing, the number of animals): see *Dance v Savery* [2011] EWCA Civ 1250. It would thus be necessary to ‘look behind’ the register and for a person with a registered right of estover to establish the precise nature of the right enjoyed.
10. The definition attributed to the Commons Act 2006 on page 29 of Mr Cameron’s document does not alter the position. That definition appears in the ‘Glossary’ to the Explanatory Notes to the Act. There is no definition of estovers in the Act itself.
11. As set out in section 28 of the Promoter’s 2024 Consultation Document (Bundle 1, page 387) the Malvern Hills Conservators has been advised that in the Forest or Chase of Malvern, the right of estover was generally limited to collecting fallen wood and bracken.
12. Mr Cameron asserts a contrary position, including by reference to an information board at Swinyard car park, which is situated at the southern end of the Hills, next to Castlemorton Common in roughly the location marked ‘Hillhouse’ on the Updated Bill Plan in Bundle 1 page 490. In the time available since receipt of Mr Cameron’s documents, the Promoter has not been able to ascertain the source of the information referred to on that information board but would highlight that the common adjacent to that car park is CL9, which did not come into the Trust’s ownership until the 1960s.
13. As set out above, clause 56(1) of the Bill would therefore clarify, and simply, the position with regards to trees planted by the Trust (whether in the past or future) on land within its jurisdiction by providing that no rights of estover are exercisable in respect of such trees except for the gathering of fallen wood. That removes the convoluted provisions currently found in s.12 of the 1884 Act and s.6 of the 1909 Act. It leaves unchanged any rights of estover in respect of trees not planted by the Trust. It also leaves unaltered the purposes for which such wood may be taken and would not, therefore, preclude or limit fallen wood being taken to be

used as firewood if that is the nature of the estover which a particular commoner can establish attaches to their property.

Cattle Grids

14. Clause 48 of the Bill makes specific provision for securing common land by means of a cattle grid. Clause 48(9) provides that the provisions of the Highways Act 1980 pertaining to cattle grids as set out in Schedule 3 to the Bill (with modifications) apply to cattle grids proposed to be used by means of enclosure under clause 48. A copy of the relevant provisions of the Highways Act 1980, marked up to show the modifications detailed in Schedule 3 to the Bill, can be found in Bundle 7 at Tab 11, pages 59-66.
15. The cattle grid can either be provided by the Trust itself, or it can enter into an agreement with the highway authority to provide, alter, improve, maintain or remove such cattle grid: clause 48(10).
16. Clause 48(4)(a) provides that where the Trust exercises the power in clause 48(1) to secure a common by means of a cattle grid, it must provide gates or other appropriate means of access adjacent to any point where the cattle grid crosses any road.
17. That by-pass infrastructure would require consent under s.38 of the Commons Act 2006 – clause 48(3) disapplies section 38(6)(a) of the Commons Act in respect of cattle grids but not in respect of the by-pass infrastructure.¹ Consent under s.38 of the Commons Act 2006 is not required for cattle grids by virtue of s.38(6)(b) as s.82 of the Highways Act 1980 makes express provision for cattle grids and by-passes on common land or waste land.

Access to common land and the Countryside and Rights of Way Act 2000

18. Contrary to what is suggested at page 42 of Mr Cameron’s document, the Bill does not seek to exempt the Malvern Hills from the provisions of the CROW Act 2000.

¹ The term “cattle grid” in the Bill has the same meaning as in s.82(6) of the Highways Act 1980 (clause 3(1) of the Bill). The terms “cattle grid” and “by-pass” are separately defined in s.82(6).

19. S.1(1) of the CROW Act 2000 defines “access land” for the purposes of the Act. It excludes land which is treated by s.15(1) as being accessible by the public apart from the Act. S.15(1) provides (so far as is material for present purposes) as follows:

“For the purpose of section 1(1), land is to be treated as being accessible to the public apart from this Act at any time if, but only if, at that time –

...

(b) by virtue of a local or private Act or a scheme made under Part 1 of the Commons Act 1899 (as read with subsection (2)), members of the public have a right of access to it at all times for the purposes of open-air recreation (however described) ...”

20. The Malvern Hills is thus s.15(1) land today – by virtue of s.15 of the Malvern Hills Act 1995. It will remain s.15(1) land if the Bill is enacted. The Promoter would note that the right of access conferred by s.15 of the Malvern Hills Act 1995 (carried forward into clause 38 of the Bill) is in fact a more expansive right than that conferred by the CROW Act 2000, in that it gives the public the right to access the Malvern Hills on foot or on horseback for the purpose of open air recreation whereas the right of access under the CROW Act 2000 is limited to a right of access on foot.

21. Mr Cameron’s submission appears to be that the powers in the Bill (a number of which are included in the Malvern Hills Acts today) to regulate or manage use of the Malvern Hills by the public means it is no longer s.15(1) land and so must be subject to the provisions of the CROW Act 2000. It is not clear on what basis that submission is advanced. If it relates to the power to make byelaws, the CROW Act 2000 itself includes provision for the making of byelaws in respect of access land: see s.17 which provides that byelaws may be made by the relevant ‘access authority’ (the local highway authority / national park authority). To the extent it relates to the licensing power, firstly, clause 63 makes clear that the Trust cannot require a charge for a licence to be paid by a person who is exercising their right of access for open air recreation whether as part of an organised activity (when the charge is payable by the organiser of the event – clause 63(6)) or otherwise (clause 63(7)). Secondly, the CROW Act 2000 itself excludes certain types of activities from falling within the right of access conferred by the Act: see the matters listed in paragraph 1 of Schedule 2 which include (inter alia) engaging in organised games, camping, hang-gliding or para-gliding (para (s)) and engaging in any activity which is organised or undertaken for any commercial purpose (para (t)).

Clause 83: the general power

22. At pages 43-57 of Mr Cameron’s document, four examples are advanced in support of his submission that the Trust cannot be trusted with a general power.
23. The first example - delegation (pages 43-45). The Trust is satisfied that it is able to delegate administrative tasks relating to the Bill to the Governance Change Officer, and the matters identified in the resolution of November 2025 to the identified group of Trustees.
24. The second example - s.31 of the 1884 Act (pages 50-51). That is not a power which can be used at any time following the acquisition of additional land by the Trust but is temporally linked to the time of the acquisition. That is clear from the terms of s.31 itself:
- “... Provided that no such agreement shall be of force until allowed by the Land Commissioners under their seal and upon allowing any such agreement it shall be lawful for the Land Commissioners if they shall think fit by order under their seal to vary the number of Conservators under this Act and the mode of their election and to provide for making the poor rate of any other parishes lands wherein shall become subject to this Act liable to contribute to the expenses of carrying out this Act in such manner and to such extent as the Land Commissioners shall think fit...” (underlining as emphasis).
25. That part of s.31 was carried forward into the Bill at the request of the Charity Commission.
26. The third example – s.15 of the 1995 Act (pages 52-53). S.15(6) of the 1995 Act is not a freestanding provision about maintaining access, or clearing ways, but is a specific proviso which applies where the Trust exercises the power in s.15(3) to regulate or prohibit access by the public to any part of the Malvern Hills for one or more of the specified purposes. Where there has been no exercise of the power in s.15(3), s.15(6) is of no application.
27. The fourth example – s.38(4) of the Commons Act 2006. In respect of Swinyard car park, the Trust has the power to provide parking places under s.6 of the Malvern Hills Act 1930. Commons Act consent is not required for such works by virtue of s.38(6)(a) of the Commons Act 2006 (previously s.194(4) of the Law of Property Act 1925) which is not disapplied by the 1930 Act.

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