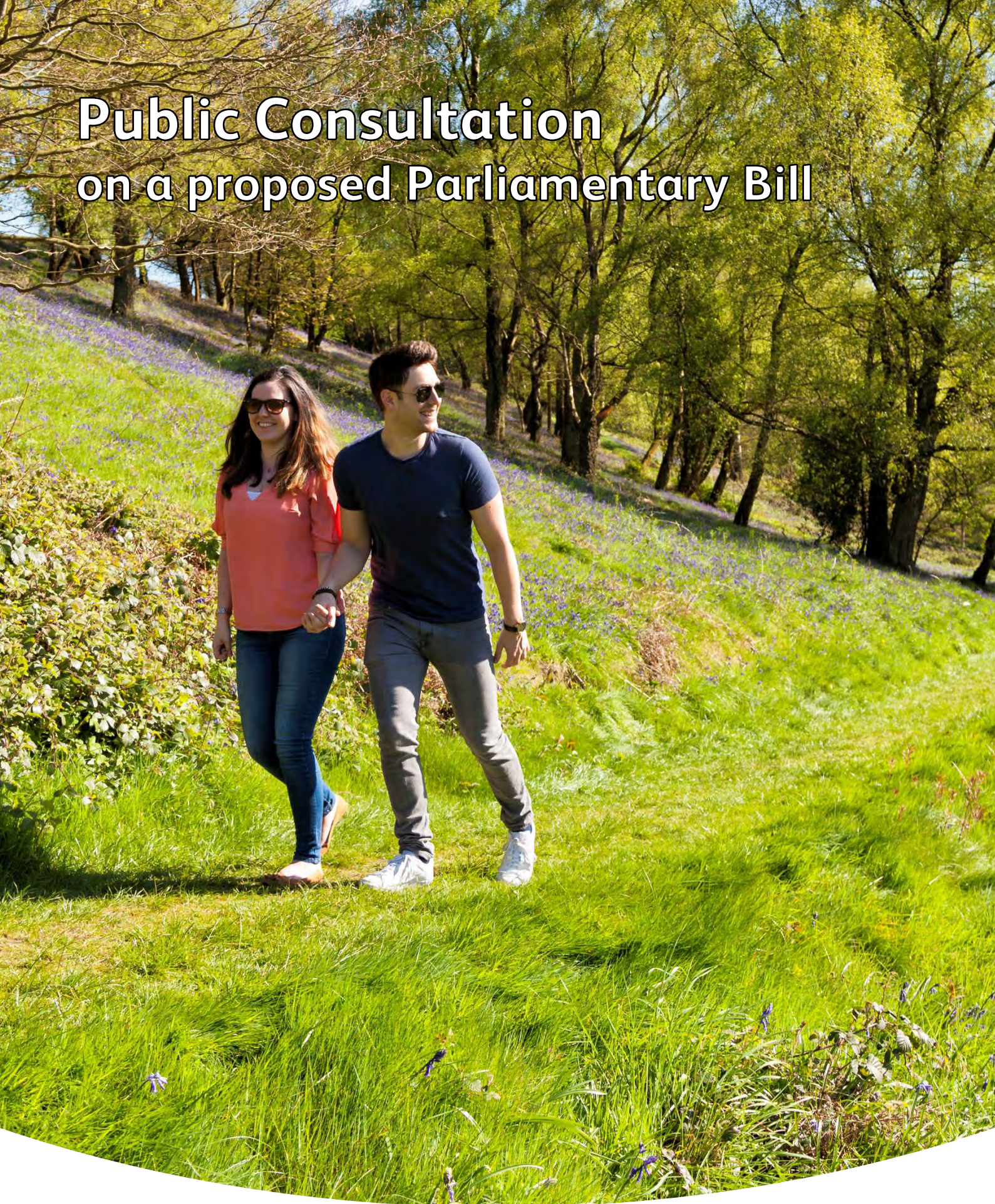


Public Consultation on a proposed Parliamentary Bill



Malvern Hills Trust

Registered charity no. 515804



Bluebells beneath British Camp

This document sets out Malvern Hills Trust's proposals to update its powers and governance in a Parliamentary Private Bill. We need to make changes to bring the Trust into the 21st century and enable us to safeguard the Hills and Commons for the future.

Your views are very important to us. Throughout the document are a number of questions relating to the proposals and we invite you to respond by completing an [online questionnaire](#) where you will also have the opportunity to add your comments and suggestions.

Please read this consultation document before answering the questionnaire. You do not need to complete all of the questions, only those that are of interest to you.

If you need a paper copy of the questionnaire or any other help to complete it, please contact the office on 01684 892002.

Any questions?

The Trust is running a series of drop-in sessions to help you find out more about the proposals and the background to them. No appointment is necessary.

29/05/2024	3pm to 8pm	Castlemorton	Castlemorton Parish Hall
08/06/2024	1:30pm to 5:30pm	Callow End	Callow End Village Hall
12/06/2024	3pm to 8pm	Malvern Link	United Reformed Church Hall
05/07/2024	3pm to 8pm	Colwall	Colwall Parish Hall
07/07/2024	1:30pm to 5:30pm	Great Malvern	Malvern Theatres (Circle Bar)

The consultation opens on Wednesday 22 May 2024.

The deadline for paper responses is Wednesday 17 July 2024 and the deadline for electronic responses is Monday 22 July 2024.

Contents

1. Glossary	5
2. Introduction	6
3. Objects	8
4. New arrangements for appointment and removal of board members	11
5. Modernising the board's administration	23
6. Administrative powers	27
7. Power to set up a membership organisation	29
8. General power	30
9. Trustee payments and benefits	31
10. Power to borrow	32
11. The Levy	33
12. Contributions from Worcestershire County Council and Herefordshire Council	34
13. Looking after livestock on the Malvern Hills	35
14. Seizure of stray animals – additional provisions in the event that a seized animal is suffering	42
15. Quarrying	43
16. Barriers for unauthorised vehicles	45
17. Ancillary Land and buildings	46
18. Power to grant leases and licences of land and buildings	50
19. Easements and licences for services	51
20. Easements and rights of access	51
21. Licensing events	52
22. Temporary food stalls	52
23. Measures for the protection of the Malvern Hills and for public safety	53
24. Liability to people on the Hills	55
25. Byelaws and enforcement	57
26. Removal of vehicles	59
27. Rights of common	60
28. Estovers	61
29. Rights of the Crown and bodies referred to in the Acts	62
30. The King's Third and the Forest or Chase of Malvern	63
31. Third parties	63
32. Existing manorial rights	68
33. Consent of Malvern Hills District Council	69
34. Changes to the names of Local Authorities	69
35. Name of the organisation	70
36. Malvern Abbey or Malvern Priory?	70
37. Consolidation of the existing Acts	71
38. Power to make future amendments	71
39. The Land Clauses Consolidation Acts	72
40. No significant change	73
41. Other repeals and changes	74
Equality Act	75
Unintended consequences	76

1. Glossary

Acts, the	The Malvern Hills Acts 1884,1909,1924,1930,1995 .
Ancillary Land	This term applies to any land or buildings acquired: 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. Pursuant to an Order of the Charity Commission for England and Wales. It is land used for operational purposes – offices, storage, workshops, land exclusively used as in-by land etc, which is not public access land.
Board	Board of trustees, who together are responsible for management of the Trust.
Best interest of the charity	That which will best enable the charity to fulfil its purposes for the public benefit. It does not mean serving the best interests of the trustees, the staff or the organisation itself.
CCA	Commissioners Clauses Act 1847
Charities Act	Charities Act 2011
Connected person	Any trustee’s spouse, civil partner, parent, child, brother, sister, grandparent or grandchild (or any spouse or civil partner of any of these people), or a person in a relationship with a trustee which may reasonably be regarded as equivalent to that of a spouse or civil partner.
King’s Third	King Charles I agreed to give up his right to take deer across the whole of Malvern Chase in return for enclosing one third of the area. The area he enclosed is the King’s Third.
Malvern Hills	This is shorthand for all the land under the Trust’s jurisdiction, including the Malvern Hills themselves, the commons, verges and woods.
MHT, the Trust	Malvern Hills Trust (this is the registered working name of Malvern Hills Conservators)
Private Bill	Private Bills go through a full Parliamentary process but only change the law as it applies to a specific organisation or location, as distinct from public bills which apply generally.
Purpose Land	This is the land under the Trust’s jurisdiction to which the public normally have access and which is held to fulfil its charitable objectives. It does not include Ancillary Land.
Special majority	75 % or more of those present and voting at a meeting.
Trustee	A trustee of the Malvern Hills Trust (previously referred to as conservators).

2. Introduction

The Trust is a registered charity which exists to:

- preserve the natural aspect of the [Malvern Hills](#);
- keep them unenclosed and unbuilt on as open spaces for the enjoyment of the public.

The Trust is regulated by the Charity Commission.

The Trust is governed by 5 Acts of Parliament, the [Malvern Hills Acts 1884, 1909, 1924, 1930 and 1995](#). Some of its administrative provisions are contained in the [Commissioners Clauses Act 1847](#) (CCA). As a statutory body, the Trust can only act where it has powers to do so (or where this can be reasonably implied).

The Trust needs to rationalise, modernise and consolidate its governing legislation. The current Acts do not reflect or permit modern best practice in relation to charity governance and do not contain all the powers that the trustees need to administer the charity in the most effective way and to best achieve its objects. There are provisions in the Acts that no longer apply, others which reflect a legal and cultural context that no longer exists and some of the key provisions are defined by reference to bodies which were abolished 50 years ago. Because the Acts are out of date, they hamper the Trust's ability to operate effectively and to provide good value for money.

Changes to the Acts over the last 140 years have been made on a piecemeal basis and it is clear that to have another stand-alone piece of legislation to add to the 5 governing Malvern Hills Acts (6 if including the Commissioners Clauses Act 1847) would make navigating the Acts even more difficult than it already is. The Trust therefore hopes to make the proposed changes by way of a new Act which will incorporate all the parts of the existing legislation which remain relevant, updated as appropriate.

The only way the Trust can change its Acts is by way of a [Private Bill](#). The Charity Commission has given consent to the Trust to do this.



Ivy Scar Rock (1924)

The Trust has given very careful consideration to the various problems with the existing legislation, what needs changing and what the alternatives might be and it consulted on proposals for modernisation of the Acts in 2019. That consultation was very successful and we are grateful to all those who responded. All but 2 of those proposals received majority support. The Trust has made some changes to reflect a number of suggestions which were made.

Because of the refinements made to the initial proposals in response to the consultation and the time which has passed since then, the Trust is consulting again on key measures and the proposals which have been amended. Your views on the proposals set out in this document will help the Trust to decide upon the best way to make the necessary changes to its governing Acts.

The consultation document contains some draft clauses which may be of particular interest. The Trust and its advisors continue to work on the rest of the drafting and will be consulting with key stakeholders including the Charity Commission and the Government over the summer and autumn. If we proceed, the Bill has to be deposited in Parliament on 27 November 2024. Once the Bill is lodged, newspaper notices will be published and the Bill will be available on the Trust's website and on the Parliamentary website. A paper copy of the Bill will also be available for inspection at the Trust's offices during December and January and copies will be available for purchase.

Please note:

1. Whatever changes are made to the governing Acts, everything which the Trust does is subject to the overriding duty to act in the [best interests of the charity](#).
2. Depending on the detail of any changes and when they come into effect, there will be transitional provisions to ensure a smooth changeover from the existing governance structure to the new one. It is too early to say what these might be. These will also provide that all things done prior to the new Act coming into force will remain in place (including the requirement to pay the levy and the byelaws).
3. In this document, text set out upon a green background is suggested wording for inclusion in the Bill. Square brackets [] indicate a clause, subclause or paragraph number which will be inserted at a later stage.
4. Where the consultation document states that a proposal received significant support in the 2019 consultation, this indicates that two thirds or more of those responding agreed with the proposal. Questions on such proposals have not been repeated here but if you have any comments or suggestions, please set them out in the free text box at the end of the questionnaire.

3. Objects

The aim is to sum up the Trust's main duties as expressed in the Acts in a single clause, in modern language.

Background

Currently the various aims and obligations of the Trust are set out in several places in the Acts, framed as duties.

These duties are:

- As far as possible preserve the natural aspect (s 21 1924 Act)
- Protect timber and other trees, pollards, shrubs, underwood, heather, gorse, turf and herbage growing on the Malvern Hills and shall prevent all persons from unlawfully felling cutting lopping or injuring the same (s 21 1924 Act)
- Prevent all persons from unlawfully digging or removing any stone gravel clay loam soil or turf forming part of the Malvern Hills (s 21 1924 Act)
- Except as otherwise provided at all times keep the Malvern Hills unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public (s 3 1930 Act)

In addition to its duties under the Acts, the Trust has other statutory obligations under public legislation relating to Sites of Special Scientific Interest and Scheduled Monuments on its land.

At present there is no assistance within the Acts for balancing the various duties in the event that they conflict.

“Natural aspect”

“Natural Aspect” is Victorian language that has no clear meaning in the present day and it is not defined in the Acts. There has been limited discussion in case law but this has not provided a clear definition.

What changes are proposed?

The Trust's objects would be much more understandable and accessible if they were clearly set out in one place. It is not intended to change the fundamental reasons for the Trust's existence nor its obligations but to express them in language that has a clear meaning.

The wording set out in the box below brings together the two key elements of keeping the Hills open and unenclosed for public access, and protecting and preserving the natural environment. We believe the proposed clause encapsulates all the current objects.

There are times when looking after the landscape, flora and fauna come into conflict with recreational use of the Hills. The National Parks have to undertake the same difficult balancing act. The National Parks Policy Review Committee made a recommendation in 1974 that is now known as the Sandford Principle, which has since been established in law:

“Where irreconcilable conflicts exist between conservation and public enjoyment, then conservation interest should take priority”

It is suggested that a similar wording should be included in the Bill. This mechanism would assist the trustees in prioritising the objects, when circumstances bring the two elements into conflict and no compromise can be found. The important features of the landscape and its flora and fauna need to be preserved for future generations.

For example, it may be necessary temporarily to exclude the public from access to one of the Scheduled Monuments for protection or restoration. The short-term disadvantage which the public might suffer would be outweighed by the need to protect and conserve the historic feature for future generations to enjoy.



Restoration of an eroded area, Beacon Road

In summary, the aim is to modernise but not change the objects and include a mechanism for resolving situations where the two elements of the objects come into conflict. “Unbuilt on” in this context means unbuilt on at the date the new Act comes into force and, for the avoidance of doubt, does not prevent the Trust from maintaining or replacing any existing buildings on the Malvern Hills or building where permitted in accordance with the Acts.

This proposal received significant support in the 2019 consultation but has been included for further consideration as the wording has been slightly amended following suggestions made in 2019.

It is proposed to include the following clause or similar in the Bill:

The objects of the Trust

- (1) The objects of the Trust are, for the benefit of the public—
 - 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 its functions, it appears to the Trust 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 Trust, the Trust must attach greater weight to the object specified in subsection (1)(a).
- (3) Subsection (2) is subject to consideration by the Trust of the health and safety of persons.
- (4) In subsection (1), “unbuilt on” means unbuilt on except for any buildings that existed at the date on which this Act was passed and any buildings which replace them.

Questions

Question 1 on the questionnaire

Do you agree that the proposed clause accurately sums up the Trust’s existing duties and is appropriate for the future?

Do you agree that if an unresolvable conflict arises between 1(a) and 1(b), conservation should be given greater weight?

If you have any comments or suggestions please set them out in the free text box marked question 2

4. New arrangements for appointment and removal of board members

The board is the group of trustees who together have overall responsibility for the management and control of the Trust. The purpose of this section is to set out the proposals to update the way trustees are appointed (and removed).



Board members (early 1900's)

Make-up of the board

Current arrangements

There are **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 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

The arrangements for appointment of board members are contained in the 1924 Act and are therefore 100 years old. They are not compliant with modern best practice and merit a complete overhaul. There are currently more trustees than members of staff.

The need to create a more up to date and efficient governance framework has been recognised for many years. The planned changes reflect as far as possible the recommendations of the [Charity Governance Code](#).

Current problems

The key problems with the current arrangements are:

- i. Some of the arrangements set out in the 1924 Act no longer make sense because of Local Government reorganisations over the last 100 years. Malvern Urban District Council was abolished by legislation in 1972. Following the Malvern Hills (Electoral Changes) Order 2023, the outer boundary of current wards in the Malvern town area no longer coincide with the old Malvern Urban District Council area. Trying to interpret the 1924 wording in the light of the current Local Government structure is confusing for residents and increasingly presents difficulties for the conduct of the Trust's elections.
- ii. The section of the Act which defines the levy paying area refers to parishes, but the section which defines who votes refers in part to wards of a council which has not existed for 50 years.
- iii. Worcestershire County Council nominates a total of 5 board members on behalf of the Council and some non-levy paying areas. The Council contributes around 0.8 % of the Trust's total annual income in respect of the Trust's land in Castlemorton, Newland and Powick.
- iv. There is a significant disparity between the population sizes of the nominating/electoral areas (and also the size of the Trust's land holdings within them). For example, Mathon parish (with an electorate of 241) appoints 2 trustees, whereas the 3 largest wards in Malvern have electorates of over 4,000 each and appoint 1 board member each. Such disparities between the numbers of electors in electoral areas would never be acceptable in Local Government elections, where the aim is to have near equality of voter populations (See Table 1).

- v. All the trustees finish their term of office at the same time so there is a significant risk of a break in continuity and loss of understanding of the Trust's ongoing work.
- vi. Not everyone who might wish to support the Trust by joining the board would be comfortable with or willing to take part in an election process. The board is thus missing out on potentially well qualified and experienced candidates. The percentage of elected trustees on the board is currently 38 %.

There has historically been a low turnout at Trust elections.

Table 1

This table shows the number of electors in the wards and parishes that appoint trustees to the board of the Trust, and the number of trustees appointed by whichever means. The figures shown are electors as at spring 2024. The wards shown are those used in the 2023 Trust elections but they are not the same as the current Malvern Hills District Council wards.

Number of board Members		
Parishes		
Guarlford	(211 electors)	1 elected
Mathon	(241 electors)	2 (1 elected, 1 nominated)
Colwall	(2028 electors)	3 (2 elected, 1 nominated)
Wards		
Malvern Wells (now part of Castlemorton Welland and Wells ward)	(2494 electors)	1 elected
Priory	(3283 electors)	1 elected
West	(3168 electors)	1 elected
Dyson Perrins	(3511 electors)	1 elected
Pickersleigh	(4455 electors)	1 elected
Chase	(4946 electors)	1 elected
Malvern Link (excluding Newland)	(4976 electors)	1 elected
Castlemorton	(506 electors)	1 nominated
Newland	(268 electors)	1 nominated
Powick	(2872 electors)	1 nominated
		Total 16

The Trust's current governing legislation does not reflect nor allow modern best practice in relation to charity governance as outlined in the [Charity Governance Code](#).

- Best practice is to have a board of no less than 5 but no more than 12 members. Various research studies have indicated this is the optimum size for a decision-making body. For example, research by management consultants Bain and Company has indicated that the optimum size for a decision making body is 7, with effectiveness reduced by 10 % for each extra person. In recent years, a number of charities have reduced the size of their boards – for example the RSPCA has recently reduced the size of its board from 25 to 12. One obvious effect of a large board is the difficulty of ensuring that all the members can make proper contributions to all topics under discussion in meetings of reasonable duration.
- An effective board should have a mix of skills, knowledge and experience. At the moment, the skills mix on the board is entirely outside the Trust's control. Best practice in the charity sector is for appointments to be made on merit, assessed against objective criteria.
- The board lacks diversity, and the opportunity to improve this is limited by the current appointments process. In October 2023 the average age of trustees was 71 and 73 % were male.
- There are inherent problems with the way trustees are currently appointed as it often generates a conflict of interest. For example, the eight District Council appointees have potential conflicts of interest in relation to the Trust's consideration of easement applications because they also serve on a local authority planning committee. They may have to decide a planning application for the development of a site where the access crosses Trust land and where the Trust has an application to grant a right of access. There are also times when there is a conflict between their duties as trustee of the charity and their desire as councillors to reflect the wishes of their electorates. The Trust has a conflict of interest policy to ensure that conflicts of interest are properly dealt with but this can mean that the Trust struggles to find enough unconflicted trustees to form a quorum.

What we considered

It is important to understand that once trustees are appointed, their obligation is to act solely and exclusively in [the best interests of the charity](#). They are neither “representatives” of the local areas from which they were elected nor of the bodies that appointed them. There would therefore be no loss of “representation” by making the changes that are being proposed below.

We have spent more time considering the ways in which the board might be constituted than any other element of the governance changes. There is general agreement that the board size should be significantly reduced to between 7 and 14, with a clear majority in favour of a maximum of 12. This is at the top end of the range for board size as recommended in Charity Commission guidance, but a majority felt it might be too big a step to reduce the number of trustees below 12.

It is important that the electoral area and the levy paying area are defined in the same way so there is no possibility of a disparity between those who pay the levy and those who vote.

The big challenge has been how best to achieve a reduced board size starting from the current position. We initially considered adopting a “council and board” arrangement rather like the National Trust. This, in outline, would involve the creation of a large and diversely constituted “council”, probably comprising appointees from some of the current appointing bodies, and other stakeholders as well. The council's role (together with some limited oversight functions) would be to appoint the smaller “board” which would be responsible for the management of the charity. However, we concluded that this type of arrangement was somewhat cumbersome for the Trust. Both bodies would need to be administered by the Trust's staff and demarcation of responsibility between the two would have to be very clear in order for there not to be potential conflict between them.

The simpler option of creating a smaller board was generally felt to be a better approach.

A key challenge has been how to reduce the number of elected trustees. To reduce the size of the board to 12 inevitably means some change in the electoral arrangements. We think it important to have a balance between elected trustees (to reflect payment of the levy) and trustees appointed for their skills and experience.

One option we considered involved combining the current electoral areas to achieve groups of wards/parishes which would have roughly the same number of electors. However, it proved impossible to identify a satisfactory solution which “worked” numerically to equalise voter populations whilst following logical geographic boundaries. Future local government boundary changes may wreck any carefully crafted solution along these lines.

We concluded that the best option would be to combine all the current electoral areas into one voting area and for the voters to be asked to elect the required number of candidates from a single list. This approach seems more consistent with the reality that all trustees serve the interests of the charity as a whole and are not “representatives” of particular local areas. It also helps to reduce conflicts of interest and has the merit of giving every candidate an equal chance of being elected by the voters across the levy paying area on the basis of their perceived ability to fulfil their role as trustees.

As much as we feel it is essential to continue to have some elected trustees, a majority of the current board consider it is very important to have some trustees appointed specifically for their relevant skills, knowledge and experience, and to enhance diversity. Our proposal is that there should be equal numbers of elected and appointed trustees, and in order to achieve a board of 12, this means 6 elected and 6 appointed trustees.

Because of the desirability of staggering the retirement of trustees, it is proposed to have 3 retiring by rotation each year. There would be an election (normally of 3 trustees) every other year and 3 appointed trustees would retire by rotation in the intervening years. For full details see “[Term of office](#)” below.

In order to sustain links with the various parishes and wards, some trustees could be assigned a liaison role for a specific area or parish. The councils and other bodies who currently nominate trustees would be able to put forward candidates for consideration to fill the appointed places.

What changes are proposed?

The board size be reduced to a maximum of 12 (minimum 6), comprising 6 elected and up to 6 trustees appointed for their relevant background. If the diversity and experience on the board is sufficient with less than 6 appointed candidates, there would be the option not to fill all 6 appointee places.

The current levy paying areas be combined into a single electoral area and the registered electors (as now, those eligible to vote in local authority elections) would vote from a single list and select the number of candidates required to fill the vacancies amongst the elected members on the board. The general principle of reducing the number of trustees was widely supported in the 2019 consultation.

Questions

Question 3 on the questionnaire

Do you agree there should be a maximum of 12 trustees?

Do you agree that half the board should be elected and half selected for their skills and experience?

Do you agree that the electoral area should be defined by parish to link the voting area to the levy paying area?

Given that elected trustees are required to serve the best interests of the charity rather than “represent” an area, do you agree that combining the electoral areas is the most practical way to overcome the current disparities in the size of the electorates?

If you have any comments or suggestions, please set them out in the free text box marked question 5



Board members' induction (2023)

Selection of candidates

Elected candidates

Background

Candidates for election

Candidates for election currently have to live in the levy-paying area and be eligible under the criteria laid down for appointing District Councillors.

In the past, there has often been a scarcity of candidates prepared to stand for election to the Trust's board. On many occasions a sole candidate has been elected unopposed. Some of these trustees have been excellent but others proved unable to make a significant contribution to the running of the charity.

The Trust needs to be able draw on the range of skills and experience available in the wider local area. There are many potential candidates who would be keen to get involved, have a close connection to the Malvern Hills and relevant experience and knowledge, but who live outside the levy paying area. The board's view is that it would be beneficial to widen the geographic area from which candidates for election can be drawn and it is proposed to change the criteria as set out on the following page (loosely modelled on the eligibility criteria for parish councillors).

What changes are proposed?

The Trust proposes that those eligible to stand for election must either:

- Be registered to vote at an address in, or have their main place of work in, a parish where the Trust has land under its jurisdiction
- or
- Be registered to vote at an address within one mile of the boundary of a parish or ward in which the Trust has land under its jurisdiction

(with a power for the trustees to determine whether the criteria are fulfilled in the case of dispute). Candidates would be able to put themselves forward as now, to stand in the election and would need to be nominated by at least two people who live in the electoral area.

All candidates would have to be at least 18 years of age and eligible to be a charity trustee.

Question

Question 3 on the questionnaire

Do you agree that people who live in or within 1 mile of the boundary of a parish where the Trust has land under its jurisdiction should be able to stand for election to the board, subject to them being nominated by people living within the electoral area?

Selected candidates

The proposal is that candidates who apply to the selection panel for appointment to the board should not be excluded by reason of their geographic location (although this would be something which might well be considered in the selection process). Vacancies would be widely advertised with a view to attracting a pool of potential candidates with the required skills.

Independent selection of candidates

Whilst it is considered appropriate for the board to appoint new trustees, it is felt to be important that candidates for appointment should be selected independently of the board (to avoid allegations of cronyism). Just as important is that those carrying out the selection process have a good understanding of the Trust's operational requirements. The selection panel would carry out an active search, interview candidates and recommend them to the board for appointment. They would identify candidates whose skills complement those of the existing trustees. It is proposed that the board should only be able to reject a candidate recommended by the selection panel by [special majority](#).

One option considered was to establish an Independent Nomination Panel (INP) comprising between 3 and 5 individuals who should each have a relevant skill (for example in land management, conservation, finance, charity governance, human resources, recruitment, health & safety) which would enable them to identify the best qualified and most suitable candidates for appointment to the board. The Chief Executive of the Trust (who would not have a vote on selection of candidates) should be part of the INP in an advisory capacity. The INP would carry out an active search, interview candidates and recommend candidates for appointment. Once established the panel would appoint its own successors. The question of how to appoint the first INP is more problematic. The Trust considered appointing named post holders – for example the Chair of a Wildlife Trust, the CEO of a local authority etc. but this risked the potential problem of the post holders declining or being unable to participate when the time came. After much consideration, the best option was thought to be that the first INP should be appointed by the board at the time of the commencement date of the new Act.

It is not proposed that the INP members should be paid for their service, although this is an option. They would be able to claim reasonable expenses.

The Trust has not settled on a final proposal for how the selection process should be run. Options are:

1. That senior staff run the trustee recruitment and selection process and put chosen/a selection of candidates to the board. The advantage is that they are independent of the trustees but have a good knowledge of the skills and knowledge required to manage the Trust.
2. Trustees (or a committee of trustees) make the selection themselves subject to criteria specified in the Act. The disadvantage is that they may be accused of selecting friends or of picking people who are similar to themselves.
3. That an independent panel be appointed to run a trustee recruitment and selection process as above. Whilst this is in many ways the favoured option, the difficulty has been guaranteeing people to serve on the INP, willing to convene whenever required.

Other suggestions are welcomed.

Interim vacancies on the board would be filled by the same process.

Question

Question 4 on the questionnaire

Rank the options where 1 is your most preferred option and 3 is your least preferred.

If you have any other suggestions for how selected trustees could be appointed please set them out in the free text section marked Question 5.

Removal of trustees

Background

At present the board has no power to remove a trustee who is not fulfilling their obligations. Some trustees have had a poor record of attending meetings.

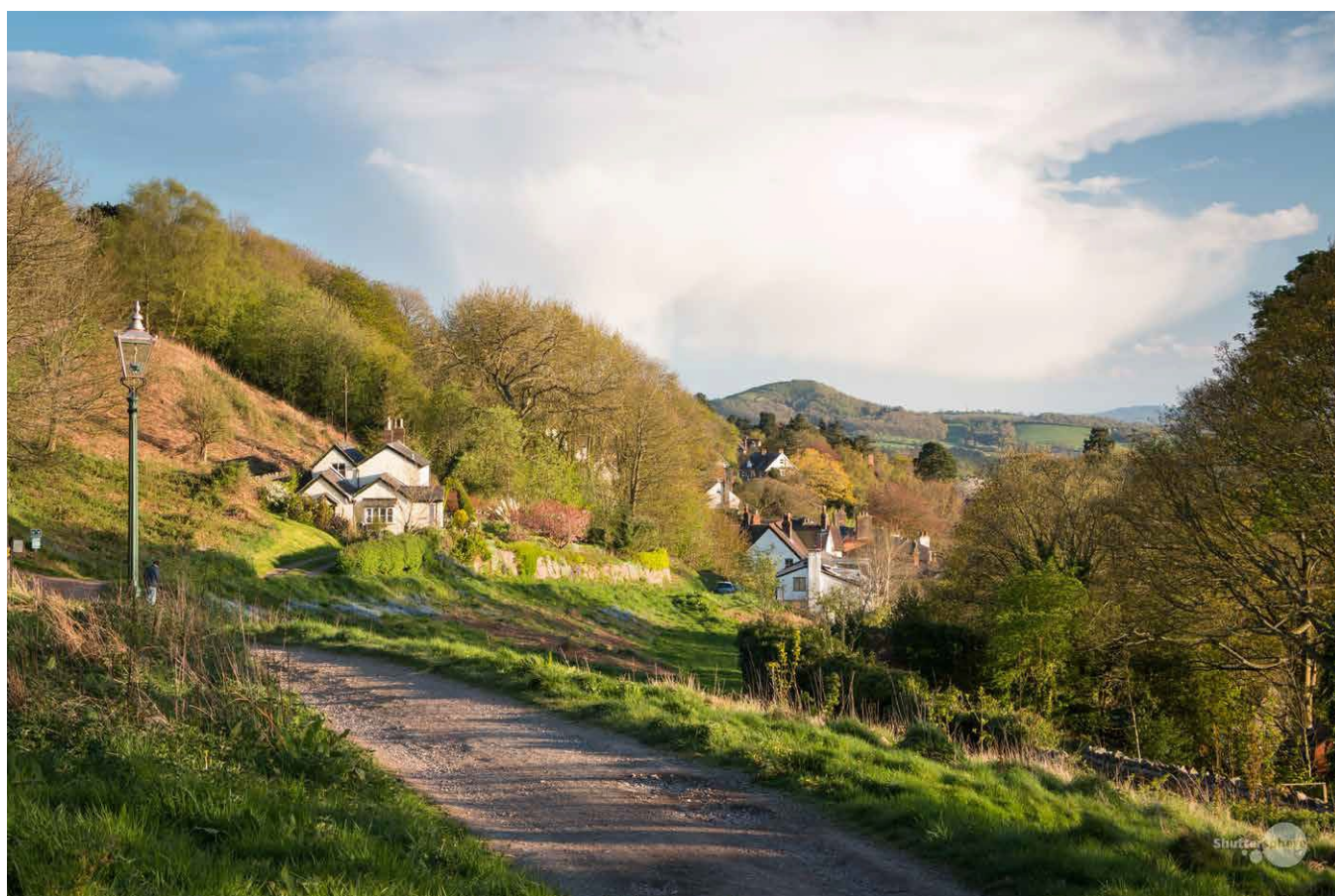
There may also be times when the board needs to be able to remove a trustee who for example, is suffering with long term ill health (and possibly lacks the capacity to resign), or has been found to have breached the trustee Code of Conduct. It is standard practice for charities to be able to remove a trustee on these or other grounds (including trustees disqualified in law from acting as a trustee).

What changes are proposed?

With a smaller board, it is important that all trustees play an active part. Trustees who only turn up occasionally are unlikely to have a good understanding of the work of the Trust and the context of the decisions they need to make. The provision could either contain a list of circumstances in which the board could remove a trustee, in the hope that all eventualities would be covered, or the power could provide that the board is able to remove a trustee for any good reason in the best interests of the charity. In such cases the trustee would be entitled to be heard and would have a right of appeal to the selection panel. In either case, it is proposed that the board should only be able to remove a trustee by [special majority](#).

The Bill also needs to provide a range of sanctions available for more minor breaches of the Trust's Code of Conduct for trustees.

This proposal received significant support in the 2019 consultation but if you have any comments or suggestions please use the text box marked question 5.



Westminster Bank

Electoral process

Background

At present the Trust is obliged to run its elections under the procedure for electing district councillors (s 9 MHA 1924). The cost of running elections uses charity funds which might otherwise be spent on caring for the Hills.

The date for the election as stated in the Acts is 1 November.

The Trust is not identified as a body entitled to receive a copy of the full electoral register in the Representation of the People Regulations 2001 (2001/341).

What changes are proposed?

A requirement to hold elections on a fixed date is in practice unworkable. Any election needs to take place some days before the new trustees take office (as with local authority elections) to give time to induct them. It would be more appropriate for the Trust to have some flexibility around setting a date for the elections within certain parameters (to be specified in the Bill).

Option 1

If it is decided that the Trust has to continue with a system of voting at polling stations, the election date should be moved to May to coincide with local authority elections. This should significantly reduce the cost, and would probably improve the turn out. Moving the election date would be unnecessary if the Trust's preferred option (option 2 below) is adopted.

Option 2

Our preferred option is that the elections should in future take place by postal ballot (which would include the option of voting on-line). This gives significant advantages:

- It is much less expensive than having to organise and staff polling stations (we estimate the saving could be in the region of £50,000 in the case of a contested election).
- It is likely to increase the number of people voting as it should make voting easier – there is generally a low turnout at polling stations.
- It is a more modern alternative and might encourage younger voters.
- Most importantly, in the Trust's view, it would ensure that all voters received candidate information as this would be enclosed with the election pack and voters would have information on which to make an informed judgement about the suitability of candidates.

Because the Trust and candidates for Trust elections are not identified in the Representation of the People Regulations 2001 as being entitled to receive a copy of the full electoral register, the Trust believes it needs to rectify this omission before it can run its own elections or appoint an independent body to carry out postal elections on its behalf. We are told that the appropriate method would be for the Department for Levelling Up, Housing and Communities to make an Order rectifying this omission but if the Department do not take this forward it could be included in the Bill.

If the Trust changes its electoral arrangements as proposed, the structure for the conduct of elections and candidate eligibility would need to be set out in the Bill, together with a power for the Trust to make regulations for the conduct of elections.

The proposal to run Trust elections by post was well supported in the 2019 consultation.

Who votes?

There is no plan to change who votes in Trust elections. However, the electoral area needs to be defined by parish so that it is linked directly to the definition of the levy paying area. The voters will be those registered to vote in Local Authority elections in Guarlford, Colwall, Mathon, West Malvern, Malvern Wells parishes and the Malvern Town Council area.

Term of office

Background

There is currently no maximum term for which a trustee can serve on the board. Trustees are appointed for a term of 4 years and are then eligible to be re-appointed (whether elected or nominated).

The whole board currently ends its term of office at the same time and, although trustees can be reappointed, this arrangement risks a lack of continuity if there is an influx of new trustees with little or no knowledge of the legal or operational framework of the Trust.

What changes are proposed?

The [Charity Governance Code](#) recommends that trustees should serve a maximum term of 9 years unless there are special circumstances (which then need to be explained in the trustees' annual report). This recommendation reflects the need to balance continuity and experience with the benefits of progressively refreshing the board.

We propose that the trustees should serve a maximum of two four-year terms. The only exception to this would be if a trustee had first been appointed to fill an interim vacancy in which case this period could be added to their 2 terms. The other important change proposed would be that all trustees do not end their term of office at the same time. After any transitional period, trustees will be appointed for terms of 4 years but retirement and appointment would be staggered so one quarter of trustees retire by rotation each year. To avoid too frequent elections, 3 of the elected trustees would retire in one year and 3 of the appointed trustees in the next, and so on.

This proposal received significant support in the 2019 consultation but if you have any comments or suggestions please use the text box marked question 5.



Common spotted orchid on Link Common

Interim vacancies on the board

Background

At present, if a vacancy occurs on the board, either the nominating body is asked to reappoint, or, if it is an elected trustee, the Trust has to hold a by-election (unless it is within 6 months of the next scheduled election date). The election process is expensive and can mean a diversion of thousands of pounds which could otherwise be spent on the Trust's objectives.

What changes are proposed?

It is suggested that, if a trustee leaves office within 6 months of the date they are due to retire, (or in the case of an elected trustee, within 6 months of the next scheduled elections) there should be no obligation to replace them at that stage unless the number of trustees had fallen below [7]. A trustee who fills an interim vacancy would serve until the date when the trustee they replaced was due to retire by rotation.

If an appointed trustee leaves office, the selection panel would be asked to find a candidate to replace them as necessary.

Because of the cost of holding elections, if a vacancy occurs as a result of an elected trustee leaving office, it is important that the Trust can fill the vacancy temporarily until the next scheduled elections, (which would take place every 2 years) without the need to hold a by-election. The selection panel would be asked to find a candidate for a replacement trustee who would be appointed by the board to serve until the next scheduled elections when the place would be filled by election. In the 2019 consultation it was suggested that if there was more than one vacancy amongst the elected trustees then the Trust should hold an election (subject always to the proviso that there must be at least 6 months before the next scheduled election). The Trust is supportive of that suggestion.

As with other selection panel nominations the board could only reject a candidate by [special majority](#) of those trustees currently in office.

Question

Question 3 on the questionnaire

Do you agree that when an interim vacancy is created by the departure of an elected trustee, that vacancy could be temporarily filled until the next scheduled election by a candidate put forward by the selection panel and appointed by the board?

5. Modernising the board's administration

Background

At present, the administrative provisions governing the board and its meetings are contained primarily in the [Commissioners Clauses Act 1847 \(CCA\)](#), the 1924 and 1995 Acts. As might be imagined, some of the provisions are worded in very old fashioned language and are in parts completely out of date.

Other requirements (such as filing accounts) are now governed by charity law.

What changes are proposed?

Much of the content of the administrative provisions will remain the same but they will be set out in one place and the language will be updated. This will align the Trust with other charities. The main proposals are highlighted below.

Minimum number of meetings

It is proposed that the Trust should be required to hold a minimum of 6 meetings per year – although the likelihood is that there would be more.

Who calls meetings?

The board will be able to set times for its regular meeting dates as it currently does and it is proposed that the Chair of trustees, or 3 trustees could call a special meeting.

The application of the provisions of Part 5A Local Government Act 1972 in relation to notice of meetings will not be changed – at least 5 clear days' notice in writing being given to the trustees (and the public) unless a special meeting has to be called on shorter notice.

What constitutes a meeting?

Background

At the moment, participating trustees have to be present in person at a meeting (and it has to be quorate).

What changes are proposed?

Having the facility to meet with some or all of the trustees taking part remotely does not mean that this would be the default arrangement, but Covid 19 provided a spur to revising what constitutes a meeting. It is proposed to update the definition of a meeting, to include where arrangements have been made in advance to allow participants to attend by means of a conference telephone, video link or similar means of electronic communication provided all participants can be heard and can hear each other, without the need for them to be physically present at the same location. If the meeting was open to the public then it would be a requirement that it must be streamed. The requirement that a trustee can join by telephone covers the situation where a trustee cannot for some reason join online.

Question

Question 6 on the questionnaire

Do you agree that meetings can be held online so long as they are streamed to the public?

Quorum

Background

The quorum is the minimum number of trustees who have to be present in order to conduct any business at a meeting. At the moment the statutory requirement for a quorum is 6.

What changes are proposed?

The proposal for a board of up to 12 is as follows:

If there are 12 trustees, the quorum will be 7.

If the number of trustees is less than twelve, then the quorum will be the number closest to half the number of current trustees plus one, so a minimum of four.

If the number of trustees is less than the quorum required, the trustees must not take any decision other than a decision to appoint further trustees in accordance with their power to fill an interim vacancy.

Voting

Background

The current requirement is for trustees to be present at the meeting and resolutions are approved by a majority of votes of the unconflicted members. In the event of equality of votes, the Chair has a casting vote (s 38 CCA).

What changes are proposed?

This requirement would remain the same except that “present” would include board member/s who are present online or by telephone as set out above. Some matters require a [special majority](#), which means decisions are approved only if 75 % or more of those present and voting agree.

The provision for a Chair’s casting vote would be retained.

Decisions outside meetings

Background

Currently, the board can delegate certain decisions, whether to staff, committees or specific trustees.

What changes are proposed?

The power of delegation will remain the same. Delegated decisions (unless of an operational nature) will be reported back to the board. Investment decisions can be delegated to authorised investment bodies.

There are times when a decision needs to be made quickly. It is proposed in these circumstances, where a delay would be detrimental to the interests of the Trust, the trustees would be permitted to make a decision by written agreement. Seventy five percent of the trustees would need to confirm their agreement in writing and any such decision would have to be reported at the next board meeting.

Question

Question 7 on the questionnaire

Do you agree that the trustees should be able to make urgent decisions by written agreement without the need for a meeting so long as 75% of trustees confirm their support for the decision and the decision is reported at the next meeting?

Public access to meetings

Background

The Trust is required to hold all its meetings in public except where exempt matters are being discussed.

What changes are proposed?

We have taken account of views expressed in the 2019 consultation and amended the original proposals so that any meeting where a decision binding on the Trust is to be taken must be open to the public (unless, as now, the board is considering a matter which is confidential). In practice this would be all board meetings and any meeting where a committee had delegated authority.

With a smaller board there would be less need for committees, as most issues would be decided directly by the board. The current position is that with limited exceptions, committees only make recommendations to the board, and their recommendations are then discussed again and voted on at the next board meeting.

It is also proposed that there should be an express power to close a meeting to the public if the normal conduct of the business was being disrupted. This is in addition to the current provisions allowing the board to exclude the public for the discussion of exempt information.

Question

Question 8 on the questionnaire

Do you agree that meetings of the Trust should be open to the public when a binding decision is to be made?

Notice of meetings

This is covered by s 5A Local Government Act 1972 as incorporated by the 1995 Act and no changes are proposed.

Conflicts of interest

Ensuring that conflicts of interests are identified and dealt with appropriately is a requirement of charity law but it is proposed to include an express provision in the [Bill](#) to outline conflict of interest/loyalty requirements for example:

1. Trustees must complete a written declaration of their interests upon joining the Trust.
2. Whenever a trustee or a connected person has or may appear to have a personal interest in a matter to be discussed at a meeting, and whenever a trustee has or may appear to have an interest in another organisation whose interests are reasonably likely to conflict with those of the charity (conflict of loyalty) in relation to a matter to be discussed at a meeting, they must:
 - a. declare an interest before discussion on the matter begins;
 - b. in the case of a personal interest, withdraw from that part of the meeting including for any vote and not be counted in the quorum;
 - c. in the case of a conflict of loyalty, unless expressly invited to remain by non-conflicted trustees, withdraw during the vote and not be counted in the quorum.

The provision will also provide for the Trust to adopt its own Conflict of Interest policy to sit beneath these statutory requirements.

Making rules and regulations

For example, procedures for meetings, financial regulations, removal of trustees, payment of expenses etc.

There is currently no express power to make rules and regulations and it is proposed that the Bill should contain a power for the Trust to make rules and regulations for the management of its affairs.

Approval of the accounts and appointment of auditors

Background

This is currently covered in the [CCA](#) (ss 89 – 92).

Preparation of accounts is now governed by charity law.

The Bill will contain a provision, as now, to provide for public notice to be given that the annual accounts are available for public inspection prior to approval, and confirming the date of the board meeting at which they will be approved. The CCA currently provides that the auditors should be appointed by the ratepayers present at the meeting. The Bill would provide that the board should appoint its auditors in the same way as other charities and local government.

This proposal received significant support in the 2019 consultation but if you have any comments or suggestions please use the text box marked question 12.

Keeping minutes

Background

The [CCA](#) requires that records of meetings are kept.

What changes are proposed?

The Bill will similarly provide for meetings and decisions made to be recorded. The period for which minutes have to be made available is 6 years (Local Government Act 1972 part 5A). In practice the Trust retains minutes of meetings indefinitely.

6. Administrative powers

Background

At present some of the general administrative provisions for the Trust are contained in the [Commissioners Clauses Act 1847 \(CCA\)](#). As might be imagined, they are worded in very outdated language and are in parts completely out of date.



Meadow pipit © Mick Colquhoun

What changes are proposed?

The Trust needs an updated set of administrative powers. Many powers are treated as implied, but we are sometimes unsure whether we can do things or not, for example, we have to ask for donations for compost or wood, as it is unclear whether a charge can be made. Modern charities usually have a great many more express powers than was the case in the 19th century. A list of appropriate generic administrative provisions is set out below. It is also proposed to seek a general power to cover any possible omissions. It is important to note that the administrative powers do not affect the Trust's responsibilities as set out in its objects.

List of administrative provisions

In furtherance of the objects of the Trust and subject to any limitations in the Act or in any other legislation, the trustees shall have the following powers:

- a. Power to enter into contracts (replaces s 56 of CCA)
- b. Power to set aside funds for special purposes or as reserves against future expenditure (limited provision in s 11 1995 Act but a more general power required)
- c. Broad power of investment (replaces s 12 1909 Act) & to delegate management of investments

- d. Power to operate bank accounts and facilities
- e. Power to accept or disclaim gifts of money and other property
- f. Power to raise funds
- g. Power to trade in the course of carrying out the objects and carry on any trade not expected to give rise to taxable profit (this would cover the situation set out as an example above for sales of compost, wood etc)
- h. Power to incorporate and acquire subsidiary companies to carry on any trade (a charity has to set up a separate enterprise in order to trade except as set out in (g) above. This would enable the Trust to set up, for example, a charity shop or tea room)
- i. Subject to the benefit provisions, power to engage employees, consultants and professional or other advisers and to make reasonable provision for pensions (extension and replacement of s 65 CCA)
- j. Power to establish, support, administer or set up charities and to act as trustee of any charitable funds, endowments or trusts
- k. Power to undertake and execute charitable trusts including permanent endowment
- l. Power to impose restrictions, revocable or irrevocable on use of property of the Trust including creating permanent endowment
- m. Power to cooperate with charities, statutory authorities and other bodies
- n. Power to create patrons or friends of the Trust
- o. Power to insure
- p. Power to compromise legal proceedings or disputes (in part covered by s 58 CCA)
- q. Power to provide indemnity insurance for the trustees (subject to limitations in [s 189 Charities Act 2011](#))
- r. Power to organise and assist in the provision of courses of instruction, exhibitions, lectures and other educational activities
- s. Power to publish and distribute information in any form
- t. Power to promote, encourage, carry out and commission research, surveys, studies or other work, making the useful results available
- u. Power to co-operate with and to enter into joint ventures, collaborations and partnerships with charitable and non-charitable bodies
- v. A power, alone or with other organisations, to seek to influence public opinion and make representations to and seek to influence governmental and other bodies and institutions regarding the reform, development and implementation of appropriate policies, legislation and regulations provided that all such activities shall be confined to those which an English and Welsh charity may properly undertake
- w. Power to sell renewable energy (limited to production eg from solar panels on buildings)

If you have any comments on this section please set them out in the free text box marked question 12 on the questionnaire.

7. Power to set up a membership organisation

Background

As a body governed by statute, the Trust can only do such things that it has a power to do. Every year, thousands of people visit the Malvern Hills, which is a much loved, nationally important landscape. We think that it would be beneficial to be able to set up a membership organisation.



Volunteers at Old Hills

What changes are proposed?

Being able to run a membership organisation would provide the Trust with an important mechanism to engage more effectively with the wider public, particularly those living outside the levy-paying area. It could further the Trust's purposes through events which promoted a better understanding of what makes the Malvern landscape special and would also potentially be a fundraising body for the Trust. Links could further be strengthened by the membership organisation putting forward individuals for appointment as a trustee.

Question

Question 9 on the questionnaire

Do you agree that the Trust should have a power to set up a membership organisation?

8. General power

Background

As a charity governed by statute, the Trust only has those powers set out in its Acts. Many similar charities and councils now have a broad general power to do anything not otherwise prohibited in order to further their purposes. It is important to understand that the Trust could only exercise its general power in pursuance of its objects.

What changes are proposed?

The Trust has had to apply to the Charity Commission on 3 occasions in recent years to obtain an order to do things that many other charities would expect to be able to do under their general authority - for example, authority to compromise a dispute which had not reached the stage of legal proceedings. This is both costly and time consuming.

- It is frequently not clear whether particular wording covers specific situations.
- Some powers must be inherent - for example if the Trust has a power to own land it must be able to carry out necessary management tasks. However, this is not always clear.
- It is impossible to anticipate every eventuality in the [Bill](#), or to predict what changes might take place in the future (for example in 1995 no one had thought about drones or the possibility of landscape scale agri-environment schemes).

The Trust does not want to be faced with the cost of going back to Parliament in the event that there is a development which was not anticipated. It is important to be as flexible as possible and the Trust would be able to be more responsive if it had a general power. The proposed wording set out below is expressly limited to furthering the objects of the Trust. It would not permit the Trust to carry out actions that are already specifically provided for or prohibited in the Acts.

It is proposed to include the following clause or similar in the Bill:

General power

- (1) The Trust may do any lawful thing to further the objects so long as it is not expressly prohibited by any enactment, including this Act.
- (2) The Trust must not exercise the power in subsection (1) if it can exercise a power contained in another provision of this Act to do the thing in question.
- (3) If exercise of a power of the Trust contained in a provision of this Act other than subsection (1) is subject to restrictions, those restrictions apply also to the exercise of the power in subsection (1) so far as it is overlapped by the power.

Question

Question 10 on the questionnaire

Do you agree that the Trust should have a restricted general power as set out above?

9. Trustee payments and benefits

Background

Trustees do not receive payment or any other benefit for being a trustee - this is one of the defining characteristics of the charitable sector.

In relation to expenses, the Commissioners Clauses Act 1847 (CCA), s 48 states

At all meetings of [the trustees] they shall defray their own expenses, except what may be incurred for the use of the room in which the meeting is held, and for books, stationery, and fire.

This is in conflict with the general law as charity trustees can normally be paid out of pocket expenses, for example, travel, specific telephone expenses and reasonable costs for the care of dependants whilst attending to trustee business.

What changes are proposed?

[CCA](#) s 48 conflicts with current good practice and the lack of ability to pay expenses is a cause for concern as it potentially impacts on the diversity of the board (for example, effectively disbaring a single parent or a person with a dependent elderly relative who cannot afford to pay a carer whilst they are at meetings).

Trustees may choose not to claim expenses, seeing it as part of their efforts to support the Trust in its work, and any payment made still has to be in the best interests of the charity. It is also a requirement that any such payments are disclosed in the charity accounts. The Trust proposes to make and publish a trustee expenses policy clearly setting out what trustees are permitted to claim.

This proposal received significant support in the 2019 consultation but if you have any comments or suggestions please use the text box marked question 12 on the questionnaire.

Prohibition on remuneration

Background

S 9 CCA prohibits trustees from holding office or receiving profit from or contracting with the Trust. There are provisions under charity law for trustees to receive payments in respect of goods supplied or for work carried out for the charity in certain limited circumstances.

What changes are proposed?

The Bill would include standard provisions which make clear that the property and assets and income of the Trust must be applied solely towards the promotion of its objects and that no trustee may receive any remuneration or other benefits other than the limited trustee benefits permitted by law and which are accepted by the Charity Commission, including out of pocket expenses.

10. Power to borrow

Background

At present there are 3 different powers to borrow in the Malvern Hills Acts, and some administrative provisions in the [CCA](#) (s 76). The current powers are set out in s 11 1909 Act, s 32 1924 Act and s 10 1995 Act. The content of the 3 sections differ and apply to purposes under specified Acts (none of the powers apply to all 5 Acts).

The current powers include the ability to secure the borrowings against revenue streams or property.

Some of the provisions contain a requirement to obtain consent to borrow (Board of Agriculture and Fisheries in 1909 Act, Minister of Health in 1924 Act, Secretary of State in 1995 Act) and the 1995 Act imposes a restriction in relation to all the powers to borrow – that a mortgagee or assignee has no power of sale in relation to [Purpose Land](#) nor any power to cut and sell timber.

What changes are proposed?

The Trust owns 2 different classes of land – Purpose Land and [Ancillary Land](#).

The primary requirement must be to protect the existing Purpose Land. In relation to that, there should still be a requirement to obtain Ministerial consent and no power of sale or power to cut and sell timber in relation to any borrowing secured on purpose land acquired prior to the commencement of the new Act.

A mortgage where there is no power of sale is an unattractive proposition to any lender. The Trust is concerned that, should an opportunity arise to acquire one of the substantial land holdings on the spine of the Hills which it currently does not own, it would not be able to offer adequate security for the sizeable loan which might be needed.

New purpose land

We therefore propose that the Trust should be able to offer by way of security, the land *which it is buying, and for the purchase of which the loan is required* with a power of sale. This would protect the current land holding, but if there was an acquisition of additional land with the assistance of a mortgage and a subsequent default, the Trust and the public would be in no worse position than they would have been had the purchase not been attempted. The Trust needs to consider whether the Bill should contain a requirement to seek the consent of the Secretary of State in these circumstances. A concern would be that this would hamper the Trust's ability to proceed with a purchase in a timely way, possibly jeopardising the transaction.

Ancillary land

It is proposed that the Trust should be able to offer Ancillary Land as security for a loan with a power of sale (as it can now) but also that the Trust should not require consent of the Secretary of State in order to do this. The Trust will consult with the Secretary of State and the Charity Commission on this proposal.

The current powers to borrow should be replaced with one comprehensive power applicable in all circumstances.

Questions

Question 11 on the questionnaire

Do you agree that the Trust's existing powers to borrow money should be consolidated?

Do you agree that the Trust should be able to secure borrowings against its ancillary land and against revenues without seeking the consent of the Secretary of State?

Should the Secretary of State's consent be required to secure borrowings against new purpose land?

11. The Levy

The Trust raised about 56 % of its general fund income (48 % of all income) from the levy in the accounting year 2023/24. The levy set for 2024/25 was £697,070. The maximum levy chargeable under the regulations as at April 2024 was £773,684.

Background

The power to raise a levy originated in the 1884 Act. The Trust's original land holding comprised mainly the central/northern Hills and Malvern Common, together with a small area of land at Colwall Green. The powers to levy contained in the 1884, 1909 and 1924 Acts reflect this historic position. The levy is currently paid by:

The Parishes of:

- Colwall
- Mathon
- Guarlford
- Malvern Town
- Malvern Wells
- West Malvern

The mechanism for collecting the levy is very similar to the arrangements for Parish Councils. Since 1884 there have been numerous reforms, and the relevant provisions are now the Levying Bodies (General) Regulations 1992, made under the Local Government Finance Act 1988.

Because of various local government reorganisations in the last 135 years, many references to local authorities in the Acts are out of date.

Worcestershire County Council (WCC) and what is now Herefordshire Council have a separate power contained in s 9 of the 1909 Act to raise a special levy (see next section). They could in principle raise a special levy on the parishes where the Trust has land but which do not pay the levy, so for example, the southern part of the Hills, Castlemorton Common, Old Hills and Newland. We are not aware that they have exercised the power and we suspect they would not consider it politically expedient to do so.

A condition of the consent given by the Charity Commission to pursue a Private Bill was that it could not contain proposals to extend or materially change MHT's powers to Levy. There will therefore be no changes made to the areas which pay the levy nor to the way in which the maximum amount is calculated but the provisions relating to the levy will be updated.

Under the package of proposals upon which the Trust is currently consulting, opportunities for people living outside the levy paying area to engage with and financially support the Trust would be opened up. Also see the sections on Power to set up a membership organisation (section 7) and Contributions from Worcestershire County Council and Herefordshire Council (section 12).

The Trust asks parishes outside the levy paying area to consider making a voluntary contribution towards the upkeep of Trust land in its area, from which its residents benefit.

12. Contributions from Worcestershire County Council and Herefordshire Council

The aim here is to update the consent provisions, but to make no major changes.

Background

S 9 of the 1909 Act gives a power for what were then the County Council of Worcestershire and the County Council of Herefordshire to contribute to the funds of the Trust.

The power is still relevant because Worcestershire County Council (WCC) makes a contribution under that section. This relates back to an agreement made in 1968 that the County would continue to contribute to the cost of maintaining certain land which had been in the care of Upton Rural District Council, but which was then acquired by the Trust. The payment (currently £13,500) goes some way to compensate for the fact that not all of the parishes that benefit from having Trust land within them pay the levy (see section 11 The Levy).

The relevant body for Herefordshire is now called Herefordshire Council (which is a unitary authority).

The Councils can either pay as a general expense or raise a special levy on selected parishes. If the Councils wish to raise a special levy, they cannot levy on the parishes which already pay a levy to the Trust without their consent. The provision relating to consent needs to be updated because of local government reorganisation.

What changes are proposed?

The wording of the section needs to be updated to reflect local government reorganisation. The names of the relevant Council funds have also changed.

Were the option to raise a special levy to be exercised, the consent mechanism for Mathon, Guarlford and Cowall remains correct. However, in relation to the Malvern area, s 9 specifies that the consent of the Urban District Council is required. Today, there is no body in existence that independently represents the interests of the levy payers which fall within the old Malvern Urban District Council area. The Town Council area does not include all the relevant parishes and the District Council represents a much wider area. We believe the combination of the Town Council and West Malvern and Malvern Wells Parish Councils cover the area concerned.

The simpler alternative would be to retain the power for Worcestershire County Council and Herefordshire Council to raise a special levy on any parish but with the exception of the parishes which already pay a levy to the Trust under the provisions of the 1884, 1909 and 1924 Acts.

This proposal received significant support in the 2019 consultation but if you have any comments or suggestions please use the text box marked question 12 on the questionnaire.

13. Looking after livestock on the Malvern Hills

Background

The landscape, flora and fauna of the Malvern Hills and Commons has been influenced for hundreds of years by grazing by domestic animals. This special landscape has been designated as an Area of Outstanding Natural Beauty (AONB) – now known as a National Landscape. The grasslands with areas of heath and geological exposures are recognised as of national importance and are protected as Sites of Special Scientific Interest (SSSI). Open habitats such as this help provide easier access for members of the public and afford the panoramic views that are so popular with visitors. Grazing by livestock is essential to the ongoing management of the Malvern Hills and it is the method recommended by Natural England.

The traditional use of commoners' rights to graze stock has all but disappeared (apart from a few individuals on Castlemorton and Hollybed Commons). There are many reasons for this including:

- The commons are unenclosed and the animals can stray, sometimes with fatal consequences for them because of the increase in traffic
- Increase in visitor numbers and livestock worrying by dogs
- Increase in regulation of farming practices
- Lack of permanent drinking water
- Changes in wider farm economics
- Sale of local smallholdings to people with no interest in farming

What changes are proposed?

The Trust needs additional powers to help ensure that grazing can continue to contribute to the maintenance of this much loved landscape and deliver conservation objectives. The Trust needs:

- A power to secure the commons so that livestock owners can be sure their stock will stay there, and to reduce road traffic casualties
- A power to provide additional watering points
- A power to provide land, buildings and stock handling facilities close to the commons for use by graziers (covered in section 17 Ancillary Land and buildings)
- The ability to own and manage livestock in furtherance of its objects

The Trust's first choice for maintaining grazing on the Malvern Hills is to support local commoners in the sensitive exercise of their traditional rights.

Fencing

a) Securing the commons

Background

The Trust's duty is to keep its land open and unenclosed for recreation and enjoyment by the public. It needs to be understood that the term "enclosure" in 1884 had a different meaning – that is taking part of the common into private hands. If grazing is to continue in the 21st century in a sustainable fashion, the commons need to be secure. It is impractical for a grazier to be on call 24 hours a day to bring wandering animals back onto the common, nor is it safe for the livestock or for motorists who might suddenly be confronted with animals on the road where they are not expected. At present, in the Castlemorton area, stock are regularly found on 23.5 km of road including 5.8 km of A road. If Common Land Unit 9 (CL9- Castlemorton, Shadybank and Hollybed Commons) was secured, this would reduce the length of road accessible by stock to 7.6 km, none of it classed as A road.

Landowners who adjoin the common have an obligation in law to fence against the common and this would still apply.



Sheep on the B4208: a regular hazard

What changes are proposed?

In practice, securing the commons means making stockproof the points where roads come onto the common. Over 92 % of the perimeter of CL9 is already secure. Securing the perimeter of commons has already been achieved elsewhere, including Minchinhampton Common in Gloucestershire, the New Forest and Epping Forest.

At present the Trust does not have clear powers to secure the commons. Doing this is key to enabling the grazing of the commons to continue, thus maintaining the habitat and the landscape character. Management by mowing alone is not an option. It would not keep the commons in good condition, it could put the Trust in breach of its obligations for the management of the SSSIs, it is very expensive, relies on fossil fuels, destroys the sensitive features such as ant hills and archaeology and is impossible on steep slopes, or where there are trees and in wet areas.

If stock are unable to escape the common, supervision and management would be much easier, road casualties would be reduced and grazing would become much more viable now and in the future.

The proposal to secure the commons will not limit public access to Trust land – the only restriction will be the need to enter and exit the common at designated points. Entry points would be at regular intervals within any Trust fencing (except where access was already impractical by virtue of the terrain) so visitors would have to walk no further than a few metres to enter or leave the common.

Landscape considerations would be key in the exercise of any power to secure the commons. There would be instances where the fence might not be exactly on the boundary of the Trust's land, but would be as close as reasonably possible. There may be areas where rock close to the surface would prevent fencing and features such as banks or scrub should ideally be used to help make fencing unobtrusive.

Gaining a power to secure the commons places the Trust in the same position as any other landowner. The power would be subject to the consent of the Secretary of State and any other necessary permissions (for example planning permission, or from Natural England on an SSSI). Any detailed proposals would be put out to public consultation and in practice if there were objections, a public inquiry would be held, so having a power to fence would not mean that the Trust could proceed without proper scrutiny. The Trust would be expected to comply with such procedure as the Secretary of State would from time to time require – currently the Works on Common Land (Procedure)(England) Regulations 2007.

Pre-existing rights (eg rights of common, easements or public rights of way) would not be affected.

The general law would apply, in particular the Equality Act, so full consideration would need to be given to, for example, suitable access for people who are less mobile.

The Bill would make it clear that when exercising any fencing powers, public access would not be deemed to be restricted or denied in circumstances where the public could still access the area using gates, etc.

It is proposed to include the following clause or similar in the Bill:

Fencing to secure common land

- (1) Subject to subsections (2) and (3) the Trust may fence common land or use 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 necessary or desirable for the prevention of animals straying from the common land in question.
- (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 any case where it exercises the power under subsection (1), the Trust must provide gates or other appropriate means of access—
 - (a) at or near any point where any footpath or bridleway crosses the fence or other means of enclosure; or
 - (b) at 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.

b) Securing grazing land which is not common land

In practice the Trust has to do this to comply with the general law. Animals grazing on land that is not common have to be prevented from straying.

c) Temporary grazing on common land

It is proposed that there should be an extension to the power to permit temporary fencing for the purpose of grazing for up to 60 days. Temporary fencing allows grazing to be targeted in key areas such as important SSSI habitats. A 60 day maximum gives more flexibility, particularly given the labour involved in setting up large grazing compartments. Public access would still be available through gates, as now. This proposal received significant support in the 2019 consultation.

d) Temporary fencing for animal health

This provision is proposed because of concerns raised by graziers/their veterinary advisers. There are circumstances where it is desirable to fence off sections of common for animal health reasons. Animal parasites can develop resistance to commonly used treatments (eg anthelmintics). Part of the parasite's life cycle is lived in the pasture and one method of breaking the cycle is to prevent grazing by the host animal whilst the parasites live out their life cycle in their hosts' absence. The Trust seeks views on a power to fence off sections of the common temporarily for up to 12 months, in the interests of animal health. This would have to be done with the consent of those exercising common grazing rights, and with public consultation. Once again, recreational access would still be available and existing rights of way unaffected. Following responses to the 2019 consultation, the Trust is happy to adopt the suggestion that the same area should not be fenced again for at least 6 months (although hopefully this should not prove necessary).

Proposals

To include the following clause or similar in the Bill:

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;
 - (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;
 - (c) that is common land, for a period not exceeding 12 months, if the Trust considers that doing so is necessary or desirable for the purposes of animal health management, and following such consultation as the Trust considers appropriate.
- (2) The Trust may not exercise the powers under subsection (1) if doing so would prohibit—
 - (a) public access on foot or on horseback to any part of Malvern Hills (other than the land on which the fence itself is located) or a public footpath or (in the case of access on horseback) a bridleway;
 - (b) the exercise by any person of a right under an easement.
- (3) [Drafting will be included to ensure that there are requirements, except in the case of an emergency, for there to be consultation and notice if the power is intended to be exercised for a period exceeding 42 days.]

- (4) Where the Trust exercises the power under subsection (1)(c) 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---
- (a) in the case of an emergency relating to animal health; or
 - (b) 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.
- (5) In any case where it exercises the power under subsection (1), the Trust must provide gates or other appropriate means of access—
- (a) at or near any point where any footpath or bridleway crosses the fence; 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.

Questions

Question 13 on the questionnaire

In all cases below the public would continue to have access to the areas in question:

Do you agree that the Trust should be able to secure the perimeter of a grazed common, to make it stock proof, subject to the consent of the Secretary of State and any other necessary permissions?

Do you agree that the Trust should have a power (subject to a requirement to consult) to put up temporary fences on the common for up to 12 months in the interests of animal health?

Please include any comments on the draft clauses in the free text box marked question 14

The Trust as livestock owner

Background

Our first priority is to help those with commoners' rights effectively to graze the Hills and Commons.

The Trust, as landowner, has the right to graze the surplus grass.

What changes are proposed?

In the event that there are not enough commoners taking up their grazing rights, the Trust's first course of action would be to approach third parties to carry out grazing, but as a final resort, the Trust needs to be able to own and manage livestock in order to use grazing as a management tool for looking after the land. The primary purpose of owning livestock, as a charity charged with caring for the Malvern Hills landscape, would be for land management purposes and not for commercial agriculture.



Grazier with sheep, End Hill

The Trust would include in the Bill a proposal that the Trust should have a power to purchase, sell, maintain and look after grazing livestock, including but not limited to cows and sheep.

(Please see also section [17 Ancillary Land and buildings](#)).

This proposal received significant support in the 2019 consultation but if you have any comments or suggestions please use the text box marked question 14 on the questionnaire.

Installing watering points for livestock

Background

The Trust currently has no express power to install watering points on the land under its jurisdiction, although it is probably implied.

What changes are proposed?

Appropriate watering points are needed for animal welfare and to make livestock management more straightforward. These would be to British Standard specification and would be located sensitively.

Currently stock have to be watered by means of bowsers. These have to be towed up the Hills, which is time consuming. They are unsightly and during hot weather the bowsers have to be refilled on a daily basis. This proposal received significant support in the 2019 consultation but if you have any comments or suggestions please use the text box marked question 14 on the questionnaire.



Cattle grazing, West of England

14. Seizure of stray animals – additional provisions in the event that a seized animal is suffering

Background

This is covered by s 19 1995 Act.

What changes are proposed?

A useful addition would be to ensure officers of the Trust are authorised to act in the event that an animal is seriously ill or badly injured.

This proposal received significant support in the 2019 consultation but if you have any comments or suggestions please use the text box marked question 14 on the questionnaire.



Grazier with sheep, Gardiner's Quarry

15. Quarrying

Provisions in the Acts that relate to the retained rights of individuals are dealt with in section 29 Third Party rights.

Background

- a. Some of the land placed under the Trust's jurisdiction by the Acts is still owned by third parties. In the case of land that the Trust owns, there are some areas where third parties have retained the mineral rights – an example being Castlemorton Common.
- b. A number of sections in the 1924 Act give powers to the Trust to acquire land, including some quarries. S 23 of the 1924 Act provides that the power for compulsory purchase of land and other interests is to cease on 31 December 1929, which makes these sections redundant.
- c. There are provisions enabling the Trust to make byelaws to regulate quarrying, but subject to requirements to compensate quarry owners who are affected.
- d. There is a provision in the 1884 Act (s 15) regulating digging and carrying away of “sand gravel stone or other material” by highways boards and turnpike trustees and a provision in the 1924 Act (s 31) for the Trust to license Local Authorities to obtain stone for road repair.
- e. There is a provision in the 1884 Act (s 25) requiring owners to give notice to the Trust before opening up any new quarry.
- f. There are provisions in the 1924 Act to enable the Trust to apply to the Minister to make an order prohibiting quarrying on any part of the Malvern Hills.

What changes are proposed?

Most of the provisions above are very out of date.

- a. There are now stringent planning laws in place which did not exist during the early years of the Trust's existence, so the requirement for the owners of mineral rights to give the Trust notice before opening up a quarry is no longer so relevant and neither are the specific provisions allowing the Trust to apply to prohibit quarrying. Whilst it is probably unlikely that planning permission to quarry on the Malvern Hills would ever be granted, legal rights to extract minerals still exist. The Trust would like to update the provisions in relation to exercise of third party mineral rights to require those seeking planning permission to open a quarry on Malvern Hills to give notice to the Trust before applying for planning permission, and to put in place certain protections for the land and public.
- b. Those sections in the 1924 Act that effectively ceased to have effect on 31 December 1929, or are no longer relevant because the Trust has now acquired the mineral rights concerned will not be reenacted.
- c. The right to make byelaws and to regulate infrastructure and machinery (s 25(1) 1924 Act) will be retained, but there is a potentially draconian provision for the Trust to compensate the owner of any quarry if they are “injuriously affected” by the byelaws. In reality any new quarry infrastructure and the protection of the public would now be regulated by planning conditions and Health and Safety regulations. Any byelaws made would be in order to protect the Malvern Hills and their users, and the Trust feels strongly that the provision for compensation should not be reenacted.
- d. S 31 1924 Act which provides for the Trust to grant licences to Local Authorities to take stone for road repairs should be repealed – on the basis that it goes against the spirit of the Acts.

If you have mineral rights over any land under the Trust's jurisdiction please get in touch to arrange a meeting to discuss these proposals. If you have any specialist knowledge in relation to quarrying or mineral extraction, the history of quarrying on the Hills or are associated with a highways authority we would welcome your comments.

Power to take spoil and rocks for the Trust's own use.

Background

The Trust presently has no express power to use stone from spoil heaps, landslips and free standing rock on its land.

What changes are proposed?

Because of the many old quarries on Trust land, there are a number of spoil heaps, and not infrequent landslips and rock falls from the old quarry faces. At present if the Trust wants to use stone for making up paths, or rocks as a natural barrier, it has to purchase them from other quarries a considerable distance away. As a result, the stone has a different pH and colour from the local stone, and of course the Trust has to pay. It would be beneficial to the Trust and more environmentally friendly if the Trust could use some of the local stone either from spoil heaps or rock falls for its work. The power would be limited to collection of loose material – there would be no resumption of quarrying. The stone taken would have to be used by the Trust solely on its own land. The right could be subject to an annual limit on quantity, for example 25 cubic metres, with an option to carry forward in the event that an annual allowance was not used up, to a maximum of 50m³ in any one year). This power should not be subject to obtaining planning permission but there could be a requirement to consult with Malvern Hills National Landscape (AONB) and/or other relevant organisations (e.g. Butterfly Conservation).

The Trust would like to seek a power in furtherance of its objects or for purposes ancillary to those objects, to extract, work, process and otherwise use spoil heaps, rock falls and other loose natural materials in areas of Malvern Hills where quarrying has taken place.

The concept of it being more environmentally friendly to use the Malvern stone for path repairs etc. received significant support in the 2019 consultation but if you have any comments or suggestions please use the text box marked question 16 on the questionnaire.

Questions

Question 15 on the questionnaire

Do you agree that the Trust should be given a power to take up to 25m³ of loose rocks and spoil per year for its own use (with a carry forward of up to 25m³ in any one year if the previous year's allowances was not used)?

Should the Trust be required to consult relevant local bodies or organisations about the exercise of this power?

16. Barriers for unauthorised vehicles

Background

Driving on Trust land is prohibited by the byelaws and driving on common land is also an offence [under s 34 Road Traffic Act 1988](#). However, the Trust has no specific power to take action physically to prevent vehicles from unlawfully driving onto its land.

What changes are proposed?

In practice the Trust would only want to take action against this sort of activity where there was an identified persistent problem. It would be necessary to ensure that any such barriers, whilst preventing vehicular access, did not harm the landscape or obstruct access for horse riders and pedestrians. This proposal received significant support in the 2019 consultation.

It is proposed to include the following clause or similar in the Bill

Prevention of unauthorised access by vehicles

- (1) The Trust may take such measures as it thinks fit to prevent unauthorised access by motor vehicles to any part of the Malvern Hills, provided that the measures do not prevent access by other means (including by any invalid carriage, unless its use is unauthorised).

- (2) In this section—

"invalid carriage" has the same meaning as in [section 20 of the Chronically Sick and Disabled Persons Act 1970](#);

"motor vehicle" means a mechanically propelled vehicle.

17. Ancillary Land and buildings

This is a proposal for minor modification to the existing power to purchase and maintain buildings and land for operational use. At the moment the Trust does not have a power to build offices, nor an express power to acquire buildings and land for the housing and care of livestock.

Background

This section deals with buildings and land which the Trust uses for running the charity – so does not apply to [Purpose Land](#) which is generally open to the public. It includes land and buildings acquired under s 53 [Commissioners Clauses Act](#), under s 9 MHA 1995 and land acquired with the authority of the Charity Commission under s 105 Charities Act 2011.

This category of land can be sold by the Trust if it wishes.

At the moment the Trust cannot acquire land specifically for livestock management purposes nor can it build new administrative buildings (although it can build sheds).

What changes are proposed?

The Trust needs more flexibility in order to manage and conserve the landscape more effectively.

Express power to purchase in-bye land for the care of livestock

In-bye land is a parcel of land which is used for grazing (usually associated with a farm or smallholding) and which is fenced and not part of the common. For further information see section [13 Looking after livestock](#).

Grazing is an essential element in the management of the Hills and has contributed substantially to the important features and special qualities of the landscape which you see today. There is no substitute for grazing - particularly for managing sensitive areas such as the ridge of the Hills, and the SSSI habitats. It is essential to conserve the nationally important habitats and archaeology. Historically, grazing has been delivered by local people with their own smallholdings near to the common exercising their commoners' rights, but in the 20th century this practice all but died out, and many of the properties which have grazing rights have now been bought by people with no interest in using them.

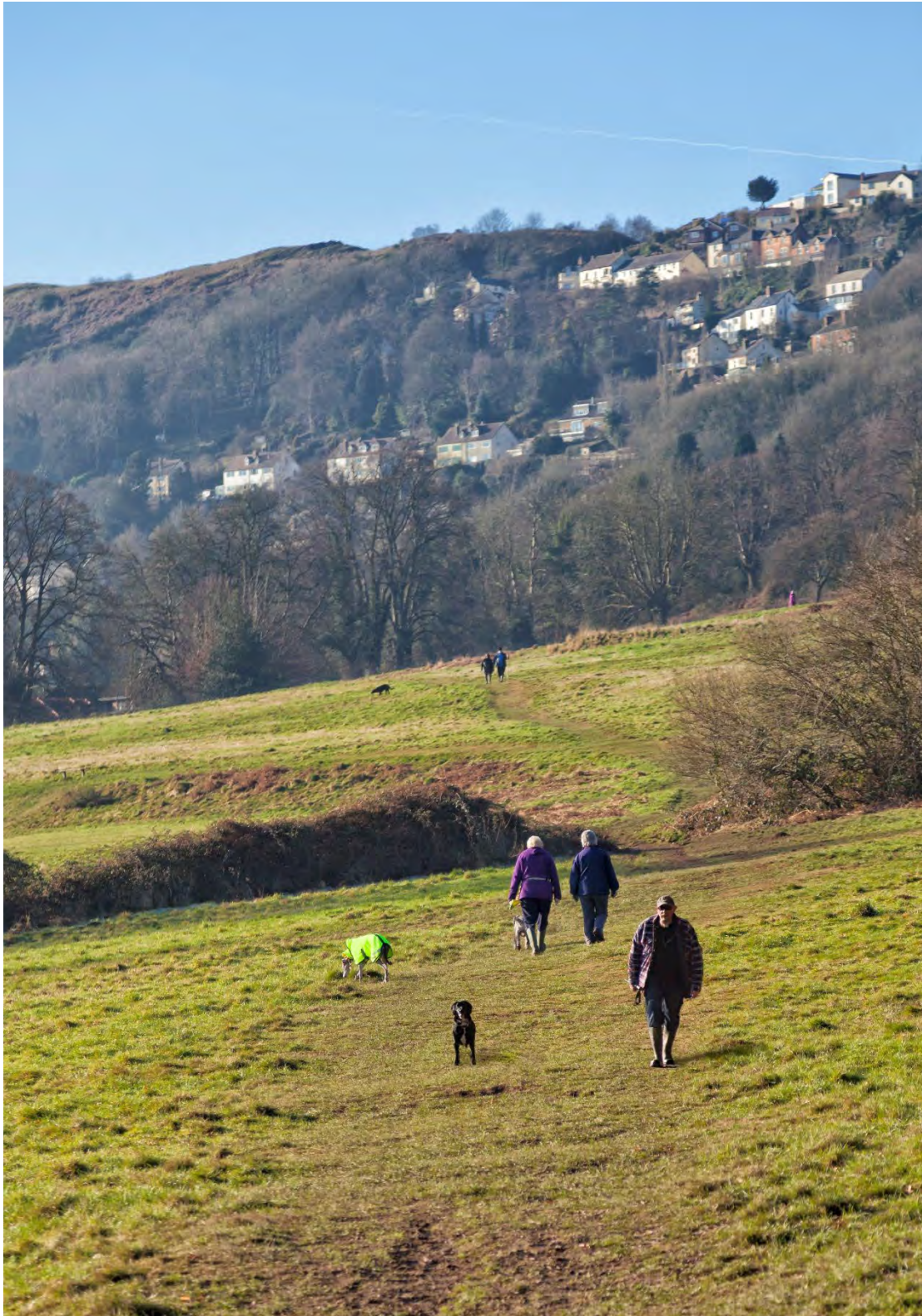
The Trust's primary wish is to support those who have commoners' rights and to enable them to use their rights to deliver suitable sensitive grazing, but if this fails, the Trust may need to use third party graziers or, as a last resort, graze their own stock on the Hills. Third party graziers and the Trust would need land and appropriate infrastructure close to the common for use in connection with the care of their animals. There are certain times of year when it is necessary to bring the stock off the common in the interests of animal welfare and practical husbandry, for lambing, in the event of disease or injury, for the administration of medicines, shearing, during heavy snow or times when there is insufficient grazing on the Hills. We propose an express power to permit the Trust to acquire strategic sites close to the commons for the purpose of providing essential buildings and stock handling facilities. The buildings and their immediate area would be closed to public access for health and safety reasons and the land may also need to be closed to the public at times, but would be open whenever possible.

Please note that the Trust is not intending to establish a commercial farming enterprise - any of these activities have to be solely in the interest of fulfilling the charity's objects.

Questions

Question 17 on the questionnaire

In order to support the continuation of grazing on the commons, should the Trust have a power to acquire land to provide for the management of livestock?



Dog walkers on Malvern Common

Operational buildings - power to build

The Trust also needs the power to build premises for operational use on land acquired for the purposes set out below. It is not always possible to buy the right building in the right place.

The clause set out below mirrors the Trust's current powers in s 9 1995 Act but widens the powers to include providing refreshments, sale of goods and for keeping livestock as proposed above.

Ancillary land

- (1) This section applies to any land—
 - (a) acquired by the Trust before the relevant date—
 - (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;
 - (b) acquired 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 or information centres;
 - (b) the provision of refreshments;
 - (c) the retail sale of goods;
 - (d) residential occupation 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;
 - (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 limitation, power to—
 - (a) acquire, demolish, replace, construct or reconstruct buildings on ancillary land and alter, repair, maintain or extend buildings on ancillary land;
 - (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;
 - (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.
- (6) Without prejudice 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.
- (7) The Trust may exercise any of their functions in respect of ancillary land as if that land formed part of the Malvern Hills.
- (8) In this section, “the relevant date” means—
- (a) as regards land referred to in subsection (1)(a)(i), the date on which section 9 of the Malvern Hills Act 1995 is repealed by this Act;
 - (b) as regards land referred to in subsection (1)(a)(ii), the date on which section 53 of the Commissioners Clauses Act 1847 ceases to apply to the Trust as a consequence of this Act;
 - (c) as regards land referred to in subsection (1)(a)(iii), the date on which this section comes into force.

Questions

Question 18 on the questionnaire

Do you agree that, subject to obtaining planning and other necessary permissions, the Trust should have a power to build in furtherance of its objects, on land which does not form part of the commons for the purposes as set out in the draft clause above?

18. Power to grant leases and licences of land and buildings

Background

There is a section in the 1995 Act (s 3) which provides for the granting of a lease in relation to St Ann's Well. The Trust can also grant a lease of certain land if it decides to do so within 2 years of purchase (s 6 1995 Act) or let parts of buildings acquired under s 9 1995 Act. The Acts are otherwise silent in relation to the granting of leases and licences of Trust land.

What changes are proposed?

The Trust owns various buildings and this power would enable the Trust to make more effective use of them and possibly raise funds where they are not immediately required for the Trust's own purposes. An express power to grant licences in relation to land would help the Trust to manage the land which it owns. The Trust proposes:

- An express power to grant licences in relation to its land and/or buildings
- An express power to grant a lease of up to 10 years of land which is not common land, or of buildings
- A power to grant a longer lease with the consent of the Secretary of State

Any grant of a lease or licence of land would be subject to the public's right of access except in the case of [Ancillary Land](#).

Questions

Question 19 on the questionnaire

Do you agree that, subject to the public's rights of access, the Trust should have a power to grant licences of land and buildings?

Do you agree that the Trust should have a power to grant leases of buildings and of land which is not common land (subject to rights of public access) for a period of up to 10 years?

If you have any comments or suggestions about ancillary land and buildings, please use the text box marked question 20 on the questionnaire.

19. Easements and licences for services

Background

This is covered by s 7 1930 Act as amended by s 8 1995 Act.

The Trust has a power to grant easements or licences under or over its land for the provision of public or private services relating to water, electricity, gas, oil, telecommunications, drainage and sewerage.

There are very limited circumstances in which the Trust can grant anything other than a temporary licence for overground services. One of the requirements is that, in the opinion of the local planning authority the provision of the service overground is “reasonable”.

What changes are proposed?

A minor amendment is proposed to this section.

For the Trust to grant a right to run a service overground would be highly unusual. The Act states, as will the Bill, that the Trust can only grant a determinable licence in circumstances where it is (a) not reasonably practicable for the service to be other than overground and (b) that the service has to be to a domestic property built before 1995. The Trust proposes removal of the requirement in subsection (5)(a)(iii) to seek the opinion of the local planning authority. If the infrastructure were to require planning permission, the person making the request would have to apply for it in the usual way and the Trust would make the granting of the licence conditional on permission being obtained. If planning permission was not required, the local authority would normally have no interest in the matter. Instead, the Trust would consult the Malvern Hills National Landscape (MHNL) Partnership (previously Area of Outstanding Natural Beauty), if the infrastructure was within the MHNL or potentially impacted on it. If a requirement to obtain the opinion of an outside body was felt to be needed, then consulting the MHNL would seem to be more appropriate. The local planning authority indicated in the 2019 consultation that it did not wish to be consulted in these circumstances.

Given the Local Planning Authority was not seeking to be asked for its opinion, the Trust is minded to pursue this provision despite there having been a small majority (2 %) against it in the 2019 consultation. The existing provision should be retained without the requirement to seek the opinion of the Local Planning Authority but substituting a requirement to consult the Malvern Hills National Landscape Partnership.

Question

Question 21 on the questionnaire

Do you agree that in the highly unusual circumstances where services are proposed to be installed overground on the Hills to a domestic property built before 1995, and where planning permission is not required, the Trust should be required to consult the Malvern Hills National Landscape Partnership, rather than seek the views of the local planning authority?

20. Easements and rights of access

Background

This is covered by s 7 1930 Act as amended by s 8 1995 Act.

The Trust does not intend to make any substantive changes to the provision other than to make it clear that if a right of access is granted by the Trust under its statutory powers, the grantee will still be required to apply for consent to the works under s38 Commons Act.

21. Licensing events

Background

Other than a power in the 1995 Act to license up to 6 mobile refreshment stalls, the Trust has no express power to license events or activities on its land (other than on Link Common). For the avoidance of doubt and for the better management of the Malvern Hills, it would be helpful to include such a power in the [Bill](#).

What changes are proposed?

Individuals who pay the levy and who use the car parks to enjoy the Hills are currently subsidising events and people using Trust land for business purposes (eg professional dog walkers). These uses are often a breach of the byelaws so the Trust's permission is needed. The Trust needs to exercise some degree of control in order to ensure, for example that events do not clash, that no damage is caused to Trust land and that events do not impact unduly on the quiet enjoyment of others. The Trust also needs to check that events and businesses have proper insurance. Where appropriate, the Trust needs to be able to make a charge to cover the sometimes substantial administrative time taken up, as well as a contribution to the care of the land which the organisers are using.

Question

Question 21 on the questionnaire

Do you agree that the Trust should have an explicit power to issue licences to people or organisations who wish to carry out activities or run businesses on Trust land, with a power to make an administrative charge?

22. Temporary food stalls

Background

The Trust has the power to license up to 6 mobile or temporary food stalls (s 4(g) 1930 Act as amended).

What changes are proposed?

The Trust is sometimes asked by people running events whether they can provide catering facilities. The Trust has no clear power to grant a licence to allow them to do this. Provided it is for a limited duration, it seems reasonable to permit this. Following the 2019 consultation the proposed limit on the maximum duration is 4 days.

Question

Question 21 on the questionnaire

Do you agree that the Trust should have a power to grant licences for temporary food stalls in association with events for a period of no more than 4 days?

If you have any comments or suggestions about licences, please use the text box marked question 22 on the questionnaire.

23. Measures for the protection of the Malvern Hills and for public safety

Background

There are times when, in order to look after the Malvern Hills and in the interests of conservation and public safety, access has to be restricted.

The Acts contain unfettered powers to put up fencing in some circumstances – s 6 1909 Act to fence to protect trees and shrubs and s 4 1930 Act to fence dangerous places.

In addition s 15(3) MHA 1995 allows the Trust temporarily to prohibit or regulate public access as set out in the following subsections:

- a. for the protection of an ancient monument or any area of archaeological or historical interest
- b. for the protection and restoration of the natural beauty
- c. for the preservation of trees
- d. in the interests of protection or preservation of flora or fauna or any area of scientific interest on the Malvern Hills
- e. for the prevention of the risk of fire
- f. for the prevention of accidents or injury or other damage to health

What changes are proposed?

The Trust proposes to remove some ambiguities and to make some minor changes to the current consent and consultation arrangements.

When exercising the powers to fence under subsections (a) – (d) the Trust cannot “regulate or prohibit” access along a public right of way. The Bill will make clear that if such a fence crosses a public right of way then the Trust must provide a gate or other appropriate means of access at the crossing point.



Cyclist on Worcestershire Beacon

There is a requirement to consult or obtain advice from Historic England and Natural England respectively, where the powers under subsections (a) and (d) are proposed to be used for temporarily regulating or prohibiting access. It is proposed that this requirement should apply only if the temporary fencing is to be in place for longer than 42 days. This will enable the Trust to take immediate action where necessary. If the Trust needs to carry out any works affecting a Site of Special Scientific Interest (SSSI) or a scheduled monument, it has to obtain consent from these bodies under the general law in any event.

The Trust is also asking to extend the period for short term fencing in all cases from 28 to 42 days. The reason for this is that the Trust must comply with certain requirements to fence for longer periods. This includes giving notice and allowing 28 days for written representations to be made. Extending the initial period to 42 days will allow the temporary fencing to remain in place whilst the consultation takes place and the responses are considered.

When exercising the powers for over 28 days, the Trust is currently required to consult the Sport and Recreation Alliance (previously the Central Council of Physical Recreation) and one relevant local association, authority or other body having a substantial interest in the area to be affected. The Sport and Recreation Alliance have agreed that it should no longer be necessary to consult them, so the Trust proposes the requirement should be removed. The requirement to consult locally would remain.

Widespread public use of the internet has become commonplace after the passing of the 1995 Act. As well as putting a notice about any fencing proposals in a local newspaper, as required under the section, the Trust now puts a notice on its website.

Section 15(10) MHA 1995 allows for individuals to ask MHT specifically to notify them when it publishes these notices. The Trust proposes that this requirement should be removed. In practice all such information is now available on the Trust's website, and on social media and, together with the other safeguards set out in the section, the notice provisions are felt to be adequate without this personalised element. The Trust also proposes removing the requirement to refer (after the event) to these notices in an annual report.

Question

Question 23 on the questionnaire

Do you agree that the ability of individuals to require personal notices of the exercise of the Trust's power to put up a temporary fence should be removed and a requirement on the Trust to publish notices on its website be added?

If you have any comments on this section please set them out in the free text section marked question 25 on the questionnaire.

24. Liability to people on the Hills

Background

Liability towards visitors to the Hills is currently covered by s 15(2) 1995 Act. This differs from the liability owed to visitors to land open to the public under the “right to roam” brought in by the [Countryside and Rights of Way Act 2000 \(CROW Act\)](#). The provisions of the CROW Act covering public access to the countryside do not apply to the Malvern Hills.

What changes are proposed?

The Trust has long regarded it as inappropriate that its liability to lawful visitors should be different from that of landowners whose land is open under the CROW Act. The CROW Act 2000 introduced s 1A to the Occupiers’ Liability Act 1984, (after the 1995 Act was passed), to limit liability in relation to natural features but it was not extended to the Trust.

The proposed change would bring the Malvern Hills into line with land open under CROW Act.

This proposal received significant support on the 2019 consultation. We are grateful to the Open Spaces Society for their suggestions in relation to the drafting.

It is proposed to include the following clause or similar in the Bill:

Public access to the Malvern Hills

- (1) 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.
- (2) A person who exercises the right mentioned in subsection (1) is not to be treated as a trespasser or incur any other liability merely because they have entered or remain on the Malvern Hills.

Occupiers’ Liability, etc.

- (1) The operation of section [X](1) 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.
- (2) A person entering the Malvern Hills in accordance with section [X](1) 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 [X](1) 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 the Trust at any time when the right conferred by section [X](1) 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 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, and references to a person interested in land are to be construed accordingly.



25. Byelaws and enforcement

The Trust has a power to make byelaws – local regulations which govern the use of land under the Trust’s jurisdiction. The [current byelaws](#) cover littering, dog fouling, driving, parking and cycling, digging and metal detecting and many other things.

Background

Various provisions for making byelaws are scattered through the five Acts.

What changes are proposed?

It is proposed that all of the current provisions for making byelaws should be brought together and the wording modernised where necessary. No substantive changes are envisaged.

The existing powers include

S 7(2) MHA 1909

S 25 MHA 1924

S 10 MHA 1930 (as amended by s 13 MHA 1995)

S 15(11) MHA 1995, 1995

S 16 MHA 1995

The Bill will specifically save the current byelaws.

Byelaw enforcement

Background

Breach of the byelaws is a criminal offence. The current penalty for breaching byelaws is a level 2 fine (up to £500). However, enforcement requires that the Trust or the Police bring a prosecution.

The Trust has certain powers under the Parks Regulations Act 1872 (including a power of arrest for failing to give name and address) but in practice it would be very difficult to use most of them.

What changes are proposed?

It is proposed that the current provision for enforcement of the byelaws will remain in place. The Parks Regulations Act will not be referenced in the Bill but provisions will be included to reflect any useful content.

The Trust would like to incorporate a new provision to impose “on the spot” fixed penalty fines including a power to request a person’s name and address.

The requirement to take a person to court for breach of the byelaws is so cumbersome and expensive that in practice it is rarely used. The provision will be based on the provisions of section 237A – 237E of Local Government Act 1972 and sections 11 and 12 of the City of London Corporation (Open Spaces) Act 2018, which relate to the Corporation's open spaces including Epping Forest.



Dog poo sign, Malvern Common

Question

Question 24 on the questionnaire

Do you agree that the Trust should have a power to issue fixed penalty notices as a way of enforcing byelaws?

26. Removal of vehicles

Background

Although the Trust has a power to remove vehicles which have been abandoned and are in such condition that they need to be scrapped (s 20 1995 Act), there is currently no provision for the removal of other vehicles that have a value. The Trust believes that it needs to address this omission.

What changes are proposed?

Clearly, the Trust's first action in any case where an abandoned vehicle is found on its land is to liaise with the police, and very often the matter can be resolved in this way. Nonetheless, the Bill needs to include a provision to enable the Trust to remove abandoned vehicles which have a value.

It is proposed to add a clause enabling the Trust to remove vehicles left on Trust land, whether broken down, abandoned or otherwise in breach of the byelaws. This would include:

- A requirement that the Trust affix a notice on the vehicle warning that it was liable to be removed by the Trust within a certain period.
- Once the notice has expired, permitting the Trust to remove the vehicle to safe storage. If the vehicle has no registration mark, nor any other way of identifying the owner, the Trust would be empowered to dispose of the vehicle at that stage.
- If the vehicle has a registration mark, an attempt must be made to contact the owner, in accordance with the process set out in regulation 12 of the Removal and Disposal of Vehicle Regulations 1986, as if the Trust was a Local Authority.

This proposal received significant support in the 2019 consultation.

27. Rights of common

Rights of common are defined rights for people to take the natural produce from a specific area of land, which they do not own. This right is shared with others and the owner of the land. Also see [Estovers](#) (section 28).

Background

Protection of the commons (and therefore the rights of those who use them) was central to the creation of the Trust.

S 9 1884 Act permits the Trust to enforce others' rights of common. It also has a power under s 11 to exercise this power in certain parishes (Cradley, Great Malvern, Mathon, Colwall and Hanley Swan) in relation to other common land (if any) over which it does not have jurisdiction.

Now under s 41 of the Commons Act 2006 anyone can apply to court to rectify breaches of s 38 Commons Act (in relation to restricted work on common land which require consent).

The Trust has a power to regulate the use and enjoyment of rights of common (s 10 1884 Act) and to make byelaws to that effect (s 10 1930 Act).

There is confirmation in s 27 1884, and echoed in s 33 1884 Act, that nothing in the Act should be construed to prejudice any rights of common exercisable at the time of the Act.

Rights of common were required to be registered in the 1960s, and are set out in registers held by Worcestershire County Council and Herefordshire Council.

What changes are proposed?

Rights of common are separate legal rights and will be unaffected by the Bill (other than a simplification in relation to two separate provisions relating to rights of estover). It is not proposed to reenact s 11 1884 Act or that part of s 9 which permits the Trust to enforce the rights of others. It is not appropriate for the Trust to spend resources on enforcing the rights of others now that any individual has a power to enforce the law. It is to be noted that the extent of common land referred to in s 9 is very small.

Question

Question 26 on the questionnaire

Do you agree that the Trust should no longer have a power to enforce other people's rights of common?

28. Estovers

These are rights of common which allow the person with the rights to collect wood and bracken for personal use.

Background

Numerous properties in the vicinity of the Hills have rights of common. One of these is the right of estover (the right to collect wood and bracken). The categories of the rights which attach to any particular property are recorded in registers held by Worcestershire County Council and Herefordshire Council. There are numerous different types of estover and the law is complex and cannot easily be summarised here. Different properties may have different rights based on historical needs. Advice received by the Trust is that in the Forest or Chase of Malvern, the right was generally limited to collecting fallen wood and bracken.

The current position in relation to trees planted by the Trust is confusing.

S 12 1884 Act says that the Trust may plant protect maintain and manage trees and shrubs on certain parts of the land placed under its jurisdiction by that Act, and that these shall not be subject to estovers.

S 6 1909 Act says trees and shrubs planted elsewhere than upon the lands set out in the third schedule to the 1884 Act shall be subject to estovers (but shall not be cut down until they reach 16 feet in girth).

What changes are proposed?

It is proposed that the Bill should contain one provision which applies to all land under the Trust's jurisdiction – stating that trees planted by the Trust on land under its jurisdiction shall not be subject to any right of estover which entitles the cutting of the tree. However, windfall wood could still be collected. There is currently no shortage of trees and wood on the Trust's land. When the Trust plants a tree it is generally for a purpose and it should be protected.

Please contact the Trust if you believe you have a right of estover which would be adversely affected by this proposal.

29. Rights of the Crown and bodies referred to in the Acts

Background

There are a number of provisions in the Acts dealing with the rights of Third Party organisations. These include the Crown, Great Western Railway Company, British Railways Board, and Shropshire Worcestershire and Staffordshire Electric Power Company.

Great Western Railway s 53 1924 Act, s 13 1930 Act

British Railways Board s 25 1995 Act

Shropshire Worcestershire and Staffordshire Electric Power Company s 14 1930 Act

What changes are proposed?

It is not intended to interfere with any rights that are still required but the bodies referred to above no longer exist. Where companies or statutory undertakers have replaced the bodies named, the Trust has no intention to alter the protection given them by the existing Acts.

Network Rail were consulted in 2019 and requested that the wording be included in the Bill as follows:

“For the protection of Network Rail Infrastructure Ltd
Nothing in this Act shall prejudice or affect the property or rights of Network Rail Infrastructure Limited”

Western Power (now National Grid) were consulted in 2019 and requested that the following wording be included:

“Nothing in this Act shall in any way prejudice or affect any right or power of Western Power 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 Electricity Special Order 1929 to place electric works or lines upon or over the Malvern Hills or any part thereof

The rights of the Crown will be retained but the wording updated.

We welcome any further comments from successor bodies to Great Western Railways, British Railways Board and Shropshire Worcestershire and Staffordshire Electric Power Company (or anyone with specific background knowledge).

30. The King's Third and the Forest or Chase of Malvern

Background

There are a number of references in the 1884, 1909 and 1930 Acts to the Forest or Chase of Malvern. See map page 64.

Ss 11, 13, 27, 33 1884 Act

S 6 1909 Act

S 10 1930 Act

There are also a number of references to the King's Third

Ss 11, 13 1884 Act

Please contact the Trust if you have a detailed knowledge of the history of King's Third and the Forest or Chase of Malvern and its relevance to the Malvern Hills Acts.

31. Third parties

We think that most of the rights referred to below, which were set out in the old Acts, no longer apply. We would be pleased to meet with anyone who believes that they have subsisting rights. There is no intention to disadvantage any third party - the aim is to clear out sections of the Acts which have no future relevance and retain in modern language any protective provisions which remain of benefit to the third party.

General Background

The Trust's jurisdiction over the Malvern Hills originated from the 1884 Act as amended by the 1924 Act which placed certain land under the Trust's control but the ownership remained with the original landowner. About 70 % of this land is now owned by the Trust. Historically, the Acts reserved powers to various landowners, but in the main, the Trust believes these have been superseded by virtue of the land coming into the Trust's ownership.

Some parcels of land still remain in third party ownership but under the Trust's jurisdiction and there is no intention to change this.

Quarrying and other rights on land set out in the third schedule to the 1884 Act

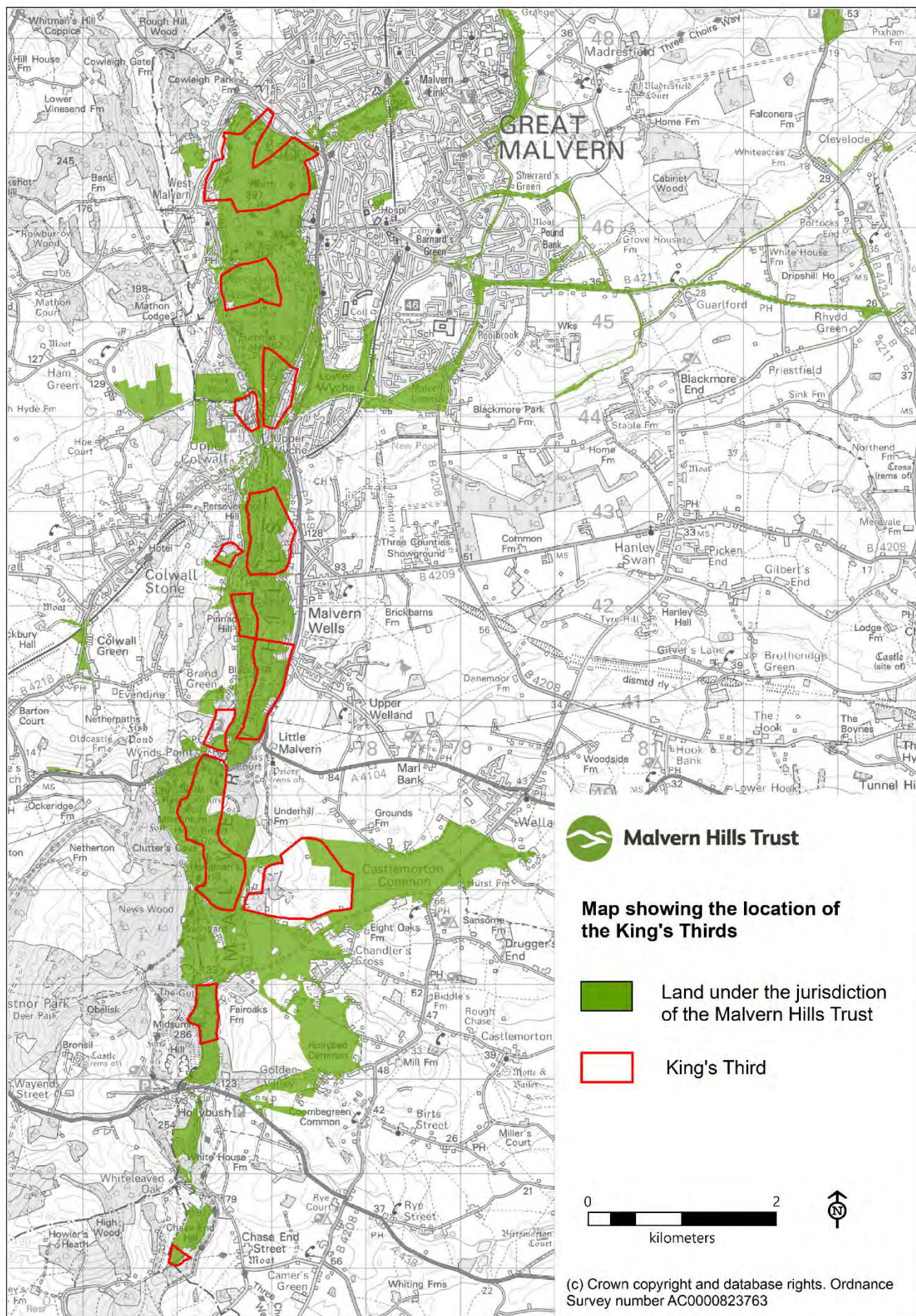
Key issues

S 13 1884 Act reserved various rights:

"to the Lords of the Manor and their successors in title, quarrying rights and any existing rights to springs of water arising from the surface of the land which was the Kings Third".

A map of the King's Third can be found on page 64.

There is a further reference in section 13 to a track which we believe is obsolete as the Trust now owns the land in question and the track does not exist.



King's Third map

Landowners of the jurisdiction land at the time of the 1924 Act are believed to have been Malvern Urban District Council, Ecclesiastical Commissioners, Lady Grey, Lord Somers, W Berington, C F Price, G Ballard, Mr A H Bright, Miss Cabrera and Major C F Raper. It is not clear whether all of those landowners had manorial rights. Under the 1924 Act, the Trust was authorised to acquire the Manorial Rights of:

- The Ecclesiastical Commissioners for England.
- The Malvern Urban District Council.
- Lady Catherine Sarah Grey.
- Major C. F. Raper as Executor of R. W. Raper.

It is proposed that these rights set out in s 13 of the 1884 Act should not be reenacted as the Trust is now the owner of the land in question, and we believe the rights have passed to the Trust.

Please get in touch with the Trust if you think you have subsisting rights which may be affected by this proposal.

Mineral rights owners – the Hornyold family

Background

S 25 1884 Act requires notice to be given to the Trust if a minerals rights owner wishes to open up a quarry (See section 15 Quarrying). There is an exception for John Vincent Hornyold and Thomas Charles Gandolfi Hornyold.

Key issues

The Trust proposes to reword/update this section and repeal the exception for the successors in title to the Hornyolds. Any requirement to notify the Trust should be consistent across all land under the Trust's jurisdiction. It would now be impossible to extract stone or minerals from the Trust's land without planning consent so not having to give notice to the Trust would no longer confer any advantage.

Please get in touch with the Trust if you think you may be adversely affected by this proposal.

Right for William Berington and successors in title to take stone

Background

S 56 (4) 1924 Act provides that William Berington and his successors are entitled to take stone for roads from certain quarries.

Key issues

The Trust would like to repeal that section. Exercise of the right now requires planning permission.

The Trust will consult the Little Malvern Estate.

Hon Isabella Caroline Somerset

Background

S 22 1884 Act appears to be personal to Hon Isabella Caroline Somerset.

Key issues

If the Trust understanding of this section is correct, it can be repealed as it is no longer applicable.

Please get in touch with the Trust if you believe the interpretation that these rights were personal is incorrect.

Charles Frederick Price

Background

S 57 1924 Act provides that the Trust were not entitled to acquire the land of Charles Frederick Price other than by agreement and that the Acts did not apply to his land.

Lady Emily Foley

Background

S 20(3) and (4) 1884 Act provides exceptions from the Acts for Lady Emily Foley and her successors in title.

Sir Henry Foley Grey Baronet

Background

S 8 1909 Act provides that the Trust's byelaws and powers shall not apply to the land of Sir Henry Foley Grey Baronet or of his successors in title in the manor or parish of Great Malvern or any estate interest or property within the said manor or parish of the said Sir Henry Foley Grey or of his successors in title or of his or their lessees tenants or grantees or of any person or persons claiming through or under him or them respectively.

Benjamin Bright

Background

S 23 1884 Act provides a protection for certain land belonging to Benjamin Bright.

Stephen Ballard

Background

S 21 1884 Act provides certain rights for the benefit of Stephen Ballard.

In relation to Messrs Price, Bright, Ballard, Lady Foley and Sir Henry Foley Grey:

Key issues

The Trust believes it has acquired the land in question by purchase, and would therefore propose to repeal and not reenact these sections.

Please get in touch with the Trust if you think you may be successor in title to any of the above and adversely affected by the proposal.

Disqualification of Judges

Background

S 51 1924 Act says a judge or justice is not disqualified from acting by reason of being liable to pay the levy.

Key issues

This section is no longer required. Modern provisions relating to judicial conflicts of interest will apply.

Rights which will be unaltered - British Camp Hotel

Background

S 16 1930 Act provides a protection for Edward Albert Berry or the owner for the time being of the British Camp Hotel.



British Camp Hotel, now Malvern Hills Hotel (1928)

Key issues

We understand that the British Camp Hotel is now called the Malvern Hills Hotel and we would propose to restate the rights in modern language and referencing its current name.

If you have any background knowledge of the history of British Camp Hotel and whether and when it became the property now called Malvern Hills Hotel please get in touch.

32. Existing manorial rights

Background

S 26 1884 Act says that the Act will not affect the rights of any Lord of the Manors in relation to land (other than the land set out in the Third Schedule to the Act) placed under the Trust's jurisdiction. The clause goes on to say that any Lord of the Manor can agree with the Trust that lands can be made subject to the provisions of the Act. This requires the consent of the Land Commissioners.

The Trust believes that it has now acquired the manorial rights to most of the land referred to.

It is difficult to see why the approval of a third party should be required when a rights holder and the Trust reach an agreement. It does not appear that the Land Commissioners still exist in England so the requirement for their approval should be removed.

The Trust would like to clarify the position and would invite anyone who believes they have manorial rights over land under the Trust's jurisdiction to get in touch.



Thirds Wood

33. Consent of Malvern Hills District Council

Background

All references to Malvern Urban District and Malvern Rural District Councils will need to be updated. See Local Authority names section 33.

S 11(1) and (2) 1930 Act relate to Belle Vue Island and Edith Walk. These areas no longer belong to the Trust.

S 11(4) 1930 Act relates to consents the Trust is required to obtain in relation to the exercise of its powers on land owned by the then urban district council.

S 11(5) is a protection for the urban district council's reservoirs, pipes or works in connection therewith.

Key issues

Belle Vue Island and Edith Walk were sold to the Council and so the provisions are no longer applicable and should be repealed.

The substance of s 11(3) will be retained (to offer what is now Malvern Hills District Council (MHDC) "first refusal" should the Trust wish to sell St Ann's Well).

The provision in s 11(4) requiring the Council's consent to undertake certain works on land owned by the Council is no longer applicable as the Trust no longer has any land under its jurisdiction which is owned by the District Council.

Subsection (5) protects the reservoirs, waterworks and pipes of MHDC. The Trust believes that these now belong entirely to Severn Trent Water (STW) and the clause is no longer applicable. STW has its own statutory protections.

The Trust will contact Malvern Hills District Council to discuss these proposed changes.

34. Changes to the names of Local Authorities

Why we need to change some of the references to local authorities in the Acts.

Background

There are many provisions in the Acts which refer to the Local Authorities in existence at the time when the particular Act was passed. Consequently most of the statutory references are out of date. The references relate primarily to appointment of trustees, but also feature in other sections.

The references need to be updated so that they reflect the current names.

The Local Government Act 1972 ("1972 Act") created a new district of Malvern Hills which took in Malvern Urban District and Upton on Severn Rural District.

The references to the parishes of Guarlford, Mathon and Colwall remain correct.

The Acts refer to the County Councils of Worcestershire and Herefordshire. The reference to Worcestershire County Council remains correct but the reference to Herefordshire County Council needs to be changed to Herefordshire Council (which is now a unitary authority).

35. Name of the organisation

Background

Under the current Acts, the name of the organisation is the Malvern Hills Conservators.

The Trust “rebranded” in April 2017. Although a name change had not originally been planned, it became apparent from market research at the time that the name “conservators” was one which many of the public found difficult to understand, rooted as it is in the 19th century when many of the conservator bodies were set up to manage areas of common under the Commons Act 1876. The word “Trust” had a more immediate resonance for many people and conveyed more obviously the status of the organisation as a charity caring for the Malvern Hills.

The name change also aligned the organisation with similar charities including the National Trust, Wildlife Trust, Woodland Trust, Wildfowl and Wetlands Trust which have similar charitable objectives to conserve the natural environment for people and wildlife. The Trust had previously found itself regularly referred to as Conservatives or Conservatories and many visitors to the Hills failed to understand that it was not part of the District Council.

The new name has generally been accepted and widely adopted (although it may take some time for the use of the word “conservators” to cease completely). It is to be noted that what was known as Cleeve Common Conservators (near Cheltenham) have also adopted the use of the word “trustees” instead of conservators and refer to themselves as the Cleeve Common Trust.

Question

Question 27 on the questionnaire

Do you agree that the Trust should change its statutory name to Malvern Hills Trust?

36. Malvern Abbey or Malvern Priory?

Background

The 1884 Act currently gives the Trust the powers to acquire certain land within a 9-mile radius of “Great Malvern Abbey”.

Key issues

We believe “Great Malvern Abbey” means the building currently known as Great Malvern Priory.

What changes are proposed?

The references in the Acts to Great Malvern Abbey should be changed to Great Malvern Priory. This proposal was well supported in the 2019 consultation.

Please tell us if you know something about the reference to Great Malvern Abbey in the 1884 Act.

37. Consolidation of the existing Acts

Transforming the governing legislation to make it more relevant and easier to follow.

Background

The five existing Acts contain complicated cross references, sections dealing with the same subject matter but in slightly different ways, and numerous sections that are now redundant. Sections containing related content are scattered through the 5 Acts, and this makes them very difficult to read and follow.

When the 1995 Act was debated in the House of Lords, the view was expressed that any further changes to the Acts should include consolidation of the existing legislation.

Restatement of the provisions of the Acts which remain relevant in a Bill would make the legislation much easier to navigate, particularly by making sure related subject matter is together in one place. The Trust's view is that it is self-evident that this should be done. The 5 Acts are already difficult to navigate and to end up with a 6th piece of legislation and yet more repeals will make matters worse.

Any material changes that are planned are outlined in this document and the final draft of the Bill will be published at an early stage in the Parliamentary process.

38. Power to make future amendments

Background

The law only permits a charity governed by statute to amend its Acts by Private Act or by a s73 Charities Act 2011 Scheme. Making changes through either of these routes is expensive and not an exercise the Trust would wish to repeat. The world changes and in the future different considerations may arise which cannot be presently be anticipated.

What changes are proposed?

It is proposed to incorporate a provision to allow some changes to administrative provisions to be made with the consent of the Charity Commission. This would be a quicker, less costly and simpler process. A similar provision has been included in the Charities (National Trust) Order 2005 & the RSPCA has a power to make quite extensive changes to its governance. The Charity Commission would require a public consultation to be carried out for all but the most trivial of changes.

This power will NOT cover the Trust's main powers and duties but only administrative arrangements.

The sort of provisions which might be covered by such a power are:

- Administration of the Trust
- Trustee duties and responsibilities
- Decision-making by board of trustees
- Decisions outside meetings
- Written resolutions
- Power to delegate to committees
- Power to delegate day to day management powers to Chief Executive Officer and others
- Delegation of management of investments

If you have any comments on this please use the free text box marked question 28 on the questionnaire.

39. The Land Clauses Consolidation Acts

Background

Section 3 (1) MHA 1924 incorporates the provisions of the Lands Clauses Acts - Lands Clauses Consolidation Act 1845 and the Lands Clauses Consolidation Acts Amendment Act 1860 into the 1924 Act.

The Land Clauses Acts were incorporated with the 1924 Act only because the 1924 Act contained powers of compulsory acquisition which are long since spent. Therefore, the intention is that section 3(1) will be repealed.

Please contact the Trust if you have a view on whether the application of the provisions in relation to the Land Clauses Consolidation Acts is still appropriate.



View from Black Hill

40. No significant change

Background

A large number of the provisions in the 5 existing Acts will not be materially changed, although the wording may be updated.

Public access

The right of access will not change.

Land holding

Jurisdiction land

There will be no change. The Trust's jurisdiction over the Malvern Hills originated from the 1884 Act as amended by the 1924 Act. At that time, the land was in private hands and over the years the Trust has acquired the freehold interest or Lordship of the Manor of more than 75 % of the land placed under its jurisdiction by the Acts. However, some of the land under the Trust's jurisdiction remains in private hands (significant parts belonging to Severn Trent, Little Malvern Estate and Eastnor Estate).

Acquired land

There will be no change to the power to acquire other public access land. Under s 29 1884 Act the Trust has a power to acquire land within a 9 mile radius of Great Malvern Abbey ([see section 36](#)).

Power to make land subject to the Acts by agreement

Currently the Trust can agree with a landowner within 9 miles of Great Malvern Abbey ([see section 36](#)) that common land can be made subject to the Acts (s 31 MHA 1884). At the moment this requires the consent of the Land Commissioners and only applies to common land. There seems no reason not to extend this to any land nor is it obvious why a third party's consent should be required to a consensual arrangement. The Land Commissioners no longer exist.

Power to adjust boundaries

S 9 MHA 1930. This is a power to sell or exchange land up to ¼ of an acre. Other than updating the wording and changing one third of an acre to 0.12ha this provision will be unchanged and it is proposed that the consent of the Secretary of State should still be required.

Disposal of land

S 6 MHA 1995 allows the Trust to dispose of land within five years of purchase. The wording will be updated but there will be no material change.

Body Corporate

The structure of the Trust will remain as before:

- i. the incorporated body, Malvern Hills Trust is the charity;
- ii. the statutory powers and functions as set out in the Act are exercised by the incorporated body, and
- iii. the land acquired by the Trust pursuant to its statutory powers is held beneficially by the Trust for its statutory purposes.

The trustees

As currently, the trustees are responsible for the general control and management of the administration of the Trust in relation to which they may exercise all the powers conferred on them by the Acts or by law.

Limited liability of trustees

Ss 60 – 62 CCA confer limited liability on the trustees. This section would not cover fraud, failing to act in good faith or acting outside the scope of the Trust's powers (*ultra vires*). This provision will be restated in modern language.

Limited liability of officers

Background

This is currently covered in s 52 MHA 1925 and Public Health Act 1875. The provision will be restated in the Bill in modern language to ensure that those carrying out their duties on behalf of the Trust will be indemnified as long as they are acting in good faith.

St Ann's Well

It is not proposed to change the substance of s 3 1995 Act (which covers the rebuilding and subsequent use of St Ann's Well) or s 11(3) MHA 1930 (which contains provisions to permit the sale of St Ann's Well).

The arbitration clause will be updated.

Preservation of order

The power in s 12 1884 Act to prevent nuisance and preserve order will be extended to all land under the Trust's ownership and jurisdiction.

If you have any comments on this section please set them out in the free text box marked question 28 on the questionnaire.

41. Other repeals and changes

New ways for horse riding

Ss 17 & 18 1995 Act

Section 18 has never been used. There is no realistic prospect of the Trust spending its resources on creating ways and facilities solely for riding and no practical way of making a charge for using them, given that the Malvern Hills are open for use of horse riders.

This proposal received significant support in the 2019 consultation but if you have any comments or suggestions please use the text box at the end of the questionnaire.

Maintenance of Jubilee Drive

S 5 1909 Act requires the Trust to maintain Jubilee Drive. This has since become public highway, and this has superseded the purpose of the section.

Equality Act

The Equality Act 2010 (the “Equality Act”) protects people in respect of particular characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation (these are known as ‘protected characteristics’).



Disabled Ramblers, Worcestershire Beacon

The Trust is committed to appropriate compliance with the Equality Act and to furthering its spirit as well as the letter of the law. Comments are welcomed to ensure that the proposed changes:

- Do not directly discriminate against those with protected characteristics;
- Do not indirectly discriminate against those with protected characteristics;
- Pay due regard to the need to:
 - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

These factors have been kept in mind during the planning of these initial proposals.

Question

Question 29 on the questionnaire

If you think that any of the proposals in the consultation document might conflict with the objectives of the Equality Act please set out details so that the Trust, can consider the issues carefully against relevant law and statutory guidance.

Unintended consequences

Whilst the Trust has gone to considerable effort to formulate the proposals for the changes, there is always the possibility of unintended consequences which have not been recognised. You are invited to contact the Trust if your observations cannot be easily accommodated on the questionnaire.

Question

Question 31 on the questionnaire

If you consider there may be unintended consequence arising from any of the Trust's proposals please identify how they may arise, their potential impact and how they might be appropriately mitigated.

Other issues

The Trust has highlighted key points where comments are invited. However, consultees are invited to bring to the Trust's attention other issues which might be pertinent to the changes proposed.



British Camp by hot air balloon





Thank you for taking part in our public consultation, your views are very important to us. If you have any comments on the proposals in this scheme, please complete the questionnaire [here](#).

If you require a paper copy of the questionnaire, alternative formats of the document or other help to take part, please contact 01684 892002.

We're also running a series of drop-in events to help you find out more about the proposals and the background behind them. Dates and locations for these events can be found [here](#).

The consultation opens on 22 May 2024. The deadline for paper responses is 17 July 2024 and the deadline for electronic responses is 22 July 2024.



Malvern Hills Trust