

MALVERN HILLS BILL

**HOUSE OF LORDS SELECT COMMITTEE
2024 - 2026 PARLIAMENTARY SESSION**

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Malvern Hills Bill [HL]

[AS PROPOSED TO BE AMENDED IN COMMITTEE]

EXPLANATORY MEMORANDUM

The Bill is promoted by the Malvern Hills Conservators, whose working name is the Malvern Hills Trust (“the Trust”). The Trust, which is a charity, has statutory responsibilities relating to the Malvern Hills (“the Hills”) as set out in its existing legislation.

That legislation is collectively known as the Malvern Hills Acts and comprises—

- (a) the Malvern Hills Act 1884 (“the 1884 Act”),
- (b) the Malvern Hills Act 1909 (“the 1909 Act”),
- (c) the Malvern Hills Act 1924 (“the 1924 Act”),
- (d) the Malvern Hills Act 1930 (“the 1930 Act”), and
- (e) the Malvern Hills Act 1995 (“the 1995 Act”).

The 1884 Act also incorporates some provisions of the Commissioners Clauses Act 1847.

The Bill will repeal the Malvern Hills Acts and re-enact much of them in modern terms. The Bill will also, among other things, reconstitute the Conservators and rename them as the Malvern Hills Trust and set out the Trust’s powers, duties and administrative arrangements. The Bill modernises the drafting and updates those provisions of the Malvern Hills Acts which are re-enacted, dispenses with provisions which the Trust no longer requires, and confers new powers which are now required for the Trust to discharge its functions.

PART 1

INTRODUCTORY

Clause 1 sets out the short title of the Bill.

Clause 2 deals with commencement.

Clause 3 defines certain expressions used in the Bill.

Clause 4 defines “the Malvern Hills”, which is the area over which the Trust has management and control under the Bill.

The Malvern Hills includes the “existing Malvern Hills” which in turn is defined in *subsection (3)* ~~by reference to~~ as the land which is currently under the jurisdiction of the Trust under the Malvern Hills Acts. The existing Malvern Hills is shown for the purposes of illustration on ~~the~~ a map which was deposited with the Bill at the office of the Clerk of the Parliaments, the Private Bill Office of the House of Commons and the offices of the local authorities in whose areas the existing Malvern Hills are located.

PART 2

THE MALVERN HILLS TRUST

Change of name, continuity of functions and objects

Clause 5 renames (*by subsection (1)*) the Malvern Hills Conservators as the Malvern Hills Trust. *Subsection (2)* provides that the Trust is to continue to be a body corporate with a common seal with powers to own and manage land and other assets. Subsections (2) and (3) reflect the position that the unrestricted assets of the charity are held as corporate property of the Trust as a corporate body. *Subsection (3)* provides that references to the Malvern Hills Conservators in other legislation and documents are to be construed as a reference to the Trust. *Subsection (4)* provides that the Trust must exercise its functions in accordance with the provisions of the Bill.

Clause 6 makes provision about the charitable objects of the Trust. The object set out in *subsection 1(a)* (which is based on section 21 of the 1924 Act) is to protect, conserve and maintain the landscape, natural appearance, habitats, flora and fauna, geology and archaeology of the Malvern Hills. The object set out in *subsection (1)(b)* (which is based on section 3 of the 1930 Act) is to keep the Malvern Hills unbuilt on as open space for recreation and enjoyment of the public. *Subsection (2)* provides that where it appears there is a conflict which cannot be resolved between the objects in *subsections (1)(a) and (b)*, the Trust should attach greater weight to the object in *subsection (1)(a)*.

Clause ~~7~~7(1) provides that the Trust must make rules about certain matters which are mentioned in Schedule 1. They include the payment of benefits to trustees, interests of trustees, the management of conflicts of interest and ~~the~~certain administration or management arrangements of the Trust. ~~It~~Clause 7(2) ~~also~~ allows the Trust to make provision for the administration and management of the Trust in regulations or other documents, provided that those regulations and other documents are not inconsistent with the rules. ~~regulations about those matters, including standing orders. Subsections (2) and (3) introduce Schedule 1 with subsection (2) saying that the rules must include provision about the matters listed in Part 1 of that Schedule. Subsections (5) to (8) make provision about the procedure to be followed when making and amending rules and regulations. Subsection (12) introduces Schedule 2, which applies certain provisions of Part VA of and Schedule 12A to the Local Government Act 1972 (which includes provision about public access to certain meetings and documents) to the Trust.~~

Constitution

Clause 8 sets out the constitution of the Trust as from the new constitution date, which is a date ~~which~~ to be fixed by the Trust after the Bill is enacted, giving time for new members to be elected and appointed.

The Trust's board currently consists of 29 trustees. 11 are directly elected by electors in specified parishes and district wards, 17 are appointed by local authorities and 1 is appointed by the Church Commissioners.

Subsection (1) of clause 8 provides that after the new constitution date, the number of trustees is to be twelve. Six trustees will be elected by electors in the Trust's electoral area (see below), and six will be appointed by the ~~Trustees~~.

Subsection (6) requires the trustees to select one or more of their number to act as a point of contact between the Trust and the inhabitants of the parishes in its electoral area. ~~*Subsection (8) requires the Trust to keep records of the name and address of its trustees.*~~

Clause 9 provides, ~~by~~in *subsection (1)* that every trustee is to be appointed or elected for a term of four years, subject to exceptions for casual vacancies and the first trustees appointed under the new constitution. *Subsections (2) to (4)* provide that appointed and elected trustees are eligible for reappointment or re-election ~~unless they have already held office for two terms~~and that a trustee who has served two consecutive terms may not serve a further term until a year has passed since the end of the last of those two terms.

Clause 10 provides that the terms of office of those trustees in office between the date of enactment and the new constitution date will expire on the day before the new constitution date. It also enables those trustees to co-opt up to two of their number to serve for a period of six months from the new constitution date, but only if fewer than three of those existing trustees were appointed or elected as trustees under the new constitution.

Clause 11 provides that trustees must make a declaration before their appointment or election takes effect. The ~~declaration may make provision to say~~matters that the declaration can cover are limited and are that the trustee will exercise all the powers and responsibilities vested in them solely and exclusively in order to advance the objects of the Trust, will comply with the Trust's code of conduct and will comply with requirements about disclosure of interests.

Clause 12 makes provision about the disqualification and resignation of trustees. *Subsection (1)* enables the trustees to pass a special resolution to declare the office of trustee vacant in specified circumstances, including where the trustees are satisfied that the trustee has failed to attend sufficient meetings is disqualified from being a charity trustee, is incapacitated by illness or is unable or unwilling to discharge the functions of a trustee.

Subsection (2) enables the trustees to request a trustee's resignation or by special resolution declare their office to be vacant in certain circumstances. Those circumstances include where a trustee has failed to comply persistently or to a material extent with the trustees' code of conduct, has brought the Trust into disrepute or is otherwise unfit to discharge adequately the functions of a trustee.

Subsection ~~(10)~~(7) provides that a trustee may resign at any time by giving notice in writing to the Trust's chief executive. There are provisions about the procedure to be followed by the trustees in making decisions under the Clause, including giving the trustee in question an opportunity to be heard.

Clause 13 enables the trustees to impose alternative requirements or sanctions on a trustee as an alternative to disqualification, or where there is a breach of the trustees' code of conduct. The alternative sanctions include a requirement to undergo training, ~~a period of suspension~~, or a formal reprimand.

Appointed Trustees

Clauses 14 to 17 are about appointed trustees.

Clause 14 sets out the requirements and process for appointment of trustees by the Trust. *Subsection (2)* provides that trustees must be appointed on merit and in accordance with a published recruitment policy. *Subsection (3)* requires the trustees to have regard to the recommendations of the Nomination Committee (see *clause ~~14~~15*) and provides that they can only reject its recommendation on passing a special resolution.

Subsections (5) and (6) of *clause ~~13~~14* provide that appointed trustees must be persons who the Trust considers to have special knowledge, experience or ability in one or more specified matters or matters which are otherwise appropriate for the discharge of their role. *Subsection (7)* places restrictions on who can be an appointed trustee. They must be at least 18 years old and must not be disqualified from being a charity trustee ~~and must not be someone liable to disqualification for some of the reasons set out in Clause ~~12~~(1)~~.

Clause 15(1) requires the trustees to establish and maintain a committee ("the Nomination Committee") for the purpose of recommending candidates for appointment as appointed trustees and *subsection (2)* says the committee is to comprise of five members, who between them must, in the opinion of the ~~T~~trustees, have a mix of skills and experience which will enable the committee to identify suitable candidates for appointment ~~to the Trust as trustees~~, taking into account the requirements of *Clause ~~13~~14* (selection of appointed trustees and interim appointed trustees).

Clause 16 makes provision about the appointment of the first trustees under the Trust's new constitution. It provides that the first trustees will hold office from the new constitution date and that three will hold office for one year and three for three years.

Clause 17 relates to casual vacancies of appointed trustees. "Casual vacancy" is defined in clause 3. A casual vacancy could arise arising as a result of, for example, death, resignation or disqualification. *Subsection (1)* provides that where a casual vacancy occurs in respect of an appointed trustee, the ~~T~~trustees must appoint another person to fill the vacancy. *Subsection (2)* provides that a ~~T~~trustee appointed to fill a casual vacancy is to hold office for the remainder of the term of the trustee who they replaced. *Subsection (3)* enables the Trust to leave a post unfilled where the casual vacancy occurs less than 6 months before the end of the trustee's normal term.

Elected Trustees

Clauses 18 to ~~26~~²⁷ are about elected trustees and the holding of elections.

Clause 18(1) explains who is eligible to be an elected trustee. A candidate must be 18 years of age or older and be eligible to be ~~and not been disqualified from being~~ a charity trustee. Subsection (2) sets out other requirements for candidates relating to where they reside or work. The residency requirement is met if the candidate is listed in the register of electors and their registered address is within a parish in which any part of the Malvern Hills is located or within one mile of the boundary of any such parish. The work requirement is met if the candidate's main place of work is in a parish in which any part of the Malvern Hills is located. Subsection (3) requires candidates to be nominated by two people and subsection (5) provides that a person cannot stand for election until they have made a declaration of their qualification to stand as a trustee. There are offences relating to giving false declarations.

Clause 19 makes provision for the first election of elected trustees and their terms of office. It provides that the first elected trustees will hold office from the new constitution date and that three will hold office for two years and three for four years.

Clause 20 requires ordinary elections to take place every two years, with three of the six elected trustees being elected in each of these cycles. ~~Subsection (4)~~^{It} makes provision about when ~~the election is~~^{elections} are to take place and ~~subsection (5) sets out~~ when the term of office of an elected trustee begins ~~and ends~~.

Clauses 21 and 22 relate to casual vacancies of ~~appointed~~^{elected} trustees arising as a result of, for example, death, resignation or disqualification.

Clause 21 provides that where there ~~are~~^{is} a vacancy in the office of an elected trustee (Trustee A) and there is no other existing ~~vacancies~~^{vacancy} in the office of an elected trustee (~~Trustee A~~), Trustee A's ~~a~~ vacancy must be filled by the appointment of an interim appointed trustee, ~~unless~~^{An exception to that} is where the vacancy occurs less than nine months before Trustee A's term of office would have expired, in which case the office may be left unfilled (subsection (2)). Where subsection (2) does not apply and the vacancy occurs within 9 months of the next scheduled trustee elections, then an election to replace Trustee A must take place at the same time as those elections. An interim appointed trustee remains in office until an election is held to replace them, which could either be when the next scheduled ordinary elections take place or where an election is required because a second casual vacancy arises (see *clause 22*)).

Clause 22 provides for circumstances in which a casual vacancy in the office of an elected trustee arises and there is another existing vacancy or an interim appointed trustee is in office. In these circumstances, ~~subsection (2)~~⁽³⁾ of clause 22 requires the Trust to hold an election to fill all the vacancies and thereby to replace the interim appointed trustee (if there is one). As with *clause 21*, special provision is made for when the vacancy takes place less than nine months before the next election is due.

Clause 23 makes provision about who is entitled to vote at a trustee election. It provides that a person is entitled to vote as an elector in an election of a trustee if they would be entitled to vote as an elector at a local government election in the Trust's electoral area. The Trust's electoral area is defined in *subsection (3)* by reference to certain parishes, namely Colwall, Guarlford, Mathon, Malvern Town, Malvern Wells and West Malvern. This mirrors the current extent of the area within which people can

vote for an elected trustee. *Subsections (4) and (5)* make provision about what happens if a parish is renamed or abolished.

Elected trustees: holding of elections

Clause 24 says that elections of elected trustees are to be conducted by postal voting or by a combination of postal voting and voting by electronic means, unless the trustees make rules providing otherwise. *Subsection (2)* requires the trustees to make rules governing the conduct of elections. *Subsection (3)* provides a list of matters which may be covered by the rules, including the nomination of candidates, obligations to declare interests, systems and methods of voting, supervision of elections, elections expenses and publicity.

Clause 25 requires the ~~T~~trustees to appoint an individual to act as the returning officer for elections of trustees. *Subsection (2)* provides that all charges and expenses properly incurred by the returning officer must be paid by the Trust to the returning officer. *Subsections (4) to (6)* enable the returning officer to take steps to remedy any acts or omissions arising in relation to their functions (but does not enable them to re-count the votes).

Clause 26 is about legal proceedings relating to the conduct of elections. It applies Part III of the Representation of the People Act 1983 to elections of elected trustees, ~~in turn~~ meaning that elections can be challenged by election petition, and that the offences of illegal and corrupt practices relating to elections apply.

Clause 27 requires the relevant electoral registration officer to supply the electoral register (and any revised version of it) to the Trust's returning officer free of charge on publication. *Subsection (2)* specifies that the electoral register must be supplied in data form unless the Trust's returning officer makes a request in writing for a printed copy. *Subsection (3)* provides that the returning officer cannot supply or disclose any information contained in the electoral register or make use of any such information other than for the purposes of an election of a trustee.

Interests of trustees

Clause 28 makes provision about the payment or transfer of Trust income or property to trustees ~~and connected persons~~. It says that any such payment or transfer must be in accordance with rules made under *Clause 7*, the other provisions of the Bill, and with provisions in the Charities Act 2011 which relate to benefits to trustees.

Clause 29 is about interests of trustees. *Subsection (1)* requires the trustees to prepare a policy about the declaration of interests and management of conflicts of interest and *subsection (2)* requires the Trust to keep a register of those interests.

Clause 30 provides that the Trustees may subscribe ~~for~~to an insurance policy to indemnify any returning officer appointed by the Trust for the conduct of elections.

Clause 31, by *subsection (1)*, prevents trustees or Trust employees from being sued as individuals where they are lawfully exercising any of the powers exercisable by the Trust, including when executing legal

instruments on the Trust's behalf. *Subsection (3)* provides that trustees and Trust employees are indemnified out of the property and income of the Trust in respect of all claims made against them in the exercise of their functions. *Subsection (5)* provides that trustees and Trust employees are not to be liable for losses to the Trust. There are restrictions on each of the protections and indemnities described above, which reflect legislation relating to company law, including not extending [the protections and indemnities](#) to any claim arising from ~~wilful fraud, wrongdoing or wrongful omission~~ [fraud or wilful or reckless misconduct](#).

Clause 32 makes provision about the service and form of notices required under *Part 2*.

PART 3

FINANCE

Clause 33 has the effect of continuing the existing power of the Trust to issue a levy for the purposes of meeting its expenses under the Bill and for other purposes. Under the Local Government Finance Act 1988 ("the 1988 Act") and regulations made under it (the Levying Bodies (General) Regulations 1992) the Trust issues an annual levy to Malvern Hills District Council and Herefordshire Council ("the Councils").

Subsections (1) and (2) provide that the Trust continues to be a levying body within the meaning of section 74(1) of the 1988 Act (levies) and that, consequently, the Trust may continue to issue a levy to the Councils in respect of any financial year to meet the expenses of the Trust and to provide for an amount for contingencies of up to 10 per cent of the estimated expenditure of the Trust for the year in respect of which the levy is issued.

Subsection (4) specifies the parishes in respect of which the Trust may issue a levy, and they are the same parishes in respect of which the Trust currently issues a levy. *Subsections (5), (6) and (6A)* make provision for what happens if the name of a parish changes or if [its boundaries change](#) ~~is abolished~~. *Subsection (7)* provides that the levy may be issued either before or after the Trust has become liable to any expenses, *subsection (8)* provides that the levy is to be raised by precept or by issuing the levy to the relevant Council and *subsection (9)* provides that the Councils must collect the levy from those persons who are liable to pay council tax in the relevant parishes.

Subsection (10) ensures continuity in the amount of levy payable by saying that the amount of the levy on the date on which the section comes into force is the same amount as it was immediately before that date. *Subsections (11) and (12)* ensure that ~~maximum~~ annual increases in the [maximum](#) amount of levy remains ~~s~~ subject to the controls in the Levying Bodies (General) Regulations 1992.

Clause 34 makes provision for the Trust's use of capital money and income. *Subsection (1)* enables the Trust to apply capital money received from the Trust's disposal of land or other interests for the repayment of the principal of any amount borrowed or for any purpose for which capital money may be properly applied. *Subsection (2)* provides that any sums received by the Trust from the sale, letting, grant or other

disposal of land or interests in land which are not capital money must be treated as income. *Subsection (3)* makes clear that income must be applied by the Trust in furthering the objects.

Clause 35 enables the Trust to borrow or raise money against its property and revenues and grant securities (including mortgages over land). *Clause 36* differentiates between “existing relevant land” and “existing buildings” and other ancillary land and buildings. “Existing relevant land” is defined in *subsection (7)* as any part of the Malvern Hills owned by the Trust at the date on which the Act is passed, other than ancillary land (as to which see *clause 75* (ancillary land)) and “existing buildings” means any buildings on existing relevant land which was owned by the Trust on the date on which this Act was passed, other than buildings acquired for purposes ancillary to the main functions of the Trust, such as offices.

Subsection (4) of *clause 35* provides that the Trust’s power to grant mortgages or securities over existing relevant land and existing buildings is only exercisable with the consent of the Secretary of State and in accordance with any terms directed by the Secretary of State. This is in line with the existing legislation. *Subsection (5)* provides that the usual mortgagee’s power of sale does not apply in respect of existing relevant land or existing relevant building. *Subsection (6)* provides that any mortgage must comply with the Charities Act 2011 except in the case of mortgages which require the Secretary of State’s consent.

Clause 35 brings together and substantially reproduces various different powers in the Malvern Hills Acts, including section 10 of the 1995 Act, section 32 of the 1924 Act and section 11 of the 1909 Act.

Clause 36 substantially reproduces section 9 of the 1909 Act by enabling Worcestershire County Council and Herefordshire Council to contribute to the funds of the Trust. *Subsection (2)* provides that the two councils can either treat any such contribution as a general expense, or treat all or part of the contribution as a special expense which may be levied upon parishes in their respective areas. *Subsection (3)* provides that the councils cannot raise a levy for these purposes in parishes who pay the levy referred to in *Clause 34* (the levy).

Clause 37 requires (by *subsection (1)*) that the trustees must arrange for the Trust’s accounts in respect of any financial year to be audited that the Trust annually and *subsection (2)* provides that the Trust’s auditors must be appointed by the trustees at its annual meeting. Under the existing legislation the auditors are appointed by the electors. *Subsection (3)* requires the Trust to hold a meeting, which must be in person, where it must consider a report of its activities in the preceding financial year and settle the accounts for that year.

PART 4

PUBLIC ACCESS AND MANAGEMENT OF THE MALVERN HILLS

Public access and duty to keep unenclosed

Clause 38 substantially replicates section 15 of the 1995 Act and provides that, subject to the provisions of the Bill and compliance with all rules, regulations and byelaws, the public have a right of access to the Malvern Hills for the purposes of open-air recreation on foot or on horseback.

Clause 39 makes provision about the duty of care owed by occupiers, including the Trust, to people accessing the Malvern Hills. *Subsection (1)* provides that the operation of *clause 38* (namely the right of public access ~~onto~~ the Malvern Hills) does not increase the liability of a person interested in the land (such as the owner) in respect of the state of the land or things done on it. *Subsection (2)* provides that people exercising their rights of access on the Malvern Hills are not visitors of any occupier of the Malvern Hills, or of the Trust, for the purposes of the Occupiers' Liability Act 1957 which means that the rules in the 1957 Act relating to the common duty of care owed by occupiers ~~does~~do not apply as regards people exercising the rights of access on the Hills.

Subsection (3) of clause 3839 provides that the Trust owes no duty to a person exercising their rights of access in respect of risks resulting from natural features of the landscape, or risks of injury resulting from improper use of gates or stiles. This brings the Malvern Hills into line with other areas over which the public have a right of access, including access land under section 2(1) of the Countryside and Rights of Way Act 2000. *Subsection (5)* makes clear that this exclusion does not prevent the Trust from owing a duty in relation to risks which the Trust intentionally creates or recklessly causes.

Subsection (6) makes provision for the application of section 1 of the Occupiers' Liability Act 1984 to any occupier of premises in the Malvern Hills (including the Trust) and the duties which they may owe to a person exercising their rights of access under *clause 3938* (public access to the Malvern Hills). It provides that, when determining the extent to which a duty is owed, regard should be had to specified factors including the need to avoid placing an undue burden on occupiers, the importance of maintaining the character of the Malvern Hills, and any code of conduct issued under section 20 of the Countryside and Rights of Way Act 2000.

Clause 40 brings together and substantially replicates various important duties on the Trust and protections for the Hills contained in the Malvern Hills Acts, in particular in sections ~~s-9, 10 and 12~~ of the 1884 Act and section 3 of the 1930 Act. It requires the Trust to keep the Malvern Hills unenclosed and unbuilt on as open space for the recreation and enjoyment of the public and to prevent, resist and abate any attempts to enclose the Malvern Hills or use the Malvern Hills or any timber on the Malvern Hills for any purpose inconsistent with the Bill.

Clause 41(1) enables the Trust to take any action it sees fit to protect trees and other things growing on the Malvern Hills and prevent unlawful felling, cutting or damaging of those things. *Subsection (2)* enables the Trust to take all necessary measures to prevent unlawful digging or removal of material and any other damage to land forming part of the Malvern Hills.

Clause 42 enables the Trust, in complying with its duty under *clause 40*, to take all necessary measures to prevent or remedy any enclosure or encroachment on the Malvern Hills and to preserve the Malvern Hills as an open space and free from enclosure and building. *Subsection (2)* enables the Trust to recover reasonable expenses for doing so from ~~the~~a person responsible for ~~the~~an enclosure or encroachment. *Subsections (3) to (8)* enable applications to be made to a county court for an order requiring persons to discontinue or remove any unlawful building on ~~and enclosing~~or enclosure of any part of the Malvern Hills ~~and to remedy any such action~~.

Regulation and management of the Malvern Hills: general

Clause 43 provides that the Malvern Hills are to be regulated and managed by the Trust under and in accordance with the Bill.

Clause 44 enables the Trust to regulate by any lawful means any rights of common exercisable upon or in the Malvern Hills.

Access to and fencing, etc of the Malvern Hills

Clause 45 continues the Trust's powers to regulate or prohibit access to the Malvern Hills, by notice, for specified reasons. Those reasons are set out in *subsection (2)*. They include protecting ancient monuments or areas of archaeological or ~~areas of~~ historical interest, protecting or restoring the Malvern Hills' natural beauty, preserving trees and protecting or preserving flora or fauna and sites of special scientific interest. Other specified reasons include preventing the risk of fire (after consultation with the chief officer or the police and the chief fire officer) and preventing accidents, injury or other damage to health where part of the Malvern Hills has become a temporary source of danger.

Subsection (3) enables the Trust to fence or enclose land for some of the reasons specified in *subsection (2)*, for as long as appears necessary to the Trust. *Subsection (4)* enables the Trust to use the powers of *subsection (1)* to regulate or prohibit access to, over or along ~~footpaths or bridleways~~ public rights of way for the prevention of fire or prevention of accidents and *subsection (5)* provides that when exercising powers for some of the reasons under *subsection (2)* the Trust must provide a gate or other appropriate means of access ~~at the point where the fence is crossed by the footpath or bridleway~~ at places where the Trust considers it to be appropriate. *Subsection (8)(9)* makes provision about the content of notices under *subsection (1)*.

Clause 46 makes further provision regarding the Trust's powers to regulate or prohibit access to the Malvern Hills under *clause 45*. *Subsections (2) to (7)* require the Trust to consult or seek the advice of certain statutory and other bodies and, except in an emergency, give notice by advertisement on its website and in a local newspaper, where it intends to regulate or prohibit access for a period exceeding 42 days. The Trust must consider any representations made in response to the advertisement. *Subsection (8)* provides that if the Trust has exercised its powers under *clause 45* to regulate or prohibit access to the Malvern Hills, it must carry out reviews of the regulation or prohibition at specified intervals and must publish a description of the nature and extent of the measures on its website.

Clause 47 continues the Trust's power to fence any part of the Malvern Hills it considers to be dangerous. It is based on section 4(b) of the 1930 Act.

Clause 48(1) enables the Trust to fence or otherwise enclose common land where it considers it desirable to do so to prevent animals straying from the common land onto land which is not common land. *Subsection (2)* provides that the fencing or other means of enclosure do not have to be installed on the exact boundary of the common land in question. *Subsection (3)* provides that the exercise of the power is subject to Part 3 of the Commons Act 2006, which regulates works on common land. It ensures that under section 38 of that Act, the consent of the Secretary of State is required for works which prevent or impede access to registered common land. The use of cattle-grids in highways is excluded, because they are governed by a different procedure.

Subsection (4) of clause 48 requires the Trust to provide gates or other appropriate means of access at points where ~~footpaths~~[public rights of way or](#) roads ~~or~~[bridleways](#) cross any fence or enclosure provided under *subsection (1)* and at other places which the Trust considers appropriate to ensure public access to the Malvern Hills is maintained. [Subsection \(4B\) provides that no cattle-grid may be installed in a public right of way.](#) By applying provisions of the Highways Act 1980, *subsection (5)* enables the highway authority to impose conditions on the provision of gates and other means of access which cross ~~footpaths and bridleways~~[public rights of way](#) and *subsection ~~(6)~~(7)* requires the Trust to have regard to the needs of those who are entitled to gain access between the areas crossed by the fence, including those on horseback and people with disabilities. *Subsections ~~(7), (8) and (9)~~(8), (9) and (10)* make special provision for where cattle-grids are proposed to be installed in the highway and introduce *Schedule 3* which is about the application of highways legislation to the installation of cattle-grids.

Clause 49 enables the Trust to fence parts of the Malvern Hills in other circumstances. *Subsection (1)(a)* enables the Trust to fence land which is not common land where it considers it is necessary or desirable to do so and *subsection (1)(b)* enables the Trust to fence land which is common land for up to sixty days where it considers it necessary or desirable for the purpose of regulating grazing and is in furtherance of the Trust's objects.

The powers to fence under *clause 49* cannot be exercised where doing so would prohibit the exercise of rights under an easement, and the Trust must provide gates or other appropriate means of access at points where ~~footpaths or bridleways cross~~[public rights of way are crossed by](#) any fence ~~or enclosure~~ provided under *subsection (1)* and at other places which the Trust considers appropriate to ensure public access to the Malvern Hills is maintained. *Subsection (3)* provides that where common land is fenced for longer than 42 days, the power to fence the same land cannot be exercised again for a period of six months, unless it is necessary for animal health or if the area involved is 1 hectare or smaller. *Subsection ~~(6)~~(7)* requires the Trust to have regard to the needs of those who would otherwise be able to gain access but for the fence ~~or enclosure~~, including those on horseback and people with disabilities. [Subsections \(7A\) to \(7C\) make provision about notifying the highway authority in cases where public rights of way are affected.](#)

Clause 50 enables the Trust to place notices or direction signs on the Malvern Hills to restrict or prohibit horse riding in certain circumstances for [as](#) long as may be reasonably necessary. The circumstances are to protect the use of the Malvern Hills as an open space for [the recreation of the public](#), or to prevent injury or damage to the Malvern Hills or its appearance.

Clause 51 enables the Trust to take measures to prevent unauthorised access by motor vehicles to any part of the Malvern Hills, providing such measures do not [prevent access by people lawfully exercising a right to access the part of the Malvern Hills in question on foot or on horseback](#). The clause does not remove the need for the consent of the Secretary of State to be given, where necessary, to works carried out on common land, under section 38 of the Commons Act 2006.

Clause 52 has the effect of removing the need for advertisement consent under the [Town and Country Planning \(Control of Advertisements\) Regulations 2007](#) for the purpose of the notices which the Trust must place in the Malvern Hills when regulating access under *clauses ~~46~~45* (Regulation and prohibition of access to Malvern Hills) and ~~51~~[50](#) (Regulation of horse riding).

Management of the Malvern Hills

Clause 53 enables the Trust to take any necessary, reasonable and proportionate measures to prevent nuisances and preserve order in the Malvern Hills.

Clause 54 continues the Trust's power to make and maintain paths and ways over the Malvern Hills, including (by agreement with the local authority or highway authority) ~~public footpaths or bridleways~~[public rights of way](#).

Clause 55 continues the Trust's power to authorise the construction, maintenance, alteration or improvement of roads and ways over the Malvern Hills ~~and~~ affording vehicular or other access from any highway to land within or adjacent to the Malvern Hills ~~and~~ which the Trust considers lacks satisfactory access. *Subsection (2)* requires the Trust to have regard to the effect of any works authorised under *subsection (1)* on the matters mentioned ~~in the first paragraph of the objects of the Trust~~[in clause 6\(1\)\(a\) \(the objects of the Trust\)](#) (namely the landscape, natural appearance, habitats, flora and fauna, geology and archaeology of the Malvern Hills) and ~~must~~[to](#) impose such terms and conditions as are necessary to minimise any adverse effects on the Hills.

Subsection (3) enables the Trust to grant licences and easements under or over lands forming part of the Malvern Hills on which roads have been authorised to be constructed under *subsection (1)*. *Subsections (4) to (6)* enable the Trust to exercise the powers in ~~clause 56~~[55](#) on land forming part of the Malvern Hills which is not owned by the Trust, but only with the landowner's consent, unless the owner cannot be ascertained after diligent enquiry.

Clause 56 enables the Trust to acquire and plant trees and shrubs on the Malvern Hills and grants powers of control over them. It provides that no rights of estover may be exercisable as regards trees planted by the Trust on the Malvern Hills except in relation to gathering fallen wood.

Clause 57 enables the Trust to drain any part of the Malvern Hills where the Trust deems it necessary or desirable, including by making a temporary enclosure for those purposes or for the purpose of protecting or renovating turf.

Clause 58 enables the Trust to designate parts of the Malvern Hills which adjoin or are near to any highway ~~to~~[for](#) use as parking places for vehicles. It enables the Trust to make reasonable charges for the use of such parking places and to make regulations governing their use.

Clause 59 continues the Trust's powers to install and maintain sheds, seats and shelters on the Malvern Hills. It makes new provision for the Trust to install watering points [for animals](#) at appropriate places.

Clause 60 continues the Trust's powers to construct and maintain lavatories on the Malvern Hills, or make arrangements for any local authority to do so. It allows the Trust to permit temporary lavatories in connection with authorised events and for the use of people working on the Malvern Hills temporarily. *Subsections (4) and (5)* make provision about the length of time [for](#) which temporary lavatories may remain on the Hills.

Clause 61 enables the Trust, by *subsection (1)*, to set apart ~~or enclose~~ land on [Malvern Link Common](#) or Malvern Commons for people to play games or hold meetings or gatherings for sports. *Subsection (3)* enables the Trust to enclose land on Malvern Link Common for the purpose of the holding of an agricultural or horticultural or other exhibition, circus, fair or show, ~~subject to specified limits~~. Only up to 20 hectares of land can be used and there are time limits on the use of the power under *subsection (3)*. *Clause 61* is based on section 4(e) and (f) of the 1930 Act.

Clause 62 authorises the Trust to grant licences for the establishment, maintenance and operation ~~or of~~ temporary or mobile stalls for the purposes of selling food and refreshments to the public. It provides that no more than six stalls may be operated at one time, although the Trust may grant additional licences for up to four days. *Subsection ~~(4)~~(5)* provides that licences may include such terms and conditions as the Trust thinks fit. *Subsection ~~(5)~~(6)* provides that no stall may be erected within a radius of 275 metres from the centre point in the highway opposite the southern corner of the building currently known as the Malvern Hills Hotel. *Clause 62* is based on sections 4 and ~~section~~ 16 of the 1930 Act.

Clause 63 makes new provision for the Trust to grant licences for the use of the Malvern Hills for purposes which would otherwise be in breach of the Trust's byelaws. Activities that could be licensed include the use of the Hills in the course of a business or for organised activities. The clause says that a fee may be charged for a licence and that any licence granted may be subject to terms and conditions as the Trust sees fit. *Subsections (3) and (4) make provision for the publication of a policy about what purposes would be covered by the clause and subsections (5) to (8) make provision about who licences should be issued to and who is responsible for paying fees.*

Removal and disposal of unauthorised articles

Clause 64 enables the Trust to remove and dispose of objects left in the Malvern Hills without its permission or without lawful authority. *Subsection (1)* contains the power of removal. *Subsection (2)* requires that a person who is present and appearing to be in control of the object is given reasonable opportunity to remove it before the Trust does so. *Subsection (3)* imposes a duty on the Trust to store an object it has removed, unless it appears to have been abandoned or to be valueless, or it cannot reasonably be stored. *Subsection (4)* gives the owner of an object stored by the Trust fourteen days to claim it and pay the Trust's expenses, and otherwise enables the Trust to dispose of a removed object.

PART 5

BYELAWS

Clause 65 provides a general power for the Trust to make and enforce byelaws where the Trust considers it necessary or desirable to do so in furtherance of its objects including in particular to comply with its duties to keep the Malvern Hills unenclosed and to protect the Malvern Hills, or ~~to~~[in the](#) exercise of its general power to regulate and manage the Hills. It is substantially based on powers contained in various Malvern Hills Acts. *Subsection (1)* lists a number of purposes for which the Trust may make byelaws, for example, preventing nuisances and preserving order, preventing or regulating the use of vehicles,

including cycles, preventing unlawful digging, regulating the enjoyment of rights of common, and prohibiting the erection of unauthorised buildings.

Subsections (2) and (3) reflect powers in the 1995 Act enabling the Trust to make byelaws which provide that contraventions of notices placed by the Trust under *clauses 45* (regulation and prohibition of access to Malvern Hills) and *50* (regulation of horse riding on the Malvern Hills) are offences.

Subsection (4) provides that byelaws may amend or ~~repeal~~[revoke](#) previous byelaws and may relate to the whole or any part of the Malvern Hills, ~~including by making~~[and may make](#) different provision for different cases or different parts of the Malvern Hills. *Subsection (5)* enables the Trust to revoke byelaws and *subsection (6)* provides that byelaws do not apply to any activity for which a licence has been granted under *clause 63* (licensing of other activities). *Subsection (7)* ensures that nothing in *clause 65* or any byelaws prejudices or affects or takes away any rights of common (save for byelaws which specifically regulate rights of common).

Clause 66 makes provision for the procedure for the making and confirmation of byelaws. *Subsection (1)* applies with modifications specified subsections of section 236 and section 238 of the Local Government Act 1972 to byelaws made by the Trust as if the Trust were a local authority. This means that byelaws must be made under the Trust's common seal, [and](#) a copy of the byelaws must be printed and deposited at the Trust's offices and on its website.

Subsection (2) provides that the Secretary of State may confirm byelaws with such modifications as they think fit. Where any modifications are substantial, *subsection (3)* requires the Secretary of State to inform the Trust of the proposed modifications and [requires the Trust to](#) consider comments from people likely to be concerned with the modifications. *Subsection (4)* provides that before making any byelaws, the Trust must consult the Sport and Recreation Alliance.

Clause 67 provides that byelaws made by the Trust under *clause 66* may provide that persons contravening the byelaws are liable to a fine not exceeding level 2 on the standard scale (currently £500) and, in the case of a continuing offence, a daily fine [of](#) up to ten percent of the amount which is equivalent to that level.

Clause 68 empowers [an](#) authorised officers of the Trust to issue fixed penalty notices where the officer has reason to believe a person has committed an offence against any byelaw made under *clause 65* (power to make byelaws). *Subsection (2)* says that a fixed penalty notice is a notice that gives persons the opportunity of discharging liability to conviction by the payment of a fixed penalty. *Subsections (3) to (11)* make provision about the forms that must be used and the procedure which the Trust must follow when issuing fixed penalty notices. *Subsection (7)* enables the Trust to prescribe different amounts of fixed penalty ~~to be specified~~ in relation to different classes of case but [it](#) may not prescribe an amount exceeding the higher of £100, the amount specified in section 237B of the Local Government Act 1972 (currently no such amount has been specified), or such other amount as the Secretary of State approves.

Clause 69 empowers authorised officers of the Trust to require people to provide information for the purposes of enforcing the Trust's byelaws. *Subsection (1)* requires [a person](#)s who an enforcement officer suspects has committed an offence against a byelaw to give their name and address to the officer on the officer's request. *Subsection (2)* provides that a person who, without reasonable excuse, fails to provide

the information or provides inaccurate information commits an offence and is liable ~~to~~on summary conviction to a fine not exceeding level 3 on the standard scale.

Subsections (3) to (5) of clause 69 impose similar requirements where a driver of a vehicle is alleged to be guilty of an offence against any byelaw which relates to the driving or parking of vehicles on the Malvern Hills. *Subsection (3)* enables the Trust to request that the owner of the vehicle, or any other person, provides information which may lead to the identification of the driver. *Subsections (4) and (5)* provide that a person who fails to give such information is guilty of an offence and *subsection (6)* sets out the penalties which apply. *Subsection (7)* enables an authorised officer, after due warning, to exclude from the Malvern Hills any person who in the view of the officer has committed an offence against the byelaws.

Clause 70 enables the Trust to seize certain types of animal which are on the Malvern Hills in contravention of any byelaw made by the Trust. ~~*Subsection (2) requires the Trust to notify the police and, if their identity is known or can be reasonably ascertained, the owner of the impounded animal.*~~ Where the Trust impounds an animal in the exercise of this power, subsection (2) requires the Trust to notify the police of this and also to notify the owner of the impounded animal if the owner's identity is known or can reasonably be ascertained. *Clause 70* is based on section 19 of the 1995 Act.

Subsections (3) to ~~(7)~~(8) of clause 70 impose duties on and give powers to the Trust in relation to an animal which has been seized or impounded. *Subsection ~~(5)~~(6)* requires the Trust to ensure that the animals ~~are~~is properly fed and maintained and provides that the Trust may take such action as ~~they~~it thinks fit in relation to the animal if it is ill or injured. Where, after prescribed time limits an owner has not come forward to claim the animal and paid the expenses incurred by the Trust as a result of its seizure, *subsection (4)* empowers the Trust to sell or otherwise dispose of the animal. *Subsections ~~(6)~~(7) and ~~(7)~~(8)* provide that where the Trust receives money for disposing of an animal, it may recover its expenses but will otherwise be accountable to the owner of the animal for any money arising from the disposal.

PART 6

LAND

Clause 71 sets out ways in which the Trust can add ~~to the~~ land to the Malvern Hills, ~~and therefore come under its management and control~~ which thereby comes under the Trust's management and control. It enables the Trust to acquire land in furtherance of the objects of the Trust and to enter into agreements ~~providing that land be included with the Malvern Hills~~ under which land becomes part of the Malvern Hills. It provides that land so acquired, land subject to such an agreement ~~or~~and land given to the Trust by bequest forms part of the Malvern Hills. Such additional land must be located within 9 miles of Great Malvern Priory and must be land which the Trust considers should be preserved unenclosed and free from building as part of or in connection with the Malvern Hills.

Land added by way of agreement under *subsection ~~(2)~~(4) of clause 71* may only be common land or waste land, and where land is added by such an agreement, the Secretary of State may make an order

which has the effect of adding the parish within which the land is located to the Trust's electoral area and requiring the inhabitants of that parish to pay the levy under *clause 3433* (the levy).

Clause 72 enables the Trust to sell or exchange by agreement any part of the Malvern Hills not exceeding 0.12 hectares. This power is subject to the Trust obtaining consent from the Secretary of State and may only be used for the purposes of adjusting, defining or improving the boundaries of the Malvern Hills. *Subsection (2)* places restrictions on the Secretary of State's decision to give consent. [Subsections \(4\) to \(7\) make provision for the publication of a notice of any request made to the Secretary of State for consent, and for related matters.](#) *Clause 72* is based on section 9 of the ~~1924~~1930 Act.

Clause 73 enables the Trust to sell, exchange, let, charge or otherwise dispose of certain land which it has acquired. It reflects section 6 of the 1995 Act. *Subsections (1) and (2)* enable the Trust, having obtained the consent of the Secretary of State, to sell land or any interest in land to which *subsection (1)* applies and which is not required by the Trust. It also enables the Trust to exchange any such land for other land.

Subsection (3) explains that *subsection (1)* only applies to land which has not been owned by the Trust for a continuous period of over 5 years and which did not form part of the existing Malvern Hills. The land must not be registered as common land or a town or village green. In addition, the Trust must also have decided no later than two years after the land was acquired that it is not desirable for the Trust to retain the land for the furtherance of its objects. The "existing Malvern Hills" is defined in *clause 3* (interpretation) by reference to *clause 4* (the Malvern Hills) and in broad terms means the land which was under the management, control or jurisdiction of the Conservators (as predecessor to the Trust) when the Bill was deposited (and is shown by way of illustration on the deposited map).

Subsection (4) provides that the Trust's power to adjust boundaries under *clause 72* (power to adjust boundaries) does not apply to any sale or exchange of land under *clause 73*. *Subsection (5)* provides that where land has vested in the Trust by virtue of a gift or a bequest, the Trust cannot [, other than in the circumstances specified in that subsection,](#) dispose of that land in a way which would be inconsistent with the gift or bequest.

Clause 74 empowers the Trust to grant leases and licences over land in the Malvern Hills. The granting of leases and licences over ancillary land is dealt with in *clause 75* (ancillary land). *Subsections (1) and (2) of clause 74* enable the Trust to grant or renew leases or grant licences in respect of any part of the Malvern Hills [that is not common land](#) or in respect of any building (whether or not in the Malvern Hills). *Subsection (3)* provides that where a lease is granted or renewed for a period exceeding 10 years, the written consent of the Secretary of State is required and *subsection (4)* ensures that leases are subject to the public's right of access over the Hills. *Subsection (6)* provides that statutory protections for commercial and assured tenancies do not apply to leases granted by the Trust in exercise of its powers under *subsection (1)* as regards the Malvern Hills, or buildings on the Hills.

Clause 75 makes provision about ancillary land. *Subsections (1) and (2)* define ancillary land as land acquired under *subsection (3)*, land which has already been acquired by the Trust under similar powers in the ~~Malvern Hills Acts~~[1995 Act and the Commissioners Clauses Act 1847](#) to provide offices, etc, and land acquired with the sanction of an order of the Charity Commission.

Subsection (3) of clause 75 enables the Trust to purchase land for any use which is ancillary to the objects of the Trust, and it sets out a non-exhaustive list of such ~~purposes~~uses, including office use, the provision of refreshments, the retail sale of goods, staff accommodation, storage and the keeping and management of livestock. *Subsection (4)* provides that ancillary land which the Trust already owns may be used for any of the purposes mentioned in *subsection (3)*. *Subsection (5)* provides that the Trust has all the powers of an absolute owner in relation to ancillary land and provides a non-exhaustive list of such powers (including power to lease and to sell). *Subsection (7)* empowers the Trust to exercise any of ~~their~~its functions in respect of ancillary land as if that land formed part of the Malvern Hills.

Clause 76 enables the Trust to maintain, repair, reconstruct or replace any building or structure which it owns or occupies.

Clause 77 is about land and buildings in the Malvern Hills known as St Ann's Well. *Subsection (1)* enables the Trust to maintain and operate the land ~~and buildings~~. *Subsection (2)* provides that in the event of damage to or the destruction of the principal building (currently used as a cafeteria), the Trust may repair reconstruct or replace it provided that the replacement is at the same site and of similar size and external character ~~of~~to the existing building. *Subsections (6) to (11)* make provision for the procedure to be followed should the Trust sell or exchange the St. Ann's Well land, including providing Malvern Hills District Council with a right to acquire the land if there are proposals to sell it.

Clause 78 continues the Trust's power to grant easements and other rights relating to the provision of utilities. *Subsection (1)* enables the Trust to grant easements, rights, privileges or licences in, under or over the Malvern Hills for the provision of services relating to water, electricity, gas, oil, telecommunications, drainage and sewerage.

The power is subject to *subsection (2)*, which requires that a term of any grant under *subsection (1)* is that the surface of the Malvern Hills must be restored if it is disturbed. *Subsection (6)* requires the Trust to not exercise ~~their~~its powers under the clause for the provision of any service, other than a temporary service, overground unless certain conditions are met. Those conditions are that in the opinion of the trustees it is not reasonably practicable for the service to be other than overground, ~~and~~ that the provision of the service overground is reasonable, that the service is to be provided to a domestic property which was in existence on 28 June 1995 and that the ~~trustees~~Trust has consulted the body ~~responsible for statutory national landscapes (AONB)~~with statutory responsibility for the area of outstanding natural beauty management plan for the Malvern Hills. *Subsections (3) to (5)* enable the Trust to exercise the powers of ~~clause 79~~78 on land which it does not own, subject to safeguards.

Clause 79 is about notices of quarrying. *Subsection (1)* requires that the Trust must be consulted before any application for planning permission is made for the carrying out of quarrying in the Malvern Hills. *Subsections (2) and (3)* provide that the consultation must include giving the Trust written notice (including a plan showing the intended location) three months before the application for planning permission is made. *Subsection (4)* provides that any proposal for a new quarry in the Malvern Hills must provide for the quarry to be located and designed so as cause as little injury and disfigurement to the Malvern Hills as reasonably practicable. The clause reflects section 25 of the 1884 Act.

Clause 80 provides that a highway authority cannot exercise its rights under section 45 of the Highways Act 1980 (power to get materials for repair of publicly maintainable highways) in respect of waste or common land in the Malvern Hills. The clause reflects section 15 of the 1884 Act.

Clause 81 enables the Trust to use loose natural materials located in the Malvern Hills for purposes in furtherance of, or ancillary to, the objects of the Trust. *Subsections (3) and (4)* provide that no more than 25 cubic metres of material may be extracted or taken by the Trust in exercise of the power in any period of one calendar year, subject to the Trust being able to carry forward the difference between the amount extracted or taken and the 25 cubic metres maximum ~~amount~~ into the next calendar year and successive calendar years up to a maximum additional amount of a further 25 cubic metres (and therefore a total of 50 cubic metres) in any calendar year. *Subsections (5A) and (5B) require the Trust to keep a record of the exercise of their powers under this clause.*

Clause 82 provides that no development which would be authorised by the Bill (other than any development which may be authorised by *clause 81*), or which was authorised by the Malvern Hills Acts, is deemed to be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015.

PART 7

GENERAL AND MISCELLANEOUS ~~POWERS~~PROVISIONS

Clause 83 makes new provision, in *subsection (1)*, for a general power for the Trust to do any lawful thing (whether or not involving the expenditure of money) to further the Trust's charitable objects, including anything which is calculated to facilitate, or is conducive or incidental to, the furtherance of the objects. *Subsection (1)* provides that the general power is without prejudice to any other powers exercisable by the Trust, but is also subject to the other provisions of the Bill (including, therefore, the duty to keep the Malvern Hills unenclosed, unbuilt on and open for the enjoyment of the public). The drafting of *subsection (1)* reflects the drafting of section 111 of the Local Government Act 1972.

Subsection (2) of clause 83 provides that the general power cannot be used where the Trust can exercise another power in the Bill or a power in another enactment to do the thing in question. *Subsection (3)* sets out specific things which the Trust cannot do under the general power. The power cannot be used to acquire or dispose of land, borrow money or erect any building, fencing or other type of enclosure on the Malvern Hills. The Trust's powers in respect of those activities are set out in other clauses.

Subsection (4) provides that the prohibition on carrying out restricted works on common land without the consent of the Secretary of State contained in section 38 of the Commons Act 2006 applies to the exercise of the general power.

Clause 84 introduces *Schedule 4*, which sets out a number of miscellaneous powers which the Trust may exercise to further its charitable objects.

Clause 85 enables the Trust to prosecute, defend and appear in legal proceedings or [make representations at](#) public inquiries in its own name.

PART 8

FINAL PROVISIONS

Clause 86 provides that the Secretary of State may hold local inquiries for the purposes of any of the Secretary of State's functions under the Act and applies specified provisions of the Local Government Act 1972 to any local inquiries so held. It is based on section 22 of the 1995 Act.

Clause 87 repeals the enactments specified in *Schedule 5*, including the ~~existing~~ Malvern Hills Acts.

Clause 88 introduces *Schedule 6*, which makes consequential amendments to other legislation.

Clause 89 introduces *Schedule 7*, which contains transitional provisions and savings consequential on the repeal of enactments under *clause 87*.

Clause 90 provides protection for Crown interests.

Clause 91 provides protection for Network Rail Infrastructure Limited.

Clause 92 provides protection for National Grid Electricity Distribution (West Midlands) PLC.

Clause 93 provides protection for Severn Trent Water Limited ~~and other water undertakers~~.

Clause 94 provides general protection for rights of commoners.

Clause 95 provides continued protection for the owners of any manorial rights which were protected by the repealed Malvern Hills Acts.

Clause 96 continues to apply reservations of certain interests (if any remain) in certain land which were protected under section 13 of the 1884 Act.

~~*Clause 97* provides protection for the owner of the Little Malvern Court Estate.~~

SCHEDULES

Schedule 1

Schedule 1 is about administrative provisions. *Part 1* sets out matters which must be included in rules ~~and regulations~~ made under *clause 77(1)*. Those matters include benefits to and interests of trustees, the

holding, calling, chairing and quorum of meetings, decision making, the keeping of records, committees and advisory panels, delegation of functions ~~and~~, financial controls and the authentication of documents.

~~Part 2 of Schedule 1 sets out the type of provision that can be included in regulations made by the trustees for the management and administration of the Trust and sets out a non-exhaustive list of the matters which the regulations may provide. "Regulations" includes rules, standing orders and instructions. It also enables the trustees, committees and advisory panels to regulate their own procedures.~~

Part 2 of Schedule 1 sets out a non-exhaustive list of the types of matter that can be included in regulations and other documents under clause 7(2). It also allows regulations and other documents to include provision enabling committees and advisory panels to regulate their own procedures.

Part 3 of Schedule 1 is about the method of holding meetings, and enables meetings of the trustees to be held in person, electronically or by a hybrid of the two. Rules must be made about the procedure for meetings held electronically.

~~Part 4 of Schedule 1 enables regulations to lay down procedures for the sealing, signature or execution of documents on behalf of the Trust~~contains definitions of terms used in the Schedule.

Schedule 2

Schedule 2 sets out certain enactments which are to apply (with modifications) to the Trust.

Part VA of and Schedule 12A to the Local Government Act 1972 are applied with modifications to the Trust as though it were a principal council within the meaning of that Act. Part VA and Schedule 12A make provision about the admission of the public to meetings, access to agenda and connected reports, inspection and publication of minutes and other documents, and exempt information. The way that these enactments are applied to the Trust is similar to the way in which they were applied under the 1995 Act, with the only significant change being that people can be removed from public meetings if they are being disruptive, and that the public can be excluded entirely if disruption being caused is too great. Also, it is clarified that the public are not entitled to access meetings of committees or sub-committees at which no decision is to be made.

Section 228 of the Local Government Act 1972, which makes provision about the availability for inspection of certain minutes, accounts and other documents by electors is applied with modifications to the Trust. Again, this reflects the current position under the 1995 Act.

Schedule 3

Schedule 3 lists provisions of the Highways Act 1980 which would apply, with modifications, ~~in the case~~ where the Trust were to install or maintain a cattle-grid in a highway under clause 48. They are sections 82 to 85, 87 and 90 of, and Schedule 10, to that Act. They are about the provision, maintenance and removal of cattle-grids, agreements with highway authorities and landowners, protection for bridges and railways, and the procedure to be followed when determining whether it is expedient to install a cattle-grid.

Schedule 4

Schedule 4 sets out a number of miscellaneous powers exercisable by the Trust. They reflect the types of miscellaneous powers which other charities have in their constitution and a number are based on the Charity Commission's model clauses. *Clause 84* introduces the ~~s~~Schedule and provides that the powers are additional to any other powers which the Trust has, and may only be used to further the objects of the Trust. The powers include:

- employing staff, advisers and agents
- raising funds and soliciting and accepting donations and other income
- establishing a supporters' organisation
- entering into contracts and licence or sponsorship agreements, opening and operating banking facilities and conducting non-taxable trade
- co-operating and entering into joint ventures with other organisations, and establishing or supporting charitable institutions and associations
- holding educational events and promoting, conducting and disseminating research, providing advice and publishing and distributing information
- making grants, setting aside funds for special purposes or as reserves against future expenditure, investing funds and delegating investment management, insuring property and taking out other insurance policies
- establishing or acquiring subsidiary companies, selling surplus solar energy, taking out insurance policies for trustees and ~~officers~~employees and settling disputes.

Schedule 5

Schedule 5 sets out the enactments to be repealed by *clause 87*, including all the Malvern Hills Acts and other local enactments which need to be repealed as a consequence of the Bill.

Schedule 6

Schedule 6 sets out a number of amendments to enactments required as a consequence of the Bill.

Schedule 7

Schedule 7 contains transitional provisions consequential on the repeal of the ~~existing~~ Malvern Hills Acts and provides for the continuation in force of byelaws and regulations made under those Acts.

EUROPEAN CONVENTION ON HUMAN RIGHTS

In the view of the Malvern Hills Conservators the provisions of [the](#) Malvern Hills Bill [HL] are compatible with the Convention rights.

Malvern Hills Bill [HL]

[AS PROPOSED TO BE AMENDED IN COMMITTEE]

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[AS PROPOSED TO BE AMENDED IN COMMITTEE]

A

B I L L

TO

Repeal and re-enact certain enactments relating to the Malvern Hills Conservators and the management of the Malvern Hills, to reconstitute and rename those Conservators as the Malvern Hills Trust and to confer further powers on the Malvern Hills Trust, to make further provision in relation to the Malvern Hills, and for other purposes.

W HEREAS –

- (1) By the Malvern Hills Act 1884 the Malvern Hills Conservators (“the Conservators”) were incorporated and were invested with certain powers for the protection, control and management of land specified in that Act and provision was made for restricting the user and enjoyment of the said land:
- (2) The Conservators were registered as a charity in 1984. They adopted the working name of the Malvern Hills Trust in 2017: 5
- (3) By the Malvern Hills Act 1909, the Malvern Hills Act 1924, the Malvern Hills Act 1930 and the Malvern Hills Act 1995 further powers were conferred upon the Conservators and further provision was made in relation to the lands under the Conservators' management and control, ~~which now forms part of the Malvern Hills and the surrounding commons:~~ 10
- (4) 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: 15
- (5) The Malvern Hills are widely known and admired for their natural beauty and are visited by the inhabitants of Herefordshire and Worcestershire and by visitors coming from all parts of the country for the purposes of recreation and enjoyment:
- (6) The value of the Malvern Hills has been recognised by substantial parts of them having been designated as a site of special scientific interest or as an area of outstanding natural beauty (now known as national landscape), and there are a number of scheduled ancient monuments on the [Malvern](#) Hills: 20
- (7) A map illustrating the current area within the jurisdiction of the Conservators has been deposited in the office of the Clerk of the Parliaments and the Private Bill Office of the House of Commons, and in the respective offices of the chief 25

executives of Malvern Hills District Council, Herefordshire Council, Forest of Dean District Council and Worcestershire County Council:

- (8) The existing [local](#) legislation referred to above is in need of modernisation in a number of respects, and the powers of the Conservators are insufficient to enable the Conservators to make suitable provision to meet the charitable objects of the Conservators, ~~to meet the convenience and requirements of the public for the public benefit~~, to carry out their functions and to manage and deal with the Malvern Hills effectively and appropriately in the light of present day circumstances: 5
- (9) It is desirable that the existing local legislation referred to above be repealed and some of it re-enacted in modern terms: 10
- (10) It is expedient that the Conservators be renamed the Malvern Hills Trust (“the Trust”) and that the constitution of the Trust be altered:
- (11) It is expedient that further powers of protecting, controlling, regulating, managing and dealing with the Malvern Hills should be conferred upon the Trust as in this Act provided: 15
- (12) It is expedient that the other powers of this Act should be conferred upon the Trust and that the other provisions contained in this Act should be enacted:
- (13) The purposes of this Act cannot be effected without the authority of Parliament: 20

May it therefore please your Majesty that it may be enacted, and be it enacted, by the King’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:—

PART 1

25

INTRODUCTORY

1 Short title

This Act may be cited as the Malvern Hills Act 202[].

2 Commencement

- (1) This Act, except those provisions mentioned in subsection (2), comes into force at the end of the period of three months beginning with the day on which it is passed. 30
- (2) The following sections come into force on the day on which this Act is passed —
 - (a) this section, 35
 - (b) section 3,

- (c) section 5,
- (d) section 8(2),
- (e) section 10(1),
- (f) section 15,
- (g) section 25(1) to (3),
- (h) section ~~31~~32.

3 Interpretation

(1) In this Act—

- “the 1884 Act” means the Malvern Hills Act 1884,
- “the 1930 Act” means the Malvern Hills Act 1930,
- “the 1995 Act” means the Malvern Hills Act 1995,
- “the annual meeting” means the first ordinary meeting of the trustees held after—
 - (a) the new constitution date, and
 - (b) each anniversary of the new constitution date,
- “authorised officer”~~, in relation to the Trust,~~ means any employee of the Trust who is authorised in writing by the Trust to act in relation to the relevant provision of this Act,
- “benefit”, as regards a trustee or a connected person means any payment of money or the provision or other application of any other direct or indirect benefit in money or money's worth,
- “the Board” means the board of trustees of the Trust,
- “bridleway” has the same meaning as in section 329 of the Highways Act 1980,
- “business day” means a day other than Saturday or Sunday, which is not a bank holiday under section 1 of the Banking and Financial Dealings Act 1971,
- “byway open to all traffic” has the same meaning as in Part III of the Wildlife and Countryside Act 1981 (see section 66(1) of that Act),
- a “casual vacancy” means a vacancy in the office of an appointed or elected trustee that occurs before the end of the trustee’s term of office,
- “cattle-grid” has the same meaning as in section 82(6) of the Highways Act 1980,
- “the chair of the Trust” means the person elected to chair meetings of the ~~Trust~~Board,
- “the chief executive” means the Chief Executive Officer of the Trust, or if there is no such person with that title, the employee of the Trust with the most senior management responsibilities,
- the “code of conduct for trustees” means the code of conduct for trustees approved and maintained by the trustees,
- “common land” means—
 - (a) land which is registered as common land under the Commons Registration Act 1965 and whose registration under that Act has become final, and

(b) land which is registered as common land under Part 1 of the Commons Act 2006,

“conflict of interest”, as regards a trustee, means where an interest of a trustee (or any person connected to a trustee) conflicts, or possibly may conflict, with the interests of the Trust and its objects, including in particular the exploitation of any property, information or opportunity (and it is immaterial whether the Trust could take advantage of the property, information or opportunity), 5

“connected person”, as regards a trustee, has the same meaning as it does for the purposes of sections 185 and 186 of the Charities Act 2011 (see section 188 of that Act) and any person who is a connected person in relation to any trustee is “connected” to them, 10

“the Conservators” means the Malvern Hills Conservators as defined in the ~~Act of~~ 1930 Act,

“the existing Malvern Hills” has the meaning given by section 4(3), 15

“footpath” has the same meaning as in section 329 of the Highways Act 1980,

“horse” includes an ass, mule or hinny,

“interest”, as regards a trustee, means any direct or indirect interest of a trustee (which includes any interest of any ~~person connected to~~ connected person as regards that trustee) in any matter, including any interest which arises or is otherwise attributable to— 20

(a) any benefit a trustee or connected person has or may have in such matter, and

(b) any duty or loyalty which the trustee or connected person owes or may owe to any person (within the meaning given by the Interpretation Act 1978) other than the Trust, including as a consequence of any office or membership held by a trustee or connected person, 25

“interim appointed trustee” means a trustee appointed under section 21(5), 30

“the Malvern Hills” has the meaning given in section 4,

“matter” as regards an interest, means any transaction, arrangement, situation or matter,

“the new constitution date” means the date fixed by the trustees under section 8(2), 35

“the objects” means the objects of the Trust, set out in section 6(1),

“ordinary election” has the meaning given by section 20(3),

an “ordinary meeting” of the trustees means one of the regularly timetabled meetings of the trustees, as opposed to a meeting that takes place outside the regular timetable and is arranged specially for the consideration of a specific matter or matters, 40

an “ordinary resolution” of the trustees means a resolution passed by a majority of the trustees present and voting at the meeting at which the resolution is considered, 45

“public right of way” means a bridleway, a byway open to all traffic, a footpath or a restricted byway,

“the repealed ~~a~~Acts” means the Malvern Hills Acts 1884 to 1995, once they have been repealed by section 887,

“restricted byway” has the same meaning as in Part II of the Countryside and Rights of Way Act 2000 (see section 72(1) of that Act).

“the returning officer” means the returning officer appointed under section 25,

“right of common” means a right of common registered in accordance with section 1 of the Commons Registration Act 1965 or, as the case may be, in a register of common land kept under section 1 of the Commons Act 2006.

~~“the rules of the Trust” means the rules of the trust made under section 7,~~

“the secretary to the Board” means the person employed by the Trust with that title, or such replacement title as the Board thinks fit,

a “special resolution” of the trustees means a resolution passed by at least 75% of the trustees present and voting at the meeting at which the resolution is considered,

“the Sport and Recreation Alliance” means the body of that name ~~at the~~ date on the day on which this Act ~~was~~is passed or any successor,

“the Trust” means the Malvern Hills Trust and references to the Trust include references to the Conservators where the context requires,

“the trustees” means the persons appointed and elected as mentioned in section 8(1)(a) and (b) and includes any person appointed or elected as a trustee or interim appointed trustee under sections 10, 17, 21 or 22,

“the Trust’s electoral area” means the area described in section 23(3).

- (2) Any reference in this Act to a resolution of the trustees which does not specify whether the resolution is a special resolution or ordinary resolution is to be taken as being a reference to an ordinary resolution.

4 The Malvern Hills

- (1) In this Act, “the Malvern Hills”, over which the Trust has management and control under this Act, means the existing Malvern Hills, together with any land which is part of the Malvern Hills by virtue of subsection (2) or by virtue of section 71(1), (2) or (4) and taking into account any change arising from the operation of section 72, section 73 or section 74.

- (2) Land acquired by the Trust under section 53 of the Commissioners Clauses Act 1847, section 9 of the 1995 Act or section 75 or with the sanction of an order of the Charity Commission is to be treated as part of the Malvern Hills if it is land to which the public have access by right or by permission of the Trust.

- (3) In this section, “the existing Malvern Hills” means the land which was, immediately before the date on which this Act is passed, under the jurisdiction, management or control of the Trust for the purposes of the repealed Acts, including—

- (a) the lands described in the first and third Schedules to the ~~Malvern Hills Act~~ 1884 [Act](#) and shown on the deposited map referred to in that Act,
 - (b) the area described in section 5 of the Malvern Hills Act 1924, including those lands, rights and interests described in the first, second and third Schedules to that Act and shown upon the deposited plans referred to in those schedules, and 5
 - (c) any other land or lands, properties, quarries, manorial rights or interests which by virtue of the operation of the repealed Acts or otherwise were under the jurisdiction of the Trust immediately before the date on which this Act is passed. 10
- ~~(4) The existing Malvern Hills as at the date on which the Bill for this Act was deposited are shown for illustrative purposes on the deposited map.~~
- ~~(5) In subsection (4), “the deposited map” means the map deposited with copies of the Bill in the office of the Clerk of the Parliaments and the Private Bill Office of the House of Commons.~~ 15

PART 2

THE MALVERN HILLS TRUST

Change of name, continuity of functions and objects

- 5 The Malvern Hills Trust** 20
- (1) The Malvern Hills Conservators are renamed the Malvern Hills Trust (in this Act referred to as “the Trust”).
 - (2) The Trust is to continue to be a body corporate with a common seal and having power to hold and manage land [and other assets](#).
 - [\(2A\) Without prejudice to any other powers it has to hold and administer property, the Trust may continue to hold and administer property as a special trust within the meaning of section 353\(4\) of the Charities Act 2011.](#) 25
 - (3) Any reference in any enactment or other document to the Malvern Hills Conservators is from the date on which this section comes into force to be construed as a reference to the Trust. 30
 - (4) The Trust is to exercise its functions in accordance with the provisions of this Act (and in accordance with the Malvern Hills Acts 1884 to 1995 so long as they remain in force).
- 6 The objects of the Trust**
- (1) The objects of the Trust are, for the benefit of the public— 35
 - (a) to protect, conserve and maintain the landscape, natural appearance, habitats, flora and fauna, geology and archaeology of the Malvern Hills, and

- (b) to keep the Malvern Hills unbuilt on as open space for recreation and enjoyment of the public.
- (2) If in exercising their functions, it appears to the trustees that there is a conflict between the object specified in subsection (1)(a) and the object specified in subsection (1)(b), and the conflict cannot be resolved by the trustees, the trustees must attach greater weight to the object specified in subsection (1)(a). 5
- (3) Subsection (2) is subject to consideration by the trustees of the health and safety of persons.
- (4) In subsection (1), “unbuilt on” means unbuilt on except for –
 - (a) any buildings that existed at the date on which this Act is passed, 10
 - (b) any buildings which replace them (so long as they are on the site of, and are of a similar size and external character to, the existing building), and
 - (c) any buildings or structures which the Trust is empowered to provide, construct, place, reconstruct, replace or erect by virtue of this Act. 15

7 Administration of the Trust

- ~~(1) The trustees must make and may amend, revoke or replace rules and may make amend, revoke or replace regulations about –~~
 - ~~(a) the payment, transfer or application of income or property of the Trust by way of benefit to trustees and connected persons;~~ 20
 - ~~(b) interests of trustees and of connected persons, including the declaration of those interests;~~
 - ~~(c) the management of conflicts of interest of trustees and connected persons, including the participation by trustees in discussions or decisions of the trustees and the receipt of information by trustees;~~ 25
 - ~~(d) the administration of and management arrangements of the Trust.~~
- ~~(2) The rules must include provision about the matters mentioned in Part 1 of Schedule 1.~~
- (1) The trustees must make (and may amend, revoke or replace) rules about the matters mentioned in Part 1, and paragraph 14(3), of Schedule 1. 30
- (2) The trustees may make provision for the administration and management of the Trust (including about the matters mentioned in Part 1, or paragraph 14(3) of Schedule 1) in regulations or other documents provided that any such regulations or other documents must not be inconsistent with anything in the rules made under subsection (1). 35
- (3) Part 2 of Schedule 1 makes provision about matters which may be included in regulations and documents under subsection (2) (but not in rules made under subsection (1))~~made under subsection (1)~~, Part 3 of Schedule 1 makes provision about the method of holding meetings and Part 4 of Schedule 1 makes general provision about rules and regulations. 40

-
- (4) The trustees must not make rules ~~or regulations~~ under subsection (1) or make provision in regulations or documents under subsection (2) which are inconsistent with anything in this Act, including the provisions of any enactments applied to the Trust by subsection (12).
- (5) Unless the Charity Commission otherwise agrees in writing in any particular case or type of case, the written agreement of the Charity Commission is required for the making, amendment, revocation and replacement of rules under subsection (1). 5
- (6) The powers ~~of~~ in subsection (1) are exercisable by the passing of a special resolution at a meeting of the Trust of which not less than 15 clear business days' notice has been given. 10
- (7) A notice under ~~subsection (1)~~ subsection (6) must set out the terms of the proposed rule, regulation, amendment, revocation or replacement rule or regulation.
- (8) The Trust must— 15
- ~~(a) prepare a written memorandum of each amendment that it makes to the rules or regulations, which must be signed at the meeting at which the amendment is made by the person chairing the meeting;~~
 - (a) ensure that each exercise of the power under subsection (1) is identified in a written memorandum prepared by the Trust and that the memorandum is signed, at the meeting at which the power is exercised, by the person chairing the meeting. 20
 - (b) send to the Charity Commission a copy of the memorandum certified by a person authorised by the Trust to do so within three months of the date of the meeting, and 25
 - (c) retain a copy of the memorandum.
- (9) This section is without prejudice to the powers of the Charity Commission to settle a scheme under section 73 of the Charities Act 2011.
- (10) Any rules ~~or regulations~~ made under subsection (1) must be consistent with sections 185 to 188 of the Charities Act 2011. 30
- (11) It is not necessary in legal proceedings to prove that the person or persons who sealed, signed or executed any document in accordance with this section or rules or regulations made under this section was or were duly authorised to do so, and such document is to be presumed to be duly signed, sealed or executed unless the contrary is proved. 35
- (12) The enactments specified in column 1 of Schedule 2 apply to the Trust in the manner specified in column 2 of that Schedule.
- ~~(13) In this section—~~
- ~~“regulations” includes standing orders and instructions;~~
 - ~~“the rules” means the rules made under subsection (1).~~ 40

Constitution

8 Constitution of Trust and status of trustees as charity trustees

- (1) Subject to ~~subsection (5)~~[subsections \(4\) and \(5\)](#), section 10, section 11, section 21 and section 22, on and after the new constitution date the Trust is to have a board of trustees, comprised of – 5
 - (a) six trustees appointed by the trustees, and
 - (b) six trustees elected by the electors of the Trust’s electoral area, each of whom is to be elected by the electors of the whole of the Trust’s electoral area.
- (2) The new constitution date is to be fixed by ordinary resolution of the trustees, and it must be a date that is in the period of nine months beginning with the date on which this Act is passed. 10
- (3) The trustees are the charity trustees of the Trust and are the persons having the general control and management of the administration of the Trust as mentioned in section 177 of the Charities Act 2011. 15
- [\(3A\) Each trustee must exercise the powers and perform the functions that the trustee has in their capacity as a charity trustee in the way that the trustee decides, in good faith, would be most likely to further the objects.](#)
- (4) Subject to subsection (5), the trustees may continue to act with their full powers as trustees and make decisions as trustees during any period when the number of trustees is below the total number required under subsection (1). 20
- (5) If the number of trustees during any period has fallen below six, the trustees may continue to act as trustees but only – 25
 - (a) to appoint or make arrangements for the election of, other trustees, or
 - (b) to make decisions as trustees which in their opinion are required to be made in order to avoid prejudice of a financial, commercial, reputational or legal nature to the interests of the Trust.
- (6) The trustees must select one or more of their number to act as a point of contact between the Trust and the inhabitants of any of the parishes comprised in the Trust’s electoral area (see section 23). 30
- (7) No trustee may be an employee ~~or officer~~ of the Trust.

9 Term of office of trustees

- (1) Except as provided by sections 10, 16, 17, 21, ~~and 22~~, every trustee is to be appointed or elected for four years. 35
- (2) Subject to subsections (3) and (4), upon ceasing to hold office, each appointed trustee and elected trustee is eligible for reappointment or re-election, as the case may be, ~~unless they have already held office for two terms.~~

- (3) A trustee who has held office for two consecutive terms may not be appointed or elected as a trustee for a further term of office until the expiry of the period of one year beginning with the day after the date on which the second of the consecutive terms expired.
- (4) The following do not count for the purposes of calculating under subsections (2) and (3) the number of terms of office already held by a trustee—
- (a) the first term of office of a trustee appointed or elected to fill a casual vacancy under section 17, 21 or 22, if that term is shorter than three years,
 - (b) a term of office of a trustee appointed or elected as one of the first trustees to be appointed or elected under section 8 if that term is shorter than three years (see sections 16 and 19).
- (5) Subject to the provisions of this Part of this Act, the term of office of a trustee—
- (a) begins on the date of the relevant anniversary of the new constitution date (“the start date”),
 - (b) ends at the end of the day before the date of the fourth anniversary of the start date.
- (6) In subsection (5), the “relevant anniversary”ⁱⁱⁱ is calculated by reference to section 16 in the case of an appointed trustee and section 19 in the case of an elected trustee.
- ~~(7) Subsection (5) is subject to any provision of or made under this Act or any other enactment passed after this Act.~~

10 Transitional arrangements and co-opted trustees

- (1) The terms of office of each of the existing trustees expire at the end of the day preceding the new constitution date, no matter what their term of office was when they were appointed or elected for that term.
- (2) ~~This section~~Subsection (3) applies if fewer than three of the existing trustees in total are appointed in accordance with section 16 or elected in accordance with section 19.
- (3) The existing trustees may, before the new constitution date, co-opt from their number no more than two trustees to serve, in addition to the trustees appointed in accordance with section 14, as co-opted trustees for a period of six months beginning on the new constitution date.
- (4) In this section, “the existing trustees” means the trustees in office between the date on which this Act is passed and the new constitution date.

11 Declaration to be made by trustees

- (1) No appointment or election of a trustee takes effect until the prospective trustee has made a declaration in such form as the trustees may prescribe, and which may make provision about (and only about)—

- (a) using reasonable care and skill to exercise the trustee’s functions solely and exclusively to advance the objects,
 - (b) complying with the code of conduct for trustees,
 - (c) complying with requirements as to disclosure of financial and other interests.
- (2) The trustees may cause a fresh appointment to be made or election to be held if the trustee in question fails to make that declaration within the period of seven days beginning with the day after the date on which their term of office would have commenced in accordance with the provisions of this Part.

12 Disqualification and resignation of trustees 10

- (1) The trustees may by special resolution remove a trustee from office and declare the office of the trustee to be vacant if they are ~~is~~ satisfied that the trustee –
 - (a) is not eligible to be ~~or~~ a trustee in accordance with section 14(7) or 18(1) as the case may be,
 - (aa) has been disqualified from being a charity trustee by virtue of the law relating to charities,
 - (b) has, without the permission of the trustees, been absent from the meetings of the Trust for whichever is the longer of –
 - (i) a period during which three ordinary meetings of the trustees have been held, and
 - (ii) ~~for~~ a period of six consecutive months, ~~or~~
 - (c) is incapable due to physical or mental illness of discharging the functions of a trustee, or
 - (d) is otherwise unable or unwilling to discharge the functions of a trustee.
- (2) If subsection (3) applies, the trustees may request in writing the resignation of a trustee or, by special resolution, remove a trustee from office and declare the office of the trustee to be vacant and on receipt of the resignation or on such a resolution coming into effect, as the case may be, that office is to become vacant.
- (3) This subsection applies if the trustees are satisfied that –
 - (a) a trustee has failed to comply, persistently or to a material extent, with the code of conduct for trustees,
 - (b) a trustee has acted in a manner which has seriously impeded or has prejudiced the Trust or a trustee in the performance of its or their functions,
 - (c) a trustee has acted in a manner which may bring the Trust into disrepute or which is otherwise inappropriate having regard to the functions of the Trust,
 - (d) a trustee is otherwise unfit to discharge adequately the functions of a trustee, or

- (e) there is other good reason for a trustee to cease to be a trustee in the best interests of the Trust, taking into consideration its status as a charity.
- (4) Subject to subsection (5), a resolution under subsection (1) or (2) has immediate effect. 5
- (5) A resolution under subsection (1) or (2) must not be passed unless the trustee in question has –
 - (a) been given notice in writing that the resolution is to be considered, specifying the circumstances alleged to justify removal from office, and 10
 - (b) been afforded a reasonable opportunity of being heard by or of making written representations to the trustees (whichever the trustee in question prefers).
- (6) A notice given under subsection (5)(a) must be given –
 - (a) at least ~~14 clear~~ 10 clear business days before the meeting at which the resolution is to be considered, and 15
 - (b) in accordance with section 32.
- (7) A trustee may resign at any time by giving notice in writing to the chief executive.
- (8) This section is without prejudice to any enactment or rule of law relating to the disqualification of charity trustees or removal of charity trustees from office. 20

13 Disciplinary procedures

- (1) If section 12(3) applies, instead of the actions mentioned in section 12(2), the trustees may impose one or more alternative requirements or sanctions in respect of the trustee in question. 25
- (2) The trustees may also impose one or more requirements or sanctions on a trustee if the trustees find that a trustee has breached the code of conduct for trustees.
- (3) Without prejudice to the generality of subsections (1) and (2), the requirements and sanctions that may be imposed include – 30
 - (a) a requirement to undergo training,
 - ~~(b) a period of suspension from attending meetings;~~
 - (c) a formal reprimand.
- (4) A finding under subsection (2) may not be made unless the trustee in question has – 35
 - (a) been given notice in writing that the matter that may give rise to the finding is to be considered, specifying the circumstances alleged to justify the imposition of a requirement or sanction, as the case may be, and 40

- (b) been afforded a reasonable opportunity of being heard by or of making written representations to the trustees (whichever the trustee in question prefers).
- (5) ~~If a period of suspension is imposed under subsection (3)(b), the absence of the trustee in question does not count when considering whether the number of trustees during any period has fallen below six, for the purposes of section 8(5):~~ 5
- (6) A notice given under subsection (4)(a) must be given—
 - (a) at least ~~14 clear~~10 clear business days before the meeting at which the matter is to be considered, and 10
 - (b) in accordance with section 32.

Appointed Trustees

14 Selection of appointed trustees and interim appointed trustees

- (1) This section applies to appointments of trustees provided for by section 8(1)(a) and 17(1) and to appointments of interim appointed trustees provided for by section 21. 15
- (2) Appointments to which this section applies are to be made—
 - (a) on merit, and
 - (b) in accordance with a published recruitment policy.
- (3) Subject to section 15(9), in making an appointment to which this section applies, the trustees must have regard to the recommendation of the Nomination Committee and may only reject a recommendation for an appointment by passing a special resolution to that effect. 20
- (4) If the trustees reject a recommendation of the Nomination Committee—
 - (a) they must give their reasons for doing so in writing to the Nomination Committee ~~no later than~~before the expiry of the period of 5 clear business days beginning with the day after the date of ~~its~~their decision, and 25
 - (b) the Nomination Committee must make a further recommendation to the trustees. 30
- (5) Each trustee ~~and~~or interim appointed trustee appointed by the trustees under sections 8(1)(a), 17(1) ~~and~~or 21 must be a person who appears to the trustees to have special knowledge, experience or ability which—
 - (a) is in one or more of the matters mentioned in subsection (6), or
 - (b) is otherwise appropriate to the efficient, effective and economic discharge by the trustees of their functions. 35
- (6) The matters are—
 - (a) charity governance,
 - (b) management of land,
 - (c) the protection or conservation of the environment, 40

- (d) financial, human resources, public relations or legal matters.
- (7) No person may be appointed as a trustee or an interim appointed trustee –
 - (a) unless they are 18 years of age or older,
 - (b) if they are disqualified from being a charity trustee.
- (8) In this section, “the Nomination Committee” means the committee of that name established under section 15. 5

15 Nomination Committee

- (1) Subject to subsection (9), the trustees must establish and maintain a committee of the Trust, the purpose of which is to recommend candidates for appointment as appointed trustees and interim appointed trustees. 10
- (2) The committee is to comprise of five members, who between them must, in the opinion of the trustees, have a mix of skills and experience which will enable the committee to identify suitable candidates for appointment as trustees, taking into account the requirements of section 14.
- (3) Of the committee members – 15
 - (a) two members must be trustees (either elected or appointed trustees),
 - (b) two members (~~“the independent members”~~) must be individuals appointed by the Trust,
 - (c) the other member is the chief executive or such other employee with senior responsibilities as the trustees think fit. 20
- (4) Independent members must not be –
 - (a) a trustee,
 - (b) a former trustee,
 - (c) an individual who has been elected or appointed to be a trustee but has not yet taken office, 25
 - (d) a current employee ~~or officer~~ of the Trust, or
 - (e) a person who would be entitled to vote at an election for an elected trustee were an election for an elected trustee to be held at the time of their appointment.
- (5) In appointing an independent member, the trustees – 30
 - (a) may take into account whether the candidate has any connection with the Malvern Hills and the local area within which the Malvern Hills are situated,
 - (b) must take into account whether any conflict of interest is likely to arise as respects the independent member carrying out their functions on the committee. 35
- (6) The requirements ~~on the trustees~~ set out in subsection (2) take precedence over the matter which the trustees may take into account under subsection (5)(a).

- (7) An independent member may be appointed for any number of terms, each of no longer than four years, and for a cumulative period of no more than 8 years.
- (8) The chief executive (or other employee, as the case may be) is to be a member of the committee in an advisory capacity and may not vote in any decisions made by the committee. 5
- (9) If despite reasonable endeavours, the trustees reasonably conclude that they are unable to establish or maintain a committee under this section, then –
 - (a) the requirement in section 14(3) does not apply in respect of an appointment, and 10
 - (b) any such appointment made is to be made by the trustees on a temporary basis.
- (10) If an appointment of a trustee (“a temporary trustee”) is made on a temporary basis in accordance with subsection (9)(b), and the committee is established or re-established more than six months before the end of the term which the temporary trustee would normally have served in accordance with section 9, 16, 17 or 21 (as the case may be) had the temporary trustee’s appointment not been made on a temporary basis – 15
 - (a) the committee must be invited by the trustees to recommend a candidate to replace the temporary trustee (or, if the committee sees fit, to recommend that the temporary trustee be appointed until the end of the term), and 20
 - (b) the trustees must consider that recommendation and, if ~~it~~they decides to appoint the recommended candidate, do so for the remainder of the term ~~in place of the temporary trustee~~. 25
- (10A) Temporary trustees and trustees appointed under subsection (10)(b) are to exercise all the functions of a trustee under this Act and be subject to all the duties on a trustee under this Act as though they were appointed for a full term of office under section 8(1)(a).
- (11) The members of the committee must appoint one of their number (other than the chief executive, or other employee of the Trust) to be the chair of the committee and at any time may remove them from that position. 30
- (12) A member of the committee ceases to be a member if they –
 - (a) resign by notice given in writing to the chair of the committee or, if they are the chair or there is no chair for the time being, to the chair of the ~~t~~Trustees, or 35
 - (b) are removed by special resolution of the trustees passed at a meeting at which at least half of the trustees are present and eligible to vote.
- (13) A resolution under subsection (12)(b) must not be passed unless the member in question has – 40
 - (a) been given notice in writing that the resolution is to be considered, specifying the circumstances alleged to justify removal from office, and

- (b) been afforded a reasonable opportunity of being heard by or of making written representations to the trustees (whichever the member in question prefers).
- (14) A notice given under subsection (13)(a) must be given –
- (a) at least 10 clear business days before the meeting at which the resolution is to be considered, and 5
 - (b) in accordance with section 32.
- (15) The trustees may make such arrangements as they think fit for the administration of the committee, including for –
- (a) notifying the committee of when vacancies are to occur or have occurred, 10
 - (b) notifying the committee of when it is expected to meet and by when recommendations for candidates are expected to be received,
 - (c) the payment of reasonable remuneration for and the expenses of independent members. 15
- (16) The trustees must issue and maintain terms of reference for the committee which must be complied with by the committee and may include provision about –
- (a) committee procedure, including quorum and decision making,
 - (b) a code of conduct for independent members and compliance with it, 20
 - (c) reasons which may be relied on for removal of members under subsection (12)(b).
- ~~(17) The provisions of section 29(1) and (2) apply in respect of independent members as though references to trustees were references to the independent members.~~ 25
- (17) The trustees must prepare and from time to time review a policy in relation to the declaration of interests of independent members and the management of conflicts of interest.
- (17A) The Trust must prepare and maintain a register of all the interests declared by the independent members in accordance with the policy prepared under subsection (17). 30
- (18) In this section –
- “the committee” means the Nomination Committee established under subsection (1),
 - “independent member” means a member of the committee appointed under subsection (3)(b). 35

16 Appointment and terms of office of first appointed trustees

- (1) The first appointments of trustees under section 8(1)(a) must be made by the trustees ~~on, or~~ as soon as reasonably practicable after the date on which this section comes into force, and the trustees so appointed are to hold office from the new constitution date. 40

- (2) Of the first trustees appointed under section 8(1)(a) –
- (a) three are to hold office from the new constitution date until the end of the day before the date of the first anniversary of the new constitution date,
 - (b) three are to hold office from the new constitution date until the end of the day before the date of the third anniversary of the new constitution date,
- as the trustees must specify when they make each of those appointments. 5

17 Casual vacancies in office of appointed trustees

- (1) Subject to subsection (3), if a casual vacancy occurs in the office of a trustee appointed under section 8(1)(a), the trustees must appoint another person to fill the vacancy. 10
- (2) Subject to sections 11 and 12, a person appointed to fill a casual vacancy is to hold office during the remainder of the term for which the person they replace was appointed. 15
- (3) A casual vacancy occurring less than six months before the end of the vacating trustee's normal term of office may at the discretion of the trustees be left unfilled.

Elected Trustees

18 Eligibility to be elected 20

- (1) A person is eligible to stand for election as a trustee if on the date on which they are nominated for election in accordance with rules made under section 24 –
- (a) they are 18 years [of age](#) or older,
 - (b) they are eligible to be a charity trustee, and
 - (c) they meet the requirements of subsections (2) and (3).
- 25
- (2) The requirements of this subsection are –
- (a) the person is listed in the register of local government electors and their address in the register is –
 - (i) in a parish or former parish area in which any part of the Malvern Hills is located, or
 - (ii) (if not included in sub-paragraph (i)) within one mile of the boundary of any parish or former parish area in which any part of the Malvern Hills is located, or - (b) the person's main place of work is in a parish or former parish area in which any part of the Malvern Hills is located.
- 30 35
- (3) The requirements of this subsection are that the person is nominated in writing in accordance with any rules made under section 24 by two people, each of whom is listed in the register of local government electors and whose address in the register is in the Trust's electoral area. 40

- (4) ~~In the case of a dispute, the returning officer may in their absolute discretion determine whether a person meets the requirements of subsection (2).~~
- (4) It is for the returning officer to determine whether a nomination under subsection (3) is valid, including whether the person nominated for election meets the requirements of subsection (2). 5
- (5) A person may not stand for election as a trustee unless they have within the specified period made a declaration in the specified form of the particulars of their qualification to stand as a trustee.
- (6) A person is guilty of an offence if they – 10
- (a) make a declaration under subsection (5) which they know to be false in a material particular, or
 - (b) recklessly make such a declaration which is false in a material particular.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 4 on the standard scale. 15
- (8) In this section –
- “former parish area” means an area which was a parish on the date on which this Act is passed but has since ceased to be a parish,
 - “parish” means a parish for which there is a parish council or a parish meeting, 20
 - “specified” means specified in rules made under section 24.

19 Election and terms of office of first elected trustees

- (1) The first elections of the trustees elected under section 8(1)(b) must be held before the new constitution date and the trustees so elected are to hold office from the new constitution date. 25
- (2) Of the first trustees elected under subsection (1) –
- (a) three are to hold office from the new constitution date until the end of the day before the date of the second anniversary of the new constitution date,
 - (b) three are to hold office from the new constitution date until the end of the day before the date of the fourth anniversary of the new constitution date, 30
- as the trustees must specify when making the arrangements for those elections.
- (3) The date and time by which postal votes or votes cast electronically must be received by the returning officer (or if a method of election is used which requires a poll, the date on, and time at, which the poll is to be held) at the first election of trustees is a date and time to be fixed by the returning officer and the date so fixed must be – 35
- (a) at least 10 clear business days before the new constitution date,
 - (b) no more than 20 clear business days before the new constitution date. 40

20 Ordinary elections

- (1) An election of three of the six elected trustees is to be held so that their terms of office commence on the date of—
 - (a) the second anniversary of the new constitution date (“date A”),
 - (b) each fourth anniversary of date A. 5
- (2) An election of the other three of the six elected trustees is to be held so that their terms of office commence on the date of—
 - (a) the fourth anniversary of the new constitution date (“date B”),
 - (b) each fourth anniversary of date B.
- (3) The elections under subsections (1) and (2) are referred to in this Act as “ordinary elections”. 10
- (4) The date and time by which postal votes or votes cast electronically must be received by the returning officer (or if a method of election is used which requires a poll, the date on which the poll is to be held) at an ordinary election of trustees is a date and time to be fixed by the returning officer and the date ~~and time~~ so fixed must be—
 - (a) at least 10 clear business days before the relevant anniversary of the new constitution date,
 - (b) no more than 20 clear business days before the relevant anniversary of the new constitution date. 15 20

21 Casual vacancies in office of elected trustee where there are no other such vacancies

- (1) This section applies where—
 - (a) a casual vacancy occurs in the office of an elected trustee (“Trustee A”), 25
 - (b) there is no unfilled vacancy in the office of another elected trustee, and
 - (c) there is no interim appointed trustee in office in respect of another elected trustee.
- (2) If the vacancy occurs within the period of nine months ending on the date on which Trustee A’s term of office would otherwise have expired, the vacancy may remain unfilled until that date. 30
- (3) If subsection (2) does not apply and the vacancy occurs within the period of nine months ending on the next expiry date—
 - (a) the Trust must cause an election to be held to replace Trustee A at the same time as the next ordinary elections and the person elected is to hold office until the date on which Trustee A’s term of office would have expired, and 35
 - (b) the vacancy is to remain unfilled until the date on which the trustee elected in accordance with paragraph (a) takes office. 40

-
- (4) Subsection (3) does not apply if, in the opinion of the returning officer, holding the election in question on the date of the next ordinary elections would result in or be likely to result in a breach of any rule made under section 24 or would otherwise be impracticable ~~to hold~~ due to the proximity of the date of the election in question. 5
- (5) If neither subsection (2) nor (3) applies, the vacancy in the office of Trustee A must be filled by the appointment of an interim appointed trustee.
- (6) Subsections (7) and (8) make provision about the term of office of an interim appointed trustee.
- (7) Subject to subsection (3), if the vacancy in the office of Trustee A occurs within the first 18 months of Trustee A’s term of office – 10
- (a) the Trust must cause an election to be held to replace Trustee A at the same time as the next ordinary elections and the person elected is to hold office until the date on which Trustee A’s term of office would have expired, and 15
- (b) the interim appointed trustee is to remain in office until the end of the day before the person elected in accordance with paragraph (a) takes office.
- (8) If the vacancy in question occurs after the first 18 months of Trustee A’s term of office, the interim appointed trustee is to remain in office until – 20
- (a) ~~†~~Trustee A’s term of office would have expired, or
- (b) if before then, there is a further vacancy in the office of an elected trustee, until the end of the day before the replacement for Trustee A who is elected under section 22 takes office.
- (9) In this section – 25
- “the next expiry date” means the date on which, in accordance with section 9(5)(b), the terms of office of the other trustees are due to end,
- “the next ordinary elections” means the ordinary election of the other trustees next due to take place under section 20, and
- “the other trustees” means the group of three elected trustees mentioned in section 20(1) or (2) which does not include Trustee A. 30
- 22 Casual vacancies in office of elected trustee where there is another vacancy, etc**
- (1) This section applies where a casual vacancy occurs in the office of one or more elected trustees (each individually “a vacancy A”) and there is – 35
- (a) an existing vacancy in the office of another elected trustee (“vacancy B”) which has not been filled by an interim appointed trustee or an elected trustee, or
- (b) an interim appointed trustee ~~is~~ in office due to a previous vacancy in respect of another elected trustee (“vacancy C”). 40
- (2) Subsection (3) applies if a vacancy A occurs at any time other than within the period of nine months ending with the date of the next ordinary elections.

- (3) If this subsection applies, elections must be held to –
- (a) fill each vacancy A and fill vacancy B (in the case where subsection (1)(a) applies), or
 - (b) fill each vacancy A and replace the interim appointed trustee appointed in respect of vacancy C (in the case where subsection (1)(b) applies). 5
- (4) The returning officer must fix the date of elections held in accordance with subsection (3).
- (5) The date fixed under subsection (4) must be not more than 70 days after the date on which the chief executive has declared the office to be vacant as regards each vacancy A. 10
- (6) Subsection (7) applies if a vacancy A occurs within the period of ~~six~~nine months ending with the date of the next ordinary elections.
- (7) Subject to subsection (8), if this subsection applies, an election in respect of each of the vacancies A, B and C (as the case may be) is to be held on the date of the next ordinary election, whether or not an election was due to be held in respect of that vacancy at the next ordinary election. 15
- (8) Subsection (7) does not ~~have effect~~apply if, in the opinion of the returning officer, holding the election in question on the date of the next ordinary elections would result in or be likely to result in a breach of any rule made under section 24 or otherwise would be impracticable ~~to hold~~ due to the proximity of the date of the election in question. 20
- (9) If subsection (8) applies, the trustees may instead cause an election to be held after the date of the next ordinary elections and before the date of the subsequent ordinary elections.
- (10) The term of office of a person elected as a trustee under subsection (3), (7) or (9) – 25
- (a) commences –
 - (i) immediately the person is declared to be elected as a trustee in the case of an election under subsection (3) or (9),
 - (ii) at the same time as the other trustees elected at the next ordinary election in question, in the case of an election under subsection (7), 30
 - (b) ends at the time when the term of office of the trustee in respect of whom the vacancy arose would have ended had there not been a vacancy. 35
- (11) In the case of a vacancy occurring in consequence of the failure of, or other irregularity in relation to, an election, subsections (4) and (5) have effect subject to any provision made by any relevant rule made under section 24.
- (12) In this section, “the next ordinary elections” means the ordinary elections next due to take place under section 20. 40

23 Persons entitled to vote

- (1) A person is entitled to vote at an election of a trustee if on the relevant date the person would be entitled to vote as an elector in a local government election and the address at which they are registered in the register of local government electors published under section 13(1) or (3) of the Representation of the People Act 1983 is in the Trust’s electoral area. 5
- (2) In subsection (1), the “relevant date” is the date on which the returning officer fixes the date of the election.
- (3) Subject to subsections ~~(4) and (5)~~ (4), (5) and (6), the Trust’s electoral area comprises the following parishes – 10
- (a) the following parishes in the district of Malvern Hills –
 - (i) Guarlford,
 - (ii) Malvern Town,
 - (iii) Malvern Wells,
 - (iv) West Malvern, 15
 - (b) the following parishes in the district of Herefordshire –
 - (i) Colwall,
 - (ii) Mathon.
- (4) If the name of any of the parishes mentioned in subsection (3) is changed, then the reference to that name in that subsection is to be read as the new name of the parish. 20
- ~~(5) If any of the parishes mentioned in subsection (3) is abolished (and not replaced in whole or in part by any new, extended or amalgamated parish), then the area of the former parish that has been abolished remains in the Trust’s electoral area.~~ 25
- (5) Any area which falls within a parish mentioned in subsection (3) before the date on which this Act is passed remains in the Trust’s electoral area on and after that date whether or not it continues to fall within that parish and whether or not that parish continues to exist.
- (6) Subject to section 71(6), any area which does not fall within a parish mentioned in subsection (3) before the date on which this Act is passed does not fall within the Trust’s electoral area whether or not it falls within any of those parishes on or after that date. 30

*Elected trustees: holding of elections***24 Method of and rules about conduct of elections**

- (1) Subject to subsection (3)(b), elections of trustees are to take place by – 35
- (a) postal voting, or
 - (b) a combination of postal voting and voting by electronic means.
- (2) The trustees must make rules containing provision as to the conduct of elections of trustees. 40

- (3) The rules may in particular provide for—
- (a) nomination of candidates and obligations to declare their interests,
 - (b) systems and methods of voting at contested elections (including systems and methods other than by postal voting if the trustees so desire), 5
 - (c) filling of vacancies,
 - (d) supervision of elections,
 - (e) elections expenses and publicity,
 - (f) (subject to section 26) questioning of elections and the consequences of irregularities. 10

25 Returning officer

- (1) The trustees must appoint an individual to be the returning officer for elections of trustees.
- (2) All charges and expenses properly incurred by or in respect of the returning officer appointed under this section in relation to the holding of an election of a trustee must be reimbursed by the Trust. 15
- (3) The Trust may treat those expenses as including all costs properly incurred by the returning officer in connection with or in contemplation of any legal proceedings arising out of the election in question (including any criminal proceedings against the returning officer), whether or not the proceedings are in fact instituted. 20
- (4) The returning officer may take such steps as they think appropriate to remedy any act or omission on their part, or on the part of a relevant person, which—
- (a) arises in connection with any function the returning officer or relevant person has in relation to the election, and 25
 - (b) is not in accordance with the rules made under section 24 or any other requirements applicable to the election.
- (5) But a returning officer may not under subsection (4) re-count the votes given at an election after the result has been declared.
- (6) In this section, “relevant person” means— 30
- (a) a person providing goods or services to the returning officer,
 - (b) a deputy of any person mentioned in paragraph (a) or a person appointed to assist, or in the course of their employment assisting, such a person in connection with any function they have in relation to the election. 35

26 Legal proceedings relating to elections of trustees

- (1) The provisions of Part III of the 1983 Act (~~which makes provision about legal proceedings relating to elections~~)(legal proceedings) which apply to an election under the local government Act apply to an election of an elected trustee under this Act as if it were an election under the local government Act. 40

- (2) The provisions applied by subsection (1)(~~1~~) are modified by the substitution, for any reference to the proper officer of the authority, of a reference to the returning officer.
- (3) The provisions applied by subsection (1) have effect with such further ~~adaptations, modifications and exceptions~~modifications as may be necessary. 5
- (4) Section 189 of the 1983 Act applies to an election of an elected trustee as it applies to an election under the local government Act.
- (5) In this section –
 - “the 1983 Act” means the Representation of the People Act 1983,
 - “~~the~~ local government Act” has the same meaning as in section 203 (local government provisions as to England and Wales) of the 1983 Act. 10

27 Register of electors

- (1) The relevant electoral registration officer must supply to the returning officer, free of charge and on publication, one copy of –
 - (a) any revised version of the register published under section 13(1) or (3) of the 1983 Act, and 15
 - (b) any notice setting out an alteration to the register published under section 13A(2), 13AB(2) or 13B(3), (3B) or (3D) of that Act.
- (2) In subsection (1), the duty to supply one copy of the register is a duty to supply it in data form unless, prior to publication, the returning officer to whom it is to be supplied has requested in writing a printed copy instead. 20
- (3) No person to whom a copy of the register has been supplied under this section may –
 - (a) supply a copy of the full register,
 - (b) disclose any information contained in it (that is not contained in the edited register), or 25
 - (c) make use of any such information,
 other than for the purposes of an election of a trustee.
- (4) In this section –
 - “the 1983 Act” means the Representation of the People Act 1983, 30
 - “the edited register” has the same meaning as in sub-paragraph 10(1) of Schedule 2 to the 1983 Act,
 - “the relevant electoral registration officer” means the electoral registration officer for any area within the Trust’s electoral area.

Interests of trustees

35

28 Benefits to trustees

~~Subject to subsection (2), n~~No part of the income or property of the Trust may be paid, transferred or applied by way of benefit to any trustee except in accordance with –

- (a) rules made under section 7,
- (b) sections 185 to ~~188 and~~ 189 of the Charities Act 2011,
- (c) the provisions of this Act.

29 Interests of trustees

- (1) The trustees must prepare and from time to time review a policy in relation to the declaration of interests of trustees and the management of conflicts of interest. 5
- (2) The Trust must prepare and maintain a register of all the interests declared by the trustees in accordance with the rules made under section 7 and the policy prepared under subsection (1). 10
- (2A) The provisions of a policy under subsection (1) and of a register under subsection (2) are to be treated, for the purposes of section 7(4), as provisions of a document under section 7(2).
- (3) For the purpose of this Act and any rules made under section 7, no conflict of interest is to be taken to arise as respects a trustee solely for the reason that the trustee (or a connected person) is liable to pay the levy under section ~~34~~33, in any case where the trustees are solely considering financial matters (including the budget of the Trust or the setting of the levy). 15

Insurance and limitation of liability

30 Indemnity insurance for ~~trustees and~~ returning officer 20

- (1) Subject to subsection (2), the Trust may subscribe to, and pay premiums ~~for~~ for a policy of insurance to indemnify any returning officer who exercises functions under this Act against personal liability arising from acts or omissions of the returning officer in relation to the holding of an election of a trustee. 25
- (2) The terms of insurance under subsection (1) must be so framed as to exclude the provision of any indemnity for a returning officer in respect of –
 - (a) any costs which arise in whole or in part from any wrongful act or omission committed intentionally or recklessly by the returning officer,
 - (b) any penalty imposed in relation to a criminal offence. 30
- ~~(3) This section is without prejudice to section 189 of the Charities Act 2011 (which makes provision about indemnity insurance for charity trustees).~~

31 Limitation of liability of and indemnity for trustees or employees

- (1) Subject to subsection (2), no trustee or employee of the Trust, by being party to or executing any contract, deed or other instrument in their capacity as a trustee or employee on behalf of the Trust or otherwise lawfully exercising any of the powers exercisable by the Trust may be sued or prosecuted either individually or with any other trustee or employee. 35

- (2) Subsection (1) does not extend to—
- (a) proceedings which could give rise to liability to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising),
 - (b) criminal proceedings in which the trustee or employee may be convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by the trustee or employee, or 5
 - (c) any proceedings in which the trustee or employee may be found liable to the Trust arising out of any conduct—
 - (i) which the trustee or employee knew (or must reasonably be assumed to have known) was not in the interests of the Trust, or 10
 - (ii) in the case of which the trustee or employee did not care whether it was in the best interests of the Trust or not.
- (3) Subject to subsection (4) and without prejudice to any indemnity to which they may otherwise be entitled, every trustee and employee of the Trust is indemnified out of the property and income of the Trust in respect of all claims made against them in respect of the exercise of their functions as a trustee or employee. 15
- (4) The indemnity under subsection (3) does not extend to— 20
- (a) a fine imposed in criminal proceedings, or
 - (b) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising),
 - (c) any liability incurred by the trustee or employee in defending any criminal proceedings in which the trustee or employee is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by the trustee or employee, or 25
 - (d) any liability incurred by the trustee or employee that arises out of any conduct— 30
 - (i) which the trustee or employee knew (or must reasonably be assumed to have known) was not in the interests of the Trust, or
 - (ii) in the case of which the trustee or employee did not care whether it was in the best interests of the Trust or not. 35
- (5) No trustee or employee of the Trust is to be liable for any loss to the Trust except ~~in relation to~~ loss caused—
- (a) ~~in respect of~~ as a result of the commission of an offence by the trustee or employee,
 - (b) ~~in respect of any non-compliance~~ as a result of any failure by the trustee or employee to comply with any requirement of a regulatory nature (of whatever nature), 40
 - (c) ~~arising out of~~ as a result of any fraud or dishonesty, or wilful or reckless misconduct, by the trustee or employee, or
 - (d) ~~in respect of~~ as a result of any conduct— 45

- (i) which the trustee or employee knew (or must reasonably be assumed to have known) was not in the interests of the Trust, or
 - (ii) in the case of which the trustee or employee did not care whether it was in the best interests of the Trust or not. 5
- (6) For the purposes of subsection (4)(c) –
 - (a) the reference to a conviction is a reference to one that has become final,
 - (b) a conviction becomes final –
 - (i) if not appealed against, at the end of the period for bringing an appeal, or 10
 - (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of, and
 - (c) an appeal is disposed of –
 - (i) if it is determined and the period for bringing any further appeal has ended, or 15
 - (ii) if it is abandoned or otherwise ceases to have effect.

Notices

32 Giving of notices under Part 2

- (1) A notice required or authorised to be given under any provision of this Part may be served – 20
 - (a) by post,
 - (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied, or
 - (c) with the consent of the recipient and, subject to subsections ~~(3)~~(4) to (7), by electronic transmission to an address notified by the recipient to the Trust in writing. 25
- (2) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978 as it applies for the purposes of this section, the proper address of any person in relation to the giving to that person of a notice under subsection (1) is, if that person has given an address for the giving of notices, that address, and otherwise the last known address of that person at the time of giving notice. 30
- (3) Any notice required to be given under any provision of this Part is taken to have been delivered – 35
 - (a) 24 hours after being sent by electronic transmission, and
 - (b) on being handed to the recipient where it is delivered to such recipient personally.
- (4) Where a notice required to be given for the purposes of this Part is given by electronic transmission the requirement is to be taken to be fulfilled only where – 40

- (a) the recipient of the notice to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission,
 - (b) the notice is legible in all material respects, and
 - (c) the notice or document is in a form sufficiently permanent to be used for subsequent reference. 5
- (5) Where the recipient of a notice given by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or part of that notice the sender must provide such a copy as soon as reasonably practicable.
- (6) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with subsection (7). 10
- (7) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this ~~subsection~~[Part](#) –
 - (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose, and 15
 - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.
- (8) This section does not exclude the employment of any method of service not expressly provided for by it. 20
- (9) In this section, “legible in all material respects” means that the information contained in the notice is available to ~~that person~~[the recipient](#) to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

PART 3 25

FINANCE

33 The levy

- (1) The Trust continues to be a levying body within the meaning of section 74(1) of the 1988 Act (levies).
- (2) Consequently, the Trust may continue to issue a levy to the councils in respect of any financial year under and in accordance with levy regulations – 30
 - (a) to meet the expenses of the Trust, and
 - (b) to provide for an amount for contingencies of up to 10 per cent. of the estimated expenditure of the Trust for the year in respect of which the levy is issued. 35
- [\(2A\) For the purposes of section 74 of the 1988 Act, the 1992 Regulations \(as they continue to apply to the Trust\), any other levy regulations and in relation to the levy, this section is to be taken to be the enactment which includes the power which the Trust would have had, apart from section 117 of the 1988 Act, in respect of the financial year beginning in 1990 to issue a precept to,](#) 40

make a levy on, have its expenses paid by, or seek payment from a county council or a charging authority.

- (3) Any reference in levy regulations (including in regulation 3(1) of the 1992 regulations) to the expenditure of the levying body in respect of which ~~a relevant precepting power~~ a power mentioned in section 74(1)(b) of the 1988 Act would have been exercisable is to be taken as a reference to the expenditure described in paragraphs (a) and (b) of subsection (2). 5
- (4) The ~~parishes~~ area in respect of which a levy may be issued by the Trust ~~are~~ comprises –
 - (a) the following parishes in the district of Malvern Hills – 10
 - (i) Guarlford,
 - (ii) Malvern Town,
 - (iii) Malvern Wells,
 - (iv) West Malvern,
 - (b) the following parishes in the district of Herefordshire – 15
 - (i) Colwall,
 - (ii) Mathon.
- (5) If the name of any of the parishes mentioned in subsection (4) is changed, then the reference to that name in that subsection is to be read as the new name of the parish. 20
- ~~(6) If any of the parishes mentioned in subsection (4) is abolished (and not replaced in whole or in part by any new, extended or amalgamated parish); then the levy may continue to be issued in (and only to the extent of) the area of the former parish.~~
- (6) Any area which falls within a parish mentioned in subsection (4) immediately before the date on which this Act is passed remains in the area in respect of which a levy may be issued by the Trust on and after that date whether or not it continues to fall within that parish and whether or not that parish continues to exist. 25
- (6A) Subject to section 71(6), any area which does not fall within a parish mentioned in subsection (4) immediately before the date on which this Act is passed does not fall within the area in respect of which a levy may be issued by the Trust whether or not it falls within any of those parishes on or after that date. 30
- (7) The levy may be issued either before or after the Trust has become liable to any expenses. 35
- (8) The amount due from each of the parishes mentioned in subsection (4) is to be raised by precept of or the issue of a levy by the Trust on the council in whose area the parish is situated, requiring that council to pay to the Trust the amount specified in the precept or specified by the Trust when it issues the levy ~~by the means~~ in such manner as may be specified in the precept or by the Trust when it issues the levy. 40

- (9) The council must collect the amount of the precept or amount specified by the Trust when it issues the levy from those persons who are liable to pay council tax in the respective parishes.
- (10) The amount of the levy on the date on which this section comes into force (and for the remainder of the financial year in which that date falls) is the same amount as it was immediately before that date. 5
- (11) Annual increases in the maximum amount of levy that may be issued under ~~the~~levy regulations are to ~~be calculated under levy regulations (including regulation 5 of the 1992 regulations) in the same way as they were calculated in respect of the levy before this section came into force~~continue to be calculated in accordance with levy regulations. 10
- (12) For the purposes of that calculation, the amount ascertained in accordance with regulation 5(2)(a) of the ~~Levying Bodies (General) Regulations 1990~~1992 Regulations for the purposes of a levy issued in respect of the financial year beginning in 1993 was £296,716. 15
- (13) Voluntary contributions or subscriptions paid to the Trust may be applied at the desire of the contributor or donor to reduce the amount of the levy issued in respect of any parish.
- (14) The 1992 ~~†~~Regulations continue to apply to the Trust as a levying body and in relation to any levy to be issued ~~or anticipated by the Trust~~by the Trust or anticipated by the councils (or either one of them) in respect of any financial year ~~to which those regulations apply~~ and ~~subsections (15) to (17)~~ subsections (2A), (3), (17) and (18) make provision about the application of those regulations to the Trust. 20
- ~~(15) For the purposes of the 1992 regulations as they continue to apply to the Trust and the levy, this section is to be taken to be the enactment which includes the power which the Trust would have had, apart from section 117 of the Act, in respect of the financial year beginning in 1990 to issue a precept to, make a levy on, have its expenses paid by, or seek payment from a county council or a billing authority.~~ 25 30
- (16) The amount of the levy to be borne by each of the councils is to be apportioned in accordance with ~~regulation 6 of the 1992~~levy regulations as though this section were a relevant Act which provides for the amount of the levy to be borne by the relevant authorities in a proportion calculated by reference to a factor connected with rating. 35
- (17) Subject to the provisions of this section, for the purposes of section 74 of the 1988 Act, the 1992 ~~†~~Regulations as they apply to the Trust, any other levy regulations and in relation to the levy –
- (a) “levying body” includes the Trust,
 - (b) “relevant Act” includes this section, and where the 1992 ~~†~~Regulations refer to the relevant Act imposing a requirement, or otherwise making provision for or about something which would have had effect apart from section 117 of the 1988 Act, the reference is to be taken instead 40

- to be a reference to this section imposing the requirement or making provision for or about that thing,
- (c) Herefordshire Council and Malvern Hills District Council are both a “relevant authority”, in respect of the Trust,
- (d) references to the relevant precepting power, (including references to a relevant precepting power which would have been exercisable apart from section 117 of the 1988 Act), are to be construed as references to the power to levy as continued by virtue of subsection (1). 5
- (18) In this section –
- “the 1988 Act” means the Local Government Finance Act 1988, 10
- “the 1992 ~~regulations~~” means the Levying Bodies (General) Regulations 1992 ~~or any regulations which replace them~~,
- “the councils” means Herefordshire Council and Malvern Hills District Council,
- “the levy” means the levy which may continue to be issued under and in accordance with this section, 15
- “levy regulations” means regulations made under section 74(2) of the 1988 Act.

34 Provision for capital and income

- (1) Capital money received by the Trust from the sale, letting, grant or other disposal of land or interests in land under the provisions of this Act may be applied by the Trust for the repayment of the principal of any amount borrowed or any purpose for which capital money may properly be applied. 20
- (2) Any ~~sums~~ received by the Trust from the sale, letting, grant or other disposal of land or interests in land under the provisions of this Act other than capital money is to be treated as income of the Trust. 25

35 Power to borrow and mortgage land

- (1) Subject to the provisions of this section, the Trust may by any method or methods borrow or raise money as may be required by them for the purposes of this Act. 30
- (2) Subject to subsections (4) and (5), money borrowed by the Trust may be borrowed upon the security of all or any of the revenues and property of the Trust (including the contributions authorised to be raised by the levy in accordance with section 33) and the Trust may mortgage or assign over to the persons by or on behalf of whom such money is advanced those revenues and property or any part of them. 35
- (3) Subject to subsections (4) and (5), the Trust may charge all or any of the revenues and property of the Trust (including the contributions authorised to be raised by the levy in accordance with section 33) as security for a grant or the discharge of an obligation. 40

- (4) The Trust may only exercise the powers ~~of~~in subsection (2) or (3) in relation to existing relevant land with the consent of the Secretary of State and upon and subject to any terms and conditions and for any period as the Secretary of State may direct.
- (5) Despite section 101 of the Law of Property Act 1925 (powers incident to estate or interest of mortgage~~e~~) or anything in any deed, where the Trust mortgage or assign over to any person any existing relevant land ~~or existing building~~, the mortgagee or, as the case may be, the assignee does not have power to sell the land ~~or building~~ or ~~a~~ power to cut and sell, or to contract for the cutting and sale of, timber or other trees on the land. 5 10
- (6) The Trust must comply ~~as appropriate~~ with sections 124 to 126 of the Charities Act 2011 in relation to any mortgage of land ~~or buildings~~, other than any mortgage in relation to which the consent of the Secretary of State is required under this section.
- (7) For the purposes of this section – 15
- “ancillary land” means land to which section 75 applies by virtue of subsection (1) of that section,
- ~~“excepted building” and “excepted land” mean –~~
- (a) ~~any buildings or land acquired before the date on which this Act was passed under section 9 of the 1995 Act (power to provide buildings for use by the Conservators) or section 53 of the Commissioners Clause Act 1847 (power to provide offices, etc.), or with the authority of an order under section 105 of the Charities Act 2011,~~ 20
- (b) ~~any ancillary land or buildings on ancillary land;~~ 25
- ~~“existing buildings” means any buildings on existing relevant land which was owned by the Trust on the date on which this Act was passed, other than an excepted building;~~
- “existing relevant land” means any part of the Malvern Hills, other than ~~excepted~~ancillary land, which was owned by the Trust on the ~~date~~day on which this Act ~~was~~is passed. 30

36 Contributions by Worcestershire County Council and Herefordshire Council

- (1) The councils may each contribute to the funds of the Trust such sums as they may respectively fix by resolution.
- (2) The councils may either – 35
- (a) treat the whole amount of any such contribution as general expenses, or
- (b) treat the whole or any part of any such contribution as special expenses to be levied upon such parish or parishes in their respective areas as the council in question thinks fit. 40
- (3) No rate, levy or charge of any nature may be raised for the purposes of this section in respect of any of the parishes in respect of which a levy may be issued by the Trust under section 33.

- (4) In this section, “the councils” means Worcestershire County Council and Herefordshire Council.

37 Report and annual accounts

- (1) Despite anything in Part 8 of the Charities Act 2011 to the contrary, the Trustees must always arrange for its accounts in respect of any financial year to be audited annually, whatever its gross income and the aggregate value of its assets. 5
- (2) The Trust’s auditors must be appointed by the trustees at the annual meeting for such period and for such reasonable remuneration as the Trustees think fit. 10
- (3) Each year at one of its meetings, the Trust must consider a report of the activities of the Trust in the preceding financial year and approve the accounts of the Trust for that year.
- (4) The meeting referred to in subsection (3) must involve the physical presence of those trustees who attend the meeting unless there are exceptional circumstances which in the opinion of the chief executive prevent the physical presence of all the trustees. 15
- (5) At least 10 clear business days before the meeting referred to in subsection (3), the Trust must give public notice of the meeting, including by advertisement published in ~~a local newspaper~~ one or more local newspapers (if there are any) circulating in the area in which the Malvern Hills is situated and on the Trust’s website, stating in the advertisement that the report and accounts referred to in that subsection are available for inspection at the offices of the Trust. 20

PART 4

25

PUBLIC ACCESS AND MANAGEMENT OF MALVERN HILLS

Public access and duty to keep unenclosed, etc

38 Public access to the Malvern Hills

Subject to the provisions of this Act and compliance with all rules, regulations and byelaws relating to the Malvern Hills for the time being in force, the public have a right of access to the Malvern Hills on foot or horseback for the purpose of open-air recreation. 30

39 Occupiers’ Liability, etc

- (1) The operation of section 38 in relation to any land does not increase the liability, under any enactment not contained in this Act or under any rule of law, of a person interested in the land or any adjoining land in respect of the state of the land or of things done or omitted to be done on the land. 35

- (2) A person entering the Malvern Hills in accordance with section 38 is not, for the purposes of the Occupiers' Liability Act 1957 (or any successor legislation), a visitor of any occupier of the Malvern Hills or of the Trust.
- (3) Subject to subsection (5), at any time when the right conferred by section 38 is exercisable, the Trust owes no duty by virtue of this section to any person in respect of—
 - (a) a risk resulting from the existence of any natural feature of the landscape, or any river, stream, ditch or pond whether or not a natural feature, or
 - (b) a risk of that person suffering injury when passing over, under or through any wall, fence or gate, except by proper use of the gate or of a stile.
- (4) For the purposes of subsection (3), any plant, shrub or tree, of whatever origin, is to be regarded as a natural feature of the landscape.
- (5) Subsection (3) does not prevent the Trust from owing a duty by virtue of this section in respect of any risk where the danger concerned is due to anything done by the Trust—
 - (a) with the intention of creating that risk, or
 - (b) being reckless as to whether that risk is created.
- (6) In determining whether any, and if so what, duty is owed by virtue of section 1 of the Occupiers' Liability Act 1984 by any occupier of premises in or forming part of the Malvern Hills or [by](#) the Trust at any time when the right conferred by section 38 is exercisable in relation to those premises, regard is to be had, in particular, to—
 - (a) the fact that the existence of that right ought not to place an undue burden (whether financial or otherwise) on the occupier or the Trust as the case may be,
 - (b) the importance of maintaining the character of the Malvern Hills, including features of historic, traditional, geological or archaeological interest, and
 - (c) any code of conduct issued under section 20 of the Countryside and Rights of Way Act 2000 (and for the purposes of this paragraph any such code of conduct is to be taken to apply to the Malvern Hills as it applies to access land within the meaning of Part 1 of that Act).
- (7) For the purposes of subsection (1), "interest", in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an estate or interest in land or by virtue of a licence or agreement, and in particular includes rights of common and sporting rights [exercisable over the Malvern Hills](#), and references to a person interested in land are to be construed accordingly.

40 Duty to keep the Malvern Hills unenclosed

- (1) Except as otherwise provided in this Act, no enclosure may be made or building erected on the Malvern Hills.

- (2) Except as otherwise provided in this Act, the Trust must –
- (a) at all times keep the Malvern Hills unenclosed and unbuilt on as open space for the recreation and enjoyment of the public, and
 - (b) by all lawful means prevent, resist and abate –
 - (i) all enclosures and encroachments upon and all attempts to enclose or encroach upon the Malvern Hills or any part of the Malvern Hills, and 5
 - (ii) any attempt to appropriate or use the Malvern Hills or the timber on the Malvern Hills for any purpose inconsistent with this Act. 10
- (3) In subsection (2), “unbuilt on” has the same meaning given by section 6(4).

41 Protection of the Malvern Hills

- (1) ~~The~~Subject to the provisions of this Act, the Trust may take any action it sees fit to –
- (a) protect trees, timber, shrubs, herbage, turf or any other thing growing on the Malvern Hills, and 15
 - (b) prevent any unlawful felling, cutting or damaging of those things.
- (2) ~~Without prejudice to the generality of section 40~~Subject to the provisions of this Act, the Trust may take all necessary measures to prevent –
- (a) any unlawful digging on or removal of stone, soil, gravel and turf from land forming part of the Malvern Hills, or 20
 - (b) any other damage to land forming part of the Malvern Hills.
- (3) This section is without prejudice to the generality of section 40.

42 Enclosure, encroachment and building: enforcement

- (1) The Trust may, in complying with its duty under section 40(2)(b), take all necessary measures to prevent or remedy any enclosure or encroachment on the Malvern Hills and to preserve and keep them as open space and free from enclosure and building. 25
- (2) Any expenses reasonably incurred by the Trust in taking measures under subsection (1) may be recovered by it from the person responsible for the enclosure or encroachment. 30
- (3) Without prejudice to any other jurisdiction or remedy, a county court may, on the making of an application, make an order requiring a person to –
- (a) discontinue or refrain from any unlawful enclosing or building upon any part of the Malvern Hills, 35
 - (b) remove any unlawful enclosure or building from any part of the Malvern Hills, or
 - (c) discontinue or refrain from taking any of the actions referred to in section 41(1)(b) or (2).

- (4) No application may be made for an order under subsection (3)(b) after the expiration of 12 years from the making of the enclosure or the erection of the building in question.
- (5) An application for an order under subsection (3)(a) or (b) may be made by any person, but an application under subsection (3)(c) may only be made by the Trust. 5
- (6) No order under subsection (3) may be made in respect of anything done by the Trust in pursuance of any of its functions under any enactment (including the provisions of this Act) or other rule of law.
- (7) Where an order made under subsection (3) requiring a person to remove any enclosure or building has not been complied with, the Trust may remove the enclosure or building itself or arrange for it to be done. 10
- (8) Any expenses reasonably incurred by the Trust in removing any enclosure or building under subsection (7) or arranging for it to be done may be recovered by it from the person who was required by the order to do so. 15

Regulation and management of the Malvern Hills: general

43 General power to regulate and manage Hills

The Malvern Hills shall be regulated and managed by the Trust under and in accordance with this Act.

44 Rights of common

20

The Trust may by all lawful means regulate the exercise of any rights of common exercisable ~~upon or in~~over the Malvern Hills.

Access to and fencing, etc of the Malvern Hills

45 Regulation and prohibition of access to Malvern Hills

- (1) Subject to subsection (5), the Trust may, by notices posted in such places on the Malvern Hills as it thinks fit, regulate or prohibit, for such period as may be reasonably necessary, access by the public or any section of the public to any part of the Malvern Hills for any one or more of the reasons mentioned in subsection (2) ~~—~~. 25
- (2) Those reasons are — 30
 - (a) 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 or restoration of the natural beauty of the Malvern Hills or their suitability for grazing or recreation,
 - (c) for the preservation of trees on the Malvern Hills, 35
 - (d) for the protection or preservation of flora or fauna or any site of special scientific interest on the Malvern Hills,

- (e) after consultation with the chief officer of police and the chief fire officer, 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, in the case where the part of the Malvern Hills in question is, in the opinion of the Trust, a [temporary](#) source of danger. 5
- (3) The Trust may (despite anything in this Act to the contrary) fence and enclose, or cause to be fenced and enclosed, parts of the Malvern Hills for as long as appears necessary to the Trust for the regulation or prohibition of access as is mentioned in subsection (1) for any one or more of the reasons mentioned in subsection (2)(a), (b), (c), (d) or (f). 10
- (4) In exercise of the powers ~~of~~[in](#) subsections (1) and (3), but only for the reasons mentioned in subsection (2)(e) or (f), the Trust may regulate or prohibit access by the public to, over or along any ~~footpath or bridleway~~[public right of way](#) on or over the Malvern Hills.
- (5) In any case where the Trust exercises the powers ~~of~~[in](#) subsections (1) and (3) for any of the reasons mentioned in subsection (2)(a), (b), (c) or (d), a gate or other appropriate means of access – 15
- (a) ~~must be provided by the Trust at any point where a footpath or bridleway crosses a fence put in place under subsection (3);~~
- (b) may be provided at any ~~other~~ place which the Trust considers appropriate, taking into account the reason for the fencing. 20
- (6) ~~No gate or other appropriate means of access may be provided under subsection (5)(a) unless the Trust represents to a competent authority as respects the footpath or bridleway that it is expedient that the gate or other appropriate means of access should be erected on the footpath or bridleway in question, and the provisions of subsections (2) to (4) and (6) of section 147 of the Highways Act 1980 have effect in relation to such a representation as though it were a representation made under subsection (1) of that section.~~ 25
- (7) ~~Section 146 of the Highways Act 1980 applies to a gate or other appropriate means of access provided under subsection (5)(a) as though references to the owner of land were references to the Trust.~~ 30
- (8) When providing a gate or other appropriate means of access under ~~section (5)(b)~~[subsection \(5\)](#), the Trust must have regard to the needs of those who would otherwise be entitled to gain access between the areas crossed by the fence, including those on horseback and people with disabilities. 35
- (9) A notice posted in accordance with this section must include a statement of the reasons for the regulation or prohibition and of its intended duration.
- (10) Nothing in subsection (1) authorises the Trust to regulate or prohibit access to any part of the Malvern Hills by any person going with good reason to or from any land which is accessible only over that part of the Malvern Hills. 40
- (11) Nothing in this Part of this Act prejudices or affects the exercise of powers by any person under any enactment by virtue of which access to the Malvern Hills is or may be regulated or prohibited.

(12) In this section –

“chief fire officer” means the person with responsibility for managing the fire and rescue service for the fire and rescue authority in whose area the relevant part of the Malvern Hills is situated,

“chief officer of police” means the chief officer of the police force in whose area the relevant part of the Malvern Hills is situated,

“competent authority” has the same meaning as in section 147 of the Highways Act 1980,

“fire and rescue authority” means a fire and rescue authority within the meaning of Part 1 of the Fire and Rescue Services Act 2004,

“site of special scientific interest” means an area notified under section 28(1) of the Wildlife and Countryside Act 1981.

46 Regulation and prohibition of access to Malvern Hills: supplementary

(1) Before exercising the powers ~~of~~in section 45(1) in respect of a period exceeding 42 days, the Trust must –

(a) consult the Historic Buildings and Monuments Commission for England if the reason ~~for the exercise of the power is the reason mentioned in section 45(2)(a),~~mentioned in section 45(2)(a) is a reason for the exercise of the power,

(b) seek the advice of Natural England if the reason ~~for the exercise of the power is the reason purpose mentioned in section 45(2)(d)~~mentioned in section 45(2)(d) is a reason for the exercise of the power.

(2) Except in an emergency, before exercising the powers ~~of~~in section 45(1) in respect of a period exceeding 42 days, the Trust must consult the Sport and Recreation Alliance and at least one local association, authority or other body having a substantial interest in –

- (a) the area to be affected by the exercise of those powers, and
- (b) the use of the Malvern Hills for recreational purposes.

(3) Except in an emergency, before exercising the powers ~~of~~in section 45 for any of the reasons mentioned in section 45(2)(a), (b), (c) or (d) in respect of a period exceeding 42 days, the Trust must give notice of the proposed regulation or prohibition, including –

- (a) its intended duration,
- (b) the reasons for which it is proposed to be made, and
- (c) an indication that written representations relating to the regulation or prohibition may be made to the Trust within a period specified in the notice.

(4) A notice required by subsection (3) must be published –

- (a) on the Trust’s website,
- (b) by advertisement in one or more local newspapers (if there are any) which circulate in any part of the Malvern Hills, and
- (c) in a newsletter or similar publication published by the Trust.

- (5) In subsection (4)(c), “published” includes published or issued electronically.
- (6) The period specified in accordance with subsection (3)(c) must be no shorter than 28 days beginning with the day after the date on which the notice is ~~advertised~~published.
- ~~(7) Before giving effect to their proposals for regulating or prohibiting access, the Trust must consider all representations made.~~ 5
- (7) Before exercising the power in section 45(1) in respect of a period exceeding 42 days, the Trust must—
 - (a) where it is required to consult or seek advice in accordance with subsection (1) or (2), consider all representations relating to the regulation or prohibition that are duly made to the Trust by the bodies referred to in those subsections, and 10
 - (b) where it is required to give notice in subsection (3), consider all written representations relating to the regulation or prohibition that are duly made to the Trust within the period specified in the notice. 15
- (8) If the Trust has exercised its powers under section 45(1) it must—
 - (a) review any continuing regulation or prohibition of access no later than one year after the regulation or prohibition was first implemented and after then at intervals of no more than one year,
 - (b) in the case of a continuing regulation or prohibition of access for the reason mentioned in section 45(2)(e), review that regulation or prohibition no later than two months after the regulation or prohibition was first implemented and after then at intervals of no more than two months, 20
 - (c) publish on its website a description of the nature and extent of the exercise of the powers and make a copy of any such description available on reasonable request. 25
- (9) Except in an emergency, each time the Trust carries out a review under subsection (8)(a) or (b) in the case where the power in section 45(4) is being exercised in conjunction with the power in section 45(1), the Trust must consult the highway authority in whose area in which the part of the public right of way over or along which access is regulated or prohibited is located. 30

47 Fencing dangerous places

The Trust may, without notice, fence (or cause to be fenced) any part of the Malvern Hills that ~~it considers to be dangerous~~in its opinion gives rise to a permanent danger. 35

48 Fencing and other means of securing common land

- (1) Subject to the provisions of this section and without prejudice to section 49(1)(b), the Trust may fence common land within the Malvern Hills or install or use and maintain any other means of enclosure (or cause the common land in question to be fenced or enclosed) if the Trust considers that doing so is 40

- desirable for the prevention of animals straying from the common land in question onto land which is not common land.
- (2) A fence or other means of enclosure installed under subsection (1) need not necessarily be installed at the location of the boundary of the common land in question. 5
- (2A) The power in subsection (1) may also be exercised to prevent animals straying onto the B4424 road from that part of the common land known as Old Hills which lies to the west of that road. Old Hills is registered with number CL28 in the register kept under section 1 of the Commons Act 2006 by Worcestershire County Council. 10
- (3) Despite section 38(6)(a) of the Commons Act 2006, the exercise of the power under subsection (1) is subject to the provisions of Part 3 of that Act except in relation to the provision of a cattle-grid in ~~a road which is~~ a highway.
- (4) ~~In~~Subject to subsection (6), in any case where it exercises the power under subsection (1), the Trust must provide gates or other appropriate means of access – 15
- ~~(a) at (or in the case of a cattle-grid, adjacent to) any point where any road (other than a road which is a highway), footpath or bridleway crosses the fence or other means of enclosure, or~~
- (a) at (or in the case of a cattle-grid, adjacent to) any point where the fence or other means of enclosure crosses any road, whether or not the road is a highway, 20
- (aa) at any point where the fence or other means of enclosure crosses any public right of way, and
- (b) at any other places which the Trust considers are appropriate for ensuring public access to the Malvern Hills is maintained, taking into account the purpose of the fencing or other means of enclosure. 25
- (4A) No later than 14 days after the day on which a gate or other appropriate means of access is provided under subsection (4)(a) in respect of a highway or under subsection (4)(aa), the Trust must notify the highway authority in writing of the location of the gate or appropriate means of access. 30
- (4B) No cattle-grid may be installed as a means of enclosure under subsection (1) in a public right of way (whether or not the public right of way is within a road).
- (5) No gate or other appropriate means of access may be provided under ~~subsection (4)(a)~~subsection (4)(aa) in respect of a public right of way unless the Trust represents to a competent authority as respects the ~~footpath or bridleway~~public right of way that it is expedient that the gate or other appropriate means of access should be erected on the ~~footpath or bridleway~~public right of way in question, and the provisions of subsections (2) to (4) and (6) of section 147 of the Highways Act 1980 have effect in relation to such a representation as though it were a representation made under subsection (1) of that section and as though references to a footpath or 35 40

bridleway included references to a byway open to all traffic or a restricted byway.

- (6) Section 146 of the Highways Act 1980 applies to a gate or other appropriate means of access provided under ~~subsection (4)(a)~~subsection (4)(aa) as though references to the owner of land were references to the Trust. 5
- (7) When providing a gate or other appropriate means of access under subsection (4)(b), the Trust must have regard to the needs of those who are entitled to gain access between the areas crossed by the fence or other means of enclosure, including those on horseback and people with disabilities.
- (8) Before exercising the power under subsection (1) ~~in the case where the means of enclosure proposed to be used by the Trust is a cattle-grid to be provided wholly or partly in road which is a highway~~in respect of any part of a highway which is not a public right of way, the Trust must – 10
 - (a) obtain the consent in writing of the highway authority for the ~~road~~highway in question (subject to such reasonable conditions as the highway authority may impose), and 15
 - (b) consult such owners and occupiers of land as the highway authority consider requisite.
- (9) The provisions of the Highways Act 1980 specified in column 1 of Schedule 3 apply to the Trust in the manner specified in column 2 of that Schedule in the case where the means of enclosure used or proposed to be used by the Trust in exercise of the power under subsection (1) is a cattle-grid to be provided wholly or partly in a ~~road which is a~~ highway. 20
- (10) The Trust may enter into agreements with a highway authority for the purpose of securing, in connection with this section, the provision, alteration, improvement~~and maintenance~~, maintenance or removal of cattle-grids and by-passes by that authority under the powers conferred by Part V of the Highways Act 1980 including by way of an agreement under section 87, 88 or 278 of that Act. 25
- (11) This section is without prejudice to any duty on the occupier of land which adjoins common land to fence that land against any animals lawfully depastured on the common land in question. 30
- (12) In this section –
 - “competent authority” has the same meaning as in section 45,
 - “highway” and “highway authority” have the same meaning as in the Highways Act 1980, 35
 - “means of enclosure” includes cattle-grids and other measures to prevent animals passing along a road~~;~~,
 - “~~road~~” ~~means any road on the Malvern Hills to which the public has access, including a highway.~~ 40

49 Fencing: further powers

- (1) Subject to subsections (2), (3) and (4), the Trust may fence (or cause to be fenced) any part of the Malvern Hills –
 - (a) that is not common land, if the Trust considers that doing so is necessary or desirable, 5
 - (b) that is common land, for a period not exceeding 60 days, if the Trust considers that doing so is necessary or desirable for the purpose of regulating grazing and is in furtherance of the Trust’s objects.
- (2) The Trust may not exercise the powers under subsection (1) if doing so would prohibit the exercise by any person of a private right in respect of an easement or would interfere with a highway other than a footpath or bridleway. 10
- (3) Where the Trust exercises the power under subsection (1)(b) in respect of a period exceeding 42 days (“period A”) over any land, it may not exercise that power again over any part of the same land within a period of six months beginning with the day after the date on which period A ended, except – 15
 - (a) if the area of land in question is 1 hectare or smaller,
 - (b) in the case of an emergency relating to animal health for as long as may be reasonably required for the emergency, or
 - (c) if the Trust is required to fence the land in question for reasons relating to animal health in order to comply with any other enactment or any direction or requirement given or made under any other enactment. 20
- (4) In any case where it exercises the power under subsection (1), the Trust must provide gates or other appropriate means of access –
 - (a) at any point where any ~~footpath or bridleway crosses~~ public right of way is crossed by the fence, and 25
 - (b) at any other places which the Trust considers are appropriate for ensuring public access to the Malvern Hills is maintained, taking into account the purpose of the fencing.
- (5) No gate or other appropriate means of access may be provided under subsection (4)(a) unless the Trust represents to a competent authority as respects the ~~footpath or bridleway~~ public right of way that it is expedient that the gate or other appropriate means of access should be erected on the ~~footpath or bridleway~~ public right of way in question, and the provisions of subsections (2) to (4) and (6) of section 147 of the Highways Act 1980 have effect in relation to such a representation as though it were a representation made under subsection (1) of that section. 30 35
- (6) Section 146 of the Highways Act 1980 applies to a gate or other appropriate means of access provided under subsection (4)(a) as though references to the owner of land were references to the Trust.
- (7) When providing a gate or other appropriate means of access under subsection (4)(b), the Trust must have regard to the needs of those who would otherwise be entitled to gain access between the areas crossed by the fence, including those on horseback and people with disabilities. 40

- (7A) Before exercising the power in subsection (1)(a) in a case where the fence would cross any public right of way, the Trust must notify the relevant highway authority in writing of the proposed exercise of the power.
- (7B) Before exercising the power in subsection (1)(b) in a case where a fence would cross any public right of way, the Trust must— 5
- (a) in the case where the Trust proposes to establish a grazing scheme, notify the relevant highway authority in writing of the proposed scheme, specifying—
- (i) the area within which the scheme is proposed to operate, and
- (ii) the approximate location of any fences within that area which would cross a public right of way during the course of the grazing rotation, or 10
- (b) in any other case, notify the relevant highway authority in writing of the proposed exercise of the power.
- (7C) As soon as reasonably practicable after the removal of a fence which crosses a public right of way, the Trust must notify the relevant highway authority of the removal. 15
- (8) This section is without prejudice to any powers that the Trust has as regards the fencing of land under this Act or any other enactment or rule of law.
- (9) In this section— 20
- a “grazing scheme” is a scheme—
- (a) which makes provision for an area within the Malvern Hills to be set aside for grazing using a system of compartments which are grazed in rotation,
- (b) which will require the powers in subsection (1)(b) to be exercised at various times for the fencing of those compartments, and 25
- (c) which will or may require that fencing to cross one or more public rights of way,
- “the relevant highway authority” means the highway authority for the public right of way in question. 30

50 Regulation of horse riding

- (1) If one or more of the circumstances in subsection (2) apply, the Trust may, subject to subsection (4), by notices or direction signs posted at such places on the Malvern Hills as it thinks fit, restrict or prohibit the riding or exercising of horses on the Malvern Hills or any part of the Malvern Hills for such period as may be reasonably necessary. 35
- (2) The circumstances are that in the opinion of the Trust, it is necessary to exercise the power in subsection (1) to—
- (a) prevent the injury or disfigurement of the Malvern Hills, 40
- (b) protect the use of the Malvern Hills as an open space for the recreation and enjoyment of the public.

~~(3) Failure to comply with a notice or direction sign under this section is to be treated as though it were a failure to comply with a byelaw made under section 65.~~

(4) Nothing in this section authorises the Trust to restrict or prohibit the lawful use of any bridleway shown on ~~the~~^a definitive map and statement which includes any part of the Malvern Hills. 5

(5) In subsection (4) “definitive map and statement” means ~~the~~^a definitive map and statement operative under Part III of the Wildlife and Countryside Act 1981.

51 Prevention of unauthorised access by vehicles 10

(1) The Trust may take such measures as it thinks fit to prevent unauthorised access by mechanically propelled vehicles to any part of the Malvern Hills, provided that the measures do not prevent access by persons lawfully exercising a right to access the part of the Malvern Hills in question on foot or on horseback. 15

(2) Despite section 38(6)(a) of the Commons Act 2006, the exercise of the power under subsection (1) is subject to the provisions of Part 3 of that Act.

(3) In this section, “mechanically propelled vehicle” does not include an invalid carriage within the meaning of section 20 of the Chronically Sick and Disabled Persons Act 1970. 20

52 Application of advertisement regulations to display of notices under ~~this~~ ~~Part~~^{Part} 4 25

For the purposes of ~~R~~^R regulation 6 of, and Description 1A under Class 1~~A~~ of Schedule 3 to the Town and Country Planning (Control of Advertisements) (~~England~~) Regulations 2007 and any similar provision in regulations replacing those regulations, the Trust is, as respects ~~their~~^{its} functions under sections ~~45~~ and 50, deemed to be a local authority.

Management of the Malvern Hills

53 Nuisance and public order 30

The Trust may take any necessary, reasonable and proportionate measures to prevent nuisances and preserve order in the Malvern Hills.

54 Paths and ways 35

(1) The Trust may make and maintain paths and ways over the Malvern Hills ~~or (in the case of a footpath or bridleway) but in the case of a public right of way, may only~~ do so by agreement with ~~a local or authority or~~ the relevant highway authority.

(2) In this section –

“~~the~~ relevant highway authority” means the highway authority for the area in which ~~any part of the footpath or way~~ the part of the public right of way that the Trust proposes to make or maintain is located.

“~~local authority~~” ~~means the district council for the area in which any part of the footpath or way is located.~~

5

55 Access roads

- (1) Subject to subsections (2) and (7), the Trust may on such terms and conditions as it thinks 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 lying within or adjacent to any part of the Malvern Hills and appearing to the Trust to lack satisfactory access. 10
- (2) In granting authorisation under subsection (1), the Trust must have regard to the effect of the works being authorised on the matters mentioned in section 6(1)(a) and must impose such terms and conditions as are necessary to ensure that any adverse effect on the Malvern Hills is minimised. 15
- (3) The Trust may, on such terms and conditions as it thinks fit, for the purpose of or in connection with the provision of roads or ways, grant licences 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 under subsection (1). 20
- (4) Subject to subsection (5), the Trust 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 it as though it was the owner of that land. 25
- (5) The consent of the owner under subsection (4) is not required in any case where the owner is not known.
- (6) For the purposes of this section the owner of land is not known where after diligent enquiry the Trust is unable to discover the owner’s identity.
- (7) Despite section 38(6)(a) of the Commons Act 2006, anything done under the authority of the Trust under subsection (1) is subject to the provisions of Part 3 of that Act. 30

56 Trees and shrubs

- (1) ~~Subject to subsection (2), t~~The Trust may acquire and plant trees and shrubs on the Malvern Hills or on any other land under their ownership, management or control and may fence or protect them and remove or transplant any of them. 35
- (2) ~~After the date on which this Act is passed, n~~No rights of estover are exercisable in relation to any tree planted by the Trust on the Malvern Hills ~~by the Trust~~ before, on or after the date on which this Act is passed except in relation to the gathering of fallen wood. 40

57 Drainage and turf

The Trust may drain any part of the Malvern Hills so far as it may deem necessary or desirable and they may make temporary enclosures for those purposes and for the purpose of protecting or renovating turf.

58 Parking places

5

- (1) The Trust may set apart any part of the Malvern Hills adjoining or near any highway and may use any land so set apart as parking places for vehicles for use by persons resorting to the Malvern Hills for the purpose of recreation and enjoyment.
- (2) The Trust may provide and maintain all necessary equipment in connection with the exercise of the powers ~~of~~ⁱⁿ subsection (1) and may make regulations as to the use of parking places provided under that subsection. 10
- (3) A copy of any regulations made under subsection (2) must be exhibited on or near any parking place to which the regulations relate.
- (4) The Trust may make such reasonable charges for the use of parking places provided under this section as it may determine. 15
- (5) In this section “parking places~~”~~[”] means places where vehicles or vehicles of any particular class or description may wait.

59 Sheds, seats, shelters and watering points

- (1) The Trust may erect sheds on the Malvern Hills for tools and materials and may maintain and repair such sheds. 20
- (2) The Trust may provide, construct and maintain seats and shelters on the Malvern Hills.
- (3) The Trust may install watering points for animals at appropriate places on the Malvern Hills. 25

60 Lavatories

- (1) The Trust may construct and maintain lavatories or may make arrangements for any local authority to construct and maintain lavatories in such places as the Trust think fit either above or below ground on the Malvern Hills with all necessary drains and works in connection therewith and may make all necessary provision for their construction, use and maintenance. 30
- (2) Subject to subsection (3), the Trust may, without other ~~sanction or~~ authority –
 - (a) place or erect temporary lavatories in such positions and places on the Malvern Hills as it thinks fit,
 - (b) grant licence upon such terms and conditions as it thinks fit to any person to place or erect temporary lavatories in such positions and places on the Malvern Hills as ~~it~~^{the Trust} thinks fit and as may be specified in the licence. 35

- (3) The powers ~~of~~[in](#) subsection (2) may only be exercised if the temporary lavatories are to be provided—
- (a) in connection with an event authorised by the Trust which in its opinion is likely to attract such a number of people onto the Malvern Hills that such facilities will be required (in which case ~~the~~[a](#) licence may be granted only for a period not exceeding 14 days), or
 - (b) for the use of persons working temporarily in the Malvern Hills.
- (4) Temporary lavatories placed or erected on the Malvern Hills for the reason mentioned in subsection (3)(a) must 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 must not remain on the Malvern Hills for a period exceeding 14 days.
- (5) Temporary lavatories placed or erected on the Malvern Hills for the reason mentioned in subsection (3)(b) must be removed from the Malvern Hills as soon as reasonably practicable after the need for them has ended and in any case must not remain on the Malvern Hills for a period exceeding 14 days after the work in question has been completed.

61 Games, sports and exhibitions, etc

- (1) The Trust may set apart land on ~~the~~ Malvern Common and ~~the~~ Malvern Link Common upon which persons may play games or hold meetings or gatherings for sports.
- (2) The area of land which may be set ~~aside~~[apart](#) under subsection (1) at any point in time must not exceed 20 hectares in the aggregate.
- (3) The Trust may enclose land on ~~the~~ Malvern Link Common for the purpose of the holding of an agricultural or horticultural or other exhibition, circus, fair or show and may let the land for those purposes on such terms as it thinks fit.
- (4) The Trust may not enclose any part of Malvern Link Common under subsection (3) for a continuous period exceeding one month and such periods must not exceed three months in any year in respect of ~~the common~~[Malvern Link Common](#) as a whole.
- (5) The area of land which may be enclosed under subsection (3) ~~on any one occasion~~[at any point in time](#) must not exceed 20 hectares in the aggregate.
- (6) In this section, “Malvern Common” and “Malvern Link Common” mean the areas of common land registered by reference to those names in the register kept under section 1 of the Commons Act 2006 by Worcestershire County Council and numbered CL17, CL18 and CL19 in that register immediately before the date on which this Act is passed.

62 Licensing of stalls

- (1) The Trust may grant a licence for any period not exceeding one year upon such terms and conditions (including a charge) and subject to such restrictions

as the Trust thinks fit to any person to erect, maintain and operate temporary or mobile stalls on the Malvern Hills for the purpose of purveying food or refreshment to the public.

- (2) Subject to subsection (3), the number of stalls which may be erected, maintained and operated under subsection (1) must not exceed six at any one time. 5
- (3) In addition to any licences granted under subsection (1), the Trust may grant additional licences as it thinks fit for any period not exceeding 4 days to any person to erect, maintain and operate temporary or mobile stalls for the purpose of purveying food or refreshment to the public. 10
- (4) The powers ~~of~~ⁱⁿ subsection (3) may only be exercised if the temporary or mobile stalls are to be provided in connection with an event authorised by the Trust.
- (5) Licences granted under subsections (1) and (3) may be granted on such terms and conditions and subject to such restrictions as the Trust thinks fit, and without prejudice to the generality of the foregoing, such terms, conditions and restrictions may include or relate to – 15
 - (a) the locations on the Malvern Hills where a stall may be erected or from where it may be operated (as the case may be),
 - (b) 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, 20
 - (c) the charging of a fee by the Trust to the licence holder.
- (6) No stall may be erected under the powers of this section within a radius of 275 metres from the centre point in the highway opposite the southern corner of the building known, on the day on which this Act is passed, as the Malvern Hills Hotel ~~when this Act was passed~~. 25

63 Licensing of other activities

- (1) The Trust may if it thinks fit issue licences for the use of the Malvern Hills for specified purposes including uses which would otherwise be in breach of byelaws made under section 65. 30
- (2) Licences granted under subsection (1) may be granted on such terms and conditions and subject to such restrictions as the Trust thinks fit, and without prejudice to the generality of the foregoing, such terms, conditions and restrictions may include or relate to – 35
 - (a) the locations on the Malvern Hills where the use for the specified purpose may happen,
 - (b) a requirement for insurance,
 - (c) the display of advertisements,
 - (d) the charging of a fee by the Trust to the licence holder. 40

- (3) In subsection (1), “the use of the Malvern Hills for specified purposes” means such use as may be specified by the Trust in a policy published and made available by the Trust in accordance with subsection (4) and includes –
- (a) the use of any part of the Malvern Hills in the course of a business,
 - (b) the use of any part of the Malvern Hills for any organised activity. 5
- (4) A copy of the policy mentioned in subsection (3) must be –
- (a) published on the Trust’s website,
 - (b) made available for inspection at all reasonable hours at the Trust’s offices, and
 - (c) provided to any person on reasonable request. 10
- ~~(4) Subject to subsection (3), fees may not be charged for the exercise by members of the public of the right of access to the Malvern Hills on foot or horseback for the purpose of open-air recreation as provided for in section 38.~~
- (5) A licence issued under subsection (1) for the use of the Malvern Hills for a purpose falling within subsection (3)(a) or (3)(b) is to be issued to a person involved in the carrying on of the business in question or, as the case may be, a person responsible for organising the activity in question. 15
- (6) A person to whom a licence is issued under subsection (5) may be charged a fee for the licence, whether or not the use of the Malvern Hills to which the licence relates involves the exercise of the public right of access to the Malvern Hills on foot or horseback for the purpose of open-air recreation that is conferred by section 38. 20
- (7) Subject to subsection (6), no person may be charged a fee for a licence issued under subsection (1) for any use of the Malvern Hills that involves the exercise of the public right of access to the Malvern Hills on foot or horseback for the purpose of open-air recreation that is conferred by section 38. 25
- (8) A person to whom any licence is issued under subsection (1) (and not for the use of the Malvern Hills for a purpose falling within subsection (3)(a) or (3)(b)) may be charged a fee for the licence, if the use of the Malvern Hills to which the licence relates does not involve the exercise of the public right of access to the Malvern Hills on foot or horseback for the purpose of open-air recreation that is conferred by section 38. 30

Removal and disposal of unauthorised articles

64 Removal and disposal of unauthorised articles

- (1) The Trust may remove any article or object placed or left on the Malvern Hills without its permission or otherwise without lawful authority. 35
- (2) If a person appearing to be in control of an article or object is present, that person must be given a reasonable opportunity to remove the article or object before it is removed under subsection (1).

- (3) On removing an article or object under subsection (1), the Trust must store it in a convenient place unless it appears to the Trust that the article or object—
- (a) has been abandoned,
 - (b) is unlikely to be of any continuing value to its owner, or
 - (c) is not reasonably capable of being stored. 5
- (4) If an article or object removed under subsection (1)—
- (a) has been stored under subsection (3), and no person appearing to be the owner has within a period of 14 days beginning with the day of removal claimed it and paid all expenses reasonably incurred by reason of its removal and storage, or 10
 - (b) is not one which the Trust must store under subsection (3), the Trust may dispose of it in such a manner as the Trust thinks fit.
- (5) In the case of farm machinery—
- (a) the Trust must give notice that it has stored the machinery under subsection (3) to the ~~officer in charge of a police station~~ police and also to the owner of the machinery if their identity is known to them or can reasonably be ascertained, 15
 - (b) in subsection (4)(a), for the period of 14 days, substitute a period of 28 days.
- (6) Where a motor vehicle is removed under subsection (1), subsections (3) and (4) of this section do not apply, but— 20
- (a) section 100(4) of the 1984 Act (which imposes a duty to retain safe custody of a removed vehicle) applies to the vehicle as if the Trust were an authority having custody of the vehicle under that section, and 25
 - (b) sections 101 to 103 of the 1984 Act (which provide for the disposal of a removed vehicle) and any regulations made under them apply in relation to the vehicle as if—
 - (i) the Trust were the local authority in relation to the Malvern Hills and the vehicle had been removed by the Trust under regulations made under section 99 of the 1984 Act, and 30
 - (ii) the ~~open-space~~ Malvern Hills were not within a civil enforcement area for parking contraventions.
- (7) In subsection (6)—
- “the 1984 Act” means the Road Traffic Regulation Act 1984, 35
 - “motor vehicle” has the meaning given by section 136 of that Act.

PART 5

BYELAWS

65 Power to make byelaws

- (1) The Trust may make and enforce byelaws to regulate the use of the Malvern Hills as the Trust considers to be necessary or desirable in furtherance of the 40

objects including in particular to comply with its duties under sections ~~40 and 41, or to exercise its power under section 43, or to exercise its powers under sections 41, 43 and 53~~, and without prejudice to that, byelaws may be made for any of the following purposes –

- (a) preventing nuisances and preserving order ~~on~~in the Malvern Hills, 5
- (b) prohibiting any enclosure of any part of the Malvern Hills or the erection of any unauthorised building, shed, tent or other structure on the Malvern Hills,
- (c) preventing any interference with the rights of common or other rights to graze ~~existing on or~~exercisable over the Malvern Hills, 10
- (d) regulating the use of any seats and shelters for the time being provided by or under the control or management of the Trust and for preventing damage to them,
- (e) prohibiting any person from placing or depositing and leaving without lawful authority any refuse or litter on the Malvern Hills, 15
- (f) preventing or regulating vehicles or devices, including cycles, being parked, driven, ridden or flown on or over 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,
- (g) prohibiting or regulating the placing on the Malvern Hills of any show, exhibition, swing, roundabout or other similar thing, 20
- (h) regulating games and other means of recreation on the Malvern Hills,
- (i) regulating assemblies of persons on the Malvern Hills,
- (j) regulating the user and enjoyment of any rights of common exercisable over the Malvern Hills, 25
- (k) without prejudice to sections 62 and 63, prohibiting or regulating the use of any part of the Malvern Hills for the purposes of carrying on a business,
- (l) preventing any unlawful digging on, or taking of stone, gravel or soil from, the Malvern Hills, 30
- (m) preventing any unlawful cutting or taking of turf or sods, or the growth or produce of the Malvern Hills, from the Malvern Hills,
- (n) preventing any other injury to the Malvern Hills,
- (o) prohibiting any person without lawful authority from turning out or permitting to remain on the Malvern Hills any cattle, sheep, pigs, goats or other animals and ~~for~~ authorising an ~~officer of~~authorised officer or other individual appointed for the purpose by the Trust to remove from the Malvern Hills any such animal being on the Malvern Hills in contravention of the byelaws or suffering from disease, 35
- (p) subject to the provisions of section 79, regulating quarrying in, upon or under the Malvern Hills, 40
- (q) prohibiting or regulating the erection of cranes, works and machinery on the Malvern Hills,
- (~~r~~) ~~authorising an authorised officer after due warning to remove or exclude from the Malvern Hills any person who in the view of the officer commits an offence against any byelaw made by the Trust,~~ 45

- (s) prohibiting the hindrance or obstruction of an authorised officer in the exercise of their powers or duties under this Act or under any byelaw made by the Trust.
- (2) The Trust may make byelaws providing that any person who, without reasonable excuse, contravenes a notice posted under section 45 is guilty of an offence. 5
- (3) The Trust may make byelaws providing that any person who, without the authority of the Trust and without reasonable excuse, contravenes a notice or direction sign posted in pursuance of section 50 ~~or, without reasonable excuse, fails to comply with a direction given under section 50~~ is guilty of an offence. 10
- (4) Byelaws made under this section may –
- (a) be made so as to relate to the whole or any part of the Malvern Hills,
 - (b) make different provision for different cases and in relation to different parts of the Malvern Hills, 15
 - (c) amend or revoke other byelaws made under this section or under the repealed ~~enactments~~ Acts.
- ~~(5) The Trust may revoke byelaws made under this section or under the repealed Acts.~~
- (6) Byelaws made under this section do not apply to any activity in respect of which a licence has been granted by the Trust under section 63. 20
- (6A) Byelaws made under subsection (1)(f) may not be made in respect of mobility scooters except for the purpose of preserving the safety of persons (including persons in charge of mobility scooters).
- (6B) In subsection (6A), a “mobility scooter” means a vehicle which is – 25
- (a) an invalid carriage which is not mechanically propelled, or
 - (b) any other invalid carriage which complies with (or falls within a class of invalid carriages that complies with) any prescribed requirements as mentioned in section 20(1) of the Chronically Sick and Disabled Persons Act 1970 which are requirements about the maximum speed of invalid carriages. 30
- (7) Nothing in this section or any byelaw made under it prejudices or affects (except as provided by subsection (1)(j)) or takes away any rights of common which are exercisable by any person over the Malvern Hills.
- ~~(8) This section is without prejudice to the generality of section 53.~~ 35

66 Procedure for byelaws

- (1) Subsections (3) to (8) and (11) of section 236 and section 238 of the Local Government Act 1972 (which respectively relate to the procedure for making byelaws by local authorities and provide for the proof of byelaws in legal proceedings) apply to any byelaws made by the Trust under section 65 as if – 40

- (a) the Trust were a local authority in England, and
 - (b) there ~~was an additional requirement~~ were additional requirements to publish the byelaws, ~~after having been made and after having been confirmed,~~ on the Trust’s website –
 - (i) after the byelaws have been made, and 5
 - (ii) after they have been confirmed,
 - (c) the chief executive were the proper officer (within the meaning of the Local Government Act 1972) of that local authority.
- (2) Subject to subsection (3), the Secretary of State may confirm the byelaws with such modifications as the Secretary of State thinks fit. 10
- (3) Where the Secretary of State proposes to make a modification to the byelaws which appears to the Secretary of State to be substantial, the Secretary of State –
 - (a) must inform the Trust and require them to take any steps ~~he~~the Secretary of State considers necessary for informing persons likely to be concerned with the modification, and 15
 - (b) must not confirm the byelaws until such period has elapsed as the Secretary of State thinks reasonable for consideration of, and comment upon, the proposed modification by the Trust and by other persons who have been informed of it. 20
- (4) Before making any byelaws under section 65 the Trust must consult the Sport and Recreation Alliance.

67 Penalty for contravening byelaws

Byelaws made by the Trust may provide that persons contravening the byelaws commit an offence and 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. 25

68 Fixed penalty notices

- (1) An authorised officer may issue a fixed penalty notice to any person who the officer has reason to believe has committed an offence against any byelaw made under this Act. 30
- (2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the Trust. 35
- (3) A fixed penalty notice must be in writing and state –
 - (a) the particulars of the circumstances alleged to constitute the offence,
 - (b) the amount of the fixed penalty,
 - (c) the name and address of the person to whom payment of the fixed penalty may be sent, 40

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- (d) the permissible methods of payment (which include the method laid down by subsection (9)), and
 - (e) the effect of subsection (6).
 - (4) A fixed penalty notice may be issued in person or by post, and must identify by name the person to whom it is issued unless the authorised officer cannot reasonably ascertain the person's name. 5
 - (5) Where a fixed penalty notice is issued by post, it is regarded as having been issued at the time at which it would be delivered in the ordinary course of post.
 - (6) Where a person is issued with a fixed penalty notice – 10
 - (a) no proceedings may be taken in respect of the alleged offence in relation to which the notice was issued before the end of the period of 14 days following the date on which the notice was issued, and
 - (b) the person may not be convicted of that offence if the fixed penalty is paid to the Trust before the end of that period. 15
 - (7) The amount specified under subsection (3)(b) is to be an amount prescribed by the Trust, which –
 - (a) may prescribe different amounts in relation to different classes of case, but
 - (b) may not prescribe an amount exceeding the higher of – 20
 - (i) £100,
 - (ii) the amount mentioned in section 237B(1)(b) of the Local Government Act 1972,
 - (iii) such other amount as may be specified by the Trust with the approval in writing of the Secretary of State. 25
 - (8) Subsections (3) and (4) of section 237B of the Local Government Act 1972 apply in respect of the powers under subsection (7) as they apply in respect of the powers under subsections (1)(a) and (2) of that section.
 - (9) Payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under subsection (3)(c), at the stated address, a letter containing the amount of the penalty (in cash or otherwise). 30
 - (10) Where a letter is sent in accordance with subsection (9), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
 - (11) In any proceedings, a certificate that – 35
 - (a) purports to be signed by or on behalf of the chief executive or the ~~officer~~employee of the Trust responsible for the Trust's financial affairs, and
 - (b) states that payment of a fixed penalty was, or was not, received by the date specified in the certificate, 40
 is evidence of the facts stated.

69 Further provision as to enforcement of byelaws

- (1) An authorised officer who has reason to believe that a person has committed an offence against any byelaw made under this Act may require that person to give their name and address with a view to—
 - (a) the service of a summons on that person, or 5
 - (b) the issuing of a fixed penalty notice to that person under section 68, in relation to that offence.
- (2) A person who, without reasonable excuse, fails to provide information required under subsection (1) or without reasonable excuse provides inaccurate information commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 10
- (3) Where the driver of a vehicle is alleged to be guilty of an offence against any byelaw made under section 65 which relates to the driving or parking of vehicles on the Malvern Hills—
 - (a) the person keeping the vehicle must give such information as to the identity of the driver as they may be required in writing by or on behalf of the Trust to give, and 15
 - (b) any other person must, if required as mentioned in paragraph (a), give any information which it is in their power to give and which may lead to the identification of the driver. 20
- (4) A person who fails to comply with the requirements of subsection (3)(a) is guilty of an offence unless they show to the satisfaction of the court that they did not know, and could not with reasonable diligence have ascertained, who was the driver of the vehicle.
- (5) A person who fails to comply with the requirements of subsection (3)(b) is guilty of an offence. 25
- (6) A person guilty of an offence under subsection (4) or (5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (7) An authorised officer ~~of the Trust~~ may, after due warning, remove or exclude from the Malvern Hills any person who in the view of that officer has committed an offence against byelaws made under this Act. 30

70 Byelaws: seizure of stray animals

- (1) The Trust 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 Trust. 35
- (2) The Trust must, no later than 24 hours after impounding any animal under this section, notify the police and also give notice to the owner of the animal if ~~his~~the owner's identity is known to the Trust or can reasonably be ascertained.
- (3) The Trust must— 40

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- (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. 5
 - (4) If after the expiry of the period of seven clear days beginning with the day after the date of its impounding the owner has not claimed an animal and paid all expenses incurred in seizing, impounding and maintaining it, the Trust may sell or otherwise dispose of the animal otherwise than by destruction. 10
 - (5) If after the expiry of the period of 14 clear days beginning with the day after the date of the impounding the owner has not claimed the animal and paid all the expenses mentioned in subsection (4), the Trust may destroy the animal in a manner to cause as little pain or distress as possible.
 - (6) Whilst any animal is impounded by the Trust under this section the Trust shall cause it to be properly fed and maintained and may take such action as it thinks fit in relation to the animal if it is ill or injured including seeking veterinary treatment. 15
 - (7) If any sums received on disposal of the animal are less than the expenses of the Trust in seizing and maintaining the animal the Trust may recover the difference from the owner of the animal. 20
 - (8) If the Trust dispose of any animal under subsection (4), it must be accountable to the owner of the animal for any money arising from its disposal after deducting all expenses incurred by reason of its seizure, impounding, maintenance and disposal, but nothing in this subsection shall render the Trust so accountable if it has accounted to any other person whom it reasonably believed to be the owner. 25
 - (9) The animals to which this section applies are cattle, horses, sheep, goats, pigs and domestic fowl.
 - (10) In subsection (9) “domestic fowl” includes turkeys, geese, ducks, guinea fowl, peacocks and quails. 30

PART 6

LAND

71 Acquisition of land, bequests and agreements

- (1) In furtherance of the objects, the Trust may acquire (by purchase or grant) land of the type described in subsection (3) and on and after the date of acquisition any land so acquired is part of the Malvern Hills. 35
- (2) Land of the type described in subsection (3) which is vested in the Trust by virtue of a gift or bequest is, on and after the date of vesting, part of the Malvern Hills. 40

- (3) The type of land which may be acquired under subsection (1) or become vested in the Trust under subsection (2) or be subject to an agreement under subsection (4) is land –
 - (a) which is situated within nine miles of Great Malvern Priory, and
 - (b) which the Trust considers should be preserved unenclosed and free from building as part of ~~or in connection with~~ the Malvern Hills.
- (4) Any land of the type described in subsection (3) that is common land or that is waste land of a manor ~~Any common land or waste land of the type described in subsection (3)~~ may become part of the Malvern Hills by agreement between the Trust and the lord of the manor of which the land forms part.
- (5) No agreement may be made under subsection (4) unless the Secretary of State has given consent in writing to the agreement.
- (5A) Any agreement to which consent is given by the Secretary of State under subsection (5) must be published in such manner as the Secretary of State directs.
- (6) The Secretary of State may, on or after giving consent under subsection ~~(4)~~(5) in relation to any land, by order –
 - (a) amend section 23(3) so as to include in the Trust’s electoral area any parish within which the land in question is situated (if that parish is not already in the Trust’s electoral area),
 - (b) amend section 33(4) so as to include in the list of parishes in respect of which a levy may be issued any parish within which the land in question is situated (if that parish is not already in that list).
- (7) An order under subsection (6) is to be made by statutory instrument and any such statutory instrument may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- ~~(8) Any order or agreement approved or made by the Secretary of State under this section must be published in such manner as the Secretary of State directs.~~

72 Power to adjust boundaries of Malvern Hills

- (1) For the purpose of adjusting, defining or improving the boundaries of the Malvern Hills, the Trust may ~~by agreement, and with,~~ with the consent of the Secretary of State, sell or exchange any part of the Malvern Hills not exceeding 0.12 hectares in area in the case of any one sale or exchange.
- (2) Consent may not be given under subsection (1) unless –
 - (a) in the case of an exchange, the Secretary of State is satisfied that in the place of the land proposed to be exchanged, other land not less in area and equally or more advantageous to the persons (if any) entitled to ~~common rights~~exercise rights of common and to the public is offered in exchange, or
 - (b) in the case of a sale, the Secretary of State is satisfied that all money received in respect of it will be paid into a special fund and used or

set aside for use in the future by the Trust only for the purchase of other land in the vicinity of the Malvern Hills and which on completion will become part of the Malvern Hills.

- (3) Any sale of land under this section qualifies as a disposition for which authority is expressly given as mentioned in section 117(3)(a)(i) of the Charities Act 2011. 5
- (4) No later than the date on which the Trust makes a request to the Secretary of State under subsection (1), the Trust must publish notice of the proposed sale or exchange.
- (5) A notice under subsection (4) must give a concise description of the proposed sale or exchange and state that objections to it may be made to the Secretary of State, giving the details of the method by which objections are to be made and stating the time by which they must be received which must be no less than 4 weeks from the date on which the Trust publishes notice under subsection (4). 10
15
- (6) A notice under subsection (4) must be published –
 - (a) on the Trust’s website,
 - (b) by advertisement in one or more local newspapers (if there are any) which circulate in the area in which the part of the Malvern Hills in question is located, and 20
 - (c) in a newsletter or similar publication published by the Trust.
- (7) The Secretary of State may not give consent under subsection (1) until the time by which objections must be received as mentioned in the notice has passed and either –
 - (a) no objections have been received, or 25
 - (b) the Secretary of State has considered all objections received, as the case may be.

73 Disposal of land

- (1) Without prejudice to any other powers the Trust has to sell, exchange, let, charge or otherwise dispose of land, and despite anything in this Act the Trust may, with the consent in writing of the Secretary of State, do any of the things mentioned in subsection (2) in respect of any land to which this subsection applies by virtue of subsection (3). 30
- (2) Those things are to –
 - (a) sell (including sell free of any restrictions) the whole or any part of or the whole or any part of any interest in any such land which is not required by the Trust, 35
 - (b) exchange (including exchange free of any restrictions) any such land which is not required by the Trust for other land either with or without paying or receiving any money by way of equality of exchange, 40
 - (c) let any such land subject to such terms and conditions, covenants or arrangements as the Trust thinks fit.

- (3) Subsection (1) applies to land that falls within all of the following paragraphs –
- (a) it is owned by the Trust,
 - (b) it has not been owned by the Trust for a continuous period of more than five years, 5
 - (c) it did not form part of the existing Malvern Hills,
 - (d) it is not registered as common land or a town or village green, and
 - (e) the trustees have not later than two years after the date of acquisition of the land by them decided that it is not desirable to retain the land for the advancement of the objects. 10
- (4) The provisions of section 72 do not apply as respects any sale or exchange under subsection (1).
- (5) Where land has become vested in the Trust 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 or where after diligent enquiry the Trust is unable to discover the identity of the donor, the personal representatives or trustees. 15
- (6) The terms and conditions, covenants or arrangements mentioned in subsection (2)(c) may include terms and conditions, covenants or arrangements relating to whether the land in question is to be treated as being part of the Malvern Hills for any of the purposes of this Act during the period of any letting under that subsection. 20
- (7) Part II of the Landlord and Tenant Act 1954 (which provides security of tenure for commercial tenancies) and section 5 of the Housing Act 1988 (which provides security of tenure for assured tenancies) do not apply to any letting under subsection (2)(c). 25
- (8) Where the Trust exercises its powers under subsection (2)(c) in relation to any land, all the powers under subsection (2) continue to be available to the Trust in relation to that land on the termination of the letting whether or not at that termination, the Trust has owned the land for more than five years. 30

74 Leases and licences of land

- (1) Without prejudice to any other powers the Trust has to let or otherwise dispose of land, and notwithstanding anything in this Act, the Trust may, on such terms and conditions as the Trust thinks fit, grant or renew a lease of – 35
- (a) any part of the Malvern Hills that is not ~~registered~~ common land,
 - (b) any building (whether or not it is in the Malvern Hills).
- (2) Without prejudice to any other powers the Trust has to dispose of land ~~and buildings~~, and notwithstanding anything in this Act, the Trust may, for such period and on such terms and conditions as the Trust thinks fit, grant licences over – 40
- (a) any part of the Malvern Hills,

- (b) any building (whether or not it is in the Malvern Hills).
- (3) A lease granted or renewed under subsection (1) may be for any period but the consent in writing of the Secretary of State is required for any lease or renewal of a lease for a period exceeding 10 years.
- (4) Any lease granted or renewed under subsection (1)(a) ~~or~~ and any licence granted under subsection (2)(a) is subject to the public right of access under section ~~39~~38 (where it applies). 5
- (5) Part II of the Landlord and Tenant Act 1954 (which provides security of tenure for commercial tenancies) and section 5 of the Housing Act 1988 (which provides security of tenure for assured tenancies) do not apply to a lease granted under subsection (1) after the ~~dated~~day on which this Act ~~was~~is passed in respect of any part of the Malvern Hills or any building on the Malvern Hills. 10
- (6) In subsection (5), the reference to a lease granted under subsection (1) after the date on which this Act is passed – 15
- (a) does not include a lease granted by way of renewal (or subsequent renewal) of a lease which was originally granted before the date on which this Act was passed, but
- (b) includes a lease granted by way of renewal (or subsequent renewal) of a lease which was originally granted after the date on which this Act is passed. 20
- ~~(6) In subsection (1) “registered common land” means—~~
- ~~(a) land which is registered as common land under the Commons Registration Act 1965 and whose registration under that Act has become final, and~~ 25
- ~~(b) land which is registered as common land under Part 1 of the Commons Act 2006.~~

75 Ancillary land

- (1) This section applies to any land –
- (a) acquired by the Trust before the relevant date – 30
- (i) under section 9 of the Malvern Hills Act 1995 (power to provide buildings for use by the Conservators),
- (ii) under section 53 of the Commissioners Clauses Act 1847 (power to provide offices, etc.), or
- (iii) with the sanction of an order of the Charity Commission, 35
- (b) acquired by the Trust under subsection (3).
- (2) Land to which this section applies is referred to in this Act as “ancillary land”.
- (3) The Trust may acquire land for any use which is ancillary to the objects of the Trust, including, without limitation, for the purposes of –
- (a) use as offices, staff and volunteer facilities or information centres, 40
- (b) the provision of refreshments,

- (c) the retail sale of goods (including for the purpose of raising funds for the Trust),
 - (d) residential ~~occupation~~ accommodation for employees of the Trust, which may be made available to those employees on such terms and conditions (including at less than market rent) as the Trust thinks fit, 5
 - (e) storage,
 - (f) the keeping or management of livestock.
- (4) The Trust may use any ancillary land acquired before the relevant date for any purpose for which land may be acquired under subsection (3).
- (5) Subject to subsection (3), the Trust has all the powers of an absolute owner in relation to ancillary land including, but without prejudice to the foregoing, ~~limitation~~, power to— 10
- (a) acquire, demolish, replace, construct or reconstruct buildings on ancillary land and alter, repair, maintain or extend buildings on ancillary land, 15
 - (b) furnish and equip buildings on ancillary land and do all such things as are necessary in order to enable the buildings to be used for the intended purpose,
 - (c) at any time sell, exchange or otherwise dispose of any ancillary land,
 - (d) at any time let, grant licences or grant rights or privileges in respect of ancillary land, 20
 - (e) install, maintain and renew watering points including laying supply pipes and ancillary facilities,
 - (f) exclude the public from the land and erect, repair and maintain fencing on the land. 25
- (6) Without prejudice to Schedule 1 to the Interpretation Act 1978, in this section “acquisition of land” includes the acquisition of a freehold or leasehold interest, letting or taking a licence of land or any other transaction which brings land under the control or management of the Trust, and may take effect subject to such conditions, rights or interests in the land as the Trust thinks fit. 30
- (7) The Trust may ~~exercise any of their functions in respect of ancillary land,~~ in respect of ancillary land, exercise any of its functions as if that land formed part of the Malvern Hills.
- (8) In this section, “the relevant date” means the date on which this ~~section comes into force~~ Act is passed. 35

76 Maintenance of buildings and structures

In addition to any other powers under this Act, the Trust may—

- (a) maintain any building or structure which it owns ~~or occupies~~,
- (b) repair, reconstruct or replace any building or structure which it owns or occupies, provided that any reconstruction or replacement shall be on the site of, and of a similar size and external character to, the existing building or structure, if it is located on the Malvern Hills. 40

77 St. Ann's Well

- (1) The Trust may maintain ~~and operate~~ St. Ann's Well and may use it for any use which is ancillary to the objects, including, without limitation, for the provision of refreshments.
- (2) In the event of damage to or the destruction of the St. Ann's Well building, the Trust may repair, reconstruct or replace it provided that any reconstruction or replacement shall be on the site of, and of a similar size and external character to, the existing building. 5
- (3) The powers ~~of~~in subsection (2) extend to any reconstructed or replacement building constructed under that subsection. 10
- (4) The Trust may enter into and carry into effect agreements with respect to the exercise of the powers contained in subsections (1) and (2) by any other person including the defraying of, or the making of contributions towards, the costs of the Trust or any other person in connection with the exercise of those powers. 15
- (5) Section 74 applies to St. Ann's Well subject to the provisions of this section.
- (6) Subject to the provisions of this section, the Trust may, with the consent in writing of the Secretary of State, sell, exchange or absolutely dispose of St. Ann's Well free from any rights or restrictions and upon such terms and conditions, subject to the consent of the Secretary of State, as the trustees consider expedient in the best interests of the Trust. 20
- (7) Before exercising the powers ~~of~~in subsection (6) to sell, exchange or absolutely dispose of St. Ann's Well to any person other than the Council, the trustees must give notice in writing of their intention to do so to the Council.
- (8) If, before the expiry of the ~~relevant~~ period of 3 months beginning with the date on which the Council receives the notice given under subsection (7), the Council give notice in writing to the Trust that the Council wishes to purchase St. Ann's Well, the Trust must, unless the parties agree otherwise or the Council withdraws that notice, sell St. Ann's Well to the Council. 25
- (9) Both parties must use reasonable endeavours to complete the sale of St. Ann's Well as soon as reasonably practicable after a notice is received by the Trust under subsection (8). 30
- (10) Unless the parties agree otherwise, the obligation on the Trust to sell St. Ann's Well to the Council under subsection (8) ceases at the expiry of the period of one year beginning with the date on which the Trust received notice from the Council under subsection (8) if by then— 35
 - (a) the purchase of St. Ann's Well has not been completed, and
 - (b) no reference has been made by either party under subsection (11) as to the terms of the sale.
- (11) Unless otherwise agreed between the parties, any difference between them ~~under this section (including any difference as to the terms of a sale)~~as to the terms of a sale must be referred to and settled by a single arbitrator to be 40

agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Royal Institution of Chartered Surveyors.

(12) In this section –

“the Council” means Malvern Hills District Council, 5

“the parties” means the Council and the Trust,

~~“the relevant period” means the period of 3 months beginning with the date on which the Council receives the notice given under subsection (7),~~

“St. Ann’s Well” means the land of that name referred to in the Schedule to the 1930 Act ~~and comprising~~ which comprises the land conveyed to the Conservators by a conveyance dated 1 April 1925 between Dame Catherine Sarah Grey on the one part, Dame Catherine Smith Grey and Lionel Foley Lambert on the second part and the Conservators on the third part (including, without prejudice to Schedule 1 to the Interpretation Act 1978, any buildings or structures on that land), 10 15

“the St. Ann’s Well building” means the ~~principal building of that name~~ building of that name which is the principal building located at St. Ann’s Well and (where the context requires) any replacement of that building and the land on which it is situated. 20

78 Grant of easements etc. for utilities

(1) Subject to subsections (2) ~~and~~, (6) and (7), the Trust may grant upon such terms and conditions and for such a period as it thinks 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. 25

(2) It shall be a term of any grant under subsection (1) 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 must be restored as soon as practicable by and at the expense of the person to whom the easement, right, privilege or licence is granted. 30

(3) Subject to subsection (4), the Trust 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 it was the owner of that land.

(4) The consent of the owner under subsection (3) is not required in any case where the owner is not known. 35

(5) For the purposes of this section, the owner of land is not known where after diligent enquiry the Trust is unable to discover the owner’s identity.

(6) The Trust may not exercise the powers of this section for the provision of any service, other than a temporary service, overground unless – 40

(a) in the opinion of the trustees it is not reasonably practicable for the service to be other than overground,

- (b) the service is to be provided to a domestic property that was in existence on 28 June 1995,
 - (c) in the opinion of the trustees the provision of the service overground is reasonable, and
 - (d) the Trust has consulted the body or bodies responsible for the preparation and publication of an area of outstanding natural beauty management plan in respect of the Malvern Hills under section 89 of the Countryside and Rights of Way Act 2000. 5
- (7) The Trust may not exercise the powers ~~of~~in this section for the provision of any service overground except by way of determinable licence. 10
- (8) In this section, “area of outstanding natural beauty” means an area designated under section 82 of the Countryside and Rights of Way Act 2000.

79 Notice of quarrying

- (1) The Trust must be consulted before any application for planning permission is made for the carrying out of quarrying in the Malvern Hills. 15
- (2) The consultation under subsection (1) must include the giving to the Trust of a notice in writing of the intention to make the application and a plan showing the intended position of the proposed quarrying.
- (3) The notice under subsection (2) must be given no later than 3 months before the application for planning permission is made. 20
- (4) Any proposal for a new quarry in the Malvern Hills must provide that the quarry be located and designed so as to cause as little injury and disfigurement to the Malvern Hills as reasonably practicable and any new quarry must be fenced for the protection of the public to the reasonable satisfaction of the Trust. 25

80 Power of highway authority to get materials

The powers ~~of~~in section 45 of the Highways Act 1980 (power to get materials for repair of publicly maintainable highways) may not be exercised in respect of any waste or common land in the Malvern Hills.

81 Power for Trust to use materials

- (1) Subject to the provisions of this section, the Trust may extract, take, work, process and otherwise use loose natural materials~~s~~ located in the Malvern Hills, including material from spoil heaps and rock falls. 30
- (2) Any material ~~taken under~~of the type mentioned in subsection (1) may be used by the Trust only – 35
 - (a) in furtherance of the objects or for purposes ancillary to the objects, and
 - (b) within the Malvern Hills or other land in its ownership.

- (3) Subject to subsection (4), no more than the maximum amount of material may be extracted or taken under subsection (1) in any period of one calendar year.
- (4) If in any calendar year, the Trust does not extract or take the maximum amount of material, then the difference between the amount extracted or taken and the maximum amount may be carried forward and added to the maximum amount that may be extracted or taken in the next calendar year and successive calendar years, subject to an overall maximum amount of 50 cubic metres in any calendar year. 5
- (5) Except where in the reasonable opinion of the trustees the amount of material to be extracted or taken is of such insignificance that no such consultation is required, the trustees must, before exercising the power in subsection (1) to extract or take material, consult— 10
- (a) the body or bodies responsible for the preparation and publication of an area of outstanding natural beauty management plan in respect of the Malvern Hills under section 89 of the Countryside and Rights of Way Act 2000, and 15
- (b) such other bodies (if any) as the Trust sees fit.
- (5A) The Trust must keep a record of the exercise of the powers under subsection (1) to extract loose material, and the record must set out— 20
- (a) the date on which the material was extracted,
- (b) an estimate of the amount (in cubic metres) of the material extracted on that date.
- (5B) The records for each calendar year must be retained by the Trust for a period of no less than 6 years and must be made available for inspection on reasonable request by the mineral planning authority. 25
- (6) In this section—
- “the maximum amount” means 25 cubic metres; 2
- “the mineral planning authority” has the same meaning as in the Town and Country Planning Act 1990 (see section 1(4) of that Act). 30

82 Saving for town and country planning

- (1) Subject to subsection (2), no development authorised by this Act or any of the repealed ~~enactments~~ Acts is to be deemed for the purposes of the 2015 Order 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. 35
- (2) Subsection (1) does not apply to any development carried out under section 81(1), and for the purposes of the 2015 Order, any development carried out under section 81(1) is deemed to be development authorised by a provision of a local or private Act of Parliament which designates specifically the nature of the development authorised under that section and the land upon which it may be carried out. 40

- (3) In this section, “the 2015 Order” means the Town and Country Planning (General Permitted Development) (England) Order 2015 (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).

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PART 7

GENERAL AND MISCELLANEOUS PROVISIONS

83 General power of the Trust

- (1) Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, the Trust has power to do any lawful thing (whether or not involving the expenditure of money) to further the objects, including anything which is calculated to facilitate, or is conducive or incidental to, the furtherance of the objects. 10
- (2) The Trust must not exercise the power in subsection (1) if it can exercise a power contained in another provision of this Act or any other enactment to do the thing in question. 15
- (3) Subsection (1) does not confer power to—
- (a) acquire or dispose of land, or grant any interest in land,
 - (b) borrow or raise money [including by levy or precept](#), 20
 - (c) erect any building, fencing or other type of enclosure on the Malvern Hills.
- (4) Despite section 38(6) of the Commons Act 2006, the prohibition in section 38(1) of that Act applies in relation to anything done under the power in subsection (1). 25

84 Miscellaneous powers of the Trust

In addition to any other powers it has, the ~~trustees~~[Trust](#) may exercise any of the powers set out in Schedule 4 in order to further the objects (but not for any other purpose).

85 Power to prosecute, defend and appear in legal proceedings

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- (1) Where the Trust considers it expedient—
- (a) it may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in its own name, and
 - (b) it may, in its own name, make representations at any public inquiry held by or on behalf of any Minister or public body under any enactment. 35
- (2) Any trustee or ~~officer~~[employee](#) of the Trust who is authorised by the Trust to prosecute or defend on its behalf, or to appear on its behalf in, proceedings

before a court is entitled to prosecute or defend or to appear in any such proceedings⁷ and⁷ to conduct any such proceedings.

PART 8

FINAL PROVISIONS

- 86 Local inquiries** 5
- (1) The Secretary of State may cause such local inquiries to be held as the Secretary of State may consider necessary for the purpose of any of their functions under this Act.
- (2) Subsections (2) to (5) of section 250 of the Local Government Act 1972 apply in relation to any inquiry under subsection (1) as if it were an inquiry held in pursuance of subsection (1) of that section and the Trust were a local authority. 10
- 87 Repeals**
- The provisions specified in Schedule 5 (which include provisions that are spent) are repealed or revoked to the extent specified. 15
- 88 Consequential amendments**
- Schedule 6 contains consequential amendments.
- 89 Transitional provisions and savings**
- (1) The transitional provisions and savings in Schedule 7 have effect.
- (2) ~~The inclusion in this Act of any express transitional provision or saving is without prejudice to the operation of sections 15 to 17 of the Interpretation Act 1978.~~ 20
- 90 Protection of Crown interests**
- Nothing in this Act affects prejudicially any estate, interest, right, power, privilege, authority or exemption of the Crown. 25
- 91 Protection of Network Rail Infrastructure Limited**
- Nothing in this Act shall prejudice or affect the property or rights of Network Rail Infrastructure Limited.
- 92 Protection of National Grid Electricity Distribution (West Midlands) PLC**
- Nothing in this Act shall in any way prejudice or affect any right or power of National Grid Electricity Distribution (West Midlands) PLC (as successor to the Shropshire Worcestershire and Staffordshire Electric Power Company) or its successors or beneficiaries under the Bromyard and Ledbury Rural 30

Electricity Special Order 1929 to place electric works or lines upon or over the Malvern Hills or any part of the Malvern Hills.

93 Protection of Severn Trent Water Limited

The Trust shall not in the exercise of any of the rights or powers conferred upon them by this Act do any act or thing which may injuriously affect any reservoir or waterworks of Severn Trent Water Limited or any of the lines of pipes or works of any description in connection with any of their reservoirs or waterworks. 5

94 Protection of rights of commoners

Except where specifically provided, nothing in this Act is to be deemed or construed to take away, prejudice or affect any right of common which may at the date of the passing of this Act be exercisable by any person or persons over or in respect of the Malvern Hills. 10

95 Protection of lords of the manor

- (1) Subject to subsection (2), nothing in this Act prejudices or affects any rights of any lord of the manor on or over any [part](#) of the Malvern Hills where those rights – 15
 - (a) existed immediately before [the day on which](#) this Act came into force, and
 - (b) were protected by virtue of section 26 of the ~~Malvern Hills Act~~ 1884 [Act](#). 20
- (2) Subsection (1) is subject to any agreement between the lord of the manor in question and the Trust made under section 71(4).

96 Reservations relating to certain land described in [the](#) 1884 Act

- (1) Subject to subsection (2), any specified rights which existed immediately before the passing of this Act continue to be reserved to the Owner. 25
- (2) The Owner must cause as little injury as possible to the surface of any land in the exercise of any specified rights reserved by subsection (1) and must keep all open pits, shafts and quarries securely fenced where necessary for the protection of the public. 30
- (3) If the Owner has complied with subsection (2), they are not liable to make any compensation or other payment in respect of ~~any workings carried out in accordance with any rights reserved by subsection (1) or~~ [the lawful exercise of the specified rights, including for](#) any damage [to the Malvern Hills](#) resulting from ~~them~~ [such exercise](#). 35
- (4) There continue to be reserved to any relevant person, any rights to springs of water naturally flowing or arising from the surface of any land forming part of the King's third and all such powers as they ~~or any of them respectively~~ had for the enjoyment of that land.

(5) In this section –

~~“the 1884 Act” means the Malvern Hills Act 1884,~~

“the King’s third” means the land as was so defined in section 2 of the 1884 Act, read with the preamble to that Act,

“the Owner” means the lord~~s~~ of the manor or other owner of any specified rights as referred to in subsection (1), 5

“~~a~~relevant person” means any person who, immediately before this Act ~~was~~is passed was, by virtue of section 13 of the 1884 Act, entitled to exercise the rights mentioned in subsection (4) or was entitled to exercise the powers mentioned in that subsection, 10

“specified rights” means rights in respect of the soil of any land that were reserved under section 13 of the 1884 Act, being rights to –

(a) ~~dig and get by open quarrying or otherwise any stone, mines or other minerals~~extract, by digging mines or by open quarrying or otherwise, any stone or other minerals, and 15

(b) carry away, sell and dispose of such stone or other minerals for their own benefit.

97 Protection of owner of Little Malvern Court Estate

(1) ~~The owner shall be entitled for building or road purposes on the Little Malvern Court Estate at any time to take stone sand and gravel from any quarry existing at the date of the passing of the Malvern Hills Act 1924 in the areas where mineral rights were acquired within Little Malvern Court Estate by the Conservators pursuant to the Malvern Hills Act 1924.~~ 20

(2) ~~No byelaws made under section 66(1)(p) shall apply to or in any way affect the property or rights of the owner.~~ 25

(3) ~~In this section, “the owner” means the owner for the time being of the estate in the parish of Little Malvern in the county of Worcestershire known as the Little Malvern Court Estate to the extent it remains in the ownership (legally or beneficially) of or for (whether by trust or other arrangement) any members of the Berrington family.~~ 30

SCHEDULES

SCHEDULE 1

Section 7

ADMINISTRATIVE PROVISIONS

PART 1

MATTERS WHICH MUST BE INCLUDED IN RULES ~~AND REGULATIONS~~ 5

Introduction

- 1 ~~The m~~Matters about which, in accordance with ~~section 7(2)~~section 7(1), provision must be made in rules made by the Trust under section 7 are those mentioned in paragraphs 2 to ~~11~~12A and paragraph ~~14(2)~~14(3).

Benefits to trustees 10

- 2 The payment, transfer or application of income or property of the Trust by way of benefit to trustees and connected persons ~~and about contracts for the supply of goods or services by trustees and connected persons.~~

Contracts

- 2A Contracts for the supply of goods or services by trustees and connected persons. 15

Interests of trustees

- 3 (1) The declaration of interests of trustees and of connected persons.
(2) The management of conflicts of interest, including the participation by trustees in discussions or decisions of the trustees and the receipt of information by trustees. 20

~~Ordinary m~~Meetings of the trustees

- 4 (1) The frequency of ordinary meetings of the trustees.
(2) The means by which meetings are held (including by electronic means).

Calling meetings 25

- 5 The making of arrangements for the date, ~~notice time~~giving of notice, time and place of meetings (which may include different provision about different types of meeting).

Chairing of meetings

- 6 (1) The election of the chair and vice-chair of the ~~trustees~~Trust and their responsibilities.
- (2) Arrangements if there is a vacancy in the position of chair or vice-chair or in their absence. 5
- (3) The removal of the chair or vice-chair from office.

Quorum

- 7 (1) The quorum required for a vote at a meeting of the trustees.
- (2) ~~The making of arrangements for the appointment or election of new trustees, where the number of trustees has fallen to the extent that those requirements cannot be met.~~ 10
- (3) The making of decisions during any period in which ~~those requirements are not~~requirements made in rules under sub-paragraph (1) as to quorum cannot be met.

Decisions of the trustees 15

- 8 (1) Requirements for the making of decisions of the trustees.
- (2) Requirements under sub-paragraph (1) may include provision for—
 - (a) the chair of the meeting having a casting vote,
 - (b) where the decision is to elect the chair or vice-chair of the ~~trustees~~Trust and there is a tied vote, 20
 - (c) decisions on urgent business, including about the requirements for and validity of decisions made otherwise than at a meeting.
- (3) The validity of any proceedings of the trustees or any committee ~~or sub-committee of the Trust~~ in cases where there is a vacancy among the trustees or committee members or a defect in the appointment of a trustee or committee member. 25

Records

- 9 (1) The keeping of records of the proceedings at meetings, including the means of doing so.
- (2) The approval of records. 30

Committees, ~~sub-committees~~ and advisory panels

- 10 (1) The establishment and dissolution by the Board of committees; ~~sub-committees~~ and advisory panels.
- (2) The composition of committees and advisory panels, including provision about the inclusion of persons who are not trustees. 35
- (3) The delegation of functions to committees except—

- (a) setting the amount of the levy under section ~~34~~33,
 - (b) approving the Trust's budget,
 - (c) appointing trustees,
 - (d) exercising the powers ~~of~~in section 7,
 - (e) such other functions as may be specified in regulations ~~made under paragraph 1~~ or other documents under section 7(2). 5
- (4) Requirements on committees, including requirements about –
- (a) acting in accordance with any regulations ~~made by the trustees under paragraph 1~~ or other documents under section 7(2), 10
 - (b) reporting to the trustees.

Delegation to employees

- 11 (1) The delegation (subject to the provisions of this Act) of the trustees' functions to ~~any employee of the Trust~~ such employees of the Trust as the trustees think fit except the functions specified in sub-paragraphs 10(3)(a) to (d) and such other functions as may be specified in regulations ~~made under paragraph 1~~ or other documents under section 7(2) for the purposes of paragraph 10(3)(a). 15
- (2) Reporting by employees to the trustees in accordance with any instructions given by the Trust.

Financial controls

- 12 Financial controls and accounting policies and procedures. 20

Authentication of documents

- 12A(1) ~~Regulations under paragraph 1 may lay down~~ The laying down of procedures for the sealing, signature or execution on behalf of the Trust of documents of any kind. 25
- (2) ~~Such regulations~~ Rules may lay down different procedures for different kinds of documents, and may specify the person or persons, being trustees or employees of the Trust, who may seal, sign or execute documents of the kinds specified in the ~~regulations~~ rules.
- (3) If ~~regulations~~ rules permit records of the Trust to be kept in electronic form and require a trustee to sign the a record, the ~~regulations~~ rules must specify a method of recording the signature that enables it to be properly authenticated. 30

PART 2

~~REGULATIONS~~ MATTERS WHICH MAY BE INCLUDED IN REGULATIONS AND OTHER DOCUMENTS 35

- 13 (1) ~~The regulations that may be made by the trustees under section 7(1) include regulations for the management and administration of the Trust and for~~

~~the conduct of its business and of any committee, sub-committee or advisory panel.~~

- (2) Without prejudice to the generality of ~~sub-paragraph (1), regulations~~ section 7(2), regulations and other documents under that section may include provision – 5
- (a) specifying the quorum for any committee, ~~sub-committee~~ or advisory panel,
 - (b) about voting rights for members of committees ~~or sub-committees~~ who are not trustees,
 - (c) about the calling of meetings, 10
 - (d) for methods of making decisions in order to deal with cases of urgency when a meeting is impractical,
 - (e) about the custody of documents, and
 - (f) about the keeping of records.
- (3) Subject to any provision made in the rules under section 7, regulations and other documents made under section 7(2) may enable any committee or advisory panel of the trustees to regulate their own procedure. 15
- ~~(3) Subject to this Schedule, and to any other regulations made under sub-paragraph (1), provision may be made in regulations under sub-paragraph (1) enabling the trustees, and any committee, sub-committee or advisory panel of the trustees each to regulate their own procedures.~~ 20

PART 3

METHOD OF HOLDING MEETINGS

Method of holding meetings

- 14 (1) Meetings of the trustees may be held – 25
- (a) involving only the physical presence of those trustees who attend the meeting,
 - (b) by electronic means only, or
 - (c) by a combination of the methods described in sub-paragraphs (a) and (b). 30
- (2) At least one of the meetings of the trustees in each year (in addition to the meeting to be held under section ~~38~~37(3)) must involve only the physical presence of those trustees who attend the meeting unless there are exceptional circumstances which in the opinion of the chief executive prevent the physical presence of all the trustees at all the meetings in that year. 35
- (3) Rules made under section 7 must include provision about the following as regards meetings of the trustees held wholly or partly by electronic means –
- (a) ensuring participating trustees are able to communicate with each other ~~and about the means by which they do,~~ 40

- (aa) the means by which participating trustees communicate with each other,
- (b) the giving of notice of meetings,
- (c) the method of casting votes,
- (d) ~~about~~ how a person is to be regarded as being present or in attendance at ~~the~~a meeting, 5
- (e) in the case of meetings which by virtue of section 7(~~11~~12) ~~of the Act~~ (which applies certain provisions of local government legislation to the Trust) are open to the public, ensuring that the public is able to see and hear the trustees if ~~they are~~any of the trustees is using electronic means. 10

PART 4

GENERAL

Authentication of documents

- 15 (1) ~~Regulations made under paragraph 1 may lay down procedures for the sealing, signature or execution on behalf of the Trust of documents of any kind.~~ 15
- (2) ~~Such regulations may lay down different procedures for different kinds of documents, and may specify the person or persons, being trustees or employees of the Trust, who may seal, sign or execute documents of the kinds specified in the regulations.~~ 20
- (3) ~~If regulations permit records of the Trust to be kept in electronic form and require a trustee to sign the record, the regulations must specify a method of recording the signature that enables it to be properly authenticated.~~

Interpretation 25

- 16 (1) In this Schedule –
 - “electronic means” includes any means which uses or is facilitated by electronic or similar communication or information technology,
 - ~~“regulations” includes standing orders and instructions,~~
 - ~~“signed signature” includes signed electronically, and “signatures” is to be construed accordingly~~an electronic signature. 30
- (2) References in this Schedule to a committee ~~of the trustees~~are references to a committee of the trustees and include references to a sub-committee of the trustees.

SCHEDULE 2

Section 7

APPLICATION OF ENACTMENTS RELATING TO PUBLIC MEETINGS, INSPECTION OF DOCUMENTS ETC.

(1) Name of enactment	(2) Manner in which applied to the Trust	5
Part VA of and Schedule 12A to the Local Government Act 1972	Whole of Part and Schedule to apply as though the Trust were a principal council within the meaning of Part VA, references to a committee or sub-committee of a principal council included references to any committee or sub-committee appointed by the Trust, and references to a member or a councillor of a principal council included references to a trustee.	10
	This is subject to the following modifications—	
	(a) section 100A applies as though—	
	(i) in subsection (1), the words “or (2A)” were inserted after “subsection (2)”,	15
	(ii) after subsection (2) there were inserted —	
	“(2A) Any member of <u>the</u> public may be excluded from a meeting of the Trust if in the opinion of the chair of the meeting the conduct of the member of the public in question disrupts or is likely to disrupt the normal conduct of the business of the meeting and the chair of the meeting may exclude the public if in the chair’s opinion the conduct of the public generally so disrupts or is likely to so disrupt the normal conduct <u>of the business</u> of the meeting.”,	20
	(iii) the reference in subsection (6)(c) to premises not belonging to a principal council shall be construed as a reference to premises not belonging to the Trust or not used as the offices of the Trust,	25
	(b) the proper officer for the purposes of sections 100B, 100C, 100D and 100F is the chief executive or such other person as is designated for the purpose in question by the Trust,	
	(c) section 100E applies as though at the end of subsection (1) there were inserted “except in relation to a meeting of a committee or sub-committee at which it is not intended that a decision is to be made in exercise of a function that has been delegated to the committee or sub-committee (in which case no such decision may be so made)”,	30
	(d) <u>section 100G applies as though</u> for subsection (1)(a) and (b) of section 100G there were substituted — <u>(i) for subsection (1)(a) and (b) there were substituted —</u>	35
	“(a) the name of every trustee for the time being, and	

(1) Name of enactment	(2) Manner in which applied to the Trust	
	(b) the name of every member of each committee or sub-committee of the Trust for the time being.”, (eii) in subsection (2)(b)- of section 100G , after “exercisable” there were inserted “, but not an officer by whom such a power is exercisable at least partly as a result of sub-delegation by any officer”.	5
Section 228 of the Local Government Act 1972	Section applies with the omission of the reference to any proper officer and as though the Trust were a parish council and (as regards elected trustees) references in the section to a local government elector for the area of a local authority are to be construed as references to a local government elector for the Trust’s electoral area.	10

SCHEDULE 3

Section 48

15

APPLICATION OF HIGHWAYS ACT 1980 TO CATTLE-GRIDS PROVIDED BY THE TRUST IN HIGHWAYS

(1) Provision of Highways Act 1980	(2) Manner in which applied to the Trust	
The sections and Schedule mentioned below	All of the sections and the Schedule to apply as though— (a) the Trust were the highway authority for the highway in question <u>(except in the case of section 84 (maintenance of cattle-grids and by-passes),</u> (b) a cattle-grid provided under section 48 were a cattle-grid provided under the Highways Act 1980, and subject to any further modifications set out below.	20 25
Section 81 82 (Provision of cattle-grids and by-passes)	Only subsections (2) and (4) to (8) apply <u>and with the following modification—</u> <u>The powers under subsection (7) are exercisable by the highway authority as well as the Trust.</u>	30
Section 82 83 (Removal of cattle-grids and discontinuance of by-passes)	The whole section applies <u>with the following modifications—</u>	35

(1) Provision of Highways Act 1980	(2) Manner in which applied to the Trust	
	The powers under the section are exercisable by the highway authority as well as the Trust	
	In subsection (1) at the end insert “to the reasonable satisfaction of the highway authority”	5
Section 83 84 (Maintenance of cattle-grids and by-passes)	The whole section applies	
	In subsection (1), at the end insert “ at the expense of the Trust subject to any agreement between the Trust and the highway authority to the contrary”	10
	In subsection (2), for the words “maintainable at the public expense for which that authority are the highway authority” substitute “maintainable at the expense of the Trust, subject to any agreement between the Trust and the highway authority to the contrary”	15
Section 84 85 (Exercise of powers by agreement between neighbouring authorities)	The whole section applies	20
Section 86 87 (Agreements for use of land for cattle-grids or by-passes)	The whole section applies	
Section 89 90 (Protection of bridges and railways)	The whole section applies	25
Schedule 10 (Procedure for Determination by Highway Authority of Certain Questions Arising in Connection with Provision of Cattle-Grid or By-Pass)	The whole Schedule applies with the following modification— Paragraph 1(1)(c) is omitted	30

SCHEDULE 4

Section 84

MISCELLANEOUS POWERS OF THE TRUST

The Powers

- | | | |
|----|--|----|
| 1 | Subject to section 28 and rules made under section 7 section 8(7) , employing and remunerating such staff as are necessary for carrying out the work of the Trust and to engage volunteers . | 5 |
| | 1A Engaging volunteers. | |
| 2 | Raising funds. | |
| 3 | Establishing and maintaining a supporters' organisation to which individuals or bodies may pay subscriptions. | 10 |
| 4 | Co-operating with and entering into joint ventures, collaborations and partnerships with charitable and non-charitable bodies. | |
| 5 | Establishing or supporting any charitable trusts, associations or institutions formed for any of the charitable purposes included in the objects. | |
| 6 | Acquiring, merging or affiliating with or entering into any partnership or joint venture arrangement with any other charity formed for any of the objects. | 15 |
| 7 | Holding seminars, conferences, lectures, tours and courses. | |
| 8 | Promoting or carrying out research and disseminating such research. | |
| 9 | Providing advice. | 20 |
| 10 | Publishing or distributing information in any form. | |
| 11 | Making grants. | |
| 12 | Setting aside funds for special purposes or as reserves against future expenditure, but only in accordance with a written policy on reserves. | |
| 13 | Depositing or investing funds in any manner (but to invest only after taking such advice as the Trust consider is reasonably necessary from such person as is reasonably believed by the Trust to be qualified to give it by their ability in and practical experience of financial and other relevant matters). | 25 |
| 14 | Designating funds for particular purposes, including designating capital money received by the Trust for any purpose for which capital money may properly be applied in accordance with section 34. | 30 |
| 15 | Entering into any derivative arrangement in connection with any investment provided that the derivative arrangement is ancillary to the investment (being entered into in order to manage the risk or transaction costs associated with the investment) and is not a speculative venture. | 35 |
| 16 | Delegating the management of investments to any person, provided that—
(a) the delegate is authorised to carry on investment business under the provisions of the Financial Services and Markets Act 2000, | |

- (b) the investment policy is set out in writing by the Trust,
 - (c) the performance of the investments is reviewed regularly with the Trust,
 - (d) the investment policy and the delegation arrangements are reviewed at least once a year, 5
 - (e) all payments due to the delegate are on a scale or at a level which is agreed in advance and are notified promptly to the Trust on receipt by the delegate, and
 - (f) the delegate must not do anything outside the powers of the Trust.
- 17 Insuring the property of the Trust against any foreseeable risk and taking out other insurance policies to protect the Trust when required. 10
- 18 Subject to section 28 and rules made under section 7, employing paid or unpaid agents or advisers.
- 19 Opening and operating bank accounts and banking facilities.
- 20 Soliciting and accepting grants, donations, endowments, gifts, legacies and bequests of assets on ~~any terms~~terms (if any) which are acceptable to the Trust. 15
- 21 Entering into any licence or sponsorship agreement.
- 22 Entering into any contract or agreement (including any finance lease).
- 23 Carrying on any trade in so far as the trade is – 20
- (a) exercised in the course of the carrying out of the objects, or
 - (b) ancillary to the carrying out of the objects, or
 - (c) not trade of the sort described in sub-paragraph (a) or (b) and is not taxable trading.
- 24 Establishing, supporting or acquiring subsidiary companies. 25
- 25 Selling surplus renewable energy.
- 26 Acquiring, keeping, managing and disposing of grazing livestock.
- 27 Without prejudice to section 30, taking out policies of insurance (including indemnity insurance for trustees).
- 28 Compromising or settling – 30
- (a) any disputes of any nature, or
 - (b) any claims made by or against the Trust in any legal proceedings or prospective legal proceedings.

Interpretation

- 29 In paragraph 23, “taxable trading”^u means carrying on a trade or business in such manner or on such a scale that some or all of the profits are subject to corporation tax. 35
- 30 In paragraph ~~24~~25 “surplus renewable energy” means electrical energy which is –

- (a) unused by the Trust, and
- (b) generated by plant or equipment which ~~may only be~~ is –
- (i) ~~is~~ located on ancillary land ~~owned or under the control of the Trust~~ or on buildings on other land owned or under the control of the Trust, and
- (ii) installed and used for the purpose of supplying energy for the Trust’s own purposes.
- 31 In paragraph 26, “grazing livestock” includes any creature which is or is to be kept by the Trust for purposes which include grazing land.

5

SCHEDULE 5

Section 87

10

REPEALS AND REVOCATION

Provision	Extent of repeal or revocation
The Malvern Hills Act 1884 (c. clxxv)	The whole Act
The Malvern Hills Act 1909 (c. xxxvii)	The whole Act
The Malvern Hills Act 1924 (c. xxxvi)	The whole Act
The Malvern Hills Act 1930 (c. lxxii)	The whole Act
The Malvern Hills Act 1995 (c. iii)	The whole Act
The Malvern Hills (Amendment of Local Enactment) Order 1958 (S.I. 1958/1986)	The whole Order
The Hereford and Worcester (Structural, Boundary and Electoral Changes) Order 1996 (S.I. 1996/1867)	Article 18

15

20

SCHEDULE 6

Section 88

CONSEQUENTIAL AMENDMENTS

Malvern Water Act 1891 (c.xcvi)

- 1 In section 10 of the Malvern Water Act 1891, for “the Malvern Hills Act 1884” ~~where those words appear in both places, in both places where those words appear~~, substitute “the Malvern Hills Act 202[X]”.
- 2 In section 33 of the Malvern Water Act ~~1891~~1905, for “the Malvern Hills Act 1884” substitute “the Malvern Hills Act 202[X]”.

25

The Commons Registration (England) Regulations 2014 (S.I. 2014/3038)

- 3 In the table in paragraph 8 of Schedule 4 to the Commons Registration (England) Regulations 2014, for the entries relating to sections 8 and 9 of the Malvern Hills Act ~~1924~~[1930](#) substitute –

<i>Column 1 – Enactment</i>	<i>Column 2 – Dispositions</i>	<i>Column 3 – Relevant Instrument</i>	<i>Column 4 – applicant</i>	5
The Malvern Hills Act 202[X], section 73(1) (disposal of land)	The sale, lease, exchange or absolute disposal free from any rights or restrictions of any certain part or parts of the Malvern Hills comprising registered common land	The deed or other instrument made by the Malvern Hills Trust (with the consent of the Secretary of State) effecting that disposition	The Malvern Hills Trust	10
The Malvern Hills Act 202[X], section 72 (power to adjust boundaries)	The sale or exchange of any part or parts of the Malvern Hills comprising registered common land, for the purpose of adjusting, defining or improving the boundaries of the Malvern Hills	The deed or other instrument made by the Malvern Hills Trust (with the consent of the Secretary of State) effecting that disposition	The Malvern Hills Trust	15
				20

SCHEDULE 7

Section 89 25

TRANSITIONAL PROVISIONS AND SAVINGS

General provisions

- 1 Where an instrument or document refers, either expressly or by implication, to a provision of any of the repealed Acts, the reference is, except where the context otherwise requires, to be construed as, or as including, a reference to any provision of this Act relating to the same matter. 30
- 2 (1) Anything begun under a provision of any of the repealed Acts may be continued under any provision of this Act as if begun under that provision of this Act.
- (2) Where any period of time specified in, or having effect in relation to, a provision of any of the repealed Acts is ~~current~~[running](#) at the date of the repeal, any provision of this Act relating to the same matter has effect as if it were in force when that period began to run. 35

- (3) Reference in this Act to things done, left undone, suffered or occurring in the past shall, so far as the context requires for the continuity of operation between a provision of any of the repealed Acts and any provision of this Act relating to the same matter, be construed as including reference to the things done, left undone, suffered or occurring before the coming into operation of that provision of this Act. 5
- 3 (1) The repeal by this Act of the repealed Acts does not affect the liability of any person for any offence under any provision of the repealed Acts or any byelaw made under any of the repealed Acts committed before the day on which the repealed Act was repealed. 10
- (2) Any proceedings under the repealed Acts (including proceedings for an offence such as is referred to in sub-paragraph (1)) may be continued notwithstanding the repeal, revocation or amendment of the repealed Acts.
- 4 Any application, approval, certificate, consent, document, exemption, notice or warrant made, submitted, given, granted or issued under any provision of the repealed Acts continues to have effect after the date on which the [repeal of the](#) relevant provision of the repealed Act took effect as though it had been made, submitted, given, granted or issued under the corresponding provision of this Act until it expires or is revoked or otherwise ceases to have effect in accordance with this Act. 15 20

Byelaws, regulations and rules

- 5 (1) Subject to sub-paragraph (2), any byelaw made under the repealed Acts continues to have effect as if made under section 65 until revoked by a byelaw made under that section.
- (2) Subsections (2) to (4) of section 64 apply in relation to anything removed from the Malvern Hills in pursuance of any byelaw which continues to have effect by virtue of sub-paragraph (1). 25
- 6 [Any regulations made under section 6\(1\) of the Malvern Hills Act 1930 continue to have effect as if made under section 58 until revoked by a regulation made under that section.](#) 30
- 7 (1) [Any provision of a repealed Act that deals with a matter about which provision must be made in rules under section 7\(1\) continues to have effect in relation to that matter until the relevant date.](#)
- (2) [In sub-paragraph \(1\) the “relevant date” in respect of a matter about which provision must be made in rules under section 7\(1\) is the date on which the first rule which makes provision about that matter comes into effect.](#) 35

Malvern Hills Bill [HL]

[AS PROPOSED TO BE AMENDED IN COMMITTEE]

A

B I L L

TO

Repeal and re-enact certain enactments relating to the Malvern Hills Conservators and the management of the Malvern Hills, to reconstitute and rename those Conservators as the Malvern Hills Trust and to confer further powers on the Malvern Hills Trust, to make further provision in relation to the Malvern Hills, and for other purposes.

SESSION 2024-25

Deborah Fox
MALVERN HILLS CONSERVATORS
Manor House
Grange Road
Malvern WR14 3EY
Chief Executive Officer

SHARPE PRITCHARD LLP
Elm Yard
10-16 Elm Street
London WC1X 0BJ
Parliamentary Agents

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PARLIAMENTARY DEBATES
(HANSARD)

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OFFICIAL REPORT

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Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
Non-afl	Non-affiliated
PC	Plaid Cymru
UUP	Ulster Unionist Party

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[LORD TIMPSON]

Of course, it is for the sentencer to decide whether to order a pre-sentence report, and there is an existing obligation on courts to obtain a pre-sentence report unless they consider it unnecessary. The Bill does not change that.

I reiterate my thanks to the noble Lord, Lord Marks, for raising the importance of pre-sentence reports and increasing their use. As I have set out, the Government are committed to ensuring greater funding, capacity and efficiency for the Probation Service. I therefore urge the noble Lord to withdraw his amendment.

Lord Marks of Henley-on-Thames (LD): My Lords, I am very grateful to the Minister for his helpful and detailed response. As I hoped he would, he has given an outline of the Government's very real commitment to more and better pre-sentence reports. He has also detailed the considerable investment that the Government propose to make in the Probation Service and in the production of such reports. I completely agree with him as to the future role of technology in the Probation Service and in the production of these reports. In that spirit, I respectfully ask leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendment 6 not moved.

Amendment 7 not moved.

Amendment 8

Tabled by The Lord Bishop of Gloucester

8: Clause 1, page 1, line 13, at end insert—

“but do not include pregnancy or maternity.”

Member's explanatory statement

This amendment seeks to ensure that existing sentencing guidelines relating to the mitigating factor of “pregnancy, childbirth and postnatal care” can continue to provide directions for courts to obtain pre-sentence reports for offenders who are pregnant or are primary carers of young children.

The Lord Bishop of Gloucester: I am minded not to move this, given what we have seen already, but I did just want to say to the Minister that there has been real confusion here, and I am really disappointed that this is undermining something that is already in existence. The Minister said the pre-sentencing guidelines are saying one thing, and the Bill is saying another. I am very disappointed, but I am not going to move this amendment.

Amendment 8 not moved.

Amendment 9 not moved.

Malvern Hills Bill [HL]

Second Reading

Moved by Lord Faulkner of Worcester

That the Bill be now read a second time.

7.42 pm

Lord Faulkner of Worcester (Lab): My Lords, I should express my gratitude to the Malvern Hills Trust for inviting me to present the Bill on its behalf.

I am sure that none of your Lordships needs me to describe the iconic beauty of the Malvern Hills. I now live in the city of Worcester and for much of my life I have been in Malvern itself or in the villages close by. The hills stretch for about eight miles from end to end across the borders of Herefordshire and Worcestershire. The highest point is the Worcestershire Beacon at 1,394 feet. The hills are designated as a national landscape, formerly known as an area of outstanding natural beauty. Some 62% of the hills are a site of special scientific interest, and there are three scheduled ancient monuments, including the remains of trenches on the Herefordshire Beacon, or British Camp, which was used by Caratacus in his last stand against the Romans. The hills are home to a rich variety of wildlife and protected habitats. They attract very significant numbers of visitors who take advantage of open access, including a network of footpaths and bridleways.

The promoters of the Bill are the Malvern Hills Trust. That is its working name; its statutory name is the Malvern Hills Conservators. It is the job of the trust to protect and manage the hills for the benefit of the public. I should say that if one visits the hills, it is evident that the trust performs its task very well indeed. The trust was established by an Act of Parliament in 1884 and since then, four further local Acts have amended and supplemented each other. The most recent Act was passed in 1995.

One of the purposes of the Bill before your Lordships is to consolidate those Acts. This would make good what the late Lord Colville of Culross said when introducing the Bill for the 1995 Act at Second Reading on 8 March 1993. I hope it is not out of order if I refer to my pleasure at seeing the noble Viscount, Lord Colville of Culross, on the Woolsack. The late Lord Colville said in 1993:

“I have great sympathy with one of the petitioners, who would like to see this private legislation consolidated. I am sure that everybody would”.—[*Official Report*, 8/3/1993; col. 869.]

The area that falls within the management of the trust consists of large parts of the hills themselves and other areas of open land comprising roadside verges and commons. The area is illustrated by a map which has been deposited with the Bill. The trust owns most, but not all, of the land within its management. About 90% of it is registered common land and virtually all of it open space, accessible by the public on foot and on horseback.

Lord Colville also remarked on the ever-increasing pressures on the hills as they become more and more popular. The pressures arising from that popularity continue to increase, and the need for the hills to be conserved and managed for the future public good remains as strong as ever.

The trust is in a somewhat unusual position in that it has the power to issue a levy on the residents of certain parishes in the local area. I will come on to that in more detail later, particularly as it is one of the topics that has been raised in the instruction tabled by the noble Earl, Lord Atlee.

It is worth drawing your Lordships' attention to the fact that the trust is a charity. As such, the trust has to comply with charity law and take heed of guidance issued by the Charity Commission. As your Lordships

are aware, the purpose of a Second Reading is to consider the Bill generally and approve the principle. In due course, a Select Committee will be appointed to examine the Bill and the 50 petitions that have been deposited against it. The trust has looked through the petitions and will respond to all the petitioners.

Common themes have been identified in the petitions, and I will touch on some of them today. Part 2 of the Bill has drawn more attention from petitioners than any other. It would make significant changes to the composition of the board of trustees, which has not changed significantly in 100 years. The trust considers that its board needs to be smaller, and it needs to include trustees who possess the skills necessary to manage an area of open space as significant as the Malvern Hills, in line with good governance of other modern statutory bodies and Charity Commission guidance. The Bill would achieve that.

Currently, the trust comprises 29 trustees: 11 are directly elected by the residents of the levy-paying parishes; 18 are nominated by various local authorities and, in the case of one trustee, by the Church Commissioners. The Bill proposes to reduce the overall number of trustees to 12, with six elected trustees and six appointed trustees. It has been suggested that the Bill would dilute the proportion of elected trustees. The reality is that, if the Bill is enacted in its current form, the proportion of elected trustees will increase from 38% to 50%.

Another point that has been raised by petitioners is about the changes that are proposed to the way elections will work. Currently, the electors of three parishes and of some former wards of a long-abolished urban district council elect one or more trustees for their individual area. The Bill proposes one electoral area, combining all the areas which currently elect trustees, so each one of the six elected trustees would be voted for by all the electors, rather than each trustee being chosen by the electors of an individual parish or ward.

A complaint that has been made is that this will mean that parishes lose their representation on the board, but charity trustees are not representatives of the interests of those who appoint them. The trust's objects are to preserve and manage the hills for the benefit of the public as a whole. They are not to look after the interests of any particular area.

The trust and I are grateful to the noble Earl, Lord Attlee, for giving us the opportunity to comment on a draft of his instruction, which touches on the trust's constitution. I can say now that I do not intend to oppose it. I understand that the noble Earl's concerns may, to some extent, overlap with those of the board as regards the potential for single-issue candidates dominating the elected trustees. I am sure that the Select Committee will look into this in detail, but the position of the trust is that the Bill strikes the right balance between elected and appointed trustees.

Part 3 of the Bill is about finance, and includes Clause 33, which deals with the levy, the subject of the other limb of the noble Earl's instruction. The first point is that Clause 33 makes no changes to the current position. The parishes which are subject to the levy would not change; the amount that is charged at the time the Bill attains Royal Assent would not

change; the way in which the levy is collected would not change; and the statutory limitation on annual increases to the levy would not change. The instruction would require the Select Committee to consider the area within which the levy is applied. I am sure that this would be a matter which the Select Committee would wish to examine in any event. I say again that I do not intend to oppose the instruction.

At the request of the trust, the noble Earl, Lord Attlee, included some wording in his instruction about a restriction on the trust on what it can promote in the Bill in relation to the levy. By law, the trust has to obtain the consent of the Charity Commissioners to incur expenditure on the promotion of the Bill. As a condition of that consent, the trust must not incur expenditure in promoting any material changes to the levying provisions, including changes to the levy-paying area. The trust is content, of course, with the levy clause as contained in the Bill, and it would seek to persuade the Select Committee of its merits.

Part 4 deals with public access to and management of the hills. It is worth referring back to Clause 5 for context. Clause 6 sets out the objects of the trust, which are

"to protect, conserve and maintain the landscape, natural appearance, habitats, flora and fauna, geology and archaeology of the Malvern Hills",

and to

"keep the Malvern Hills unbuilt on as open space for recreation and enjoyment of the public".

Alongside Clauses 38 and 40, which respectively set out the statutory rights of the public to access the hills and impose a duty on the trust to keep the hills unenclosed, there remains very significant protection for the hills into the future.

I hope that your Lordships have no complaints about the way in which the trust manages the hills now or about the provisions of Part 4, which, in general terms, consolidate the existing local legislation, with very few changes. The most significant change in the Bill is a new power to fence common land to prevent animals straying from it. The Bill does not provide the trust with a charter to build on the hills or to install solar panels or wind turbines all over the hills, as some of the Bill's detractors have, rather fancifully, suggested. It is quite the opposite.

The proposed instruction by the noble Baroness, Lady Coffey, asks that the Select Committee pays particular attention to the provisions which would impede or restrict public access. I strongly suspect that public access also will be of interest to the Select Committee, and I do not intend to oppose her instruction.

Part 5 restates in modern terms the trust's power to make and enforce by-laws with one significant change—namely, a new power to issue fixed penalties. Part 6 deals with the trust's power in relation to land, and again makes no significant changes.

Finally, I should mention Clause 83 in Part 7, which is a new general power for the trust, akin to general powers enjoyed by other statutory bodies and charities. It is important to note the inbuilt restrictions on the use of the power, which means that any fears about the trust bypassing the provisions I have mentioned about preserving the hills cannot become reality.

[LORD FAULKNER OF WORCESTER]

The proposed instruction of the noble Baroness, Lady Coffey, touches on the scope of the promoters' powers. I am sure that, in any event, the Select Committee will take particular interest in Clause 83 and Clause 84, which introduces a number of miscellaneous powers, all of which can be exercised only to further the objects of the trust. The noble Baroness's instruction is based on the instruction which was passed on Second Reading of the Bill which became the Malvern Hills Act 1995. Following in the footsteps of the previous Lord Colville, as mentioned earlier, I do not intend to oppose it.

I hope that what I have said is persuasive enough for your Lordships to allow the Bill to be given a Second Reading and for it to proceed to Committee. I beg to move.

7.55 pm

Earl Attlee (Con): My Lords, I am grateful to the noble Lord, Lord Faulkner of Worcester, for his usual expert introduction of the Bill today. The promoters would have been hard pushed to find a more suitable and capable Peer to move the Second Reading.

Assuming that your Lordships give the Bill a Second Reading, I will then move my Motion that it be an instruction to the Select Committee considering the Bill that it considers both the precept area and the electoral arrangements. This will not prevent the Select Committee considering, subject to the Standing Orders governing its procedures, any other matters it sees fit or the many petitions that have been deposited, and the noble Lord recognised that. I am indebted to him for agreeing in advance that he will not oppose my Motion. I gently point out to my noble friend Lady Coffey that the drafting of my Motion was very carefully considered and agreed with the promoters in early February this year.

If both instructions are agreed—and they probably will be—your Lordships' Committee of Selection will have to decide between composing a committee that is ideal for considering the electoral and precept issues or one that is ideal for considering the AONB and access aspects of the Bill, if I may put it that way. I think that the electoral and precept aspects are more important.

My interest in the Malvern Hills arose through my wife, who was born in Little Malvern, and we regularly attend local events. By chance, last Saturday, we were in Malvern and climbed the Worcestershire Beacon—my hips have just about recovered. We have no property interests in Malvern, although my wife's siblings do.

I would like to think that I am very well briefed on the MHT. I have an open mind, but I have some serious anxieties regarding the governance of the MHT. In particular, last year, the board lost its chair in acrimonious circumstances; there were accusations that it was being run by a small group and was withholding information from certain trustees. Some trustees complained of not getting information in a timely way, or even at all. I have taken up the governance matters with the Charity Commission at the highest level, and this is no longer a matter for me to deal with—I am not equipped to deal with it, nor is it my

role. It should be noted that not all trustees are in favour of the Bill. However, advice from the Charity Commission is that the decisions of the trustees do not have to be unanimous.

I echo the comments of the noble Lord, Lord Faulkner, about the operational side of the MHT. Despite a recent tragedy, I have no doubt that the Malvern Hills are being very well looked after. There is an excellent new chief executive in place. I agree that the five Acts of Parliament that govern the Malvern Hills need to be brought up to date; some of the drafting is archaic and refers to organisations that are no longer extant, and the trustees are unnecessarily constrained in what they can do.

Compared with the eight petitions in 1995, there are 50 petitions on this occasion, reflecting the Bill's complexity and controversy. Many of them are very well argued, and I am sure that the Select Committee will look at them all carefully.

Removing "natural aspect" from the objects of the Acts and replacing it with "natural appearance" is one example of shared concerns of those living in or close to the Malvern Hills or surrounding commons. Others concern estovers and other ancient rights of commoners. In the context of the trust's rights to grant land access easements, the residents fear that the changed wording will invalidate previous case law and counsels' opinions on what might affect the natural aspect, leaving the door wide open for future developments to be facilitated. "Natural aspect" continues to be used and understood in the planning context and neither the conservators of Epping Forest nor of Wimbledon and Putney Commons have chosen to remove those words from their governing Acts.

An important issue raised by many petitioners is whether or not MHT is a public body. Last year, I tabled a Written Parliamentary Question on this point and it was confirmed by the Government that MHT is not a public body. However, very recently, the ONS has undertaken a reclassification exercise and determined that MHT is indeed a public body. My understanding is that the ONS did not consult with MHT before making its conclusion public, which was rather surprising when MHT is in the course of putting a private Bill through your Lordships' House.

If it is a public body, MHT might be subject to freedom of information requests, but it is not well enough resourced to deal with them. I am not a fan of FoI, although I have used it to good effect myself. Can the Minister tell the House what she thinks the new position is regarding FoI and MHT?

Some of the petitioners make compelling arguments that MHT is a public body because it takes in the precept as its main source of income. Car parking charges are considerable, but those are for the provision of a service. Charitable income is negligible. If it was a normal charity, funders could walk away if they disagreed with how it was being run. Instead, they must pay a compulsory levy.

No doubt MHT will consider the implications of this latest development. The committee will have to consider it because there are several potential consequences; these might include distinguishing between the legal and statutory requirements of being classed

as a public body as distinct from its role as a charity receiving donations. As a public body, the trustees could have a duty to the levy payers rather than acting only in the best interests of the charity—a point touched on by the noble Lord.

I have identified two major issues of concern for the residents of the Malvern Hills area; that is, the area in the jurisdiction of the trust. They are the subject of my instruction to the Committee, and they are both linked. The first is the long-standing anomaly that some residents pay the precept while others also in the MHT landholding area do not. Although existing Acts provide that the levy-paying area can be applied to commons and wastelands at any time and from time to time, the provisions have never been used. However, the new draft position at Clause 71(6) appears to give the power only on lands acquired in the future, so the residents in those existing areas will never bear a portion of the precept. I also question whether orders made by the Secretary of State under Clause 71 really require the affirmative order process.

On the one hand, the trustees recognise that some paying the levy and some not is illogical and unfair. But, of course, there is no financial advantage for them in changing this because the total precept received would remain the same but there would be some increased costs for the trust. On the other hand, existing precept payers argue that they are exposed to an increased burden on costs, especially as some 46% of the trust's landholding is outside the precept area and the trust continues to have the power to purchase more land. Parliament owes it to residents in the Malvern area to have the matter of the precept very carefully considered.

The second issue is the electoral and appointment arrangements for trustees. The noble Lord has carefully explained the new arrangements for the trustees. The proposals to have all the levy-paying parishes combined into a single electoral area is of concern to the residents because they believe they will lose their democratic right to elect their own representative. Their concern is that the new arrangements will extinguish the practice established in 1884 of ensuring that the individual needs of the different parishes—rural, urban and agricultural—are properly considered through their local trustee. That may now become particularly relevant if MHT is a public body.

A further concern is that non-levy payers, many of whom live in the rural areas, may have no voice at all. Extending the precept area could resolve these anomalies and be fairer. Matching the precept area to the landholdings of the MHT was envisaged in the 1884 Act, because, if the conservators acquired land in the future, they had the powers to levy the relevant parishes and they would be entitled to appoint a conservator.

The removal of the 18 trustees appointed by local councils across the whole of the area under MHT's jurisdiction, to be replaced by the appointment of six independent trustees, via a new nomination committee, from anywhere in the country with no necessary connection to Malvern whatever, will further dilute the residents' ability to have a voice in the trust. Surely the necessary expertise could be found from within the Malvern area or at the very least from within, say, 35 miles of Great Malvern Priory and all of Birmingham.

However, the question remains whether the complete severance of the link with all local councils is the best way of managing the hills effectively. Perhaps the residents of Malvern would be better served if the trust bought in some or all such expertise as and when needed and instead increased the numbers of elected trustees to give a fairer representation.

In addition to some of the concerns that I have had time to mention, I am concerned that, over time, the new arrangements would mean that it would be too easy for the trust to be taken over by a single-issue pressure group, with serious adverse consequences—a point recognised by the noble Lord.

In conclusion, I hope the whole House will welcome the principle of having a new Bill. It is essential that we instruct the committee to look specifically at the two areas I have suggested. However, the Committee will have to consider the petitions and other matters as well, and I fear that the Committee's task will be somewhat onerous.

8.08 pm

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow the noble Earl, Lord Attlee, who has clearly carefully applied himself to the details, in both his speech and instruction. I thank the noble Lord, Lord Faulkner, for so ably introducing the Bill.

I have the misfortune not to have a special connection to the Malvern Hills, although I have been a visitor there a number of times, but I have had representations from people who are very concerned about their future who have asked me to speak today. They are passionate about the future of the hills and they support the Bill and the way forward. A really important point, as the noble Lord, Lord Faulkner, stressed, is that this is a charity and is under the governance of the Charity Commission, which we know is important for keeping a sense of direction and for bodies following their aims.

I have to reflect briefly on why we here in Westminster are debating this Bill. According to Google Maps, it would take us one day and 20 hours to walk to the top of the Malvern Hills—I do not think I would do it in that time myself, but that is a matter of record. It would take more than four hours by public transport. That being about 120 miles, it means the average speed is 30 miles per hour, which is something of an indictment of the public transport. None the less, the question is: why do we have a system of government that means that we are here in Westminster debating the future of a local area? Would it not be much better if it was local people having the debate in that local area? However, we are where we are and we have to do the best we can, and that is what noble Lords are doing.

There are a couple of points that I particularly wanted to make. The noble Lord, Lord Faulkner, has outlined so much that I am not going to go over anything like all the ground that he did, but it is important to make the point about the reduction in the number of trustees from 29 to 12. That figure is the maximum number generally recommended by the charity governance code and the Charity Commission guidance. I think most noble Lords in this Chamber and elsewhere will have found themselves on many governing bodies, trusts, boards, et cetera, over the years. Twelve is a

[BARONESS BENNETT OF MANOR CASTLE]

very large board, and we know how difficult decision-making can be in those sorts of situations. It is also important to stress that, if the Bill is enacted in its current form, the proportion of elected trustees increases from 38% to 50%. This is a modernisation and a moving forward—that is the overall direction of the Bill—for an area that sees 1.25 million visitors a year, according to University of Bristol figures.

It is worth noting—and many people have commented on it—what a good state the Malvern Hills are in. I looked this up. The word Malvern derives from the Celtic, “moel bryn”, which means “bare hill”. That is obviously an historic name, but we know that we live in one of the most nature-depleted corners of this blighted planet. I am sure that we can do better by nature; we can do better by those many visitors, and we know how important green spaces are to public health to make those spaces as good as they can be for visitors, for the farmers, and for the communities. This is an attempt to make a step forward, a modernisation. Ideally, we would not be doing this here at all, but given that these are the rules we operate under, I support the direction of the Bill.

8.12 pm

Baroness Thornhill (LD): My Lords, I too thank the noble Lord, Lord Faulkner, and the noble Earl, Lord Attlee, for their more detailed and comprehensive look at this Bill. Several years ago, when I was working for the Local Government Association with councillors in Malvern Hills, I came to enjoy being in the town. I found a super B&B on the main road and particularly enjoyed the backdrop of the wonderful Malvern Hills. However, I also heard of issues and concerns—even back then—with the Malvern Hills Trust, as it likes to be known. When I saw this Bill coming forward, therefore, my interest was piqued. It did not take very long research to see that the changes in the Bill were meeting considerable opposition—and I emphasise “considerable”.

As a former elected mayor, I am no stranger to some vocal members of the public opposing any modernisation within any organisation, however they are constituted, and, indeed, being resistant to any change whatever—do not get me started on development. However, the opposition to this Bill is something of a completely different order. As a member of our office staff said to me yesterday, “I have close friends in Malvern. They said the whole town is talking about it” and the evidence confirms that they are, so the noble Baroness, Lady Bennett, should be assured that they are having the debate, but it is mainly in acrimonious public meetings.

That the House has received more than 50 individual, highly articulate, well-intentioned petitions, including petitions from the local county, district and parish councils, from former chairs of the Malvern Hills Conservatives and even from a group of current trustees is a red flag. Raising substantive concerns in respect of this Bill, they surely tell a tale in themselves. I think the House has received more petitions in respect of this Bill than it has received in total for the past 10 years for all Private Bills. That their concerns appear to be completely ignored begs the question as

to the motives behind these changes. What will the Bill change? What powers is it granting that are causing such a furore of public opinion?

I do not doubt that the trust could and should be improved, which is why I am not opposing this Bill but think that it must and should be improved. However, I do believe that the trust’s PR has been dire, or we would not be in the situation that we are in now. The noble Lord said how wonderfully things have been managed and how good things are, but “Oh, but we have to change”. I would argue that the trust has not made the case for change to the general public. That is in how it has conducted its affairs and its consultation, which needs to be looked at.

It is clear that the promoters, as well as consolidating the existing five Acts, wish to be granted substantial additional powers while being governed by a much smaller and—as outlined well by the noble Earl, Lord Attlee—less democratic board. For example, if one of the six elected people stands down, the other six can appoint a person in their stead, so it is easier to be taken over by a single-issue pressure group. The evidence suggests that little, if any, thought has been given by the promoters to the substantive concerns raised by the levy-paying public in Malvern who fund this—and I am going to use the words—public body. I commend the work of the Malvern Environment Protection Group in bringing these issues to the attention of the public.

There is even a dispute as to the constitutional nature of the trust. Several noble Lords have referred to it as a charity, yet we hear that as recently as last month it was deemed by a KC to be a public body, and that is usually defined by the amount of taxation that it gets as part of its revenue—which, again, was well expressed by the noble Earl. This must be clarified, because noble Lords will be very aware that there are significant legal differences as to whether you are a public body or a charity in what you can do, what you cannot do and to whom you are accountable. This lack of clarity is making members of the public nervous and, whether rightly or wrongly, question the motives and intentions of the trustees.

This has, understandably, set hares running, and, it might seem, with good reason, because something starts to smell not quite right. As mentioned by the noble Earl, Lord Attlee, its former chair could not find out how much a senior official of her trust was being paid. We all know that if you are the chair of any board, you are responsible, so to not be able to have that information tells you that something is a bit rotten in the state of Denmark. These anxieties and fears were further fuelled when, at recent meetings to discuss this Bill and the financial arrangements regarding it, eight trustees were, in effect, gagged from speaking or voting. Moreover, in successive board meetings, the level of transparency and accountability would appear to have fallen significantly below what would be expected of any public body or, indeed, any well-run charity. In such circumstances, I am quite shocked that they are pushing ahead regardless. Surely, with this level of concern and with so many unanswered questions—including from some of their own trustees—they should think again.

Yes, I too am deeply concerned about the governance arrangements. These proposals remove 140 years of accountability to local councils and the public, which should not be cast off lightly. I sense the public feel that they have not been given good reasons for this change. “Everything’s going wonderfully; everything’s terrific; it’s all managed well, but we need to modernise and move forward”. What does that actually mean?

If power could pass to a small group of people to take over and run the trust, there is a fear that corruption will increase and of course that changes will be made to alter the nature of and access to the hills—and also that it could make significant amounts of money. The Bill erodes the rights of taxpaying residents to question and challenge this new body on how that money is spent: a right they have enjoyed for 140 years. Retaining or clarifying its status as a public body is vital to ensure that the organisation remains subject to a judicial review and the ability to be subject to freedom of information.

In summary, therefore, I welcome the proposals from the noble Earl, Lord Attlee, and to a large extent those from the noble Baroness, Lady Coffey. However, I think the issue about access, the one line in her proposal, should be left to trustees and not be down to us to dictate. I feel that we need to consider the arrangements concerning the appointment of board members and the scope of the levy-paying area. I also urge noble Lords to carefully consider the application for a general power.

What might be of interest to your Lordships—and please indulge me on this; it is probably because I am married to a historian—is that, when the Act was discussed by noble Lords in 1993, Baroness Macleod of Borve said:

“It would empower the conservators to change the face of Malvern forever”.

Lord Hampton added that the conservators were

“seeking powers well beyond those needed to carry out their prime functions”.

Lord Moran commented that there was

“no explanation of why the conservators thought that they required these comparatively sweeping powers”.—[*Official Report*, 8/3/93; cols. 870-76.]

These objections seem to me to be still valid because they have not been answered, because of the lack of good engagement and good consultation.

Finally, I urge the promoters of this Bill to very carefully consider the costs they are incurring. There was yet another acrimonious meeting, where questions went unanswered about the amounts of money. That too is not good. If you are funded mainly by taxpayers, they want to know what you are spending their money on and how much this is all going to cost. There are estimates that the true final cost could be well over £1 million, compared with an annual income of £1.4 million. Had the conservators actively engaged with those who articulated their concerns, I believe they would have saved themselves a great deal of time, effort and expense.

There is still an opportunity to do this now. It should never have been necessary for five trustees to have to petition this House, with the consequence that they and others appear currently arbitrarily suspended

from matters relating to that Bill. I believe that the committee will have its work cut out, but, having been on a Private Bill Committee, I have no doubt that it will do it and do it well and that the suggestions for its work from the noble Baroness and others are going in the right direction.

I really feel that the conservators should answer the questions raised and conduct themselves in a more open and transparent manner than it would appear is happening at the moment. Then we can come to an amicable situation where we can satisfy most of the people. One of the things I have learned over the years in politics is that you can never please all of the people all of the time. I used to settle for pleasing some of the people some of the time.

8.23 pm

Lord Murphy of Torfaen (Lab): That puts a different light on things.

I support my noble friend Lord Faulkner of Worcester in supporting this private Bill. I also commend the noble Earl, Lord Attlee, for explaining his points in detail, as did the noble Lord, Lord Faulkner. I understand the points that the noble Baroness, Lady Thornhill, made about the difficulties faced in Malvern, but there are two points I would like to make.

First, the Malvern Hills really are of not just local, regional or even national significance but of international significance and importance. In a way, I suspect that, if a private Bill—which after all 140 years ago set up the trust—is to be used, it is being used because the Malvern Hills are so utterly important to our country. Like the noble Baroness, Lady Thornhill, I have served on private Bills in the other place. The Select Committees do a very thorough job and I have no doubt that the Select Committee which your Lordships will appoint to deal with this Bill will do an equally thorough job, and clearly it needs to do precisely that. Let us see what happens, but that is the mechanism we have in front of us and that is why it is such an important issue.

Secondly, I just want to touch for a few moments on why I as a Welshman am interested in the Malvern Hills: after all, we have a few hills of our own in Wales, including in my former constituency and where I live, my valley, Mynydd Maen. They rise to 1,500 feet above sea level—100 feet more than the Malvern Hills. I am not sure they are quite as beautiful as the Malvern Hills and I would not have said that when I was the Member of Parliament for that constituency.

The Malvern Hills are a wonderful part of our scenery in England. It seems to me that we are doing this, as I said, because of their huge significance and importance in our society. I fell in love with the Malverns in the 1960s, and indeed I was there during the last month on two occasions. I always remember the first time I approached those hills from Ross-on-Wye; you go up to Ledbury and see these magnificent Malvern Hills. But to me, they were always associated with my other love, Sir Edward Elgar, our greatest British composer in my view. Some of your Lordships might be—I am, certainly—old enough to remember Ken Russell’s black and white film on the life of Elgar. It opens with a young Elgar riding across the top of

[LORD MURPHY OF TORFAEN]

the Malvern Hills to the sound of the introduction and allegro. Every time I go, even now, after all these years to the Malvern Hills, that music is in my ears.

Remember that Elgar himself was a Malvern man. He lived for 76 years, and for 55 of those he lived in Malvern. His grave, and those of his wife and daughter, lie in St Wulstan's Catholic church in the foothills, in Little Malvern. To those of us who love his music, I say that the "Enigma Variations" and the "Dream of Gerontius" were actually written, among other things, when he was within sight of the Malvern Hills. So I think there is an importance of acquainting or associating the work of this great composer and British music with these wonderful hills. That is why it is important to me.

There are all sorts of other reasons why the Malvern Hills are important. I cannot climb them; I walk them, I even ride a car across them—it is only eight miles. Nevertheless, to me, those hills are something so very special that something like this means that they deserve the sort of scrutiny and the sort of attention that a Select Committee of the House of Lords can give them.

I conclude by saying to your Lordships that in 1934, the year that Elgar died, not long before died, he wrote of his cello concerto:

"If ever after I'm dead you hear someone whistling this tune on the Malvern Hills, don't be alarmed. It's only me".

8.28 pm

Baroness Coffey (Con): My Lords, I am delighted to contribute to this debate and it is a huge pleasure to follow other noble Lords. I think it has been an interesting exposure so far of not only the passion that people have for this wonderful part of our country but the interest in what has brought the Bill to this point.

The noble Baroness, Lady Bennett, talked about local people and the local area. Interestingly, the Malvern Hills Trust area is enveloped within an AONB but, as has already been pointed out, one of the reasons why we are in this rather unusual situation is that it was recognised, well over 100 years ago, that not only should this area be protected but that a levy needed to be created to help contribute towards that. We know that the 1949 Act allowed the creation of the national parks and AONBs, and there is something to be said here in thinking about the governance. It is not a suggestion I want to specifically recommend to this House or to the Committee, but one of the things that has come up in this situation is around governance: is it a charity, a public body or even a public authority? This special situation is why we have the Bill here today. This is not the first private Bill I have been involved in; as a Defra Minister, I was involved in the Middle Level Act 2018. It is interesting to see a DCMS Minister—the noble Baroness, Lady Twycross—here today, because of that link to the charity.

We should bear in mind that the trust itself says it became a charity in 1984 only because it was legally required to do so. The other thing that has not been set out to your Lordships today is that a different approach was considered a few years ago. In the two Charities Acts—in particular the Charities Act 2011—a process was initiated, and which went a long way, to

consider whether some of these modifications could be changed, recognising the provisions that have been put in place thanks to Parliament to simplify some of this process. However, given the degree of concern and opposition, the Secretary of State at the time, through the Charity Commission, rejected the approach of taking it through the parliamentary procedure of the Charities Act, and said that it should come back as a private Bill to get the full scrutiny that the petitioners quite rightly expect.

I am very grateful to the noble Lord, Lord Faulkner of Worcester, for his expert navigation of the Bill so far, and to my noble friend Lord Attlee. I am conscious that the noble Lord has perhaps engaged more than I have in thinking some time ago about how to make the governance a particular focus of discussion. That has been a key issue which has been raised in several of the petitions.

I am also conscious of what the noble Baroness, Lady Thornhill, said, and she is right to raise those concerns. There is certainly trouble at mill. It is not a happy ship, and it should not necessarily need Parliament to be involved. However, recognising the situation we are in, and recognising that nobody wants this trust, this conservators' body, to be collapsed and simply absorbed into the AONB, here we are. It is right that we have a Select Committee consider these important issues.

One reason I put my instruction in is because the private Bill is rarely used in Parliament. There are only a handful of other places in a similar situation, such as what happens with the Conservators of Ashdown Forest, and perhaps the New Forest—which has a far more ancient aspect of governance, but which was still put into statute. Then there is the much smaller, but still similar, Wimbledon and Putney Commons trust. What the Malvern Hills Trust has in common with the Wimbledon and Putney Commons trust is the ability to, in effect, require a levy. That is what lends itself to the governance, and to people being concerned that, under their own volition, and also by being part of the Charity Commission, the trustees, who are also the board of directors—they are holding the two posts simultaneously—are saying that they have to follow what the Charity Commission is saying, not necessarily the original status of what was put forward. That is why I understand why people are concerned that changes in representation could have an impact on the future of this very special part of our country.

As has been mentioned, there are other situations where a proportion of trustees or directors—whatever they are going to be called—are elected directly, and others are appointed. We seem to have almost a National Trust Council situation, where there is a balance. But I raise the point, which is also being put forward by some of the councils which have petitioned, that all the 29 appointed bodies today—apart from the Church Commissioners—are, I believe, elected in their own right, and will appoint somebody to do that. This is a changing point, which is why—as has been pointed out—it has attracted attention from a record number of petitioners on a private Bill. This Bill is not the same as a hybrid Bill, and HS2 certainly got more, but, according to the clerks, it received a record number of petitioners for a private Bill.

I am interested in this because it is a very special part of the country, and because, through my experience as a Minister, I understand how passionately people feel about a very special place where they live, and which they treasure and want to continue to be special. They are nervous about not only aspects of the governance but some of the clauses in the Bill. I do not know where the equivalent here of the under-gallery is, but I appreciate that the parliamentary agent is almost certainly going to be here somewhere. I am not suggesting that they are going to try to strike out a number of the petitioners, but we have already heard from the noble Baroness, Lady Thornhill, that some people who are currently on the board and have made a petition to express publicly their concerns are now in a particular procedure and process.

To that extent, one thing that can happen is that, if certain petitions are struck out, the Select Committee is not required to consider the issues that they may have raised. That is why the noble Lord, Lord Faulkner of Worcester, is accurate to say that I have basically copied and pasted—recycling is classic environmental stuff—the instruction of the departed Baroness Macleod of Borve for consideration today.

I deliberately did not put the commercial side in because I think that there is a lot of sense in trying to increase the opportunity for the trust to raise money itself in a variety of ways; at the moment, it seems somewhat constrained in that. I do not intend to go through all the different petitions, but there are some very valid discussions about aspects of the Bill. I am sure that the parliamentary agent will work with the promoters to tidy up parts of the Bill that just do not work today—there are references in it to subsections that do not exist. That is not necessarily a matter for the Select Committee, but it needs to be tidied up.

I come back to this key question about whether it is a charity or a public body. There is no actual legal definition of what a public body is. I am mindful that, in response to a question posed by my noble friend Lord Attlee, the Government said that it was not a public body. Meanwhile, the ONS has come forward to say that it is some kind of public body or public authority, and I am not surprised by that classification. I cannot think of another example—except potentially the Wimbledon and Putney Commons trust that I referred to—that can require a levy to be imposed on people and not be considered some kind of public authority. I do not want to get into the details about FoI and the like, but I notice that, on its own website, the trust refers to the fact that it is under obligation through public law regarding biodiversity. I know, because I wrote that obligation. I passed that regulation myself, and it is only for what are considered to be public authorities.

Although the Bill puts in a lot of powers to the Secretary of State, it is unclear right now—I would be grateful if, when she speaks, the Minister could clarify—whether that means it is the Secretary of State for Culture, Media and Sport or the Secretary of State for Defra who will make these determinations in the future. It is those sorts of things that, as a consequence, have got people's backs up, because this is where part of the governance element comes through, when it is said, "You're not here to represent areas; you're here

to do what the charity says". This is why this really does need some careful scrutiny. My noble friend Lord Attlee has put down a perfect instruction. Mine might have been copied and pasted, but it was made with the intention of making sure that other issues that have been brought forward by the petitioners are carefully considered.

I am conscious that access is a really important matter of debate. There has been a recent Supreme Court ruling, again, linked to legislation in this House—I am of course referring to Dartmoor. That legislation and that Supreme Court ruling do not apply anywhere else in the country. They apply only to Dartmoor, and that is because of the wording of the Act. That is why, overall, I really am keen for the Select Committee to consider carefully all the factors that petitioners have raised, and why I have put forward an instruction to make sure, in spite of what other processes might go on in Parliament, that these are considered.

I do not intend to oppose the Second Reading of the Bill, and I hope that the Committee will give it fair consideration on behalf of all the petitioners and, importantly, on behalf of Parliament.

8.41 pm

Lord Hampton (CB): My Lords, in speaking in the gap, I apologise for not putting my name down. I did not think that I was going to have time, but it turns out that I do. I must also declare an interest that I grew up within sight of the Malvern Hills and I went to school in Malvern Link and in Malvern Wells.

The noble Baroness, Lady Thornhill, slightly took the wind out of my sails by quoting my father, but I will quote a little more of what he said at Second Reading on 8 March 1993:

"I love the hills as they are and I do not anticipate with pleasure any major change. I have not followed the arguments in the *Malvern Gazette* as carefully as perhaps I should have done. I was first alerted to the proposals by someone who said that the Malvern Hills conservators were seeking considerable extra powers to build houses, offices and warehouses, to make roads and to fence areas off".

I will, if I may, also quote my cousin, Baroness Macleod, in the same debate:

"However, my noble friend will know that if the Bill goes through in its present form it is possible, and even probable, that the Malvern Hills will be ruined forever. That is one of my reasons for putting down the Instruction to the Committee. Worcestershire is the most lovely county and the Malvern Hills the most beautiful range of hills in the country ... I start with Clause 3, which is the first clause that matters. It would empower the conservators to change the face of the Malvern Hills forever. They would have the power to build a McDonald's, a Little Chef, and fish and chip shops. All of those eating places are welcome in the right place, but not on the Malvern Hills".—[*Official Report*, 8/3/1993; cols. 864-70.]

We had dire predictions in 1993 but, when I was there last, the Malvern Hills were as beautiful as ever. There is always a suspicion of change when anything comes in but, as it is, this seems a very sensible Bill.

8.43 pm

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Baroness Twycross) (Lab): My Lords, I am pleased to have the opportunity to contribute to an important and interesting debate on a much loved and important British institution—or rather,

[BARONESS TWYXCROSS]

not necessarily an institution, but the hills themselves. I thank my noble friend Lord Faulkner for his explanation of the Bill and its importance to the Malvern Hills Trust. I am also grateful to the trust for preparing a briefing note for Peers on the Bill explaining its aims and key provisions. As my noble friend Lord Faulkner said, the Malvern Hills are a spectacular area rich in wildlife and much loved by local communities and visitors alike. As my noble friend Lord Murphy said, they are a wonderful part of our scenery.

As my noble friend Lord Faulkner outlined, and as was referred to by a number of other noble Lords, the Malvern Hills Trust has been endowed since 1884 with the responsibility of protecting and managing the iconic Malvern Hills—not only an area of outstanding natural beauty but one of only 159 national character areas as well as a site of special scientific interest. I note that the Bill will not alter the trust's core charitable purpose of protecting, maintaining and conserving the natural aspects of the hills and keeping them unbuilt-on as an open space for public recreation.

The noble Baroness, Lady Bennett of Manor Castle, noted that the intention of the Bill is modernisation. DCMS will always welcome charities working to ensure that their governance follows the best practices of charity law and governance. It is clear from the number of petitions that there is significant local interest in the Malvern Hills Trust and the importance of observing open access to the hills for future generations. I particularly enjoyed the contribution of the noble Lord, Lord Hampton, in the gap. It must be unusual to have your father quoted in a debate from decades ago, and even less usual to be able to quote two close relatives from the same debate.

I also thank the noble Earl, Lord Attlee, and the noble Baroness, Lady Coffey, for the instructions they have tabled. These will ensure that the Bill receives detailed scrutiny as it proceeds to Committee. I thank the noble Earl, Lord Attlee, for asking about the implications of the recent Office for National Statistics decision to classify the Malvern Hills Trust as a public body. As the noble Earl said, the ONS recently announced that it has classified the Malvern Hills Trust as part of the local government sub-sector of the public sector for the purposes of economic statistics. I am grateful to the noble Earl for helpfully drawing this to my attention. It will be for the Malvern Hills Trust itself to consider what, if any, implications this classification decision has for the charity. In response to the point made by the noble Baronesses, Lady Thornhill and Lady Coffey, I can say that it is perfectly possible to be both a charity and a public body.

In answer to the noble Earl's point about the extent to which the MHT will be subject to the Freedom of Information Act 2000, the ONS classification does not mean that the Malvern Hills Trust is subject to that Act. Separate legislation would be needed to bring the trust within the scope of Freedom of Information Act requests. The noble Baroness, Lady Thornhill, raised the number of complaints and petitions from local residents against the Bill, which was alluded to in a number of speeches, including that by the noble Baroness, Lady Coffey. It is clear that there is significant local interest in the role of the Malvern Hills Trust in

preserving the Malvern Hills for the benefit of future generations. This level of public interest is to be welcomed. I note that a large number of petitions have been lodged against the Bill, and I would encourage the trust to work with petitioners to respond to their concerns and find workable solutions.

The noble Baroness, Lady Thornhill, raised the use of the general power in Clause 83, and asked whether it was required. General powers are very common in the charity sector. The Charity Commission's published model governing documents for charities includes a general power. In relation to the Malvern Hills Trust, the general power could be used only to further the charity's work in pursuance of its charitable objectives and would not alter anything in the way in which the sale of land and the granting of easements are dealt with.

The noble Baroness, Lady Coffey, asked why the changes proposed were not being made through secondary legislation. Given the nature of some of the charity's proposals, coupled with the strong public interest locally, DCMS and the Charity Commission agreed that it would be more appropriate for those measures to be delivered through a private Bill. This approach allows greater scope for public and parliamentary scrutiny and debate than would be the case under a Section 73 procedure, whereby such measures are not always debated in Parliament. The noble Baroness also asked which Secretary of State was being referred to. It would be the Secretary of State with policy responsibility, so primarily Defra in most instances, but MHCLG in others.

As noble Lords will know, the Government do not adopt a position on private Bills unless a Bill contains provisions considered to be contrary to public policy. We take the view that this Bill does not contain any such provisions. Therefore, as is the tradition with private Bills, the Government will not be adopting a position on this Bill. I am sure, however, that the trust will want to reflect carefully on the points made by noble Lords in today's debate as the Bill proceeds to Committee.

8.49 pm

Lord Faulkner of Worcester (Lab): My Lords, may I say how delighted I am by the tone and content of every speech made in this debate, particularly that of my noble friend the Minister? She answered a number of the issues raised by others as the debate has gone on, which I therefore do not need to repeat now. What I would like to do, though, is first to endorse what my friend Lord Murphy said about the international status of the Malvern Hills—the fact that it is wider than Malvern, wider than Worcestershire, wider than the West Midlands. They are an international icon, and it is the determination of everybody concerned with the trust in future to make sure that that goes on.

The noble Lord, Lord Hampton, talked about his ancestor—his father, I assume—and the dire predictions he uttered in 1993. It is interesting that the hills have not been ruined over the last 32 years: there is no McDonald's or Kentucky Fried Chicken there. The hills are in as good a condition today as back in 1993, and the Bill today is to modernise the governance and levy-paying arrangements and to ensure consultation with local residents. I note what the noble Baroness,

Lady Thornhill, said. She is a great critic, I think, of the trust and of the consultation, but it is fair to say that the trust went to great lengths—

Baroness Thornhill (LD): I am a critic not of how the trust has managed the hills' affairs—the general management—but of how it has managed the Bill process. I hope that that came across to everyone. I would not dream of commenting on that; I am not in a position to do so.

Lord Faulkner of Worcester (Lab): I am grateful to the noble Baroness for her clarification, but she is presumably aware that 15,000 leaflets were distributed to households in the area. Posters were put up, businesses and cafes were leafleted, there were advertisements in the local press and on social media, and there were drop-in sessions. With an issue like this, you cannot please all the people all the time—which is, I think, almost exactly the words she finished her speech with—but I am certainly satisfied that it has done the best it could. I am certain that the points that have been made in the debate tonight will be taken on board by the Select Committee, which will look at the petitions and consider all the other points that have been made today.

The noble Earl, Lord Attlee, whose contribution I am delighted to pay tribute to—his interest in the formulation of the Bill deserves the highest praise—expressed concern about the possible dominance of single-issue candidates such as those, perhaps, who oppose further housing in their area. I imagine that the committee will consider this in detail, but there are one or two points that can be made in response. First, this could happen where there is a single electoral area, as proposed in the Bill, or, as now, where candidates are elected by individual parishes or wards. It is also worth bearing in mind that the exercise of democracy and the election of trustees has not been entirely without problems. One example is that under the present arrangements, most seats go uncontested: eight of 11 seats were uncontested at the last election. If interest in the election can be enhanced by the creation of a smaller board of trustees, then that change is worth while.

I do not intend to answer the question, “public body or charity?” The Select Committee will want to look at that, but it seems to me that it does not have the dire consequences that some people think.

As for the levy, which the noble Earl, Lord Attlee, mentions in his instruction, it is important to remember that the trust is under a constraint which means it cannot incur expenditure on promoting provisions in the Bill which are materially different from the existing levy legislation. The Bill brings together the existing levy arrangements into one clause with modern drafting and preserves the status quo.

The noble Baroness, Lady Coffey, briefly turned to the Dartmoor judgment, the question of open access and the freedoms which visitors on Dartmoor have. The trust has been studying the judgment and it will obviously take account of any elements that have implications in the drafting of the Bill; and it is something I imagine the Select Committee will want to hear about. However, the existing Malvern Hills legislation and the by-laws make provision to prevent camping on the hills, so I cannot see the Malvern Hills being turned into a giant campsite as a result of the Dartmoor judgment.

I hope that either the Minister or I have been able to address most of the points that are of importance to noble Lords. The promoters of the Bill have, as I mentioned earlier, continued to work hard to conserve the natural beauty of the hills, and I am delighted that so many of your Lordships have referred to their natural beauty. But the time has undoubtedly come to modernise the way the trust is constituted and to update and consolidate its powers.

Alluding to my predecessor in moving a private Bill on the Malvern Hills, the noble Viscount, Lord Colville, I hope that your Lordships will see that as a matter of principle, it is wholly reasonable to try to bring the legislation up to date, subject, of course, to getting it right. As a number of noble Lords have said, that is the point of a Select Committee procedure. I hope, therefore, that noble Lords will give this Bill a Second Reading and establish the Select Committee. I beg to move.

Bill read a second time and committed to a Select Committee.

Motions to Instruct

Moved by Earl Attlee

That it be an instruction to the Select Committee to whom the Malvern Hills Bill is committed that—

(a) notwithstanding that the promoters themselves are under a restriction which prevents them from promoting provisions in the Bill which would have the effect of changing the existing levy arrangements materially, the committee considers the provisions in the Bill relating to the levy paying area; and

(b) the committee considers the provisions in the Bill relating to the composition of the board of the Malvern Hills Trust and the proposed arrangements for electing and appointing trustees.

Motion agreed.

Moved by Baroness Coffey

That it be an instruction to the Select Committee to whom the Malvern Hills Bill is committed that—

(a) the committee considers to what extent if any the powers proposed to be granted by the Bill go beyond what is necessary for the Malvern Hills Conservators (to be renamed under the Bill as the Malvern Hills Trust) properly to manage the land within their jurisdiction; and

(b) the committee pays particular attention to the provisions which would impede or restrict public access.

Motion agreed.

Special Educational Needs: Dyscalculia *Question for Short Debate*

8.58 pm

Asked by Baroness Bull

To ask His Majesty's Government what provision is in place in schools for identifying and supporting students who have special educational needs, particularly dyscalculia.



Attorney
General's
Office

Rt Hon Lord Hermer KC
Attorney General

Attorney General's Office
102 Petty France
London
SW1H 9EA

www.gov.uk/ago

Lord Gardiner of Kimble
Senior Deputy Speaker
House of Lords
London
SW1 A0M

Friday 28th November 2025

Dear Lord Gardiner,

Report of the Attorney General on the Malvern Hills Bill

Standing Order 142 of the House of Lords requires the Attorney General to provide a report on this bill to the House before it can be taken into consideration by the committee on the bill. I have considered the provisions of the bill and how it affects the beneficial interests in charity.

As set out in the explanatory notes of the Bill the Malvern Hills Bill is promoted by the Malvern Hills Conservators ("the Trust") – a charity which exists to preserve the natural aspect of the Malvern Hills and to keep them unenclosed and unbuilt on as open spaces for the enjoyment of the public. The Bill seeks to consolidate the Trust's five governing pieces of legislation (the Malvern Hills Acts 1884, 1909, 1924, 1930, and 1995) into one new Act.

The Act also repeals outdated and redundant legislation in so far as it relates to the Trust and confirms Trust's powers to operate and manage the Malvern Hills following these repeals. There is a clear benefit in updating and consolidating the provisions which govern the Trust to make those provisions fit for purpose in the modern era.

The Malvern Hills are a place of significant environmental, cultural, and historical importance. A practically effective constitution is vital to ensuring the ongoing operation of the charity which protects this place. I am satisfied that the Bill achieves a balance between modernising the Trust's constitutional framework whilst ensuring the furtherance of its charitable objectives. In my view, there is nothing in the Bill which will impede the charity's ability to act in accordance with its charitable purpose.

Kind Regards,

RT HON LORD HERMER KC
ATTORNEY GENERAL

Malvern Hills Bill

Note on Origin of the Provisions of the Bill

Glossary:

CCA 1847:	Commissioners Clauses Act 1847
MHA 1884:	Malvern Hills Act 1884
MHA 1909:	Malvern Hills Act 1909
MHA 1924:	Malvern Hills Act 1924
MHA 1930:	Malvern Hills Act 1930
MHA 1995:	Malvern Hills Act 1995
Existing Acts:	The above Acts collectively

PART 1

INTRODUCTORY

Clauses 1 and 2 deal with short title and commencement. No explanation is required.

Clause 3: Interpretation

Where there are new definitions, these will be picked up where necessary in the individual clauses where they are used.

Clause 4: The Malvern Hills

The existing area within the management and control of the Trust is unchanged (see subsection (3)).

Subsection (1) says that the existing area can be altered under clauses 71 (acquisition of land, bequests and agreements), 72 (power to adjust boundaries of Malvern Hills), 73 (disposal of land) and 74 (Leases and licences of land). See the descriptions for those clauses below.

Subsection (2) is new. It says that any land to which the public have access by right or by permission of the Trust is to be treated as part of the Hills if it was acquired by the Trust as ancillary land under the existing Acts or under clause 75 of the Bill (ancillary land) or under the sanction of an order made by the Charity Commission.

PART 2

THE MALVERN HILLS TRUST

Change of name, continuity of functions and objects

Clause 5: The Malvern Hills Trust

Clause 5 is new, save for clause 5(2) which is based on section 7(1) of MHA 1924 (constitution of Board of Conservators): the two provisions are set out below:

Section 7(1) MHA 1924	Clause 5(2)
Notwithstanding the repeal of sections 5, 6, 7 and 8 of the Act of 1884 and section 3 of the Act of 1909 the existing Conservators as re-constituted by this Act and their successors shall, continue to be a body corporate by the name of " the Malvern Hills Conservators " with a common seal having power to hold and manage lands.	The Trust is to continue to be a body corporate with a common seal and having power to hold and manage land and other assets.

Clause 6: The objects of the Trust

Subsection (1)(a) and (b) set out the proposed charitable objects of the Trust. The objects are currently not set out as such in the existing Acts but are expressed as duties. The proposed objects reflect those existing duties.

Subsection (1)(a) is new, save that the words “conserve ... the natural appearance ... of the Malvern Hills” is drawn from the duty in section 21 of MHA 1924, which says: “The Conservators shall at all times as far as possible preserve the natural aspect of the Malvern Hills”.

Subsection (1)(b) is preceded in section 3(a) of MHA 1930 (management of Malvern Hills by Conservators) (set out below) which says:

“Except as in the Malvern Hills Acts otherwise provided [the Trust] shall at all times keep the Malvern Hills unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public;”

The words “unenclosed and” have not been carried through to subsection (1)(b).

Subsections (2) and (3), which deal with conflicts between subsections (1)(a) and (b), are new, as is subsection (4) which sets out a definition of “unbuilt on”.

Clause 7, Schedule 1 and Schedule 2: Administration of the Trust

Clause 7 sets out a new approach to the way in which the Trust is governed. Currently, provision about administrative arrangements is made in some detail in the existing Acts, and in particular in CCA 1847. Instead, the Trust will have power (and in some cases will be under a duty) to make rules, regulations and provision about its administrative arrangements in other documents. There is no express power for the Trust to make such rules and regulations in the existing Acts.

Clause 7(1) and Schedule 1 require the Trust to make rules about certain subjects:

- Benefits to trustees (Schedule 1, paragraph 2): not covered in the existing Acts.
- Contracts (Schedule 1, paragraph 2A): there is a power to enter into contracts in [section 56](#) of CCA 1847 (power to commissioners to enter into contracts), which includes details about the form of contracts. See the commentary on clause 84 of the Bill and Schedule 4 (miscellaneous powers of the Trust) for further detail.
- Interests of trustees: (Schedule 1, paragraph 3): See the commentary on clauses 28 (benefits to trustees) and 29 (interests of trustees) of the Bill.
- Meetings of the trustees and calling meetings: (Schedule 1, paragraphs 4, 5 and 14): covered in detail in sections 40 (as modified by Schedule 2 to MHA 1884), and 42 to 47 of CCA 1847 (see commentary below).

Annual meeting

- [Section 40](#) of CCA 1847 (commissioners to hold annual and monthly meetings), as modified, requires an annual meeting to be held on a day appointed by byelaw and at a place to be appointed by the trustees. There is no provision for remote meetings.
- Clause 37(2) to (4) of the Bill (report and annual accounts) read with the definition of “annual meeting” in clause 3(1) ensure there must be an annual meeting. The first meeting of the trustees after the new constitution date will be the first annual meeting. It must be in person except where there are exceptional circumstances (clause 37(4)).

Ordinary meetings

- [Section 40](#) of CCA 1847 (as modified by Schedule 2 to MHA 1884) requires general meetings to be held no less frequently than once in every three months. They must be held at the Trust’s offices and on such day and time as the trustees appoint. Notice of meetings must be given by the clerk to the trustees. There is no provision for remote meetings.
- Paragraph 4 of Schedule 1 to the Bill (meetings of the trustees) requires rules to be made about the frequency of ordinary meetings (with no minimum frequency specified) and about the means by which meetings can be held (including electronically). Paragraph 14 of Schedule 1 (method of holding meetings) sets out the different methods of holding meetings including electronic and hybrid, which is new, and requires rules to be made about the arrangements for such meetings.

Calling meetings

- Calling of meetings is currently governed by a combination of provisions in CCA 1847 and in the Local Government Act 1972 (“LGA 1972”). The provisions of LGA 1972 are applied to the Trust by [section 26](#) of and [Schedule 1](#) to MHA 1995 (application of certain enactments). [Section 40](#) of CCA 1847 as modified requires notice of meetings to be given by the clerk to the trustees and [section 47](#) of CCA 1847 (how notices of meetings of commissioners are to be given) makes detailed provision about the giving of notices of meetings, including a requirement for notice to be in writing, two clear days’ notice, and the notice to specify the time and place and any special business to be transacted. [Section 100A\(6\)](#) of LGA 1972 (admission to meetings of principal councils) requires that public notice of the time and place of the meeting shall be given by posting it at the offices of the council (ie the Trust) five clear days at least before the meeting. That requirement will remain in effect.
- Paragraph 5 of Schedule 1 to the Bill (calling meetings) requires rules to make provision about the making of arrangements for the date, giving notice, time and place of meetings, without setting out any minimum requirements, though section 100A(6) of LGA 1972 will continue to have effect.

Adjourning meetings

- [Section 41](#) of CCA 1847 (meetings of commissioners may be adjourned from time to time) says that meetings may be adjourned. There is no equivalent in the Bill but the subject can be covered in rules.

Business at meetings

- There is no equivalent in the Bill to the following provisions of CCA 1847 but the subjects covered can be covered in rules made under clause 7 of the Bill or are no longer relevant.
- [Section 42](#) of CCA 1847 (monthly meetings to be held for transacting the ordinary business under this and the special Act) says that ordinary meetings are for conducting the ordinary business of the trustees and for appointing/removing officers, and other specified matters.
- [Section 43](#) of CCA 1847 (no extraordinary business shall be transacted at monthly meetings, unless notice be given) says that no extraordinary business can be transacted at an ordinary meeting unless special notice is given.
- [Section 44](#) of CCA 1847 (no resolution of commissioners to be revoked at a subsequent meeting unless under certain circumstances) says that special notice of any proposal to revoke or alter a previous resolution must be given, and makes specific provision about the majority required (two thirds if the number present is the same or less than the number at the original meeting, a simple majority otherwise).
- [Section 45](#) of CCA 1847 (as to the holding of special meetings) makes provision about the holding of special meetings.
- [Section 46](#) of CCA 1847 (notice to be given of things to be done by the commissioners by special order only) is about things to be done by special order and is not applicable to the trustees.
- [Section 48](#) of CCA 1847 (expenses of meetings) says that the trustees must defray their own expenses of meetings, except those incurred for room hire, stationery etc.
- Chairing of meetings: (Schedule 1, paragraph 6): covered in section 37 of CCA 1847.
 - [Section 37](#) of CCA 1847 (election of chairmen of meetings) requires the chair to be appointed by a majority of the trustees at the annual meetings and any replacement (permanent or at a specific meeting) to be elected by a majority.
 - Paragraph 6 of Schedule 1 to the Bill (chairing of meetings) requires rules to make provision about the election of the chair and vice-chair, arrangements if there is a vacancy or absence, and also about the removal of the chair or vice chair from office.
- Quorum (Schedule 1, paragraph 7): covered in section 39 of CCA 1847.
 - [Section 39](#) of CCA 1847 allows the trustees to prescribe a quorum, with a default of 5 if no number is prescribed. It says that no business is to be transacted if the quorum is not met.
 - Paragraph 7 of Schedule 1 to the Bill (quorum) requires rules to be made about the quorum and about the making of decisions when it is not met.

- Decisions of the trustees and validity of actions (Schedule 1, paragraph 8): covered in part in sections 37, 38, 44, 51 and 52 of CCA 1847.

Decisions

- The current default position is in [section 38](#) of CCA 1847 (manner of voting) which requires a majority of votes of those present at meetings of the trustees for deciding questions. [Section 37](#) (election of chairmen of meetings) and [section 44](#) (revoking or altering a previous resolution of the commissioners if there are more trustees present than at the meeting when the original resolution was passed) also specify that a simple majority is required.
- [Section 44](#) of CCA 1847 also requires a majority of two thirds present (a special resolution under the Bill requires 75%) if the decision is to revoke or amend a previous resolution and there are fewer trustees present than at the meeting when the original resolution was passed (or the same number).
- Clause 3(2) of the Bill says that any reference in the Bill to a resolution of the trustees which does not specify whether the resolution is a special or ordinary resolution is to be taken as being a reference to an ordinary resolution unless the Bill says otherwise. Special resolutions are specifically required under:
 - Clause 7(4) (administration of the Trust) for making, amending, revoking or replacing rules under that clause
 - Clause 12(1) and (3) (disqualification and resignation of trustees) for removing a trustee from office or requesting a trustee's resignation
 - Clause 14(3) (selection of appointed trustees and interim appointed trustees) for rejecting the recommendation of the nomination committee for a new appointed trustee
 - Clause 15(3) (Nomination Committee) for removing a member of the Nomination Committee.
- For other cases, rules must be made under paragraph 8(1) of Schedule 1 to the Bill (decisions of the trustees) about requirements for the making of decisions of trustees and paragraph 8(2) provides examples of the types of requirements that may be made, including about casting votes, what happens if there is a tie in the election of a chair, and decisions on urgent business (including decisions being made otherwise than at a meeting – which is new).

Validity of proceedings

- [Section 51](#) (acts of the commissioners not to be invalidated by reason of vacancies) and [section 52](#) (informalities in appointment of commissioners not to invalidate proceedings) of CCA 1847 says that the proceedings of the trustees or a committee are valid in cases where there is a vacancy in the number of trustees or where there was a defect in the appointment of a trustee or a trustee is disqualified. Those provisions are being replaced by clause 8(4) and (5) of the Bill (constitution of Trust and status of trustees as charity trustees). Paragraph 8(3) of Schedule 1 to the Bill requires rules to be made about the validity of proceedings of the trustees or any committee in cases where there is a vacancy among the trustees or committee members or a defect in their appointment.

- Records and authentication of documents (Schedule 1, paragraphs 9 (records) and 12A (authentication of documents) and clause 7(11) (administration of the Trust): covered in [section 55](#) of CCA 1847 (proceedings to be entered in a book, and, when signed, shall be received in evidence).
 - Section 55 of CCA 1847 requires entries of the proceedings of the trustees and committees to be made in books to be provided for the purpose, to include the names of attendees; the keeping of records by the clerk under the superintendence of the trustees, and the signature of the chair of the meeting.
 - Paragraph 9(1) of Schedule 1 to the Bill (records) requires rules to be made about the keeping of records of proceedings at meetings and the means of doing so and about the approval of records.
 - Paragraph 12A of Schedule 1 to the Bill (authentication of documents) requires rules to be made about the procedures for signing, sealing and executing documents, including electronically.
 - Section 55 of CCA 1847 also provides that signed records are to be received by the courts as evidence of the meeting having been duly convened or held without further proof. Clause 7(11) of the Bill makes similar provision, by including a presumption that a document has been duly signed, sealed or executed unless the contrary is proved.
 - Section 55 of CCA 1847 also provides that all the books are to be open for inspection at reasonable times by the trustees and mortgagees of the rates or property of the Trust. Clause 7(12) of the Bill read with Schedule 2 (see later) imposes requirements on the Trust about inspection of documents by the public.
- Committees (Schedule 1, paragraphs 10 (committees and advisory panels) and 13: covered in [section 49](#) (power of commissioners to appoint committees) and [section 50](#) of CCA 1847 (quorum of committee).
 - [Section 49](#) of CCA 1847 enables the trustees to appoint committees for any purposes which in their opinion would be better regulated and managed by means of committees, and may fix the quorum, continue or alter such committees.
 - Paragraph 10 of Schedule 1 to the Bill requires rules to be made about the establishment and dissolution of committees and advisory panels by the Board of trustees (the concept of advisory panels is new), the composition of committees and panels (including provision about inclusion of persons who are not trustees, which is new), and the delegation of functions to committees (but not advisory panels) with some specified exemptions, for example, setting the levy. There are no such exemptions specified in CCA 1847. The rules must also impose requirements on committees, including about acting in accordance with regulations made and other documents produced by the trustees, and reporting to the trustees. This is also a new requirement.
 - [Section 50](#) of CCA 1847 enables committees to meet from time to time and adjourn from place to place. The trustees may fix the quorum for committees (with a default of 3 if they don't), one member must be appointed as chair, and all questions are decided on a majority with the chair having a casting vote.

- Paragraph 13 of Schedule 1 to the Bill sets out a number of matters relating to committees and advisory panels which can be dealt with under regulations made by the trustees under clause 7(2) (without prejudice to the general power to make regulations). They are specifying the quorum, voting rights, calling meetings, methods of making urgent decisions, custody of documents and keeping records.
- Delegation to employees (Schedule 1, paragraph 10)
 - There is no equivalent specific power to delegate functions (or make rules about delegating functions) under the existing Acts.
- Financial controls (Schedule 1, paragraph 12)
 - There is no equivalent specific provision in the existing Acts about financial controls and accounting procedures (or the making of rules about those matters), save for provisions about appointing auditors (see clause 37 (report and annual accounts)). But as a charity the Trust is subject to the requirements for financial oversight imposed on charities under [Part 8](#) of the Charities Act 2011 (charity accounts, reports and returns). They include requirements to produce accounts and annual reports and returns to the Charity Commission in accordance with [FRS 102 \(Statement of Recommended Practice\)](#). Paragraph 12 also reflects Charity Commission guidance on internal financial controls.

Clause 7(2) is new and enables the trustees to make provision for the administration and management of the Trust in regulations or other documents (regulations must not be inconsistent with rules made under clause 7(1)).

Clauses 7(3) to (10) make further provision about the making of rules under clause 7(1) and are new.

Clause 7(12) and Schedule 2 apply certain provisions of the Local Government Act 1972 to the Trust relating to access to meetings and availability of documents. The provisions are the same as in [section 26](#) of and [Schedule 1](#) to MHA 1995, with the following exceptions of substance:

- The modification to [section 100A](#) of the 1972 Act (Admission to meetings of principal councils) includes a new subsection (2A) which is about disruptive conduct
- References to the “proper officer” in the relevant provisions of the 1972 Act are to be construed as references to chief executive of the Trust (or other designated person) rather than the clerk
- [Section 100E](#) (application of sections 100A to 100D to committees and sub-committees) is modified so that those sections (which are about admission to meetings and access to documents) will not apply in the case where a committee is not intending to make a decision in exercise of a function that has been delegated to it
- [Section 100G\(1\)](#) (principal councils to publish additional information) is modified so that instead of the Trust being required to publish the name and address of every trustee, it only needs to provide the name
- Section 100G(2)(b) is modified so that the Trust does not have to publish the names of officers to whom responsibilities have been sub-delegated by another officer, in the list of delegated powers that is required by section 100G(2).

Schedule 1 to MHA Act 1995 also applied certain provisions of the Defamation Act 1952 to the Trust, but those provisions have been repealed and not replaced.

Constitution

Clause 8: Constitution of Trust and status of trustees as charity trustees

Subsections (1) and (2) provide for the new constitution of the Trust as 6 elected and 6 appointed trustees. They replace section 7 of MHA 1924 (constitution of Board of Conservators) as amended by SI 1958/1986 and SI 1996/1867, and an agreement made with Worcestershire County Council under section 10 of MHA 1909 (power to agree with Worcester Council or Hereford Council for appointment of a Conservator). Section 10 is not being re-enacted. The current constitution of the Trust is 29 trustees made up as follows:

- 11 Directly elected by those on the electoral roll for the parishes of Colwall (2 trustees), Guarlford and Mathon and seven persons to be elected by the local government electors for the Urban District of Malvern (one person by each of the seven wards of the said district);
- 8 Nominated by the council of the district of Malvern Hills (who have to be district councillors)
- 2 Nominated by Herefordshire Council
- 2 Nominated by Worcestershire County Council
- 3 further nominated by Worcestershire County Council (in practice the parishes of Castlemorton, Newland and Powick put forward their candidates)
- 1 Nominated by Colwall Parish Council
- 1 Nominated by Mathon Parish Council
- 1 Nominated by the Church Commissioners

Subsections (3) and (3A) set out the status of the trustees as charity trustees and their obligation as charity trustees to further the objects. They are new.

Subsection (4) enables the trustees to continue to function if their number falls below the total required. This replicates the effect of [section 51](#) of CCA 1847 (acts of the commissioners not to be invalidated by reason of vacancies). Subsection (5) imposes limitations on what powers the trustees can exercise if their number falls below 6. This is new.

Subsection (6) requires trustees to be selected as point of contact with inhabitants of each of the parishes. This is new.

Subsection (7) provides that no employee of the Trust may be a trustee. This is the same as [section 9](#) of CCA 1847 (no person holding office or concerned in a contract to be a commissioner) save that the prohibition on trustees holding office if they are concerned in or participate in a contract, or in the profit thereof, or of any work to be done under the authority of the existing Acts is not carried through. Clause 29 of the Bill deals with interests of trustees.

Clause 9: Term of office of trustees

Subsection (1) provides that the term of office of a trustee is 4 years. The current term of office for a trustee is also 4 years, under section 7(3) MHA 1924 (constitution of Board of Conservators) as amended by Part II of [Schedule 2](#) to MHA 1995. The trustees have passed a resolution under section 7(3) as so amended, extending the term of office from 3 years to 4 years.

Subsections (2) to (4) say that trustees are eligible for reappointment or re-election, save that there must be a 1 year break if they have served two consecutive terms. There is no limitation on reappointment or re-election under the existing Acts (section 7(3) MHA 1924).

Clause 10: Transitional arrangements and co-opted trustees

Clause 10 is of short-term effect.

Clause 11: Declaration to be made by trustees

This clause is new.

Clause 12: Disqualification and resignation of trustees

This clause is new although as regards subsection (7), the Trust currently works on the assumption that a trustee can resign at any time, even though there is no specific provision for it in the existing Acts. This is borne out by section 11 of MHA 1924 Act (occasional vacancies) which refers to trustees resigning.

Clause 13: Disciplinary procedures

This clause is new.

Appointed Trustees

Clause 14: Selection of appointed trustees and interim appointed trustees

This clause is new. There are no criteria for the selection of the nominated trustees under the existing Acts, save that [section 8](#) CCA 1847 (no bankrupt or insolvent to be a commissioner) provides that no bankrupt or insolvent person is to be a trustee. This is carried through by clause 14(7) of the Bill specifically requiring that a trustee must not be disqualified from being a charity trustee (which means bankrupts are not qualified). The position is unchanged in that regard because the Charities Act 2011 applies in any event, as regards who is disqualified from being a charity trustee. See the commentary on clause 18 below.

Clause 15: Nomination Committee

This clause is new: there are no procedures for the nomination of trustees under the existing Acts. It is for the nominating bodies to ascertain their own procedures.

Clause 16: Appointment and terms of office of first appointed trustees

This clause is new.

Clause 17 Casual vacancies in office of appointed trustees

Section 11 of MHA 1924 (occasional vacancies) enables, but does not require, a nominating body to nominate a replacement trustee for the remainder of the original trustee's term. Under clause 17, the trustees are under a duty to appoint a replacement, except where there is less than 6 months remaining of the original trustee's term, in which case there is a discretion to appoint. Clause 17 also makes clear that the replacement must sign the declaration under clause 11 and must not have been disqualified under clause 12.

Elected Trustees

Clause 18: Eligibility to be elected

Under section 9 of MHA 1924, the statutory provisions and rules in force governing the elections of district councils apply to the elected trustees with necessary modifications, by virtue of s.9 of MHA 1924. The rules about eligibility are contained in [section 79](#) (qualifications for election and holding office as member of local authority), [section 80](#) (disqualifications for election and holding office as member of a local authority in England) and [section 81A](#) (disqualification relating to sexual offences etc (England))

of the Local Government Act 1972 ("LGA 1972"). Because the trustees (current and future) are charity trustees, they must not be disqualified from being so under charity law. The criteria for disqualification are set out in [section 178](#) (persons disqualified from being charity trustees or trustees of a charity) and [section 178A](#) (Case A: specified offences) of the Charities Act 2011.

The existing criteria and the proposed criteria under the Bill are set out below:

Existing criteria under LGA 1972 and Charities Act 2011 LGA 1972 criteria must apply 6 months before the date of the election	Criteria under clause 18 and Charities Act 2011 Clause 18 criteria must apply on the date of nomination as a candidate for election
British or a citizen of the Commonwealth (and may be eligible if a citizen of the EU) (s.79(1))	No citizenship requirement
At least 18 years old (s.79(1))	At least 18 years old (clause 18(1)(a))
A local government elector for the area of the relevant authority (and continues to be one) (s.79(1)(a))	Listed in the local electoral register with an address in a parish or former parish area in which any part of the Malvern Hills is located; or within one mile of such a parish or former parish area (clause 18(2)(a))
During the whole 12 months preceding the election, occupied as owner or tenant any land or other premises in that area (s.79(1)(b))	No equivalent
Principal or only place of work during that twelve months has been in that area (s.79(1)(c))	The person's main place of work is in a parish or former parish area in which any part of the Malvern Hills is located (clause 18(2)(b))
Has during the whole of the twelve months preceding the election resided in that area (s.79(1)(d))	No equivalent
Must not hold paid office with the authority (s.80(1))	No trustee may be an employee of the Trust (clause 8(7))
Must not be the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order, or a debt relief restrictions order or interim debt relief restrictions order under Schedule 4ZB of the Insolvency Act 1986 (s.80(2))	The effect of the Charities Act 2011 is the same (see below)
Must not be subject to notification requirements of Part 2 of the Sexual Offences Act 2003	The effect of the Charities Act 2011 is the same (see below)
Must not be disqualified from being a charity trustee (clause 14(7)(b) and 19(1)(a) read with sections 178 and 178A of the Charities Act 2011). This excludes persons who: • have been convicted of specified offences (terrorism, money laundering, bribery offences, misconduct in public office, perjury, perverting the course of justice	The same

Existing criteria under LGA 1972 and Charities Act 2011 LGA 1972 criteria must apply 6 months before the date of the election	Criteria under clause 18 and Charities Act 2011 Clause 18 criteria must apply on the date of nomination as a candidate for election
• have been convicted of offences involving dishonesty or deception • are undischarged bankrupts or are subject to a bankruptcy restrictions order or interim order • who have made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it. • who have been removed as a trustee, charity trustee, officer, agent or employee of a charity by an order made by the Charity Commission or the High Court; on the ground of any misconduct or mismanagement in the administration of the charity for which they were responsible or which they knew of and failed to take any reasonable step to oppose, or which P's conduct contributed to or facilitated. • who are subject to (a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, or (b) an order made under section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order) • who are subject to (a) a moratorium period under a debt relief order under Part 7A of the Insolvency Act 1986; or (b) a debt relief restrictions order or interim order under Schedule 4ZB to that Act • who have been found to be in contempt of court under Civil Procedure Rules for (a) making a false disclosure statement, or causing one to be made, or (b) making a false statement in a document verified by a statement of truth, or causing one to be made. • who have been found guilty of disobedience to an order or direction of the Charity Commission on an application to the High Court under section 336(1) of the Charities Act 2011 (enforcement of orders of Commission) • who are designated persons as regards certain terrorism legislation • who are subject to the notification requirements of Part 2 of the Sexual Offences Act 2003	

Subsection (3) of clause 18 requires candidates to be nominated in accordance with rules to be made by the Trust under clause 24 (method of and rules about conduct of elections). Currently the nomination procedure is governed by the [Local Elections \(Principal Areas\) \(England and Wales\) Rules 2006](#) (“the 2006 rules”) which are applied with necessary modifications by section 9 of MHA 1924 (election of conservators).

Subsection (3) also says that the nomination must be made by two people who are registered in the register of electors in the Trust’s electoral area. The requirements of the 2006 rules include (rule 6(1)) that the nomination paper must be subscribed by two electors as proposer and seconder. “Elector” is defined in rule 6(7) as a person who is registered in the register of local government electors for the electoral area in question on the last day for the publication of notice of the election; and includes a person then shown in the register as below voting age if (but only if) it appears from the register that he will be of voting age on the day fixed for the poll. In principle, the position is the same in the Bill.

Subsection (4) says that it is for the Trust’s returning officer to determine whether a nomination is valid. Also, as mentioned above, rules can be made by the Trust under clause 24 of the Bill (method of and rules about the conduct of elections) governing the conduct of elections. Currently the 2006 rules say that the candidate is deemed to stand nominated unless (among other things) the local authority’s returning officer decides that the nomination paper is invalid on the grounds that (a) the particulars of the candidate or the persons subscribing the paper are not as required by law; (b) the returning officer decides that the candidate’s home address form does not comply with certain requirements, (c) that the paper is not subscribed as so required, or (d) that an order under section 30 of the Elections Act 2022 (disqualification orders) has effect in relation to the candidate.

Subsections (5) to (7) require candidates to make a declaration of the particulars of their qualification to stand as a trustee and include offences to making a false declaration. These provisions are new but are based on the local government election legislation which applies to the Trust currently. Detailed provision is made in rules 4 to 7 of the 2006 rules, which require nomination papers to be in a standard form to be subscribed to by two electors, and require a separate consent to nomination form to be submitted by the candidate. A person is guilty of a corrupt practice under [section 65A of the Representation of the People Act 1983](#) (false statements in nomination papers etc.) if they knowingly furnish documents or make statements in nomination papers. [Section 168](#) of that Act (prosecutions for corrupt practices) says that those guilty of corrupt practices under section 65A are liable to imprisonment (up to a year on indictment or 6 months on summary conviction) or a fine (or both).

Clause 19: Election and terms of office of first elected trustees

This clause is new and time limited.

Clause 20: Ordinary elections

This clause is new and provides that ordinary elections are to take place in two year cycles, with the election of three trustees taking place every two years. Currently, all the ordinary elections take place at the same time, every four years, in November (section 9(a) of MHA 1924).

Clause 21: Casual vacancies in office of elected trustee where there are no other such vacancies

This clause is new. Currently there is no provision in the existing Acts about casual vacancies. Where an elected trustee resigns or dies, a by-election is held and is conducted in accordance with the [Local Elections \(Principal Areas\) \(England and Wales\) Rules 2006](#) (“the 2006 rules”) which are applied with the necessary modifications by section 9 of MHA 1924.

Clause 22: Casual vacancies in office of elected trustee where there is another vacancy etc

As clause 21 above.

Clause 23: Persons entitled to vote

Clause 23 replaces the existing provisions about entitlement to vote contained in section 7 of MHA 1924 (constitution of Board of Conservators). Clause 23 describes the Trust's electoral area (as one area consisting of 6 parishes) and says that those entitled to vote are those registered to vote as an elector in a local government election in that area. The electoral area comprises the areas of all those parishes whose electors are currently entitled to vote for a trustee in respect of that individual parish.

Section 7(2) of MHA 1924 says that the current elected trustees are to be elected by the local government electors for each of the parishes.

Elected trustees: holding of elections

Clause 24: Method of and rules about conduct of elections

Clause 24 replaces the current arrangements about the conduct of elections. Currently, the relevant provisions of the Local Government Act 1972 and the [Local Elections \(Principal Areas\) \(England and Wales\) Rules 2006](#) ("the 2006 rules") are applied to elections of the trustees "mutatis mutandis" (ie with necessary modifications) by section 9 of MHA 1924.

Clause 24(1) is new - it requires elections to take place by postal voting or a combination of postal voting and voting by electronic means, rather than (as required under the 2006 rules) by ballot in person combined with one of the alternative methods provided for in the rules (including postal and proxy voting).

Clause 24(2) and (3) require the trustees to make rules containing provision about the conduct of elections instead of relying on the local government election rules. This is similar to the position that applies to the Wimbledon and Putney Conservators, who are a similar body to the Trust (elected members, local levy). The Wimbledon and Putney Conservators can make byelaws relating to the procedure at elections.

Clause 25: Returning officer

Proviso (a) to section 9 of MHA 1924 currently requires the clerk to the Trust to be the returning officer. Clause 25(1) requires the trustees to appoint an individual (with no limitation on who that might be) to be the returning officer.

Subsection (2) reflects proviso (b) to section 9 of MHA 1924 and requires the Trust to pay the returning officer's expenses.

Subsections (3) to (6) are new.

Clause 26: Legal proceedings relating to elections of trustees

This clause is new, though it reflects the existing position whereby local government election law is applied to the Trust.

Clause 27: Register of electors

This clause is new. Because the Trust's elections will be governed by its own rules, rather than the local government election legislation, it will no longer be able to rely on the district council to provide the full electoral register in accordance with [Part VI](#) of the Representation of the People (England and Wales) Regulations 2001.

Interests of trustees

Clause 28: Benefits to trustees

This clause is new. Remuneration of and benefits for charity trustees are governed by the general law relating to charities, in particular sections [185 to 188 of the Charities Act 2011](#). Clause 28 supplements the general law.

Clause 29: Interests of trustees

This clause is new and supplements general charity law and Charity Commission guidance. Charity trustees have a legal duty to act only in the best interests of their charity. They must not put themselves in any position where their duties as trustee may conflict with any personal interest they may have. Charity Commission Guidance ([Conflicts of interest: a guide for charity trustees](#)) recommends (paragraph 3.1 and Annex 4) that charity trustees should draw up a conflicts of interest policy and establish a register of interests. Those recommendations are put into the form of duties by clause 29.

Insurance and limitation of liability

Clause 30: Indemnity insurance for trustees and returning officer

This clause is new, though see the commentary on clause 31 below, and [section 60](#) of CCA 1847 (Commissioners not to be personally liable for acts done in the capacity of a commissioner. Commissioners to be indemnified for acts done in the execution of their office), which provides for indemnification for trustees out of the funds of the trustees.

Clause 31: Limitation of liability of and indemnity for trustees or employees

[Section 60](#) of CCA 1847 deals with trustees' liability. It says:

“No commissioner, by being party to or executing in his capacity of commissioner any contract or other instrument on behalf of the commissioners, or otherwise lawfully executing any of the powers given to the commissioners, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the several commissioners shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as commissioners; and the commissioners respectively, their heirs, executors, and administrators, shall be indemnified out of the rates and other monies coming to the hands of the commissioners by virtue of this and the special Act for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them.”

Section 52 of MHA 1924 applies [section 265](#) of the Public Health Act 1875 (protection of local authority and their officers from personal liability) to the trustees, the clerk and to any other officer of the Board of trustees or other person acting under the direction of the trustees, and any expense referred to in section 265 shall be borne and repaid out of the funds of the trust. Section 265 (which remains on the statute book) says:

No matter or thing done, and no contract entered into by any local authority or joint board or port sanitary authority, and no matter or thing done by any member of any such authority or by any officer of such authority or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done or the contract were entered into bona fide for the purpose of executing this Act, subject them or any of them personally to any action liability claim or demand whatsoever; and any expense incurred by any such authority member officer

or other person acting as last aforesaid shall be borne and repaid out of the fund or rate applicable by such authority to the general purposes of this Act.

Clause 31 contains a similar limitation and indemnity in subsections (1) and (3). Clause 31 differs from section 60 and section 52 in that:

- it sets out specific cases where the limitation of liability and the indemnity does not apply (see subsections (2) and (4)): for example, the limitation of liability does not apply in the case of acts which may constitute a crime arising out of fraud or dishonesty,
- it includes in subsection (5) a limitation of liability for trustees and employees as respects losses of the Trust, with a list of specific exceptions.

Notices

Clause 32: Giving of notices under Part 2

This clause is new. [Section 100](#) of CCA 1847 (Notices by advertisement) makes provision about the method of publishing notices which are required to be given by advertisement, but it is no longer required.

PART 3

FINANCE

Clause 33: The levy

The effect of clause 33 is to carry over various provisions which underlie the power of the Trust to charge a levy in accordance with the Local Government Finance Act 1988 (“LGFA”) and the [Levying Bodies \(General\) Regulations 1992](#) (“the 1992 regulations”).

The existing local legislation which underlies the power is as follows:

Section 19 (contributions from parishes) of MHA 1884

Sections 33 and 34 (expenses to be paid by contributory authorities) of MHA 1924

Section 11 of MHA 1995 (Amount for contingencies)

Section 19 of MHA 1884 (as amended by section 4 of MHA 1909) contains the original power to raise a levy as a precept against the overseers of the parishes to which it applied. A further power was added by sections 33 and 34 of MHA 1924. These powers were abolished by [section 117](#) of LGFA (Rates and precepts: abolition) and replaced by the power to continue to levy under regulations made under [section 74](#) (Levies) of that Act (currently the 1992 regulations). The “in principle” power is continued by clause 33(1), (2), (2A) and (3) of the Bill.

The parishes which pay the levy are unchanged and are described in clause 33(5) but clause 33 differs from the existing Acts in that it sets out what would happen in the event of renaming or reorganisation of the parishes (clauses 33(5) to (6A) of the Bill).

Section 19 of MHA 1884 and s 33 of MHA 1924 set out the purposes for which the levy could be raised – to meet “the expenses of the Conservators”. These purposes were extended by [section 11](#) of MHA 1995 which enabled the levy to provide for a contingency amount of up to 10 percent of the estimated expenditure of the Trust in respect of the relevant levy year. This is all carried through in clause 33(2) and (3) of the Bill.

Section 19 of MHA 1884 and section 33 of MHA required the precept to be made against the “overseers of the parishes”. The effect of LGFA and the 1992 regulations (and intervening local government legislation) is that the precept is now issued against the councils responsible for collecting council tax in the levy area: namely Malvern Hills District Council and Herefordshire Council. This is carried through in clause 33(8) of the Bill read with the definition of “the councils” in clause 33(18).

Section 19 of MHA 1884 and section 4 of MHA 1909 (amending section 19 of Act of 1884) set limits on the amount of the levy that could be raised. The mechanism for setting the maximum amount of the levy was replaced by LGFA and the 1992 regulations, so that it is now set by reference to annual inflationary increases against a base figure for the 1992 financial year. That mechanism is carried through in clause 33(10) to (12) of the Bill.

Section 19 of MHA 1884 enables the Trust to apply money donated to them so as to reduce the levy. This has been carried through in clause 33(13).

Section 33 of MHA 1924 provides that the levy can be raised in respect of expenses before or after they have actually become liable. This is carried through in clause 33(7).

The 1992 regulations

The 1992 regulations will continue to apply to the Trust as they do now. This is secured by clause 33 and in particular by subsections (14), (16) and (17).

Clause 34: Provision for capital and income

Clause 34 is based on [section 7 of MHA 1995](#) (provision for capital and income). There are two material differences.

First, clause 34(1) allows for capital money to be applied for the repayment of the principal of any amount borrowed.

Secondly, subsection (2) of section 7 of the 1995 Act says that sums received from the sale etc of land or interests in land other than capital money is to be treated as income of the board and shall be used in defraying expenses incurred by the Trust in the execution of their powers and duties. In clause 34, the words “and shall be used in defraying expenses incurred by the Trust in the execution of their powers and duties” have not been carried forward.

Clause 35: Power to borrow and mortgage land

Clause 35 is based on [section 10 of MHA 1995](#) (power to borrow). There are three existing borrowing powers under the local legislation: section 11 of MHA 1909 (power to borrow amount of compensation and costs under this Act), section 32 of MHA 1924 (power to borrow) and section 10 of MHA 1995 (power to borrow). There is also a power to re-borrow under section 44 (power to re-borrow) of MHA 1924.

The table below contrasts the powers with those proposed in the Bill and the text highlighted in red shows differences between the most recent of the powers - section 10 of MHA 1995 - and clause 35:

Section 11 MHA 1909	Section 32 MHA 1924	Section 10 MHA 1995	Clause 35 of Bill
Allows borrowing for purposes of MHA 1909 and MHA 1930	Allows borrowing for purposes of MHA 1924, MHA 1884 and MHA 1909. Section 45 of MHA 1924 (application of money borrowed) also	Allows borrowing by any method or methods for purposes of MHA 1930 and MHA 1995	Allows borrowing by any method or methods for the purposes of the Bill

Section 11 MHA 1909	Section 32 MHA 1924	Section 10 MHA 1995	Clause 35 of Bill
	says that all moneys borrowed by the Trust under the Act shall be applied only to the purposes for which they are borrowed and to which capital is properly applied.		
Requires Secretary of State consent and must be on terms and conditions and for such period as sanctioned or directed by Secretary of State	Requires Secretary of State consent and must be on terms and conditions and for such period as sanctioned or directed by Secretary of State	Requires Secretary of State consent and must be on terms and conditions and for such period as sanctioned or directed by Secretary of State	Requires Secretary of State consent and must be on terms and conditions and for such period as sanctioned or directed by Secretary of State but consent is only required in respect of "existing relevant land" "Existing relevant land" is any part of the Malvern Hills other than ancillary land which is owned by the Trust on the date on which the Bill is enacted. Ancillary land is land purchased under clause 75 (ancillary land) or section 9 of MHA 1995 (power to provide buildings for use by the Trust) or section 53 of CCA 1847 (power to provide offices etc). Where Secretary of State consent is not required, the Trust must comply with sections 124 to 126 of the Charities Act 2011 in relation to any mortgage.
The borrowing may be on the security of the contributions authorised to be raised by precept and on the security of any property belonging to the Trust	The borrowing may be on the security of the revenues and property of the Trust	The borrowing may be on the security of all or any of the revenues and property of the Trust	The borrowing may be on the security of all or any of the revenues and property of the Trust (including the contributions authorised to be raised by the levy in accordance with clause 33)

Section 11 MHA 1909	Section 32 MHA 1924	Section 10 MHA 1995	Clause 35 of Bill
			Subsection (3) allows the Trust to charge all or any of the revenues and property of the Trust (including the contributions authorised to be raised by the levy in accordance with section 33) as security for a grant or the discharge of an obligation. Secretary of State consent is required in respect of existing relevant land See above for meaning of “existing relevant land”
Allows Trust to mortgage or assign over the contributions or property or part thereof	Allows Trust to mortgage or assign the revenues or property or part thereof	Allows Trust to mortgage or assign the revenues or property or part thereof	No difference
By virtue of section 10 MHA 1995, where “relevant land” is mortgaged or assigned over, the mortgagee or assignee does not have a power to sell the land or a power to cut and sell or contract for the cutting and sale of trees.	By virtue of section 10 MHA 1995, where “relevant land” is mortgaged or assigned over, the mortgagee or assignee does not have a power to sell the land or a power to cut and sell or contract for the cutting and sale of trees.	Where “relevant land” is mortgaged or assigned over, the mortgagee or assignee does not have a power to sell the land or a power to cut and sell or contract for the cutting and sale of trees. “Relevant land” is defined as what was then the existing Malvern Hills and any other land owned by the trust other than land and buildings acquired under section 9 of MHA 1995 (power to provide buildings for use by the Trust) or section 53 of CCA 1847 (power to provide offices etc)	Where “existing relevant land” is mortgaged or assigned over, the mortgagee or assignee does not have a power to sell the land or a power to cut and sell or contract for the cutting and sale of trees. See above for meaning of “existing relevant land”
Incorporates the provisions of CCA 1847 relating to mortgages. Those provisions are:	The following provisions of the 1924 Act are also relevant: Section 39 (mode of raising money). This allows the raising of		The flexibility given by clause 35(1) means that the detailed provisions in MHA 1909 and MHA 1924 are not required

Section 11 MHA 1909	Section 32 MHA 1924	Section 10 MHA 1995	Clause 35 of Bill
Section 75 (form of mortgage) Section 76 (register of mortgages to be kept and open to inspection) Section 77 (transfer of mortgages) Section 78 (register of transfers to be kept) Section 79 (interest on mortgages to be paid half-yearly) Section 80 (power to borrow money at a lower rate of interest to pay off securities at a higher rate) Section 81 (repayment of money borrowed at a time and place agreed upon) Section 82 (repayment of money borrowed when no time or place has been agreed upon) Section 83 (interest to cease on expiration of notice to pay off a mortgage debt) Section 84 (monies borrowed on security of rates to be paid off in a limited period): this section requires the Trust, if it has borrowed on the security of the levy, to appropriate and set aside a sum out of the rates as a sinking fund to be applied in paying off the money borrowed, and to invest it in government securities Section 85 (mode of paying off mortgages)	borrowed money by way of mortgage, the issue of debentures or annuity certificates under and subject to the Local Loans Act 1875; Section 40 extends and applies the following provisions of the Public Health Act 1875 to mortgages granted under the Act: ss 236 (form of mortgage), 237 (register of mortgage) and 238 (transfer of mortgage). Section 41 (mode of payment off of money borrowed) Section 42 (sinking fund) Section 43 (appointment of receiver) Section 44 (power to re-borrow) Section 45 (application of money borrowed). Section 46 (power to invest funds in statutory securities) Section 47 (return to Minister of Health with respect to payment of debt) Section 48 (inquiries by Minister of Health) Section 49 (Conservators not to regard trusts) Section 50 (protection of lender from inquiry)		

Section 11 MHA 1909	Section 32 MHA 1924	Section 10 MHA 1995	Clause 35 of Bill
Section 86 (arrears of interest, when to be enforced by appointment of a receiver. Arrears of principal and interest) Section 87 (as to appointment of receiver) Section 88 (account books to be open to the inspection of mortgagees)			
Allows enforcement by appointment of a receiver			

Clause 36: Contributions by Worcestershire County Council and Herefordshire Council

Clause 36 is based on section 9 of MHA 1909 (Contributions by County Councils of Worcester and Hereford to funds of Conservators) and there are no material changes.

Clause 37: Report and annual accounts

Clause 37 is based, to some extent, on various provisions of the CCA 1847 (see the first table below). In addition, as a charity, the Trust has to comply with the financial provisions contained in [Part 8 of the Charities Act 2011](#) (Charity accounts, reports and returns), relating to (among other things) the production of accounting records ([section 130](#)), an annual statement of accounts ([section 132](#)) and an annual report ([section 162](#)), and this will continue to be the case. Those provisions substitute provisions of CCA 1847 (see the second table below).

Table 1: Clause 37 (report and annual accounts)	
Clause 37 Provision	Charities Act 2011 or CCA 1847 Provision
Clause 37(1): The Trust must arrange for its accounts to be audited annually, whatever its income and assets.	See the next row about the requirement to appoint auditors (which implies a requirement for the accounts to be audited). The existing requirement for an annual audit under the Charities Act 2011 (section 144 - Audit of accounts of larger charities) will continue to apply, whatever the income and assets of the Trust.
Clause 37(2): The Trust must appoint the auditors at the annual meeting.	Clause 37(2) replaces provisions in section 92 of CCA 1847 (Auditors to be appointed. Qualifications of auditors.) which say the ratepayers appoint the auditors at the annual meeting, or if not, it is done by the chair of that meeting.

	Section 92 of CCA 1847 also contains detailed provisions about the qualifications of auditors, requiring them to swear declarations before a magistrate, and also contains unrealistic maximum daily rates for their work, with provision for an appeal to a magistrate in case of dispute over those rates.
Clause 37(3) requires the Trust to consider a report of its activities and approve its accounts at a meeting each year, which must involve the physical presence of the trustees unless there are exceptional circumstances. Note also that the provisions of the Local Government Act 1972 which are applied to the Trust by clause 7(12) of and Schedule 2 to the Bill would require the meeting to be open to the public.	Section 91 (accounts to be examined and settled at the annual meeting) of CCA 1847 provides: - the accounts of the Trust, together with a statement and account of certain of its affairs, shall be produced at the annual meeting of the Trust, at which all creditors and rate-payers and other persons interested may be present - the accounts shall be then finally examined and settled by the Trust, and if the same be found just and true they shall be allowed by the Trust, and certified by the chair of the meeting - after the accounts have been so allowed and signed by such chairman, and by the auditors, they shall be final in regard to all persons whomsoever, unless an appeal be prosecuted against such accounts
Clause 37(4) requires the annual meeting to involve the physical presence of the trustees unless there are exceptional circumstances.	There is no specific provision in the existing Acts for remote meetings.
Clause 37(5) requires the Trust to give 10 clear business days' notice of the annual meeting, and the notice must state that the annual accounts and report of activities are available for inspection by the public at the Trust's offices. In addition, the provisions of the Local Government Act 1972 which are applied to the Trust by clause 7(12) of and Schedule 2 to the Bill require documents for meetings to be made available for inspection by the public. Furthermore, section 163 (Transmission of annual reports to Commission in certain cases) and section 164 (Documents to be transmitted with annual report) of CA2011 require the Trust to transmit its annual report and statement of accounts to the Charity Commission and the Commission must keep them open to public inspection under section 170 CA2011 (Public inspection of annual reports etc. kept by Commission).	Section 90 of CCA 1847 (Statement of accounts to be prepared and to be open for inspection. Copies of such statement to be furnished) says that fourteen days at the least before the meeting for examining and settling such account, the Trust shall give public notice of such intended meeting, stating in such notice that the said statement and account are printed, and lie at the office of the Trust ready for the inspection of the creditors and rate-payers or other parties interested.

Table 2: Charities Act 2011	
Charities Act 2011 provision	CCA 1847 Provision
Section 132 CA2011 (Preparation of statement of accounts) requires the preparation of an annual statement of accounts in accordance with regulations about their form and contents made by the Secretary of State. Section 162 CA2011 (Charity trustees to prepare annual reports) requires the preparation of an annual report containing such a report and other information as prescribed in regulations by the Secretary of State.	Section 90 (statement of accounts to be prepared and to be open for inspection. Copies of such statement to be furnished) requires: • accounts to be balanced in each year • preparation of a statement and account Section 95 (Annual account to be made up and transmitted to the clerk of the peace in England or Ireland, or to the sheriff clerk in Scotland, and to be open to inspection) requires an annual account in abstract to be made up.
Section 163 and section 164 CA2011 require the Trust to transmit its annual report and statement of accounts to the Charity Commission and the Commission must keep them open to public inspection under section 170 CA2011.	Section 90 requires: • statement and account to be printed, and open for inspection to levy payers and creditors who must be able to compare the statement of account with relevant books and documents • provision, on demand, of a printed copy of the statement and account to every creditor and rate-payer without fee. Section 95 requires the annual account in abstract to be transmitted to the clerk of the peace and to be open to inspection.

PART 4

PUBLIC ACCESS AND MANAGEMENT OF MALVERN HILLS

Public access and duty to keep unenclosed, etc

Clause 38: Public access to the Malvern Hills

This is the same as the first phrase of [section 15\(1\) MHA 1995](#) (public access to the Malvern Hills). The second phrase is not carried through. It says that a person who enters on the Malvern Hills for the purpose of open-air recreation 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.

Clause 39: Occupiers' liability, etc

Clause 39 is all new except for subsection (2) which is the same as section 15(2) of MHA 1995. Subsection (1) is based on [section 12\(1\)](#) of the Countryside and Rights of Way Act 2000 (Effect of right of access on rights and liabilities of owners). Subsection (2) is based on [section 1\(4\) of the Occupiers' Liability Act 1957](#) (preliminary) as substituted by section 13(1) of the Countryside and Rights of Way Act

2000. Subsections (3), (4) and (5) are based on [section 1\(6A\), \(6B\) and \(6C\) of the Occupiers' Liability Act 1984](#) (Duty of occupier to persons other than his visitors) as inserted by section 13(2) of the Countryside and Rights of Way Act 2000. Subsection (6) is based on [section 1A of the Occupiers' Liability Act 1984](#) (Special considerations relating to access land) as inserted by section 13(3) of the Countryside and Rights of Way Act 2000. Subsection (7) is based on the definition of "interest" in [section 45 of the Countryside and Rights of Way Act 2000](#) (Interpretation of Part I).

Clause 40: Duty to keep the Malvern Hills unenclosed

Clause 40(1) (a prohibition on enclosures being made or buildings being erected on the Malvern Hills) repeats the first phrase of section 10 of MHA 1884 (lands subject to Act to be preserved as open spaces) with the addition of the words "Except as otherwise provided by this Act". For the destination of other parts of section 10 of the 1884 Act, see subsection (2) below and clauses 41(2), 42(3) to (8) and 44. The duty to maintain existing rights of common and commonable rights in the third phrase of section 10 has not been taken forward. Protection of rights of common is now covered by general legislation.

Clause 40(2) (duties to keep the Hills unenclosed and unbuilt on as open space for the recreation of the public and duties of enforcement) repeats the duties in section 3 of MHA 1930 (management of Malvern Hills by Conservators). The power of enforcement in the second phrase of section 10 of MHA 1884 appears to have been overtaken by the duty in section 3. The only differences in the Bill are (a) that the duties in subsection (2)(b) are framed by reference to the words "Except as otherwise provided in this Act" and (b) there is a definition of "unbuilt on". For the destination of the rest of section 3 of the 1930 Act, see clause 43.

Clause 41: Protection of the Malvern Hills

Clause 41(1) contains a power of enforcement in relation to things growing on the Malvern Hills. It is in all material respects (save that it is expressed as a power rather than a duty) the same as the duty in section 21 of MHA 1924.

Clause 41(2) contains a power of enforcement in relation to unlawful digging, etc and damage to the Malvern Hills which is in all material respects the same as the power in the fourth phrase of section 10 of MHA 1884 (lands subject to Act to be preserved as open spaces) save that the power in clause 41(2)(b) to prevent damage does not include the existing power to prevent damage to the growth or the produce of the land forming the Malvern Hills.

Clause 42: Enclosure, encroachment and building: enforcement

The power of enforcement in clause 42(1) is based on section 20(1) of MHA 1884 (limiting powers of Act over manor and parish of Great Malvern). It is the same in all material respects, save that section 20(1) applies only to the manorial waste land forming part of the Malvern Hills, whereas clause 42(1) extends to the whole of the Malvern Hills.

The power to recover costs of enforcement in clause 42(2) is new.

The provisions of clause 42(3) relating to enforcement, in the court, of the prohibition on enclosing or building on the Malvern Hills are precededented in the sixth phrase of section 10 of MHA 1884 (lands subject to Act to be preserved as open spaces) and in section 20(1) of the 1884 Act (limiting powers of Act over manor and parish of Great Malvern). The provisions have been rewritten in modern terms, with the reference to a court of summary jurisdiction being replaced by a reference to a county court. The powers of the court in subsection (3) are the same, as is the limitation period in subsection (4) which follows through the provisos to section 10 and 20(1) of MHA 1884. Subsections (5) to (8) of clause 42 are new (restriction on who can make an application to the court, saving for things done by the Trust, default powers of removal and recovery of expenses of doing so).

Regulation and management of the Malvern Hills: general

Clause 43: General power to regulate and manage Hills

Clause 43 is the same in all material respects to section 20 of MHA 1924 and the opening words to section 3 of MHA 1930.

Clause 44: Rights of common

The power to regulate the exercise of rights of common in clause 44 is based on the fourth phrase of section 10 of MHA 1884 (lands subject to Act to be preserved as open spaces) . It is worded differently in that it is a power to regulate the exercise of rights of common, rather than a power to regulate the user and enjoyment of any rights of common or commonable rights in accordance so far as may be with the ancient customs of the forest of Malvern or other customs under which such rights are enjoyed.

“Rights of common” is defined in clause 3 (interpretation) to (in effect) mean rights of common registered under the Commons Registration Act 1965 or the Commons Act 2006. There is no definition in the existing Acts.

Access to and fencing, etc of the Malvern Hills

Clause 45: Regulation and prohibition of access to Malvern Hills

Clause 46: Regulation and prohibition of access to Malvern Hills: supplementary

Clauses 45 and 46 are based on [section 15\(3\) of MHA 1995](#) (public access to the Malvern Hills).

These are the material differences between section 15 and clauses 45 and 46:

Section 15 MHA 1995	Clauses 45 and 46 of the Bill
Section 15(3)(d) (protection or preservation of flora and fauna being a reason for regulating access) applies only if Natural England advise that regulation is desirable	That limitation is not carried through in clause 45(2)(d), instead clause 46(1)(b) requires the Trust to seek the advice of Natural England if the period of the exercise of powers exceeds 42 days. Certain operations on the Malvern Hills SSSI require separate consent from Natural England, including the construction of fences (see paragraph 21 of “Operations likely to damage the special interest” of the Malvern Hills SSSI).
Section 15(3)(d) (see above) only applies where the protection or preservation required is reasonably necessary	That limitation is not carried through in clause 45(2)(d), but the power to regulate access may only be exercised for such period as may be reasonably necessary (clause 45(1))
Section 15(3)(d) (prevention of accidents etc being a reason for regulating access the place in question is a source of danger) is not explicitly restricted to cases where the source of danger is temporary	An amendment in the filled Bill sets out that restriction
The power in the tailpiece of section 45(3) for the Trust to fence and enclose land does not include a power for the Trust to cause land to be fence or enclosed	Clause 45(3) includes a power to cause land to be fenced and enclosed

Section 15 MHA 1995	Clauses 45 and 46 of the Bill
The power in subsection (4) to regulate or prohibit access to, over or along any bridleway or footpath is exercisable only in respect of the reasons mentioned in subsection (3)(e) and (f) (fire and danger). Subsection (4) also says the power to so regulate is not exercisable in respect of the other reasons in subsection (3)(a) to (d).	Clause 45(4) is the same except: • it does not say that the power to regulate is not exercisable in respect of the reasons in subsection (3)(a) to (d) (it was not thought necessary, as it is implied) • amendments in the filled bill extend the ambit of the protection to public rights of way (defined in clause 3 and including byways) not just bridleways and footpaths.
There is no power to provide a gate or other appropriate means of access where fencing is provided.	Clause 45(5) enables the Trust to provide gates and other means of access where it considers appropriate and clause 45(6) requires the Trust to take account of the needs of those who would otherwise be able to gain access, including the disabled and horse riders.
Section 15(7) requires consultation with the Sport and Recreation Alliance and at least one other local body where the regulation or prohibition of access is for a period not exceeding 28 days	In the equivalent clause 46(2), the period is 42 days, not 28
Section 15(3)(a) requires consultation with Historic England in all cases where the reason for the regulation or prohibition of access is to protect certain heritage assets	In the equivalent clause 46(1)(a), consultation is required only if the period of the exercise of powers exceeds 42 days
Except in an emergency, section 15(8) requires the Trust to give notice by advertisement of its intended exercise of the power where the regulation or prohibition of access is for a period not exceeding 28 days	In the equivalent clause 46(3), the period is 42 days, not 28
The notice referred to above must be advertised where the reason for the exercise of the power is one of the reasons in section 15(3)(a), (b) or (c) (heritage, natural beauty, trees).	The notice must also be advertised if the reason is protection of flora and fauna.
The notice must be advertised in one or more local newspapers which together circulate throughout the whole of Herefordshire and Worcestershire (section 15(9))	The notice must be advertised in one or more local newspapers (if there are any) which circulate in any part of the Malvern Hills (clause 46(4)(b)) The notice must also be published on the Trust's website and contained in a newsletter or other publication published by the Trust (clause 46(4)(a) and (c))
There is no requirement to consult the highway authority	Clause 46(9) in the filled bill requires consultation with the highway authority in certain circumstances.

Clause 47: Fencing dangerous places

This clause is based on section 4(b) of MHA 1930 (powers exercisable over Malvern Hills) and is the same in all material respects save that there is a requirement for the Trust to be of the opinion that the part of the Hills to be fenced off gives rise to a permanent danger, rather than simply providing a power “to fence dangerous places”.

Clause 48 and Schedule 3: Fencing and other means of securing common land

This clause and Schedule are new.

Clause 49: Fencing: further powers

This clause is new.

Clause 50: Regulation of horse riding

This clause is the same in all material respects as [section 16 MHA 1995](#) (regulation of horse-riding on the Malvern Hills).

Clause 51: Prevention of unauthorised access by vehicles

This clause is new.

Clause 52: Application of advertisement regulations to display of notices under Part 4

This clause is the same in all material respects as [section 23 MHA 1995](#) (display of advertisements).

Management of the Malvern Hills

Clause 53: Nuisance and public order

This clause is the same in all material respects as section 12 MHA 1884 (powers as to lands described in Third Schedule) save that any measures to be taken under the power must (in addition to the existing requirement that be necessary) be reasonable and proportionate.

Clause 54: Paths and ways

This clause is the same in all material respects as section 4(c) MHA 1930 (powers exercisable over the Malvern Hills). The agreement of the highway authority is required in the case of a public right of way (rather than the local authority). There is also a power to make and maintain paths and ways in section 12 MHA 1884 at the expense of voluntary contributions: that power is subsumed in clause 54.

Clause 55: Access roads

This clause enables the Trust to authorise the construction, maintenance, alteration or improvement of roads or ways over Trust-owned land so that adjoining landowners can access the highway.

Clause 55 is in all material respects the same as section 7A of MHA 1930.

One difference, which the Trust does not consider to be material, reflects the change in the way the objects of the Trust are expressed in clause 6. When considering whether to grant authorisation to construct, maintain, alter or improve roads or ways the Trust must (under clause 55(2)) have regard to the effect of the works being authorised on the matters mentioned in clause 6(1)(a) of the Bill, rather than (under section 7A(2) of MHA 1930) on the natural aspect of the Malvern Hills. Clause 6 sets out the objects of the Trust and the object in subsection (1)(a) is “to protect, conserve and maintain the landscape, natural appearance, habitats, flora and fauna, geology and archaeology of the Malvern Hills”.

Clause 55(7) ensures that the consent provisions for works in [section 38 of the Commons Act 2006](#) (Prohibition on works without consent) apply to anything done under the authority of the Trust under clause 55(1). It reflects [section 21 of MHA 1995](#) (Law of Property Act), the effect of which is the same (section 21 refers to [section 194 of the Law Property Act 1925](#) (Restrictions on inclosure of commons), which was repealed by the Commons Act and re-enacted as section 38).

There is nothing in clause 55 which would affect the existing legal rights of access over land owned by the Trust.

Clause 56: Trees and shrubs

Clause 56 is based on section 12 of MHA 1884 (powers as to lands described in Third Schedule) and section 6 of MHA 1909 (power to plant trees and shrubs).

See the table below for a comparison:

Current provision	Bill provision
Section 12 MHA 1884 (powers as to lands described in the Third Schedule) says: [The Trust] 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 maintain and manage trees and shrubs which trees and shrubs shall not be subject to estovers or commonable rights ... provided that the expenses of planting such trees and shrubs ... be defrayed by voluntary contributions and not otherwise. The powers of this section may from time to time be exercised by the Conservators upon and with respect to any other lands which may have been made subject to this Act under the provisions in that behalf herein-after contained. Section 6 MHA 1909 says: The Conservators may purchase or acquire and plant trees and shrubs upon any part of the lands subject to the Act of 1884 and may fence or protect the same and from time to time remove or transplant any of such trees or shrubs. Such trees and shrubs if planted elsewhere 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.	Clause 56 (as proposed to be amended) says: (1) The Trust may acquire and plant trees and shrubs on the Malvern Hills or on any other land under their ownership, management or control and may fence or protect them and remove or transplant any of them. (2) No rights of estover are exercisable in relation to any tree planted by the Trust on the Malvern Hills before, on or after the date on which this Act is passed except in relation to the gathering of fallen wood.

Clause 55 is intended to clarify any potential confusion between section 12 of MHA 1884 and section 6 of MHA 1909 and make clear that the Trust can plant and care for trees and shrubs on any land under

its management and control and that all rights of estover in relation to such trees shall be limited to gathering of fallen wood.

The provisions of the existing Acts are difficult to follow. Section 12 of MHA 1884 applies to land described in the Third Schedule to that Act and coloured dark green and brown, and to any other land acquired under that Act. There is no power for the Trust to pay for the acquisition or planting of the trees under section 12.

On the other hand, the Trust does have power under section 6 of MHA 1909 to pay for the acquisition and planting of trees planted on its land (including the MHA 1884 land). The latter part of section 6 implies that the Trust can plant trees elsewhere than on the MHA 1884 land but that any such trees are subject to estovers (to the extent that it can be proved that a right of estover allows the cutting down of a tree) once they get to over 18 feet in girth.

This means the Trust is able to plant donated trees anywhere, with such trees not being subject to estovers, but if the Trust pays for the acquisition and planting of trees other than on the MHA 1884 land, then they are subject to estovers (including the right to cut down a tree once it reaches a certain size). Clause 56 removes any limitation on expenditure on acquiring and planting trees and provides a uniform position as regards rights of estover in relation to trees planted by the Trust.

Clause 57: Drainage and turf

This clause is the same in all material respects as section 4(a) of MHA 1930 (powers exercisable over the Malvern Hills).

Clause 58: Parking places

This clause is the same in all material respects as section 6 of MHA 1930 (parking places for vehicles).

Clause 59: Sheds, seats, shelters and watering points

Clause 59(1) (sheds) is the same in all material respects as section 4(d) of MHA 1930 (powers exercisable over the Malvern Hills).

Clause 59(2) (seats and shelters) is the same in all material respects as section 7 MHA 1909 (power to provide seats and shelters and regulation thereof) save that the power to make byelaws in that section is carried through to clause 65(1)(d).

Clause 59(3) (watering points) is new.

Clause 60: Lavatories

Subsection (1) is based on section 5 of MHA 1930 (provision of lavatories). The only differences of substance are:

- The consent of the Secretary of State is no longer required for the construction and maintenance of lavatories
- Instead of a power to “grant licence” to a local authority to construct and maintain lavatories, the Trust can “make arrangements” for them to do so.

Subsections (2) to (5) (temporary lavatories) are based on [section 5 of MHA 1995](#) (Provision of temporary lavatories). The only material difference is that in addition to the existing power to grant licences where lavatories are required for events authorised by the Trust, they would also be capable of being authorised for the use of persons working temporarily on the Malvern Hills (clause 60(3)(b) and (5)).

Clause 61: Games, sports and exhibitions, etc

This clause is the same in all material respects as section 4(e) and (f) of MHA 1930 (powers exercisable over Malvern Hills), save that there is a definition in the filled Bill of Malvern Common and Malvern Link Common.

Clause 62: Licensing of stalls

Clause 62(1), (2) and (5) which provide the main power to license temporary stalls are the same in all material respects as section 4(g) MHA 1930 (powers exercisable over Malvern Hills) as substituted by section 4 MHA 1995. The protective provision for the Malvern Hills Hotel in clause 62(6) is the same in all material respects as section 16 MHA 1930.

Clauses 62(3) and (4) which provide power to grant licences for stalls provided in connection with an event authorised by the Trust are new.

Clause 63 Licensing of other activities

This clause is new. Other organisations with control and management of open spaces have powers to regulate activities, including commercial activities. See section 10(2)(b) and (e) and (3) of the [Monken Hadley Common Act 2022](#) (Regulations) and section 10 (Control of commercial activity) of and the Schedule to the [City of London Corporation \(Open Spaces\) Act 2018](#).

Removal and disposal of unauthorised articles

Clause 64: Removal and disposal of unauthorised articles

Clause 64 is based on [section 20 of MHA 1995](#) (removal of placards and abandoned machinery and vehicles) and on [section 13 of the City of London Corporation \(Open Spaces\) Act 2018](#) (Removal and disposal of unauthorised articles).

The following are the material differences between clause section 20 MHA 1995 and clause 64:

Section 20 MHA 1995	Clause 64
Section 20(1) sets out a list of types of articles that can be removed from the Malvern Hills by the Trust, but also says it can remove “any other articles or things” including farm machinery.	Clause 64(1) enables the Trust to remove any article or thing.
Section 20(1) says that the article being removed must have been left “without proper authority or in contravention of any byelaw made by the Trust”, or it must appear to have been abandoned.	Clause 64(1) says the article being removed must have been placed or left without the Trust’s permission or without lawful authority. This is the same in all material respects as section 13(1) of the City of London Corporation (Open Spaces) Act 2018.
There is no equivalent provision to clause 64(2) in section 20.	Clause 64(2) requires that a person appearing to be in control of the article is present, they must be given the opportunity to remove the article. This is the same in all material respects as section 13(2) of the City of London Corporation (Open Spaces) Act 2018.
Section 20(2)(b)(i) says (in the case of all objects except farm machinery) that on removal the Trust 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	Clause 64 (3) says that on removing any article or object (with no distinction made for farm machinery) under subsection (1), the Trust must store it in a convenient place unless it appears to the Trust that the article or object—

Section 20 MHA 1995	Clause 64
day of removal the owner has not claimed the item and paid all expenses incurred by reason of its removal, impoundment and storage the Trust may dispose of the item in such a manner as they think fit.	(a) has been abandoned, (b) is unlikely to be of any continuing value to its owner, or (c) is not reasonably capable of being stored. This is the same in all material respects as section 13(3) of the City of London Corporation (Open Spaces) Act 2018. Clause 64(4) says that if an article or object removed under subsection (1)— (a) has been stored under subsection (3), and no person appearing to be the owner has within a period of 14 days beginning with the day of removal claimed it and paid all expenses reasonably incurred by reason of its removal and storage; or (b) is not one which the Trust must store under subsection (3), the Trust may dispose of it in such a manner as the Trust thinks fit. This is the same in all material respects as section 13(4) of the City of London Corporation (Open Spaces) Act 2018.
Section 20(2)(b)(ii) says that in the case of farm machinery the Trust 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.	Clause 64(5) is the same in all material respects as section 20(2)(b)(ii).
Section 20(3) to (10) set out detailed provisions about the exercise of the powers of section 20 in relation to vehicles.	Clause 64(6) and (7) make similar provision about motor vehicles. This is achieved by applying sections 101 to 103 of the Road Traffic Regulation Act 1984 ("RTRA 1984") and regulations made under them which apply to the storage and disposal of vehicles removed by local authorities where they have been unlawfully or dangerously parked, abandoned or have broken down. This is materially the same as section 13(5) of the City of London Corporation (Open Spaces) Act 2018.

Section 20 MHA 1995	Clause 64
Section 20(3)(a) says that in the case of vehicles, the power of removal applies only to “relevant vehicles”. A “relevant vehicle” is a vehicle which appears to the Trust 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.	The power of removal in clause 64 applies to all motor vehicles (defined by reference to section 136 of the RTRA 1984)
Section 20(3)(b) read with section 20(6) says that not less than 7 days before removing a vehicle the Trust must cause a notice to be fixed to the vehicle stating that they propose to remove it (which they can only do when the licence displayed on the vehicle expires, if there is one so displayed).	This provision has not been carried through, which reflects the position in the City of London Corporation (Open Spaces) Act 2018.
Section 20(4) says that the Trust can impound a vehicle and must give notice of having done so to the police and to the owner of the vehicle if their identity is known or can reasonably be ascertained.	Section 100(4) of RTRA 1984 (Interim disposal of vehicles removed under s. 99) applies, requiring the Trust to take such steps as are reasonably necessary for the safe custody of the vehicle. The requirement to notify the police has not been carried through. In that regard it is the same as the City of London Corporation (Open Spaces) Act 2018. Under section 101(3) of RTRA 1984 (Ultimate disposal of vehicles abandoned and removeable under this Act), if a licence or registration mark is displayed on the vehicle, the Trust would not be able to dispose of the vehicle unless it had taken prescribed steps to find its owner, but (a) failed to do so, or (b) the owner had not complied with a notice served by the Trust. There is no requirement to notify the owner if in the opinion of the Trust the vehicle is in such condition that it ought to be destroyed or if no licence or registration mark were displayed. The prescribed steps are set out in detail in regulation 12 of the Removal and Disposal of Vehicles Regulations 1986 (Steps to be taken to find the owners of certain vehicles)¹.
Section 20 (5) says that the Trust may, in such manner as they think fit, dispose of a relevant vehicle which has been removed.	Section 101(1) RTRA is materially the same.
Section 20 (6) sets out the time at which the Trust may dispose of a vehicle that it has removed:	See above as regards section 101(3) of RTRA 1984.

¹ Note that the hyperlink is to the regulations as originally made and the have been amended since

Section 20 MHA 1995	Clause 64
(a) any time after its removal if no current licence was displayed when removed (b) any time after the licence expires if one was displayed (c) for vehicles other than a motor vehicle, any time after the expiration of a period of 28 days beginning with the day of removal.	
Section 20(7) says that if a vehicle is claimed by a person who satisfies the Trust that they are its owner and pays the Trust all expenses incurred by reason of its removal, impoundment and storage, the Trust must permit them to remove the vehicle within a prescribed period (defined in section 20(10) as 7 days after the Trust became satisfied that the person was the owner, or before disposal of the vehicle if later).	Section 101A (1) of RTRA 1984 (Right of owner to recover vehicle or proceeds of sale) read with regulation 14 of the Removal and Disposal of Vehicles Regulations 1986 (Period during which owner may remove vehicle before it can be disposed of) ² is materially the same. Regulation 14 sets the time limit as 7 days from the date of service of the notice under s.101(3) referred to above.
Section 20(8) makes provision about what happens if it appears to the Trust that more than one person is or was its owner at the relevant time.	This provision is not carried through
Section 20(9) says the Trust shall, in relation to the disposal, give to persons prescribed by regulations under section 101(7) of RTRA 1984 such information as is so prescribed.	No difference.

PART 5

BYELAWS

Clause 65: Power to make byelaws

Clause 65(1), (2) and (3) set out the subjects which may be included in byelaws. Clause 65(1) is based mainly on section 10(1) of MHA 1930. The table below sets out the origin of each power and indicates any differences.

Clause 65 provision	MHA Act provision
(1)(a): nuisances	section 10(1)(h) MHA 1930
(1)(b): enclosure etc	section 10(1)(a) MHA 1930
(1)(c): interference with rights of common	section 10(1)(a) MHA 1930
(1)(d): seats and shelters	section 7(2) MHA 1909

² Note that the hyperlink is to the regulations as originally made and the have been amended since

Clause 65 provision	MHA Act provision
(1)(e): refuse and litter	section 10(1)(g) MHA 1930
(1)(f): vehicles and devices	section 10(1)(k) MHA 1930 inserted by Part III of Sch 2 1995 Act. This provision has been altered by bringing “devices” and “flying” within its scope. Subsections (6A) and (6B) have been included in the filled bill to ensure that mobility scooters are not included.
(1)(g): shows, etc	section 10(1)(b) MHA 1930
(1)(h): games, etc	section 10(1)(c) MHA 1930
(1)(i): assemblies	section 10(1)(c) MHA 1930
(1)(j): regulating rights of common	section 10(1)(f) MHA 1930
(1)(k): carrying on business	
(1)(l), (m), (n): digging, cutting turf, damage to the Hills	section 10(1)(e) MHA 1930
(1)(o): turning out animals	section 10(1)(d) MHA 1930
(1)(p), (q): quarrying, works and machinery	section 25(1) MHA 1924
(1)(r): [deleted from filled bill]	
(1)(s): hindrance of authorised officer	section 10(1)(j) MHA 1930
(2): contravening notice under clause 45 (regulation and prohibition of access to Malvern Hills)	section 15(11) MHA 1995
(3): contravening notice or direction sign under clause 50 (regulation of horse riding)	section 16(2) MHA 1995

Subsections (4) to (6B) of clause 65 are new and subsection (7) carries forward existing protections for rights of common.

Clause 66: Procedure for byelaws

Clause 66 is the same in all material respects as subsections (4) to (6) of section 10 of MHA 1930, which were inserted by section 13 MHA 1995.

Clause 67: Penalty for contravening byelaws

Clause 67 is the same in all material respects as subsection (7) of section 10 of MHA 1930, which was inserted by [section 13 of MHA 1995](#).

Clause 68: Fixed penalty notices

This clause is new. It is based [on section 11 of the City of London Corporation \(Open Spaces\) Act 2018](#).

Clause 69: Further provision as to enforcement of byelaws

Subsections (1) and (2) of clause 69 replace section 17 of MHA 1884. Section 17 enables the Trust to appoint keepers for the purpose of enforcing byelaws and regulations, and applies sections 5, 6, 7 and 8 of the [Parks Regulation Act 1872](#) with regard to keepers and police constables on the Malvern Hills.

See the table below for a comparison between the 1872 Act and subsections (1) and (2).

Parks Regulation Act 1872	Clause 69
Section 5 (Park-keeper may apprehend any offender whose name or residence is not known) Any person who— (a) within the view of a park constable acts in contravention of any of the said regulations in the park where the park constable has jurisdiction; and (b) when required by any park constable or by any police constable to give his name and address gives a false name or false address, shall be liable on summary conviction to a penalty of an amount not exceeding level 1 on the standard scale	(1) An authorised officer who has reason to believe that a person has committed an offence against any byelaw made under this Act may require that person to give their name and address with a view to— (a) the service of a summons on that person, or (b) the issuing of a fixed penalty notice to that person under section 68, in relation to that offence. (2) A person who, without reasonable excuse, fails to provide information required under subsection (1) or without reasonable excuse provides inaccurate information commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
Section 6 (Penalty on assaults on park-keeper) Where any person is convicted of an assault on any park constable when in the execution of his duty, such person shall, on conviction by a court of summary jurisdiction, in the discretion of the court, be liable either to pay a penalty not exceeding level 2 on the standard scale, or to be imprisoned for any term not exceeding six months.	No equivalent
Section 7 (Powers, duties, and privileges of park-keeper) Every park constable in addition to any powers and immunities specially conferred on him by this Act, shall, within the limits of the park of which he is park constable, have all such powers, privileges, and immunities, and be liable to all such duties and responsibilities, as any police constable has within the police area in which such park is situated; and any person so appointed a park constable as aforesaid shall obey such lawful commands as he may from time to time receive from the Secretary of State in respect of his conduct in the execution of his office.	No equivalent
Section 8 (Police constables to have the same powers, &c. as park-keepers)	No equivalent

Parks Regulation Act 1872	Clause 69
Every police constable belonging to the police force for the police area in which any park, to which this act applies is situate shall have the powers, privileges, and immunities of a park constable within such park.	

Subsections (3) to (6) of Clause 69 are the same in all material respects as [section 14 of MHA 1995](#) (Further provision as to enforcement of byelaws).

Subsection (7) of clause 69 is based on section 10(1)(i) of MHA 1930. The only difference of substance is that section 10(1)(i) sets out a power to make a byelaw enabling an authorised officer to remove or exclude persons who in the officer's view has committed an offence against the other byelaws, whereas subsection (7) is a stand alone power (ie the power is contained in the Bill, not in byelaws).

Clause 70: Byelaws: seizure of stray animals

Clause 70 is the same in all material respects as [section 19 of MHA 1995](#) (Seizure of stray animals) save that in subsection (6) there is a new power for the Trust to take such action as it thinks fit in relation to an impounded animal if it is ill or injured, including seeking veterinary treatment.

PART 6

LAND

Clause 71: Acquisition of land, bequests and agreements

Subsections (1) and (3) of clause 71 are based on section 29(a) of MHA 1884 (power to acquire other lands). They are set out in the table below (with paragraph (b) of section 29 and subsection (2) of clause 71):

Section 29 MHA 1884 (first part)	Clause 71(1), (2) and (3)
29. For the purpose of preserving unenclosed and free from building any lands within nine miles of Great Malvern Abbey (in addition to those coloured on the deposited map) which the Conservators may regard as proper to be so preserved as part of or in connexion with the range of Malvern Hills or for the purpose of maintaining any common or commonable rights which may subsist over or affecting such lands or any of them the Conservators may either: (a) Acquire by purchase or grant (whether absolutely or subject to conditions) any of such lands subject to all common or commonable rights (if any) subsisting over or affecting the same or any estate or interest therein with or without the minerals thereunder and the timber thereon or any rights privileges or easements over the same. (b) Enter into an agreement or agreements with any person or persons for making any of such	(1) In furtherance of the objects, the Trust may acquire (by purchase or grant) land of the type described in subsection (3) and on and after the date of acquisition any land so acquired is part of the Malvern Hills. (2) Land of the type described in subsection (3) which is vested in the Trust by virtue of a gift or bequest is, on and after the date of vesting, part of the Malvern Hills. (3) The type of land which may be acquired under subsection (1) or become vested in the Trust under subsection (2) or be subject to an agreement under subsection (4) is land— (a) which is situated within nine miles of Great Malvern Priory, and (b) which the Trust considers should be preserved unenclosed and free from building as part of the Malvern Hills.

lands subject to this Act or to any of the provisions thereof.	
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The differences of substance between them can be summarised as:

- The purposes of exercising the clause are expressed differently, though “in furtherance of the objects” (in clause 71(1)) encompasses the purpose expressed in section 29 of MHA 1884 of preserving lands unenclosed and free from building
- The ability for the Trust to acquire land if it considers it is desirable to be preserved “in connection with” the Malvern Hills is not carried through.
- Subsection (2) of clause 71 (which makes specific provision about gifts and bequests) is new.
- The tailpiece of section 29 of MHA 1884 and the proviso to that section are not carried through to the Bill. They make provision for the making of orders by the Trust which would have the effect of adding additional trustees in the case where a person makes a voluntary grant of land to the Trust.

Subsections (4) to (7) (including new subsection (5A) in the filled Bill) are based on section 31 (provision for adding other common or waste land) and section 32 of MHA 1884 (notice of extending powers of Conservators). They are set out in the table below for comparison:

Section 31 and 32 MHA 1884	Clause 71(4) to (7)
31. Any common or waste lands within the said distance of nine miles from Great Malvern Abbey may be at any time and from time to time made subject to all or any of the provisions of this Act by agreement between the Conservators and the lord of the manor of which such lands form part: 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: Provided that the vestry of any parish subject to such liability shall be entitled to appoint or share in the appointment of one or more Conservators in such manner as the Land Commissioners shall determine. 32. Any order or agreement approved or allowed by the Land Commissioners under this	(4) Any land of the type described in subsection (3) that is common land or that is waste land of a manor may become part of the Malvern Hills by agreement between the Trust and the lord of the manor of which the land forms part. (5) No agreement may be made under subsection (4) unless the Secretary of State has given consent in writing to the agreement. (5A) Any agreement to which consent is given by the Secretary of State under subsection (5) must be published in such manner as the Secretary of State directs. (6) The Secretary of State may, on or after giving consent under subsection (5) in relation to any land, by order— (a) amend section 23(3) so as to include in the Trust’s electoral area any parish within which the land in question is situated (if that parish is not already in the Trust’s electoral area), (b) amend section 33(4) so as to include in the list of parishes in respect of which a levy may be issued any parish within which the land in question is situated (if that parish is not already in that list).

Section 31 and 32 MHA 1884	Clause 71(4) to (7)
Act shall be published in such manner as the Land Commissioners shall direct.	(7) An order under subsection (6) is to be made by statutory instrument and any such statutory instrument may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

The differences of substance between them can be summarised as:

- Section 31 allows the Land Commissioners (now the Secretary of State) to make an order enabling the vestry of a parish in question (now the parish council) to appoint an additional trustee, whereas clause 71(6)(a) allows the Secretary of State to make an order extending the electoral area to include the parish in which the land acquired under clause 71(4) is situated.
- Clause 71 uses modern statutory language about the making of orders by the Secretary of State.

Clause 72: Power to adjust boundaries of Malvern Hills

Clause 72 is based on section 9 of MHA 1930 (power to adjust boundaries), which incorporates by reference the first proviso to section 8 of that Act.

The differences of substance between them can be summarised as:

- Subsection (3) of clause 72 is new: it has the effect of disapplying provisions in the Charities Act 2011 relating to the disposition of land by charities where the disposition (as here) is authorised by an Act
- The provisions about the giving of notice of any application for ministerial consent in subsections (4) to (6) are more detailed. Under section 9(2) of MHA 1930, there is a simple requirement to advertise the application in two local newspapers. Subsection (5) requires more detail to be given in the notice and subsection (6) requires the notice to be published on the Trust's website, in a Trust newsletter or similar publication and in at least one local newspaper
- Subsection (7) of clause 72 is new: it requires the Secretary of State to consider all representations received before giving consent to a sale or exchange under subsection (1).

Clause 73: Disposal of land

Subsections (1), (2), (3) and (4) of clause 73 are the same in all material respects as [section 6\(1\) of MHA 1995](#) (as to disposal of land), save that the power to sell land in subsection (2)(a) is expressed as being a power to sell "free of restrictions" whereas the equivalent section 6(1)(i) is not.

Subsection (5) of clause 73 is the same in all material respects as section 6(2) of MHA 1995, save that there is provision for cases where the Trust is unable to discover the identity of a donor, their personal representatives or trustees.

Subsections (6) and (7) of clause 73 are new. Clause (7) is precededented in [section 6\(11\) of the City of London Corporation \(Open Spaces\) Act 2018](#) (Letting of buildings) and [section 9\(5\) of the Monken Hadley Common Act 2022](#) (leases).

Subsection (8) of clause 73 is the same in all material respects as section 6(3) of MHA 1995.

Clause 74: Leases and licences of land

This clause is new. There are similar powers to lease in [section 9 of the Monken Hadley Common Act 2022](#) (leases).

Clause 75: Ancillary land

Clause 75 is based on [section 9 of MHA 1995](#) (Power to provide buildings for use by the Conservators). The material differences are:

- Subsections (1) and (2) of clause 75 together provide a definition of ancillary land, to which the clause applies: it includes land acquired with the sanction of an order of the Charity Commission: section 9 MHA 1995 does not expressly extend to such land
- Subsection (3) of clause 75 says that the Trust may acquire land for any use which is ancillary to the objects of the Trust. That includes (without limitation to that limited general power) the purposes listed in paragraphs (a) to (f) of subsection (3). Section 9(1), (2) and (4) MHA 1995 set out specific purposes for which the power to acquire land may be exercised.
- The respective purposes mentioned in section 9(1), (2) and (4) of MHA 1995 and subsection (3) of clause 75 are set out in the table below:

Section 9(1), (2) and (4) MHA 1995	Clause 75(3) of the Bill
Offices	Offices
Information centres	Information centres
Storage in connection with the carrying out of the Trust's functions	Storage
Residential occupation by an employee of the Trust in the interests of security of any building used by the Trust It may be made available to the employee of the Conservators on such terms and conditions as the Conservators think fit.	Residential accommodation for employees of the Trust, which may be made available to those employees on such terms and conditions (including at less than market rent) as the Trust thinks fit
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 (subsection (5))	Retail sale of goods (including for the purpose of raising funds for the Trust)
	The keeping or management of livestock
	Staff and volunteer facilities
	Provision of refreshments

- Subsection (5) of clause 75 says that the Trust has all the powers of an absolute owner in relation to ancillary land, and lists example of those powers. The powers of dealing with such land under section 9 of MHA 1995 are limited to:
 - The selling, exchange or otherwise disposing of any buildings and land (section 9(3))
 - Repair and maintenance or reconstruction or extension of buildings and execution of such works as may be necessary or expedient in connection with the furnishing and equipping of the buildings (section 9(5))
 - Letting parts of buildings which are surplus to the Trust's requirements on such terms and conditions as the Trust think fit.
- Subsection (7) is new in the sense of it being a stand alone power, although the Trust has a similar power to repair, maintain, reconstruct or extend buildings acquired under section 9 of MHA 1995 (power to provide buildings for the use by the Trust) – see section 9(5) - and to maintain a building constructed in place of St. Anne's Well ([section 3\(2\) of MHA 1995](#) - Provision of refreshment facilities).

Clause 76: Maintenance of buildings and structures

This clause is new.

Clause 77: St. Ann's Well

Clause 77 is based on [section 3 of MHA 1995](#) (Provision of refreshment facilities) and sections 8 (power to sell or lease land described in Schedule) and section 11(3) (for protection of Council) of MHA 1930.

A general difference between section 3 of MHA 1995 and clause 77 is that the powers in section 3 appear to apply to any building that replaces St. Ann's Well (not the existing building), whereas clause 77 applies to the existing building as well as any replacement.

Subsection (1) of clause 77 is based on section 3(2) of MHA 1995. Subsection (1) allows the Trust to maintain St. Ann's Well and use it for any use which is ancillary to the objects. Section 3(2) says the Trust may maintain and operate a building constructed under section 3 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.

Subsections (2) and (3) of clause 77 (reconstruction of St. Ann's Well) are the same in all material respects as section 3(1) of MHA 1995.

Subsections (4) and (5) of clause 77 are the same in all material respects as section 3(3) of MHA 1995.

Subsection (6) of clause 77 is the same in all material respects as the operative part of section 8 of MHA 1930.

Subsections (7) and (8) of clause 77 are the same in all material respects as section 11(3) of MHA 1930.

Subsections (9) to (11) of clause 77 are new and provide a modern method of resolving disputes between the Trust and Malvern Hills District Council about the terms of any sale of St. Ann's Well triggered by subsection (8).

Clause 78: Grant of easements etc. for utilities

Clause 78 is the same in all material respects as section 7 of MHA 1930 (power to grant easements) that was inserted by [section 8 of MHA 1995](#), except:

- In subsection (6)(a) of clause 78, the requirement for the opinion of the local planning authority as to whether it is not reasonably practicable for the service to be overground is not carried forward (the requirement for the opinion of the trustees is carried forward)
- Subsection (6)(d) is new: it requires consultation with the body responsible for the AONB management plan before the clause are exercised.

Clause 79: Notice of quarrying

Clause 79 is the same in effect in all material respects as section 25 MHA 1884 (as to opening of new quarries), save that:

- Rather than notice being required to be given to the Trust about any proposed quarrying, the Trust must be consulted, and the consultation must include the giving of a notice (the requirements for which are the same in all material respects as those in section 25)
- The notice must be given no less than 3 months before planning permission for the quarrying is applied for.
- The exceptions given in relation to land belonging to the Hornyold family are not carried forward.

Clause 80: Power of highway authority to get materials

Although clause 80 is new, it is based on section 15 of MHA 1884 (restricting digging of gravel etc). The material difference is that whereas section 15 prohibits the highway authority from taking material from any part of the Malvern Hills without the sanction of an order of a magistrate, clause 80 is framed so as to disapply the power of the highway authority to get materials from any waste or common land in the Malvern Hills.

Clause 81: Power for Trust to use materials

This clause is new.

Clause 82: Saving for town and country planning

Clause 82 is the same in effect in all material respects as [section 24 of MHA 1995](#) (saving for town and country planning), save that (with the exception of development authorised by clause 81) it applies to all development authorised by the Bill, and not just development authorised by the provisions in the Bill which replace the provisions of the 1995 Act.

PART 7

GENERAL AND MISCELLANEOUS PROVISIONS

Clause 83: General power of the Trust

This clause is new.

Clause 84 and Schedule 4: Miscellaneous powers of the Trust

This clause is new. Some of the powers listed in Schedule 4 are available under the existing Acts and they are illustrated in the table below:

Provision of Schedule 4 to Bill	Provision of existing Act
Paragraph 1: Subject to section 8(7), employing and remunerating such staff as are necessary for carrying out the work of the Trust	Section 65 of CCA 1847 (Power to commissioners to appoint clerk and other officers, and remove them from time to time): The [Trust] may from time to time appoint and employ a treasurer, clerk, collector, assessor, and all such other officers to assist in the execution of this and the special Act as they shall think necessary and proper, and from time to time remove any of such officers, and appoint others in the room of such as shall be so removed, or as may die, resign, or discontinue their offices, and may, out of the monies to be raised for the purposes of this and the special Act, pay such salaries and allowances to the said officers respectively as the [trustees] shall think reasonable.
Paragraph 12: Setting aside funds as reserves against future expenditure, but only in accordance with a written policy on reserves. Paragraph 13: Depositing or investing funds in any manner (but to invest only after taking such advice as the Trust consider is reasonably necessary from such person as is reasonably believed by the Trust to be qualified to give it by their ability in and practical experience of financial and other relevant matters). Paragraph 14: Designating funds for particular purposes, including designating capital money received by the Trust for any purpose for which capital money may properly be applied in accordance with section 34.	Section 12 of MHA 1909 (investment of surplus funds) Any moneys from time to time in the hands of the Conservators and not immediately required for the purposes for which the same are applicable may be invested by the Conservators in any securities in which trustees are for the time being empowered by Act of Parliament to invest trust moneys and the Conservators shall be at liberty from time to time to transpose any such investments. Section 35 of MHA 1924 (general fund): The Conservators shall create and form a general fund and they shall carry to the credit of that fund all sums payable by any contributory authority all moneys raised by precept under the provisions of the section of this Act of which the marginal note is "Expenses to be paid by contributory authorities" and all fines fees on licences and revenue of the Conservators other than interest on the compensation fund. Section 12 of MHA 1995 (land acquisition fund) (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

Provision of Schedule 4 to Bill	Provision of existing Act
	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.
Paragraph 23: Entering into any contract or agreement (including any finance lease)	Section 56 of CCA (power to enter into contracts): Enables contracts to be made for the execution of works authorized by the existing Acts, or for furnishing materials, or for any other things necessary for the purposes of the existing Acts. There are requirements for works contracts to be in writing, and for certain details to be included in them. There are detailed requirements about the manner of execution of contracts and their enforcement, all now covered by clause 7 (administration of the Trust) or by general law

Clause 85: Power to prosecute, defend and appear in legal proceedings

Clause 85 is based on [section 222](#) (Power of local authorities to prosecute or defend legal proceedings). and [section 223](#) (Appearance of local authorities in legal proceedings) of the Local Government Act 1972.

Section 52 of MHA 1924 applied section 259 of the Public Health Act 1875 (appearance of local authorities in legal proceedings) to the Trust, the clerk and to any officer of the Board of trustees as if the Trust were included in that section. Section 259 was repealed by the Local Government Act 1933 and replaced by sections 276 (power of local authorities to prosecute or defend legal proceedings) and 277 (appearance of local authorities in legal proceedings) of the 1933 Act. The 1933 Act was repealed and the relevant provisions re-enacted by the Local Government Act 1972.

PART 8

FINAL PROVISIONS

Clause 86: Local inquiries

Clause 86 is the same in all material respects as [section 22 of MHA 1995](#), save that it applies to the whole Bill, not just those provisions of the 1995 Act that have been carried through.

Clause 87 and Schedule 5: Repeals

Not applicable.

Clause 88 and Schedule 6: Consequential amendments

Not applicable

Clause 89 and Schedule 7: Transitional provisions and savings

Not applicable

Clause 90: Protection of Crown interests

Crown protective provisions are in section 34 MHA 1884, section 14 MHA 1909, section 58 MHA 1924 and section 17 MHA 1930.

Clause 91: Protection of Network Rail Infrastructure Limited

Railway protective provisions are in section 53 of MHA 1924, section 13 of MHA 1930 and section 25 of MHA 1995.

Clause 92: Protection of National Grid Electricity Distribution (West Midlands) PLC

Electricity Protective provisions are in section 14 MHA 1930.

Clause 93: Protection of Severn Trent Water Limited

Water protective provisions are in section 11(5) MHA 1930.

Clause 94: Protection of rights of commoners

Clause 94 is based on section 27 MHA 1884, save that it applies to the whole Bill, not just those provisions of the 1884 Act that have been carried through. The only material difference is that the clause does not override specific provisions in the Bill which apply to commoners – this is achieved by the clause beginning “Except where specifically provided [by the Bill],”.

Clause 95: Protection of lords of the manor

This clause carries forward protections contained in section 26 of MHA 1884.

Clause 96: Reservations relating to certain land described in the 1884 Act

This clause carries forward reservations contained in section 13 of MHA 1884.

Sharpe Pritchard LLP | 15 January 2026



Department
for Culture,
Media & Sport

Stephanie Peacock MP
Minister for Sport, Media, Civil Society and Youth
Department for Culture, Media and Sport
1st Floor
100 Parliament Street
London SW1A 2BQ

E: enquiries@dcms.gov.uk

www.gov.uk/dcms

22 January 2025

The Lord Gardiner of Kimble
Senior Deputy Speaker
House of Lords
London
SW1A 0PW

INT2024/00737/Dc

Dear Lord Gardiner,

Malvern Hills Bill

I write concerning the Malvern Hills Bill.

Standing Order 98A (Reports concerning human rights) requires that, in the case of a Private Bill originating in either House, a report from a Minister of the Crown on the statement of opinion required by Standing Order 38(3) shall be presented to the House (by being deposited in the Office of the Clerk of the Parliaments) not later than the second sitting day after that on which the Bill was read a first time.

I consider that the Bill's promoters have undertaken a full assessment of the compatibility of their proposals with the European Convention on Human Rights and I see no need to dispute their conclusions.

Yours sincerely,

Stephanie Peacock MP
Minister for Sport, Media, Civil Society and Youth