

# Malvern Hills Bill [HL]

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[AS INTRODUCED]

## EXPLANATORY MEMORANDUM

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

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

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

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

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

## PART 1

### INTRODUCTORY

*Clause 1* sets out the short title of the Bill.

*Clause 2* deals with commencement.

*Clause 3* defines certain expressions used in the Bill.

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

The Malvern Hills includes the “existing Malvern Hills” which in turn is defined in *subsection (3)* by reference to land which is currently under the jurisdiction of the Trust under the Malvern Hills Acts. The existing Malvern Hills is shown for the purposes of illustration on the map deposited with the Bill.

## PART 2

### THE MALVERN HILLS TRUST

#### *Change of name, continuity of functions and objects*

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

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

*Clause 7* provides that the Trust must make rules about the payment of benefits to trustees, interests of trustees, the management of conflicts of interest and the administration or management arrangements of the Trust. It also allows the Trust to make regulations about those matters, including standing orders. *Subsections (2) and (3)* introduce *Schedule 1* with *subsection (2)* saying that the rules must include provision about the matters listed in Part 1 of that Schedule. *Subsections (5) to (8)* make provision about the procedure to be followed when making and amending rules and regulations. *Subsection (12)* introduces *Schedule 2*, which applies certain provisions of Part VA of and Schedule 12A to the Local Government Act 1972 (which includes provision about public access to certain meetings and documents) to the Trust.

#### *Constitution*

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

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

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

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

*Clause 9* provides, by *subsection (1)* that every trustee is to be appointed or elected for a term of four years, subject to exceptions for casual vacancies and the first trustees appointed under the new constitution. *Subsections (2) to (4)* provide that appointed and elected trustees are eligible for reappointment or re-election unless they have already held office for two terms.

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

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

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

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

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

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

### *Appointed Trustees*

*Clauses 14 to 17* are about appointed trustees.

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

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

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

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

*Clause 17* relates to casual vacancies of appointed trustees arising as a result of, for example, death, resignation or disqualification. *Subsection (1)* provides that where a casual vacancy occurs in respect of an appointed trustee, the Trust must appoint another person to fill the vacancy. *Subsection (2)* provides that a Trustee appointed to fill a casual vacancy is to hold office for the remainder of the term of the trustee who they replaced. *Subsection (3)* enables the Trust to leave a post unfilled where the casual vacancy occurs less than 6 months before the end of the trustee’s normal term.

### *Elected Trustees*

Clauses 18 to 26 are about elected trustees.

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

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

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

*Clauses 21 and 22* relate to casual vacancies of appointed trustees arising as a result of, for example, death, resignation or disqualification.

*Clause 21* provides that where there are no other existing vacancies in the office of an elected trustee (Trustee A), a vacancy must be filled by the appointment of an interim appointed trustee, unless the vacancy occurs less than nine months before Trustee A's term of office would have expired, in which case the office may be left unfilled. An interim appointed trustee remains in office until an election is held to replace them, which could either be when the next scheduled ordinary elections take place or where an election is required because a second casual vacancy arises (see *clause 22*)).

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

*Clause 23* makes provision about who is entitled to vote at a trustee election. It provides that a person is entitled to vote as an elector in an election of a trustee if they would be entitled to vote as an elector at a local government election in the Trust's electoral area. The Trust's electoral area is defined in *subsection (3)* by reference to certain parishes, namely Colwall, Guarlford, Mathon, Malvern Town, Malvern Wells and West Malvern. This mirrors the current extent of the area within which people can vote for an elected trustee. *Subsections (4) and (5)* make provision about what happens if a parish is renamed or abolished.

#### *Elected trustees: holding of elections*

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

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

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

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

#### *Interests of trustees*

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

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

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

*Clause 31*, by subsection (1), prevents trustees or Trust employees from being sued as individuals where they are lawfully exercising any of the powers exercisable by the Trust, including when executing legal instruments on the Trust's behalf. *Subsection (3)* provides that trustees and Trust employees are indemnified out of the property and income of the Trust in respect of all claims made against them in the exercise of their functions. *Subsection (5)* provides that trustees and Trust employees are not to be liable for losses to the Trust. There are restrictions on each of the protections and indemnities described above, which reflect legislation relating to company law, including not extending to any claim arising from wilful fraud, wrongdoing or wrongful omission.

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

## PART 3

### FINANCE

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

the Trust issues an annual levy to Malvern Hills District Council and Herefordshire Council (“the Councils”).

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

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

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

*Clause 34* makes provision for the Trust’s use of capital money and income. *Subsection (1)* enables the Trust to apply capital money received from the Trust’s disposal of land or other interests for the repayment of the principal of any amount borrowed or for any purpose for which capital money may be properly applied. *Subsection (2)* provides that any sums received by the Trust from the sale, letting, grant or other disposal of land or interests in land which are not capital money must be treated as income. *Subsection (3)* makes clear that income must be applied by the Trust in furthering the objects.

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

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

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

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

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

## PART 4

### PUBLIC ACCESS AND MANAGEMENT OF THE MALVERN HILLS

#### *Public access and duty to keep unenclosed*

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

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

*Subsection (3) of clause 38* provides that the Trust owes no duty to a person exercising their rights of access in respect of risks resulting from natural features of the landscape, or risks of injury resulting from improper use of gates or stiles. This brings the Malvern Hills into line with other areas over which the public have a right of access, including access land under section 2(1) of the Countryside and Rights of Way Act 2000. *Subsection (5)* makes clear that this exclusion does not prevent the Trust from owing a duty in relation to risks which the Trust intentionally creates or recklessly causes.

*Subsection (6)* makes provision for the application of section 1 of the Occupiers' Liability Act 1984 to any occupier of premises in the Malvern Hills (including the Trust) and the duties which they may owe to a person exercising their rights of access under *clause 39* (public access to the Malvern Hills). It provides that, when determining the extent to which a duty is owed, regard should be had to specified

factors including the need to avoid placing an undue burden on occupiers, the importance of maintaining the character of the Malvern Hills, and any code of conduct issued under section 20 of the Countryside and Rights of Way Act 2000.

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

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

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

#### *Regulation and management of the Malvern Hills: general*

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

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

#### *Access to and fencing, etc of the Malvern Hills*

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

*Subsection (3)* enables the Trust to fence or enclose land for some of the reasons specified in *subsection (2)*, for as long as appears necessary to the Trust. *Subsection (4)* enables the Trust to use the powers of *subsection (1)* to regulate or prohibit access to, over or along footpaths or bridleways for the prevention of fire or prevention of accidents and *subsection (5)* provides that when exercising powers for some of

the reasons under *subsection (2)* the Trust must provide a gate or other appropriate means of access at the point where the fence is crossed by the footpath or bridleway. *Subsection (8)* makes provision about the content of notices under *subsection (1)*.

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

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

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

*Subsection (4) of clause 48* requires the Trust to provide gates or other appropriate means of access at points where footpaths, roads or bridleways cross any fence or enclosure provided under *subsection (1)* and at other places which the Trust considers appropriate to ensure public access to the Malvern Hills is maintained. By applying provisions of the Highways Act 1980, *subsection (5)* enables the highway authority to impose conditions on the provision of gates and other means of access which cross footpaths and bridleways and *subsection (6)* requires the Trust to have regard to the needs of those who are entitled to gain access between the areas crossed by the fence, including those on horseback and people with disabilities. *Subsections (7), (8) and (9)* make special provision for where cattle-grids are proposed to be installed in the highway and introduce *Schedule 3* which is about the application of highways legislation to the installation of cattle-grids.

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

The powers to fence under *clause 49* cannot be exercised where doing so would prohibit the exercise of rights under an easement, and the Trust must provide gates or other appropriate means of access at points where footpaths or bridleways cross any fence or enclosure provided under *subsection (1)* and at other places which the Trust considers appropriate to ensure public access to the Malvern Hills is maintained. *Subsection (3)* provides that where common land is fenced for longer than 42 days, the power to fence

the same land cannot be exercised again for a period of six months, unless it is necessary for animal health or if the area involved is 1 hectare or smaller. *Subsection (6)* requires the Trust to have regard to the needs of those who would otherwise be able to gain access but for the fence or enclosure, including those on horseback and people with disabilities.

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

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

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

#### *Management of the Malvern Hills*

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

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

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

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

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

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

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

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

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

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

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

*Clause 63* makes new provision for the Trust to grant licences for the use of the Malvern Hills for purposes which would otherwise be in breach of the Trust's byelaws. Activities that could be licensed include the use of the Hills in the course of a business or for organised activities. The clause says that a fee may be charged for a licence and that any licence granted may be subject to terms and conditions as the Trust sees fit.

#### *Removal and disposal of unauthorised articles*

*Clause 64* enables the Trust to remove and dispose of objects left in the Malvern Hills without its permission or without lawful authority. *Subsection (1)* contains the power of removal. *Subsection (2)*

requires that a person who is present and appearing to be in control of the object is given reasonable opportunity to remove it before the Trust does so. *Subsection (3)* imposes a duty on the Trust to store an object it has removed, unless it appears to have been abandoned or to be valueless, or it cannot reasonably be stored. *Subsection (4)* gives the owner of an object stored by the Trust fourteen days to claim it and pay the Trust's expenses, and otherwise enables the Trust to dispose of a removed object.

## PART 5

### BYELAWS

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

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

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

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

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

*Clause 67* provides that byelaws made by the Trust under *clause 66* may provide that persons contravening the byelaws are liable to a fine not exceeding level 2 on the standard scale (currently £500) and, in the

case of a continuing offence, a daily fine up to ten percent of the amount which is equivalent to that level.

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

*Clause 69* empowers authorised officers of the Trust to require people to provide information for the purposes of enforcing the Trust's byelaws. *Subsection (1)* requires persons who an enforcement officer suspects has committed an offence against a byelaw to give their name and address to the officer on the officer's request. *Subsection (2)* provides that a person who, without reasonable excuse, fails to provide the information or provides inaccurate information commits an offence and is liable to summary conviction to a fine not exceeding level 3 on the standard scale.

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

*Clause 70* enables the Trust to seize certain types of animal which are on the Malvern Hills in contravention of any byelaw made by the Trust. *Subsection (2)* requires the Trust to notify the police and, if their identify is known or can be reasonably ascertained, the owner of the impounded animal. *Clause 70* is based on section 19 of the 1995 Act.

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

## PART 6

### LAND

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

Land added by way of agreement under *subsection (2) of clause 71* may only be common land or waste land, and where land is added by such an agreement, the Secretary of State may make an order which has the effect of adding the parish within which the land is located to the Trust's electoral area and requiring the inhabitants of that parish to pay the levy under *clause 34* (the levy).

*Clause 72* enables the Trust to sell or exchange by agreement any part of the Malvern Hills not exceeding 0.12 hectares. This power is subject to the Trust obtaining consent from the Secretary of State and may only be used for the purposes of adjusting, defining or improving the boundaries of the Malvern Hills. *Subsection (2)* places restrictions on the Secretary of State's decision to give consent. *Clause 72* is based on section 9 of the 1924 Act.

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

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

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

*Clause 74* empowers the Trust to grant leases and licences over land in the Malvern Hills. The granting of leases and licences over ancillary land is dealt with in *clause 75* (ancillary land). *Subsections (1) and*

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

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

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

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

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

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

The power is subject to *subsection (2)*, which requires that a term of any grant under *subsection (1)* is that the surface of the Malvern Hills must be restored if it is disturbed. *Subsection (6)* requires the Trust to not exercise their powers under the clause for the provision of any service, other than a temporary service, overground unless certain conditions are met. Those conditions are that in the opinion of the trustees it is not reasonably practicable for the service to be other than overground and that the provision of the service overground is reasonable, that the service is to be provided to a domestic property which was in existence on 28 June 1995 and that the trustees has consulted the body responsible for statutory

national landscapes (AONB). *Subsections (3) to (5)* enable the Trust to exercise the powers of *clause 79* on land which it does not own, subject to safeguards.

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

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

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

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

## PART 7

### GENERAL AND MISCELLANEOUS POWERS

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

*Subsection (2) of clause 83* provides that the general power cannot be used where the Trust can exercise another power in the Bill or another enactment to do the thing in question. *Subsection (3)* sets out specific things which the Trust cannot do under the general power. The power cannot be used to acquire or

dispose of land, borrow money or erect any building, fencing or other type of enclosure on the Malvern Hills. The Trust's powers in respect of those activities are set out in other clauses.

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

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

*Clause 85* enables the Trust to prosecute, defend and appear in legal proceedings or public inquiries in its own name.

## PART 8

### FINAL PROVISIONS

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

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

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

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

*Clause 90* provides protection for Crown interests.

*Clause 91* provides protection for Network Rail Infrastructure Limited.

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

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

*Clause 94* provides general protection for rights of commoners.

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

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

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

## SCHEDULES

### *Schedule 1*

*Schedule 1* is about administrative provisions. *Part 1* sets out matters which must be included in rules and regulations made under *clause 7*. Those matters include benefits to and interests of trustees, the holding, calling, chairing and quorum of meetings, decision making, the keeping of records, committees and advisory panels, delegation of functions and financial controls.

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

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

*Part 4 of Schedule 1* enables regulations to lay down procedures for the sealing, signature or execution of documents on behalf of the Trust.

### *Schedule 2*

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

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

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

### *Schedule 3*

*Schedule 3* lists provisions of the Highways Act 1980 which would apply, with modifications, in the case where the Trust were to install or maintain a cattle-grids in a highway under *clause 48*. They are

sections 82 to 85, 87 and 90 of, and Schedule 10 to that Act. They are about the provision, maintenance and removal of cattle-grids, agreements with highway authorities and landowners, protection for bridges and railways, and the procedure to be followed when determining whether it is expedient to install a cattle-grid.

#### *Schedule 4*

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

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

#### *Schedule 5*

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

#### *Schedule 6*

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

#### *Schedule 7*

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

#### EUROPEAN CONVENTION ON HUMAN RIGHTS

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



# Malvern Hills Bill [HL]

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[AS INTRODUCED]

## CONTENTS

### PART 1

#### INTRODUCTORY

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 The Malvern Hills

### PART 2

#### THE MALVERN HILLS TRUST

##### *Change of name, continuity of functions and objects*

- 5 The Malvern Hills Trust
- 6 The objects of the Trust
- 7 Administration of the Trust

##### *Constitution*

- 8 Constitution of Trust and status of trustees as charity trustees
- 9 Term of office of trustees
- 10 Transitional arrangements and co-opted trustees
- 11 Declaration to be made by trustees
- 12 Disqualification and resignation of trustees
- 13 Disciplinary procedures

##### *Appointed Trustees*

- 14 Selection of appointed trustees and interim appointed trustees
- 15 Nomination Committee
- 16 Appointment and terms of office of first appointed trustees
- 17 Casual vacancies in office of appointed trustees

##### *Elected Trustees*

- 18 Eligibility to be elected

- 19 Election and terms of office of first elected trustees
- 20 Ordinary elections
- 21 Casual vacancies in office of elected trustee where there are no other such vacancies
- 22 Casual vacancies in office of elected trustee where there is another vacancy etc
- 23 Persons entitled to vote

*Elected trustees: holding of elections*

- 24 Method of and rules about conduct of elections
- 25 Returning officer
- 26 Legal proceedings relating to elections of trustees
- 27 Register of electors

*Interests of trustees*

- 28 Benefits to trustees
- 29 Interests of trustees

*Insurance and limitation of liability*

- 30 Indemnity insurance for trustees and returning officer
- 31 Limitation of liability of and indemnity for trustees or employees

*Notices*

- 32 Giving of notices under Part 2

**PART 3**

FINANCE

- 33 The levy
- 34 Provision for capital and income
- 35 Power to borrow and mortgage land
- 36 Contributions by Worcestershire County Council and Herefordshire Council
- 37 Report and annual accounts

**PART 4**

PUBLIC ACCESS AND MANAGEMENT OF MALVERN HILLS

*Public access and duty to keep unenclosed, etc*

- 38 Public access to the Malvern Hills
- 39 Occupiers' Liability, etc
- 40 Duty to keep the Malvern Hills unenclosed
- 41 Protection of the Malvern Hills
- 42 Enclosure, encroachment and building: enforcement

*Regulation and management of the Malvern Hills: general*

- 43 General power to regulate and manage Hills
- 44 Rights of common

*Access to and fencing, etc of the Malvern Hills*

- 45 Regulation and prohibition of access to Malvern Hills
- 46 Regulation and prohibition of access to Malvern Hills: supplementary
- 47 Fencing dangerous places
- 48 Fencing and other means of securing common land
- 49 Fencing: further powers
- 50 Regulation of horse riding
- 51 Prevention of unauthorised access by vehicles
- 52 Application of advertisement regulations to display of notices under this Part

*Management of the Malvern Hills*

- 53 Nuisance and public order
- 54 Paths and ways
- 55 Access roads
- 56 Trees and shrubs
- 57 Drainage and turf
- 58 Parking places
- 59 Sheds, seats, shelters and watering points
- 60 Lavatories
- 61 Games, sports and exhibitions, etc
- 62 Licensing of stalls
- 63 Licensing of other activities

*Removal and disposal of unauthorised articles*

- 64 Removal and disposal of unauthorised articles

**PART 5**

BYELAWS

- 65 Power to make byelaws
- 66 Procedure for byelaws
- 67 Penalty for contravening byelaws
- 68 Fixed penalty notices
- 69 Further provision as to enforcement of byelaws
- 70 Byelaws: seizure of stray animals

**PART 6**

LAND

- 71 Acquisition of land, bequests and agreements
- 72 Power to adjust boundaries of Malvern Hills

- 73 Disposal of land
- 74 Leases and licences of land
- 75 Ancillary land
- 76 Maintenance of buildings and structures
- 77 St Ann's Well
- 78 Grant of easements etc. for utilities
- 79 Notice of quarrying
- 80 Power of highway authority to get materials
- 81 Power for Trust to use materials
- 82 Saving for town and country planning

## PART 7

### GENERAL AND MISCELLANEOUS PROVISIONS

- 83 General power of the Trust
- 84 Miscellaneous powers of the Trust
- 85 Power to prosecute, defend and appear in legal proceedings

## PART 8

### FINAL PROVISIONS

- 86 Local inquiries
- 87 Repeals
- 88 Consequential amendments
- 89 Transitional provisions and savings
- 90 Protection of Crown interests
- 91 Protection of Network Rail Infrastructure Limited
- 92 Protection of National Grid Electricity Distribution (West Midlands) PLC
- 93 Protection of Severn Trent Water Limited
- 94 Protection of rights of commoners
- 95 Protection of lords of the manor
- 96 Reservations relating to certain land described in 1884 Act
- 97 Protection of owner of Little Malvern Court Estate

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### Schedule 1 – Administrative provisions

Part 1 – Matters which must be included in rules and regulations

Part 2 – Regulations

Part 3 – Method of holding meetings

Part 4 – General

Schedule 2 – Application of enactments relating to public meetings, inspection of documents etc.

Schedule 3 – Application of Highways Act 1980 to cattle-grids provided by the Trust in highways

Schedule 4 – Miscellaneous powers of the trust

- Schedule 5 – Repeals and revocations
- Schedule 6 – Consequential amendments
- Schedule 7 – Transitional provisions and savings



[AS INTRODUCED]

A

# B I L L

TO

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

W HEREAS –

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

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

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

May it therefore please your Majesty that it may be enacted, and be it enacted, by the King’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—
20

## PART 1

### INTRODUCTORY 25

#### 1 Short title

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

#### 2 Commencement

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

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

### 3 Interpretation

(1) In this Act—

- “the 1884 Act” means the Malvern Hills Act 1884,
- “the 1930 Act” means the Malvern Hills Act 1930, 10
- “the 1995 Act” means the Malvern Hills Act 1995,
- “the annual meeting” means the first ordinary meeting of the trustees held after—
  - (a) the new constitution date, and
  - (b) each anniversary of the new constitution date, 15
- “authorised officer”, in relation to the Trust, means any employee of the Trust who is authorised in writing by the Trust to act in relation to the relevant provision of this Act,
- “benefit”, as regards a trustee or a connected person means any payment of money or the provision or other application of any other direct or indirect benefit in money or money's worth, 20
- “the Board” means the board of trustees of the Trust,
- “bridleway” has the same meaning as in section 329 of the Highways Act 1980,
- “business day” means a day other than Saturday or Sunday, which is not a bank holiday under section 1 of the Banking and Financial Dealings Act 1971, 25
- “the chair of the Trust” means the person elected to chair meetings of the Trust,
- “the chief executive” means the Chief Executive Officer of the Trust, or if there is no such person with that title, the employee of the Trust with the most senior management responsibilities, 30
- the “code of conduct for trustees” means the code of conduct for trustees approved and maintained by the trustees,
- “conflict of interest”, as regards a trustee, means where an interest of a trustee (or any person connected to a trustee) conflicts, or possibly may conflict, with the interests of the Trust and its objects, including in particular the exploitation of any property, information or opportunity (and it is immaterial whether the Trust could take advantage of the property, information or opportunity), 35
- “connected person”, as regards a trustee, has the same meaning as it does for the purposes of sections 185 and 186 of the Charities Act 2011 (see section 188 of that Act) and any person who is a connected person in relation to any trustee is “connected” to them, 40

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|                                                                                                                                                                                                                                                                           |    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| “the Conservators” means the Malvern Hills Conservators as defined in the Act of 1930,                                                                                                                                                                                    |    |
| “the existing Malvern Hills” has the meaning given by section 4(3),                                                                                                                                                                                                       |    |
| “footpath” has the same meaning as in section 329 of the Highways Act 1980,                                                                                                                                                                                               | 5  |
| “horse” includes an ass, mule or hinny,                                                                                                                                                                                                                                   |    |
| “interest”, as regards a trustee, means any direct or indirect interest of a trustee (which includes any interest of any person connected to that trustee) in any matter, including any interest which arises or is otherwise attributable to –                           | 10 |
| (a) any benefit a trustee or connected person has or may have in such matter, and                                                                                                                                                                                         |    |
| (b) any duty or loyalty which the trustee or connected person owes or may owe to any person (within the meaning given by the Interpretation Act 1978) other than the Trust, including as a consequence of any office or membership held by a trustee or connected person, | 15 |
| “interim appointed trustee” means a trustee appointed under section 21(5),                                                                                                                                                                                                |    |
| “the Malvern Hills” has the meaning given in section 4,                                                                                                                                                                                                                   | 20 |
| “matter” as regards an interest, means any transaction, arrangement, situation or matter,                                                                                                                                                                                 |    |
| “the new constitution date” means the date fixed by the trustees under section 8(2),                                                                                                                                                                                      |    |
| “the objects” means the objects of the Trust, set out in section 6(1),                                                                                                                                                                                                    | 25 |
| “ordinary election” has the meaning given by section 20(3),                                                                                                                                                                                                               |    |
| an “ordinary resolution” of the trustees means a resolution passed by a majority of the trustees present and voting at the meeting at which the resolution is considered,                                                                                                 |    |
| “the repealed acts” means the Malvern Hills Acts 1884 to 1995, once they have been repealed by section 88,                                                                                                                                                                | 30 |
| “the returning officer” means the returning officer appointed under section 25,                                                                                                                                                                                           |    |
| “the rules of the Trust” means the rules of the trust made under section 7,                                                                                                                                                                                               | 35 |
| “the secretary to the Board” means the person employed by the Trust with that title, or such replacement title as the Board thinks fit,                                                                                                                                   |    |
| a “special resolution” of the trustees means a resolution passed by at least 75% of the trustees present and voting at the meeting at which the resolution is considered,                                                                                                 | 40 |
| “the Sport and Recreation Alliance” means the body of that name at the date on which this Act was passed or any successor,                                                                                                                                                |    |
| “the Trust” means the Malvern Hills Trust and references to the Trust include references to the Conservators where the context requires,                                                                                                                                  |    |
| “the trustees” means the persons appointed and elected as mentioned in section 8(1)(a) and (b) and includes any person appointed or elected                                                                                                                               | 45 |

as a trustee or interim appointed trustee under sections 10, 17, 21 or 22,

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

- (2) Any reference in this Act to a resolution of the trustees which does not specify whether the resolution is a special resolution or ordinary resolution is to be taken as being a reference to an ordinary resolution. 5

#### 4 The Malvern Hills

- (1) In this Act, “the Malvern Hills”, over which the Trust has management and control under this Act, means the existing Malvern Hills, together with any land which is part of the Malvern Hills by virtue of subsection (2) or by virtue of section 71(1), (2) or (4) and taking into account any change arising from the operation of section 72, section 73 or section 74. 10
- (2) Land acquired by the Trust under section 53 of the Commissioners Clauses Act 1847, section 9 of the 1995 Act or section 75 or with the sanction of an order of the Charity Commission is to be treated as part of the Malvern Hills if it is land to which the public have access by right or by permission of the Trust. 15
- (3) In this section, “the existing Malvern Hills” means the land which was, immediately before the date on which this Act is passed, under the jurisdiction, management or control of the Trust for the purposes of the repealed Acts, including— 20
- (a) the lands described in the first and third Schedules to the Malvern Hills Act 1884 and shown on the deposited map referred to in that Act,
  - (b) the area described in section 5 of the Malvern Hills Act 1924, including those lands, rights and interests described in the first, second and third Schedules to that Act and shown upon the deposited plans referred to in those schedules, and 25
  - (c) any other land or lands, properties, quarries, manorial rights or interests which by virtue of the operation of the repealed Acts or otherwise were under the jurisdiction of the Trust immediately before the date on which this Act is passed. 30
- (4) The existing Malvern Hills as at the date on which the Bill for this Act was deposited are shown for illustrative purposes on the deposited map.
- (5) In subsection (4), “the deposited map” means the map deposited with copies of the Bill in the office of the Clerk of the Parliaments and the Private Bill Office of the House of Commons. 35

**PART 2****THE MALVERN HILLS TRUST***Change of name, continuity of functions and objects***5 The Malvern Hills Trust**

- (1) The Malvern Hills Conservators are renamed the Malvern Hills Trust (in this Act referred to as “the Trust”). 5
- (2) The Trust is to continue to be a body corporate with a common seal and having power to hold and manage land.
- (3) Any reference in any enactment or other document to the Malvern Hills Conservators is from the date on which this section comes into force to be construed as a reference to the Trust. 10
- (4) The Trust is to exercise its functions in accordance with the provisions of this Act (and in accordance with the Malvern Hills Acts 1884 to 1995 so long as they remain in force).

**6 The objects of the Trust**

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- (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. 20
- (2) If in exercising their functions, it appears to the trustees that there is a conflict between the object specified in subsection (1)(a) and the object specified in subsection (1)(b), and the conflict cannot be resolved by the trustees, the trustees must attach greater weight to the object specified in subsection (1)(a). 25
- (3) Subsection (2) is subject to consideration by the trustees of the health and safety of persons.
- (4) In subsection (1), “unbuilt on” means unbuilt on except for –
  - (a) any buildings that existed at the date on which this Act is passed,
  - (b) any buildings which replace them (so long as they are on the site of, and are of a similar size and external character to, the existing building), and
  - (c) any buildings or structures which the Trust is empowered to construct, place or erect by virtue of this Act. 30

**7 Administration of the Trust**

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- (1) The trustees must make and may amend, revoke or replace rules and may make amend, revoke or replace regulations about –

- (a) the payment, transfer or application of income or property of the Trust by way of benefit to trustees and connected persons,
  - (b) interests of trustees and of connected persons, including the declaration of those interests,
  - (c) the management of conflicts of interest of trustees and connected persons, including the participation by trustees in discussions or decisions of the trustees and the receipt of information by trustees, 5
  - (d) the administration of and management arrangements of the Trust.
- (2) The rules must include provision about the matters mentioned in Part 1 of Schedule 1. 10
- (3) Part 2 of Schedule 1 makes provision about matters which may be included in regulations made under subsection (1), Part 3 of Schedule 1 makes provision about the method of holding meetings and Part 4 of Schedule 1 makes general provision about rules and regulations.
- (4) The trustees must not make rules or regulations which are inconsistent with anything in this Act, including the provisions of any enactments applied to the Trust by subsection (12). 15
- (5) Unless the Charity Commission otherwise agrees in writing in any particular case or type of case, the written agreement of the Charity Commission is required for the making, amendment, revocation and replacement of rules under subsection (1). 20
- (6) The powers of subsection (1) are exercisable by the passing of a special resolution at a meeting of the Trust of which not less than 15 clear business days' notice has been given.
- (7) A notice under subsection (1) must set out the terms of the proposed rule, regulation, amendment, revocation or replacement rule or regulation. 25
- (8) The Trust must—
  - (a) prepare a written memorandum of each amendment that it makes to the rules or regulations, which must be signed at the meeting at which the amendment is made by the person chairing the meeting, 30
  - (b) send to the Charity Commission a copy of the memorandum certified by a person authorised by the Trust to do so within three months of the date of the meeting, and
  - (c) retain a copy of the memorandum.
- (9) This section is without prejudice to the powers of the Charity Commission to settle a scheme under section 73 of the Charities Act 2011. 35
- (10) Any rules or regulations made under subsection (1) must be consistent with sections 185 to 188 of the Charities Act 2011.
- (11) It is not necessary in legal proceedings to prove that the person or persons who sealed, signed or executed any document in accordance with this section or rules or regulations made under this section was or were duly authorised 40

to do so, and such document is to be presumed to be duly signed, sealed or executed unless the contrary is proved.

- (12) The enactments specified in column 1 of Schedule 2 apply to the Trust in the manner specified in column 2 of that Schedule.
- (13) In this section –
- “regulations” includes standing orders and instructions,
- “the rules” means the rules made under subsection (1).

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### *Constitution*

## **8 Constitution of Trust and status of trustees as charity trustees**

- (1) Subject to subsection (5), section 10, section 11, section 21 and section 22, on and after the new constitution date the Trust is to have a board of trustees, comprised of – 10
- (a) six trustees appointed by the trustees, and
- (b) six trustees elected by the electors of the Trust’s electoral area, each of whom is to be elected by the electors of the whole of the Trust’s electoral area. 15
- (2) The new constitution date is to be fixed by ordinary resolution of the trustees, and it must be a date that is in the period of nine months beginning with the date on which this Act is passed.
- (3) The trustees are the charity trustees of the Trust and are the persons having the general control and management of the administration of the Trust as mentioned in section 177 of the Charities Act 2011. 20
- (4) Subject to subsection (5), the trustees may continue to act with their full powers as trustees and make decisions as trustees during any period when the number of trustees is below the total number required under subsection (1). 25
- (5) If the number of trustees during any period has fallen below six, the trustees may continue to act as trustees but only –
- (a) to appoint or make arrangements for the election of, other trustees, or 30
- (b) to make decisions as trustees which in their opinion are required to be made in order to avoid prejudice of a financial, commercial, reputational or legal nature to the interests of the Trust.
- (6) The trustees must select one or more of their number to act as a point of contact between the Trust and the inhabitants of any of the parishes comprised in the Trust’s electoral area (see section 23). 35
- (7) No trustee may be an employee or officer of the Trust.

## **9 Term of office of trustees**

- (1) Except as provided by sections 10, 16, 17, 21, and 22, every trustee is to be appointed or elected for four years.
- (2) Subject to subsections (3) and (4), upon ceasing to hold office, each appointed trustee and elected trustee is eligible for reappointment or re-election, as the case may be, unless they have already held office for two terms. 5
- (3) A trustee who has held office for two consecutive terms may not be appointed or elected as a trustee for a further term of office until the expiry of the period of one year beginning with the day after the date on which the second of the consecutive terms expired. 10
- (4) The following do not count for the purposes of calculating under subsection (2) and (3) the number of terms of office already held by a trustee –
  - (a) the first term of office of a trustee appointed or elected to fill a casual vacancy under section 17, 21 or 22, if that term is shorter than three years, 15
  - (b) a term of office of a trustee appointed or elected as one of the first trustees to be appointed or elected under section 8 if that term is shorter than three years (see sections 16 and 19).
- (5) Subject to the provisions of this Part of this Act, the term of office of a trustee – 20
  - (a) begins on the date of the relevant anniversary of the new constitution date (“the start date”),
  - (b) ends at the end of the day before the date of the fourth anniversary of the start date.
- (6) In subsection (5), the “relevant anniversary” is calculated by reference to section 16 in the case of an appointed trustee and section 19 in the case of an elected trustee. 25
- (7) Subsection (5) is subject to any provision of or made under this Act or any other enactment passed after this Act.

## **10 Transitional arrangements and co-opted trustees**

- (1) The terms of office of each of the existing trustees expire at the end of the day preceding the new constitution date, no matter what their term of office was when they were appointed or elected for that term. 30
- (2) This section applies if fewer than three of the existing trustees in total are appointed in accordance with section 16 or elected in accordance with section 19. 35
- (3) The existing trustees may, before the new constitution date, co-opt from their number no more than two trustees to serve, in addition to the trustees appointed in accordance with section 14, as co-opted trustees for a period of six months beginning on the new constitution date. 40

- (4) In this section, “the existing trustees” means the trustees in office between the date on which this Act is passed and the new constitution date.

## **11 Declaration to be made by trustees**

- (1) No appointment or election of a trustee takes effect until the prospective trustee has made a declaration in such form as the trustees may prescribe, and which may make provision about— 5
- (a) using reasonable care and skill to exercise the trustee’s functions solely and exclusively to advance the objects,
  - (b) complying with the code of conduct for trustees,
  - (c) complying with requirements as to disclosure of financial and other interests. 10
- (2) The trustees may cause a fresh appointment to be made or election to be held if the trustee in question fails to make that declaration within the period of seven days beginning with the day after the date on which their term of office would have commenced in accordance with the provisions of this Part. 15

## **12 Disqualification and resignation of trustees**

- (1) The trustees may by special resolution remove a trustee from office and declare the office of the trustee to be vacant if they are satisfied that the trustee—
- (a) is not eligible to be or has been disqualified from being a charity trustee, 20
  - (b) has, without the permission of the trustees, been absent from the meetings of the Trust for whichever is the longer of—
    - (i) a period during which three ordinary meetings of the trustees have been held, 25
    - (ii) for a period of six consecutive months, or
  - (c) is incapable due to physical or mental illness of discharging the functions of a trustee, or
  - (d) is otherwise unable or unwilling to discharge the functions of a trustee.
- (2) If subsection (3) applies, the trustees may request in writing the resignation of a trustee or, by special resolution, remove a trustee from office and declare the office of the trustee to be vacant and on receipt of the resignation or on such a resolution coming into effect, as the case may be, that office is to become vacant. 30
- (3) This subsection applies if the trustees are satisfied that— 35
- (a) a trustee has failed to comply, persistently or to a material extent, with the code of conduct for trustees,
  - (b) a trustee has acted in a manner which has seriously impeded or prejudiced the Trust or a trustee in the performance of its or their functions, 40

- (c) a trustee has acted in a manner which may bring the Trust into disrepute or which is otherwise inappropriate having regard to the functions of the Trust,
  - (d) a trustee is otherwise unfit to discharge adequately the functions of a trustee, or 5
  - (e) there is other good reason for a trustee to cease to be a trustee in the best interests of the Trust, taking into consideration its status as a charity.
- (4) Subject to subsection (5), a resolution under subsection (1) or (2) has immediate effect. 10
- (5) A resolution under subsection (1) or (2) must not be passed unless the trustee in question has –
  - (a) been given notice in writing that the resolution is to be considered, specifying the circumstances alleged to justify removal from office, and 15
  - (b) been afforded a reasonable opportunity of being heard by or of making written representations to the trustees.
- (6) A notice given under subsection (5)(a) must be given –
  - (a) at least 14 clear days before the meeting at which the resolution is to be considered, and 20
  - (b) in accordance with section 32.
- (7) A trustee may resign at any time by giving notice in writing to the chief executive.
- (8) This section is without prejudice to any enactment or rule of law relating to the disqualification of charity trustees or removal of charity trustees from office. 25

### 13 Disciplinary procedures

- (1) If section 12(3) applies, instead of the actions mentioned in 12(2), the trustees may impose one or more alternative requirements or sanctions in respect of the trustee in question. 30
- (2) The trustees may also impose one or more requirements or sanctions on a trustee if the trustees find that a trustee has breached the code of conduct for trustees.
- (3) Without prejudice to the generality of subsections (1) and (2), the requirements and sanctions that may be imposed include – 35
  - (a) a requirement to undergo training,
  - (b) a period of suspension from attending meetings,
  - (c) a formal reprimand.
- (4) A finding under subsection (2) may not be made unless the trustee in question has – 40

- (a) been given notice in writing that the matter that may give rise to the finding is to be considered, specifying the circumstances alleged to justify the imposition of a requirement or sanction, as the case may be, and
  - (b) been afforded a reasonable opportunity of being heard by or of making written representations to the trustees. 5
- (5) If a period of suspension is imposed under subsection (3)(b), the absence of the trustee in question does not count when considering whether the number of trustees during any period has fallen below six, for the purposes of section 8(5). 10
- (6) A notice given under subsection (4)(a) must be given—
  - (a) at least 14 clear days before the meeting at which the matter is to be considered, and
  - (b) in accordance with section 32.

*Appointed Trustees* 15

**14 Selection of appointed trustees and interim appointed trustees**

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

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

## 15 Nomination Committee

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

- 
- (7) An independent member may be appointed for any number of terms, each of no longer than four years, and for a cumulative period of no more than 8 years.
- (8) The chief executive (or other employee, as the case may be) is to be a member of the committee in an advisory capacity and may not vote in any decisions made by the committee. 5
- (9) If despite reasonable endeavours, the trustees reasonably conclude that they are unable to establish or maintain a committee under this section, then—
- (a) the requirement in section 14(3) does not apply in respect of an appointment, and 10
  - (b) any such appointment made is to be made by the trustees on a temporary basis.
- (10) If an appointment of a trustee (“a temporary trustee”) is made on a temporary basis in accordance with subsection (9)(b), and the committee is established or re-established more than six months before the end of the term which the temporary trustee would normally have served in accordance with section 9, 16, 17 or 21 (as the case may be) had the temporary trustee’s appointment not been made on a temporary basis— 15
- (a) the committee must be invited by the trustees to recommend a candidate to replace the temporary trustee, and 20
  - (b) the trustees must consider that recommendation and, if it decides to appoint the recommended candidate, do so for the remainder of the term in place of the temporary trustee.
- (11) The members of the committee must appoint one of their number (other than the chief executive, or other employee of the Trust) to be the chair of the committee and at any time may remove them from that position. 25
- (12) A member of the committee ceases to be a member if they—
- (a) resign by notice given in writing to the chair of the committee or, if they are the chair or there is no chair for the time being, to the chair of the trustees, or 30
  - (b) are removed by special resolution of the trustees passed at a meeting at which at least half of the trustees are present and eligible to vote.
- (13) A resolution under subsection (12)(b) must not be passed unless the member in question has—
- (a) been given notice in writing that the resolution is to be considered, specifying the circumstances alleged to justify removal from office, and 35
  - (b) been afforded a reasonable opportunity of being heard by or of making written representations to the trustees.
- (14) A notice given under subsection (13)(a) must be given— 40
- (a) at least 10 clear business days before the meeting at which the resolution is to be considered, and
  - (b) in accordance with section 32.

- (15) The trustees may make such arrangements as they think fit for the administration of the committee, including for –
- (a) notifying the committee of when vacancies are to occur or have occurred,
  - (b) notifying the committee of when it is expected to meet and by when recommendations for candidates are expected to be received, 5
  - (c) the payment of reasonable remuneration for and the expenses of independent members.
- (16) The trustees must issue and maintain terms of reference for the committee which must be complied with by the committee and may include provision about – 10
- (a) committee procedure, including quorum and decision making,
  - (b) a code of conduct for independent members and compliance with it,
  - (c) reasons which may be relied on for removal of members under subsection (12)(b). 15
- (17) The provisions of section 29(1) and (2) apply in respect of independent members as though references to trustees were references to the independent members.
- (18) In this section –
- “the committee” means the Nomination Committee established under subsection (1), 20
  - “independent member” means a member of the committee appointed under subsection (3)(b).

## **16 Appointment and terms of office of first appointed trustees**

- (1) The first appointments of trustees under section 8(1)(a) must be made by the trustees on, or as soon as reasonably practicable after the date on which this section comes into force, and the trustees so appointed are to hold office from the new constitution date. 25
- (2) Of the first trustees appointed under section 8(1)(a) –
- (a) three are to hold office from the new constitution date until the end of the day before the date of the first anniversary of the new constitution date, 30
  - (b) three are to hold office from the new constitution date until the end of the day before the date of the third anniversary of the new constitution date, 35
- as the trustees must specify when they make each of those appointments.

## **17 Casual vacancies in office of appointed trustees**

- (1) Subject to subsection (3), if a casual vacancy occurs in the office of a trustee appointed under section 8(1)(a), the trustees must appoint another person to fill the vacancy. 40

- (2) Subject to sections 11 and 12, a person appointed to fill a casual vacancy is to hold office during the remainder of the term for which the person they replace was appointed.
- (3) A casual vacancy occurring less than six months before the end of the vacating trustee's normal term of office may at the discretion of the trustees be left unfilled. 5

### *Elected Trustees*

## **18 Eligibility to be elected**

- (1) A person is eligible to stand for election as a trustee if on the date on which they are nominated for election in accordance with rules made under section 24— 10
  - (a) they are 18 years or older,
  - (b) they are eligible to be a charity trustee, and
  - (c) they meet the requirements of subsections (2) and (3).
- (2) The requirements of this subsection are— 15
  - (a) the person is listed in the register of local government electors and their address in the register is—
    - (i) in a parish or former parish area in which any part of the Malvern Hills is located, or
    - (ii) (if not included in sub-paragraph (i)) within one mile of the boundary of any parish or former parish area in which any part of the Malvern Hills is located, or 20
  - (b) the person's main place of work is in a parish or former parish area in which any part of the Malvern Hills is located.
- (3) The requirements of this subsection are that the person is nominated in writing in accordance with any rules made under section 24 by two people, each of whom is listed in the register of local government electors and whose address in the register is in the Trust's electoral area. 25
- (4) In the case of a dispute, the returning officer may in their absolute discretion determine whether a person meets the requirements of subsection (2). 30
- (5) A person may not stand for election as a trustee unless they have within the specified period made a declaration in the specified form of the particulars of their qualification to stand as a trustee.
- (6) A person is guilty of an offence if they— 35
  - (a) make a declaration under subsection (5) which they know to be false in a material particular, or
  - (b) recklessly make such a declaration which is false in a material particular.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 4 on the standard scale. 40

(8) In this section –

“former parish area” means an area which was a parish on the date on which this Act is passed but has since ceased to be a parish,

“parish” means a parish for which there is a parish council or a parish meeting,

5

“specified” means specified in rules made under section 24.

## 19 Election and terms of office of first elected trustees

(1) The first elections of the trustees elected under section 8(1)(b) must be held before the new constitution date and the trustees so elected are to hold office from the new constitution date.

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(2) Of the first trustees elected under subsection (1) –

(a) three are to hold office from the new constitution date until the end of the day before the date of the second anniversary of the new constitution date,

(b) three are to hold office from the new constitution date until the end of the day before the date of the fourth anniversary of the new constitution date,

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as the trustees must specify when making the arrangements for those elections.

(3) The date and time by which postal votes or votes cast electronically must be received by the returning officer (or if a method of election is used which requires a poll, the date on which the poll is to be held) at the first election of trustees is a date and time to be fixed by the returning officer and the date so fixed must be –

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(a) at least 10 clear business days before the new constitution date,

(b) no more than 20 clear business days before the new constitution date.

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## 20 Ordinary elections

(1) An election of three of the six elected trustees is to be held so that their terms of office commence on the date of –

(a) the second anniversary of the new constitution date (“date A”),

(b) each fourth anniversary of date A.

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(2) An election of the other three of the six elected trustees is to be held so that their terms of office commence on the date of –

(a) the fourth anniversary of the new constitution date (“date B”),

(b) each fourth anniversary of date B.

(3) The elections under subsections (1) and (2) are referred to in this Act as “ordinary elections”.

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(4) The date and time by which postal votes or votes cast electronically must be received by the returning officer (or if a method of election is used which requires a poll, the date on which the poll is to be held) at an ordinary election of trustees is a date to be fixed by the returning officer and the date and time so fixed must be –

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- (a) at least 10 clear business days before the relevant anniversary of the new constitution date,
- (b) no more than 20 clear business days before the relevant anniversary of the new constitution date.

**21 Casual vacancies in office of elected trustee where there are no other such vacancies** 5

- (1) This section applies where—
  - (a) a vacancy occurs in the office of an elected trustee (“Trustee A”),
  - (b) there is no unfilled vacancy in the office of another elected trustee, and 10
  - (c) there is no interim appointed trustee in office in respect of another elected trustee.
- (2) If the vacancy occurs within the period of nine months ending on the date on which Trustee A’s term of office would otherwise have expired, the vacancy may remain unfilled until that date. 15
- (3) If subsection (2) does not apply and the vacancy occurs within the period of nine months ending on the next expiry date—
  - (a) the Trust must cause an election to be held to replace Trustee A at the same time as the next ordinary elections and the person elected is to hold office until the date on which Trustee A’s term of office would have expired, and 20
  - (b) the vacancy is to remain unfilled until the date on which the trustee elected in accordance with paragraph (a) takes office.
- (4) Subsection (3) does not apply if, in the opinion of the returning officer, holding the election in question on the date of the next ordinary elections would result in or be likely to result in a breach of any rule made under section 24 or otherwise be impracticable to hold due to the proximity of the date of the election in question. 25
- (5) If neither subsection (2) nor (3) applies, the vacancy in the office of Trustee A must be filled by the appointment of an interim appointed trustee. 30
- (6) Subsections (7) and (8) make provision about the term of office of an interim appointed trustee.
- (7) Subject to subsection (3), if the vacancy in the office of Trustee A occurs within the first 18 months of Trustee A’s term of office—
  - (a) the Trust must cause an election to be held to replace Trustee A at the same time as the next ordinary elections and the person elected is to hold office until the date on which Trustee A’s term of office would have expired, and 35
  - (b) the interim appointed trustee is to remain in office until the end of the day before the person elected in accordance with paragraph (a) takes office. 40

- (8) If the vacancy in question occurs after the first 18 months of Trustee A’s term of office, the interim appointed trustee is to remain in office until –
  - (a) trustee A’s term of office would have expired, or
  - (b) if before then, there is a further vacancy in the office of an elected trustee, until the end of the day before the replacement for Trustee A who is elected under section 22 takes office. 5
- (9) In this section –
  - “the next expiry date” means the date on which, in accordance with section 9(5)(b), the terms of office of the other trustees are due to end,
  - “the next ordinary elections” means the ordinary election of the other trustees next due to take place under section 20, and 10
  - “the other trustees” means the group of three elected trustees mentioned in section 20(1) or (2) which does not include Trustee A.

## 22 **Casual vacancies in office of elected trustee where there is another vacancy etc** 15

- (1) This section applies where a vacancy occurs in the office of one or more elected trustees (each individually “a vacancy A”) and there is –
  - (a) an existing vacancy in the office of another elected trustee (“vacancy B”) which has not been filled by an interim appointed trustee or an elected trustee, or 20
  - (b) an interim appointed trustee is in office due to a previous vacancy in respect of another elected trustee (“vacancy C”).
- (2) Subsection (3) applies if a vacancy A occurs at any time other than within the period of nine months ending with the date of the next ordinary elections.
- (3) If this subsection applies, elections must be held to – 25
  - (a) fill each vacancy A and fill vacancy B (in the case where subsection (1)(a) applies), or
  - (b) fill each vacancy A and replace the interim appointed trustee appointed in respect of vacancy C (in the case where subsection (1)(b) applies).
- (4) The returning officer must fix the date of elections held in accordance with subsection (3). 30
- (5) The date fixed under subsection (4) must be not more than 70 days after the date on which the chief executive has declared the office to be vacant as regards each vacancy A.
- (6) Subsection (7) applies if a vacancy A occurs within the period of six months ending with the date of the next ordinary elections. 35
- (7) Subject to subsection (8), if this subsection applies, an election in respect of each of the vacancies A, B and C (as the case may be) is to be held on the date of the next ordinary election, whether or not an election was due to be held in respect of that vacancy at the next ordinary election. 40

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- (8) Subsection (7) does not have effect if, in the opinion of the returning officer, holding the election in question on the date of the next ordinary elections would result in or be likely to result in a breach of any rule made under section 24 or otherwise be impracticable to hold due to the proximity of the date of the election in question. 5
- (9) If subsection (8) applies, the trustees may instead cause an election to be held after the date of the next ordinary elections and before the date of the subsequent ordinary elections.
- (10) The term of office of a person elected as a trustee under subsection (3), (7) or (9) – 10
- (a) commences –
- (i) immediately the person is declared to be elected as a trustee in the case of an election under subsection (3) or (9),
- (ii) at the same time as the other trustees elected at the next ordinary election in question, in the case of an election under subsection (7), 15
- (b) ends at the time when the term of office of the trustee in respect of whom the vacancy arose would have ended had there not been a vacancy.
- (11) In the case of a vacancy occurring in consequence of the failure of, or other irregularity in relation to, an election, subsections (4) and (5) have effect subject to any provision made by any relevant rule made under section 24. 20
- (12) In this section, “the next ordinary elections” means the ordinary elections next due to take place under section 20.
- 23 Persons entitled to vote** 25
- (1) A person is entitled to vote at an election of a trustee if on the relevant date the person would be entitled to vote as an elector in a local government election and the address at which they are registered in the register of local government electors published under section 13(1) or (3) of the Representation of the People Act 1983 is in the Trust’s electoral area. 30
- (2) In subsection (1), the “relevant date” is the date on which the returning officer fixes the date of the election.
- (3) Subject to subsections (4) and (5), the Trust’s electoral area comprises the following parishes –
- (a) the following parishes in the district of Malvern Hills – 35
- (i) Guarlford,
- (ii) Malvern Town,
- (iii) Malvern Wells,
- (iv) West Malvern,
- (b) the following parishes in the district of Herefordshire – 40
- (i) Colwall,
- (ii) Mathon.

- (4) If the name of any of the parishes mentioned in subsection (3) is changed, then the reference to that name in that subsection is to be read as the new name of the parish.
- (5) If any of the parishes mentioned in subsection (3) is abolished (and not replaced in whole or in part by any new, extended or amalgamated parish), then the area of the former parish that has been abolished remains in the Trust’s electoral area. 5

*Elected trustees: holding of elections*

**24 Method of and rules about conduct of elections**

- (1) Subject to subsection (3)(b), elections of trustees are to take place by – 10
  - (a) postal voting, or
  - (b) a combination of postal voting and voting by electronic means.
- (2) The trustees must make rules containing provision as to the conduct of elections of trustees.
- (3) The rules may in particular provide for – 15
  - (a) nomination of candidates and obligations to declare their interests,
  - (b) systems and methods of voting at contested elections (including systems and methods other than by postal voting if the trustees so desire),
  - (c) filling of vacancies, 20
  - (d) supervision of elections,
  - (e) elections expenses and publicity,
  - (f) (subject to section 26) questioning of elections and the consequences of irregularities.

**25 Returning officer**

- (1) The trustees must appoint an individual to be the returning officer for elections of trustees. 25
- (2) All charges and expenses properly incurred by or in respect of the returning officer appointed under this section in relation to the holding of an election of a trustee must be reimbursed by the Trust. 30
- (3) The Trust may treat those expenses as including all costs properly incurred by the returning officer in connection with or in contemplation of any legal proceedings arising out of the election in question (including any criminal proceedings against the returning officer), whether or not the proceedings are in fact instituted. 35
- (4) The returning officer may take such steps as they think appropriate to remedy any act or omission on their part, or on the part of a relevant person, which –
  - (a) arises in connection with any function the returning officer or relevant person has in relation to the election, and

- (b) is not in accordance with the rules made under section 24 or any other requirements applicable to the election.
- (5) But a returning officer may not under subsection (4) re-count the votes given at an election after the result has been declared.
- (6) In this section, “relevant person” means – 5
  - (a) a person providing goods or services to the returning officer,
  - (b) a deputy of any person mentioned in paragraph (a) or a person appointed to assist, or in the course of their employment assisting, such a person in connection with any function they have in relation to the election. 10

## 26 Legal proceedings relating to elections of trustees

- (1) The provisions of Part III of the 1983 Act (which makes provision about legal proceedings relating to elections) apply to an election of an elected trustee under this Act as if it were an election under the local government Act.
- (2) The provisions applied by subsection (1)(1) are modified by the substitution, 15  
for any reference to the proper officer of the authority, of a reference to the returning officer.
- (3) The provisions applied by subsection (1) have effect with such further adaptations, modifications and exceptions as may be necessary.
- (4) Section 189 of the 1983 Act applies to an election of an elected trustee as it 20  
applies to an election under the local government Act.
- (5) In this section –
  - “the 1983 Act” means the Representation of the People Act 1983,
  - “the local government Act” has the same meaning as in section 203 (local government provisions as to England and Wales) of the 1983 Act. 25

## 27 Register of electors

- (1) The relevant electoral registration officer must supply to the returning officer, free of charge and on publication, one copy of – 30
  - (a) any revised version of the register published under section 13(1) or (3) of the 1983 Act, and
  - (b) any notice setting out an alteration to the register published under section 13A(2), 13AB(2) or 13B(3), (3B) or (3D) of that Act.
- (2) In subsection (1), the duty to supply one copy of the register is a duty to supply it in data form unless, prior to publication, the returning officer to whom it is to be supplied has requested in writing a printed copy instead. 35
- (3) No person to whom a copy of the register has been supplied under this section may –
  - (a) supply a copy of the full register,

- (b) disclose any information contained in it (that is not contained in the edited register), or
  - (c) make use of any such information,  
other than for the purposes of an election of a trustee.
- (4) In this section –
  - “the 1983 Act” means the Representation of the People Act 1983,
  - “the edited register” has the same meaning as in sub-paragraph 10(1) of Schedule 2 to the 1983 Act,
  - “the relevant electoral registration officer” means the electoral registration officer for any area within the Trust’s electoral area.

#### *Interests of trustees*

### **28 Benefits to trustees**

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

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

### **29 Interests of trustees**

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

#### *Insurance and limitation of liability*

### **30 Indemnity insurance for trustees and returning officer**

- (1) Subject to subsection (2), the Trust may subscribe, and pay premiums, for a policy of insurance to indemnify any returning officer who exercises functions under this Act against personal liability arising from acts or omissions of the returning officer in relation to the holding of an election of a trustee.

- (2) The terms of insurance under subsection (1) must be so framed as to exclude the provision of any indemnity for a returning officer in respect of –
  - (a) any costs which arise in whole or part from any wrongful act or omission committed intentionally or recklessly by the returning officer,
  - (b) any penalty imposed in relation to a criminal offence. 5
- (3) This section is without prejudice to section 189 of the Charities Act 2011 (which makes provision about indemnity insurance for charity trustees).

### 31 Limitation of liability of and indemnity for trustees or employees

- (1) Subject to subsection (2), no trustee or employee of the Trust, by being party to or executing any contract, deed or other instrument in their capacity as a trustee or employee on behalf of the Trust or otherwise lawfully exercising any of the powers exercisable by the Trust may be sued or prosecuted either individually or with any other trustee or employee. 10
- (2) Subsection (1) does not extend to –
  - (a) proceedings which could give rise to liability to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising), 15
  - (b) criminal proceedings in which the trustee or employee may be convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by the trustee or employee, or 20
  - (c) any proceedings in which the trustee or employee may be found liable to the Trust arising out of any conduct –
    - (i) which the trustee or employee knew (or must reasonably be assumed to have known) was not in the interests of the Trust, or 25
    - (ii) in the case of which the trustee or employee did not care whether it was in the best interests of the Trust or not.
- (3) Subject to subsection (4) and without prejudice to any indemnity to which they may otherwise be entitled, every trustee and employee of the Trust is indemnified out of the property and income of the Trust in respect of all claims made against them in respect of the exercise of their functions as a trustee or employee. 30
- (4) The indemnity under subsection (3) does not extend to –
  - (a) a fine imposed in criminal proceedings, or
  - (b) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising), 35
  - (c) any liability incurred by the trustee or employee in defending any criminal proceedings in which the trustee or employee is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by the trustee or employee, or 40
  - (d) any liability incurred by the trustee or employee that arises out of any conduct –

- (i) which the trustee or employee knew (or must reasonably be assumed to have known) was not in the interests of the Trust, or
  - (ii) in the case of which the trustee or employee did not care whether it was in the best interests of the Trust or not. 5
- (5) No trustee or employee of the Trust is to be liable for any loss to the Trust except in relation to loss caused –
  - (a) in respect of the commission of an offence,
  - (b) in respect of any non-compliance with any requirement of a regulatory nature (of whatever nature), 10
  - (c) arising out of any fraud or dishonesty, or wilful or reckless misconduct, by the trustee or employee, or
  - (d) in respect of any conduct –
    - (i) which the trustee or employee knew (or must reasonably be assumed to have known) was not in the interests of the Trust, or 15
    - (ii) in the case of which the trustee or employee did not care whether it was in the best interests of the Trust or not.
- (6) For the purposes of subsection (4)(c) –
  - (a) the reference to a conviction is a reference to one that has become final, 20
  - (b) a conviction becomes final –
    - (i) if not appealed against, at the end of the period for bringing an appeal, or
    - (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of, and 25
  - (c) an appeal is disposed of –
    - (i) if it is determined and the period for bringing any further appeal has ended, or
    - (ii) if it is abandoned or otherwise ceases to have effect. 30

### *Notices*

## **32 Giving of notices under Part 2**

- (1) A notice required or authorised to be given under any provision of this Part may be served –
  - (a) by post, 35
  - (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied, or
  - (c) with the consent of the recipient and, subject to subsections (3) to (7), by electronic transmission to an address notified by the recipient to the Trust in writing. 40
- (2) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978 as it applies for the purposes of this section, the proper

address of any person in relation to the giving to that person of a notice under subsection (1) is, if that person has given an address for the giving of notices, that address, and otherwise the last known address of that person at the time of giving notice.

- (3) Any notice required to be given under any provision of this Part is taken to have been delivered –

  - (a) 24 hours after being sent by electronic transmission, and
  - (b) on being handed to the recipient where it is delivered to such recipient personally.

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- (4) Where a notice required to be given for the purposes of this Part is given by electronic transmission the requirement is to be taken to be fulfilled only where –

  - (a) the recipient of the notice to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission,
  - (b) the notice is legible in all material respects, and
  - (c) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

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- (5) Where the recipient of a notice given by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or part of that notice the sender must provide such a copy as soon as reasonably practicable.

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- (6) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with subsection (7).
- (7) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this subsection –

  - (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose, and
  - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

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- (8) This section does not exclude the employment of any method of service not expressly provided for by it.
- (9) In this section, “legible in all material respects” means that the information contained in the notice is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

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## PART 3

### FINANCE

#### 33 The levy

- (1) The Trust continues to be a levying body within the meaning of section 74(1) of the 1988 Act (levies). 5
- (2) Consequently, the Trust may continue to issue a levy to the councils in respect of any financial year under and in accordance with levy regulations—
  - (a) to meet the expenses of the Trust, and
  - (b) to provide for an amount for contingencies of up to 10 per cent. of the estimated expenditure of the Trust for the year in respect of which the levy is issued. 10
- (3) Any reference in levy regulations (including in regulation 3(1) of the 1992 regulations) to the expenditure of the levying body in respect of which a relevant precepting power would have been exercisable is to be taken as a reference to the expenditure described in paragraphs (a) and (b) of subsection (2). 15
- (4) The parishes in respect of which a levy may be issued by the Trust are—
  - (a) the following parishes in the district of Malvern Hills—
    - (i) Guarlford,
    - (ii) Malvern Town, 20
    - (iii) Malvern Wells,
    - (iv) West Malvern,
  - (b) the following parishes in the district of Herefordshire—
    - (i) Colwall,
    - (ii) Mathon. 25
- (5) If the name of any of the parishes mentioned in subsection (4) is changed, then the reference to that name in that subsection is to be read as the new name of the parish.
- (6) If any of the parishes mentioned in subsection (4) is abolished (and not replaced in whole or in part by any new, extended or amalgamated parish), then the levy may continue to be issued in (and only to the extent of) the area of the former parish. 30
- (7) The levy may be issued either before or after the Trust has become liable to any expenses.
- (8) The amount due from each of the parishes mentioned in subsection (4) is to be raised by precept of or the issue of a levy by the Trust on the council in whose area the parish is situated, requiring that council to pay to the Trust the amount specified in the precept or specified by the Trust when it issues the levy by the means specified in the precept or by the Trust when it issues the levy. 35 40

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

- (d) references to the relevant precepting power, (including references to a relevant precepting power which would have been exercisable apart from section 117 of the 1988 Act), are to be construed as references to the power to levy as continued by virtue of subsection (1).

- (18) In this section – 5
- “the 1988 Act” means the Local Government Finance Act 1988,
- “the 1992 regulations” means the Levying Bodies (General) Regulations 1992 or any regulations which replace them,
- “the councils” means Herefordshire Council and Malvern Hills District Council, 10
- “the levy” means the levy which may continue to be issued under and in accordance with this section,
- “levy regulations” means regulations made under section 74(2) of the 1988 Act.

### 34 Provision for capital and income 15

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

### 35 Power to borrow and mortgage land

- (1) Subject to the provisions of this section, the Trust may by any method or methods borrow or raise money as may be required by them for the purposes of this Act. 25
- (2) Subject to subsections (4) and (5), money borrowed by the Trust may be borrowed upon the security of all or any of the revenues and property of the Trust (including the contributions authorised to be raised by the levy in accordance with section 33) and the Trust may mortgage or assign over to the persons by or on behalf of whom such money is advanced those revenues and property or any part of them. 30
- (3) Subject to subsections (4) and (5), the Trust may charge all or any of the revenues and property of the Trust (including the contributions authorised to be raised by the levy in accordance with section 33) as security for a grant or the discharge of an obligation. 35
- (4) The Trust may only exercise the powers of subsection (2) or (3) in relation to existing relevant land with the consent of the Secretary of State and upon and subject to any terms and conditions and for any period as the Secretary of State may direct. 40

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

### **36 Contributions by Worcestershire County Council and Herefordshire Council**

- (1) The councils may each contribute to the funds of the Trust such sums as they may respectively fix by resolution. 30
- (2) The councils may either—  
     (a) treat the whole amount of any such contribution as general expenses, or  
     (b) treat the whole or any part of any such contribution as special expenses to be levied upon such parish or parishes in their respective areas as the council in question thinks fit. 35
- (3) No rate, levy or charge of any nature may be raised for the purposes of this section in respect of any of the parishes in respect of which a levy may be issued by the Trust under section 33.
- (4) In this section, “the councils” means Worcestershire County Council and Herefordshire Council. 40

**37 Report and annual accounts**

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

**PART 4****PUBLIC ACCESS AND MANAGEMENT OF MALVERN HILLS 20***Public access and duty to keep unenclosed, etc***38 Public access to the Malvern Hills**

Subject to the provisions of this Act and compliance with all rules, regulations and byelaws relating to the Malvern Hills for the time being in force, the public have a right of access to the Malvern Hills on foot or horseback for the purpose of open-air recreation. 25

**39 Occupiers' Liability, etc**

- (1) The operation of section 38 in relation to any land does not increase the liability, under any enactment not contained in this Act or under any rule of law, of a person interested in the land or any adjoining land in respect of the state of the land or of things done or omitted to be done on the land. 30
- (2) A person entering the Malvern Hills in accordance with section 38 is not, for the purposes of the Occupiers' Liability Act 1957 (or any successor legislation), a visitor of any occupier of the Malvern Hills or of the Trust.
- (3) Subject to subsection (5), at any time when the right conferred by section 38 is exercisable, the Trust owes no duty by virtue of this section to any person in respect of— 35

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- (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. 5
  - (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— 10
    - (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 38 is exercisable in relation to those premises, regard is to be had, in particular, to— 15
    - (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, 20
    - (b) the importance of maintaining the character of the Malvern Hills, including features of historic, traditional, geological or archaeological interest, and
    - (c) any code of conduct issued under section 20 of the Countryside and Rights of Way Act 2000 (and for the purposes of this paragraph any such code of conduct is to be taken to apply to the Malvern Hills as it applies to access land within the meaning of Part 1 of that Act). 25
  - (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. 30

#### **40 Duty to keep the Malvern Hills unenclosed**

- (1) Except as otherwise provided in this Act, no enclosure may be made or building erected on the Malvern Hills. 35
- (2) Except as otherwise provided in this Act, the Trust must—
  - (a) at all times keep the Malvern Hills unenclosed and unbuilt on as open space for the recreation and enjoyment of the public, and
  - (b) by all lawful means prevent, resist and abate— 40
    - (i) all enclosures and encroachments upon and all attempts to enclose or encroach upon the Malvern Hills or any part of the Malvern Hills, and

- (ii) any attempt to appropriate or use the Malvern Hills or the timber on the Malvern Hills for any purpose inconsistent with this Act.

(3) In subsection (1), “unbuilt on” has the same meaning given by section 6(4).

#### **41 Protection of the Malvern Hills**

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

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#### **42 Enclosure, encroachment and building: enforcement**

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- (1) The Trust may, in complying with its duty under section 40(2)(b), take all necessary measures to prevent or remedy any enclosure or encroachment on the Malvern Hills and to preserve and keep them as open space and free from enclosure and building.
- (2) Any expenses reasonably incurred by the Trust in taking measures under subsection (1) may be recovered by it from the person responsible for the enclosure or encroachment.
- (3) Without prejudice to any other jurisdiction or remedy, a county court may, on the making of an application, make an order requiring a person to—
  - (a) discontinue or refrain from any unlawful enclosing or building upon any part of the Malvern Hills,
  - (b) remove any unlawful enclosure or building from any part of the Malvern Hills, or
  - (c) discontinue or refrain from taking any of the actions referred to in section 41(1)(b) or (2).
- (4) No application may be made for an order under subsection (3)(b) after the expiration of 12 years from the making of the enclosure or the erection of the building in question.
- (5) An application for an order under subsection (3)(a) or (b) may be made by any person, but an application under subsection (3)(c) may only be made by the Trust.
- (6) No order under subsection (3) may be made in respect of anything done by the Trust in pursuance of any of its functions under any enactment (including the provisions of this Act) or other rule of law.

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- (7) Where an order made under subsection (3) requiring a person to remove any enclosure or building has not been complied with, the Trust may remove the enclosure or building itself or arrange for it to be done.
- (8) Any expenses reasonably incurred by the Trust in removing any enclosure or building under subsection (7) or arranging for it to be done may be recovered by it from the person who was required by the order to do so.

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*Regulation and management of the Malvern Hills: general*

**43 General power to regulate and manage Hills**

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

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**44 Rights of common**

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

*Access to and fencing, etc of the Malvern Hills*

**45 Regulation and prohibition of access to Malvern Hills**

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- (1) Subject to subsection (5), the Trust may, by notices posted in such places on the Malvern Hills as it thinks fit, regulate or prohibit, for such period as may be reasonably necessary, access by the public or any section of the public to any part of Malvern Hills for any one or more of the reasons mentioned in subsection (2) –

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- (2) Those reasons are –

- (a) for the protection, so far as is reasonably necessary, of any ancient monument or any area of archaeological or historical interest,
- (b) for the protection or restoration of the natural beauty of the Malvern Hills or their suitability for grazing or recreation,
- (c) for the preservation of trees on the Malvern Hills,
- (d) for the protection or preservation of flora or fauna or any site of special scientific interest on the Malvern Hills,
- (e) after consultation with the chief officer of police and the chief fire officer, for the prevention of the risk of fire on the Malvern Hills,
- (f) for the prevention of accidents or injury or other damage to health, in the case where the part of the Malvern Hills in question is, in the opinion of the Trust, a source of danger.

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- (3) The Trust may (despite anything in this Act to the contrary) fence and enclose, or cause to be fenced and enclosed, parts of the Malvern Hills for as long as appears necessary to the Trust for the regulation or prohibition of access as is mentioned in subsection (1) for any one or more of the reasons mentioned in subsection (2)(a), (b), (c), (d) or (f).

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- (4) In exercise of the powers of subsections (1) and (3), but only for the reasons mentioned in subsection (2)(e) or (f), the Trust may regulate or prohibit access by the public to, over or along any footpath or bridleway on or over the Malvern Hills.
- (5) In any case where the Trust exercises the powers of subsections (1) and (3) for any of the reasons mentioned in subsection (2)(a), (b), (c) or (d), a gate or other appropriate means of access – 5
- (a) must be provided by the Trust at any point where a footpath or bridleway crosses a fence put in place under subsection (3),
  - (b) may be provided at any other place which the Trust considers appropriate, taking into account the reason for the fencing. 10
- (6) No gate or other appropriate means of access may be provided under subsection (5)(a) unless the Trust represents to a competent authority as respects the footpath or bridleway that it is expedient that the gate or other appropriate means of access should be erected on the footpath or bridleway in question, and the provisions of subsections (2) to (4) and (6) of section 147 of the Highways Act 1980 have effect in relation to such a representation as though it were a representation made under subsection (1) of that section. 15
- (7) Section 146 of the Highways Act 1980 applies to a gate or other appropriate means of access provided under subsection (5)(a) as though references to the owner of land were references to the Trust. 20
- (8) When providing a gate or other appropriate means of access under section (5)(b), the Trust must have regard to the needs of those who would otherwise be entitled to gain access between the areas crossed by the fence, including those on horseback and people with disabilities. 25
- (9) A notice posted in accordance with this section must include a statement of the reasons for the regulation or prohibition and of its intended duration.
- (10) Nothing in subsection (1) authorises the Trust to regulate or prohibit access to any part of the Malvern Hills by any person going with good reason to or from any land which is accessible only over that part of the Malvern Hills. 30
- (11) Nothing in this Part of this Act prejudices or affects the exercise of powers by any person under any enactment by virtue of which access to the Malvern Hills is or may be regulated or prohibited.
- (12) In this section –
- “chief fire officer” means the person with responsibility for managing the fire and rescue service for the fire and rescue authority in whose area the relevant part of the Malvern Hills is situated, 35
  - “chief officer of police” means the chief officer of the police force in whose area the relevant part of the Malvern Hills is situated,
  - “competent authority” has the same meaning as in section 147 of the Highways Act 1980, 40
  - “fire and rescue authority” means a fire and rescue authority within the meaning of Part 1 of the Fire and Rescue Services Act 2004,

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

#### **46 Regulation and prohibition of access to Malvern Hills: supplementary**

- (1) Before exercising the powers of section 45(1) in respect of a period exceeding 42 days, the Trust must— 5
  - (a) consult the Historic Buildings and Monuments Commission for England if the reason for the exercise of the power is the reason mentioned in section 45(2)(a),
  - (b) seek the advice of Natural England if the reason for the exercise of the power is the reason purpose mentioned in section 45(2)(d). 10
- (2) Except in an emergency, before exercising the powers of section 45(1) in respect of a period exceeding 42 days, the Trust must consult the Sport and Recreation Alliance and at least one local association, authority or other body having a substantial interest in— 15
  - (a) the area to be affected by the exercise of those powers, and
  - (b) the use of the Malvern Hills for recreational purposes.
- (3) Except in an emergency, before exercising the powers of section 45 for any of the reasons mentioned in section 45(2)(a), (b), (c) or (d) in respect of a period exceeding 42 days, the Trust must give notice of the proposed regulation or prohibition, including— 20
  - (a) its intended duration,
  - (b) the reasons for which it is proposed to be made,
  - (c) an indication that written representations relating to the regulation or prohibition may be made to the Trust within a period specified in the notice. 25
- (4) A notice required by subsection (3) must be published— 30
  - (a) on the Trust’s website,
  - (b) by advertisement in one or more local newspapers (if there are any) which circulate in any part of the Malvern Hills,
  - (c) in a newsletter or similar publication published by the Trust.
- (5) In subsection (4)(c), “published” includes published or issued electronically.
- (6) The period specified in accordance with subsection (3)(c) must be no shorter than 28 days beginning with the day after the date on which the notice is advertised.
- (7) Before giving effect to their proposals for regulating or prohibiting access, the Trust must consider all representations made. 35
- (8) If the Trust has exercised its powers under section 45(1) it must— 40
  - (a) review any continuing regulation or prohibition of access no later than one year after the regulation or prohibition was first implemented and after then at intervals of no more than one year,

- (b) in the case of a continuing regulation or prohibition of access for the reason mentioned in section 45(2)(e), review that regulation or prohibition no later than two months after the regulation or prohibition was first implemented and after then at intervals of no more than two months, 5
- (c) publish on its website a description of the nature and extent of the exercise of the powers and make a copy of any such description available on reasonable request.

#### **47 Fencing dangerous places**

The Trust may, without notice, fence (or cause to be fenced) any part of the Malvern Hills that it considers to be dangerous. 10

#### **48 Fencing and other means of securing common land**

- (1) Subject to the provisions of this section and without prejudice to section 49(1)(b), the Trust may fence common land or install or use and maintain any other means of enclosure (or cause the common land in question to be fenced or enclosed) if the Trust considers that doing so is desirable for the prevention of animals straying from the common land in question. 15
- (2) A fence or other means of enclosure installed under subsection (1) need not necessarily be installed at the location of the boundary of the common land in question. 20
- (3) Despite section 38(6)(a) of the Commons Act 2006, the exercise of the power under subsection (1) is subject to the provisions of Part 3 of that Act except in relation to the provision of a cattle-grid in a road which is a highway.
- (4) In any case where it exercises the power under subsection (1), the Trust must provide gates or other appropriate means of access – 25
  - (a) at (or in the case of a cattle-grid, adjacent to) any point where any road (other than a road which is a highway), footpath or bridleway crosses the fence or other means of enclosure, or
  - (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. 30
- (5) No gate or other appropriate means of access may be provided under subsection (4)(a) unless the Trust represents to a competent authority as respects the footpath or bridleway that it is expedient that the gate or other appropriate means of access should be erected on the footpath or bridleway in question, and the provisions of subsections (2) to (4) and (6) of section 147 of the Highways Act 1980 have effect in relation to such a representation as though it were a representation made under subsection (1) of that section. 35
- (6) Section 146 of the Highways Act 1980 applies to a gate or other appropriate means of access provided under subsection (4)(a) as though references to the owner of land were references to the Trust. 40

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- (7) When providing a gate or other appropriate means of access under section (4)(b), the Trust must have regard to the needs of those who are entitled to gain access between the areas crossed by the fence, including those on horseback and people with disabilities.
- (8) Before exercising the power under subsection (1) in the case where the means of enclosure proposed to be used by the Trust is a cattle-grid to be provided wholly or partly in a road which is a highway, the Trust must—
- (a) obtain the consent in writing of the highway authority for the road in question (subject to such reasonable conditions as the highway authority may impose),
  - (b) consult such owners and occupiers of land as the highway authority consider requisite.
- (9) The provisions of the Highways Act 1980 specified in column 1 of Schedule 3 apply to the Trust in the manner specified in column 2 of that Schedule in the case where the means of enclosure used or proposed to be used by the Trust in exercise of the power under subsection (1) is a cattle-grid to be provided wholly or partly in a road which is a highway.
- (10) The Trust may enter into agreements with a highway authority for the purpose of securing, in connection with this section, the provision, alteration, improvement and maintenance of cattle-grids and by-passes by that authority under the powers conferred by Part V of the Highways Act 1980 including by way of an agreement under section 88 of that Act.
- (11) This section is without prejudice to any duty on the occupier of land which adjoins common land to fence that land against any animals lawfully depastured on the common land in question.
- (12) In this section—
- “highway” and “highway authority” have the same meaning as in the Highways Act 1980,
  - “means of enclosure” includes cattle-grids and other measures to prevent animals passing along a road,
  - “road” means any road on the Malvern Hills to which the public has access, including a highway.

#### **49 Fencing: further powers**

- (1) Subject to subsections (2), (3) and (4), the Trust may fence (or cause to be fenced) any part of the Malvern Hills—
- (a) that is not common land, if the Trust considers that doing so is necessary or desirable,
  - (b) that is common land, for a period not exceeding 60 days, if the Trust considers that doing so is necessary or desirable for the purpose of regulating grazing and is in furtherance of the Trust’s objects.
- (2) The Trust may not exercise the powers under subsection (1) if doing so would prohibit the exercise by any person of a private right in respect of an easement.

- (3) Where the Trust exercises the power under subsection (1)(b) in respect of a period exceeding 42 days (“period A”) over any land, it may not exercise that power again over any part of the same land within a period of six months beginning with the day after the date on which period A ended, except—
  - (a) if the area of land in question is 1 hectare or smaller, 5
  - (b) in the case of an emergency relating to animal health, or
  - (c) if the Trust is required to fence the land in question for reasons relating to animal health in order to comply with any other enactment or any direction or requirement given or made under any other enactment.
- (4) In any case where it exercises the power under subsection (1), the Trust must provide gates or other appropriate means of access— 10
  - (a) at 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. 15
- (5) No gate or other appropriate means of access may be provided under subsection (4)(a) unless the Trust represents to a competent authority as respects the footpath or bridleway that it is expedient that the gate or other appropriate means of access should be erected on the footpath or bridleway in question, and the provisions of subsections (2) to (4) and (6) of section 147 of the Highways Act 1980 have effect in relation to such a representation as though it were a representation made under subsection (1) of that section. 20
- (6) Section 146 of the Highways Act 1980 applies to a gate or other appropriate means of access provided under subsection (4)(a) as though references to the owner of land were references to the Trust. 25
- (7) When providing a gate or other appropriate means of access under section (4)(b), the Trust must have regard to the needs of those who would otherwise be entitled to gain access between the areas crossed by the fence, including those on horseback and people with disabilities.
- (8) This section is without prejudice to any powers that the Trust has as regards the fencing of land under this Act or any other enactment or rule of law. 30

## 50 Regulation of horse riding

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

- (3) Failure to comply with a notice or direction sign under this section is to be treated as though it were a failure to comply with a byelaw made under section 65.
- (4) Nothing in this section authorises the Trust to restrict or prohibit the lawful use of any bridleway shown on the definitive map and statement which includes any part of the Malvern Hills. 5
- (5) In subsection (4) “definitive map and statement” means the definitive map and statement operative under Part III of the Wildlife and Countryside Act 1981.

## **51 Prevention of unauthorised access by vehicles** 10

- (1) The Trust may take such measures as it thinks fit to prevent unauthorised access by mechanically propelled vehicles to any part of the Malvern Hills, provided that the measures do not prevent access by persons lawfully exercising a right to access the part of the Malvern Hills in question on foot or on horseback. 15
- (2) Despite section 38(6)(a) of the Commons Act 2006, the exercise of the power under subsection (1) is subject to the provisions of Part 3 of that Act.
- (3) In this section, “mechanically propelled vehicle” does not include an invalid carriage within the meaning of section 20 of the Chronically Sick and Disabled Persons Act 1970. 20

## **52 Application of advertisement regulations to display of notices under this Part**

For the purposes of Regulation 6 of, and Description 1A under Class 1A of Schedule 3 to, the Town and Country Planning (Control of Advertisements) Regulations 2007 and any similar provision in regulations replacing those regulations, the Trust is, as respects their functions under section 45 and 50, deemed to be a local authority. 25

### *Management of the Malvern Hills*

## **53 Nuisance and public order**

The Trust may take any necessary, reasonable and proportionate measures to prevent nuisances and preserve order in the Malvern Hills. 30

## **54 Paths and ways**

- (1) The Trust may make and maintain paths and ways over the Malvern Hills or (in the case of a footpath or bridleway) do so by agreement with a local or authority or the relevant highway authority. 35
- (2) In this section –

“relevant highway authority” means the highway authority for the area in which any part of the footpath or way is located,

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

## 55 Access roads

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- (1) Subject to subsections (2) and (7), the Trust may on such terms and conditions as it thinks fit (including terms and conditions as to the provision and maintenance of cattle-grids and other works) authorise in writing any person to construct, maintain, alter or improve roads or ways over the Malvern Hills affording vehicular or other access from any highway to land lying within or adjacent to any part of the Malvern Hills and appearing to the Trust to lack satisfactory access. 10
- (2) In granting authorisation under subsection (1), the Trust must have regard to the effect of the works being authorised on the matters mentioned in section 6(1)(a) and must impose such terms and conditions as are necessary to ensure that any adverse effect on the Malvern Hills is minimised. 15
- (3) The Trust may, on such terms and conditions as it thinks fit, for the purpose of or in connection with the provision of roads or ways, grant licence to use and grant easements and rights in, under or over lands forming part of the Malvern Hills and on which roads or ways are authorised to be constructed under subsection (1). 20
- (4) Subject to subsection (5), the Trust may, with the consent of the owner, exercise the powers of this section in relation to any land forming part of the Malvern Hills not owned by it as though it was the owner of that land.
- (5) The consent of the owner under subsection (4) is not required in any case where the owner is not known. 25
- (6) For the purposes of this section the owner of land is not known where after diligent enquiry the Trust is unable to discover the owner’s identity.
- (7) Despite section 38(6)(a) of the Commons Act 2006, anything done under the authority of the Trust under subsection (1) is subject to the provisions of Part 3 of that Act. 30

## 56 Trees and shrubs

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

## **57 Drainage and turf**

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

## **58 Parking places**

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

## **59 Sheds, seats, shelters and watering points**

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

## **60 Lavatories**

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

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

## **61 Games, sports and exhibitions, etc**

- (1) The Trust may set apart land on the Malvern Common and the Malvern Link Common upon which persons may play games or hold meetings or gatherings for sports.
- (2) The area of land which may be set aside under subsection (1) must not exceed 20 hectares in the aggregate.
- (3) The Trust may enclose land on the Malvern Link Common for the purpose of the holding of an agricultural or horticultural or other exhibition, circus, fair or show and may let the land for those purposes on such terms as it thinks fit.
- (4) The Trust may not enclose any part of Malvern Link Common under subsection (3) for a continuous period exceeding one month and such periods must not exceed three months in any year in respect of the common as a whole.
- (5) The area of land which may be enclosed under subsection (3) on any one occasion must not exceed 20 hectares.

## **62 Licensing of stalls**

- (1) The Trust may grant a licence for any period not exceeding one year upon such terms and conditions (including a charge) and subject to such restrictions as the Trust thinks fit to any person to erect, maintain and operate temporary or mobile stalls on the Malvern Hills for the purpose of purveying food or refreshment to the public.

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

### **63 Licensing of other activities**

- (1) The Trust may if it thinks fit issue licences for the use of the Malvern Hills for specified purposes including uses which would otherwise be in breach of byelaws made under section 65. 25
- (2) Licences granted under subsection (1) may be granted on such terms and conditions and subject to such restrictions as the Trust thinks fit, and without prejudice to the generality of the foregoing, such terms, conditions and restrictions may include or relate to – 30
  - (a) the locations on the Malvern Hills where the use for the specified purpose may happen,
  - (b) a requirement for insurance,
  - (c) the display of advertisements,
  - (d) the charging of a fee by the Trust to the licence holder. 35
- (3) In subsection (1), “the use of the Malvern Hills for specified purposes” includes –
  - (a) the use of any part of the Malvern Hills in the course of a business,
  - (b) the use of any part of the Malvern Hills for any organised activity.
- (4) Subject to subsection (3), fees may not be charged for the exercise by members of the public of the right of access to the Malvern Hills on foot or horseback for the purpose of open-air recreation as provided for in section 38. 40

*Removal and disposal of unauthorised articles*

**64 Removal and disposal of unauthorised articles**

- (1) The Trust may remove any article or object placed or left on the Malvern Hills without its permission or otherwise without lawful authority.
- (2) If a person appearing to be in control of an article or object is present, that person must be given a reasonable opportunity to remove the article or object before it is removed under subsection (1). 5
- (3) On removing an article or object under subsection (1), the Trust must store it in a convenient place unless it appears to the Trust that the article or object—
  - (a) has been abandoned, 10
  - (b) is unlikely to be of any continuing value to its owner, or
  - (c) is not reasonably capable of being stored.
- (4) If an article or object removed under subsection (1)—
  - (a) has been stored under subsection (3), and no person appearing to be the owner has within a period of 14 days beginning with the day of removal claimed it and paid all expenses reasonably incurred by reason of its removal and storage; or 15
  - (b) is not one which the Trust must store under subsection (3), the Trust may dispose of it in such a manner as the Trust thinks fit.
- (5) In the case of farm machinery— 20
  - (a) the Trust must give notice that it has stored the machinery under subsection (3) to the officer in charge of a police station and also to the owner of the machinery if their identity is known to them or can reasonably be ascertained,
  - (b) in subsection (4)(a), for the period of 14 days, substitute a period of 28 days. 25
- (6) Where a motor vehicle is removed under subsection (1), subsections (3) and (4) of this section do not apply, but—
  - (a) section 100(4) of the 1984 Act (which imposes a duty to retain safe custody of a removed vehicle) applies to the vehicle as if the Trust were an authority having custody of the vehicle under that section, and 30
  - (b) sections 101 to 103 of the 1984 Act (which provide for the disposal of a removed vehicle) and any regulations made under them apply in relation to the vehicle as if—
    - (i) the Trust were the local authority in relation to the Malvern Hills and the vehicle had been removed by the Trust under regulations made under section 99 of the 1984 Act, and 35
    - (ii) the open space were not within a civil enforcement area for parking contraventions. 40
- (7) In subsection (6)—

“the 1984 Act” means the Road Traffic Regulation Act 1984,

“motor vehicle” has the meaning given by section 136 of that Act.

## PART 5

### BYELAWS

#### 65 Power to make byelaws

- (1) The Trust may make and enforce byelaws to regulate the use of the Malvern Hills as the Trust considers to be necessary or desirable in furtherance of the objects including in particular to comply with its duties under section 40 and 41, or to exercise its power under section 43, and without prejudice to that, byelaws may be made for any of the following purposes –
  - (a) preventing nuisances and preserving order on the Malvern Hills, 10
  - (b) prohibiting any enclosure of any part of the Malvern Hills or the erection of any unauthorised building, shed, tent or other structure on the Malvern Hills,
  - (c) preventing any interference with the rights of common or other rights to graze existing on or over the Malvern Hills, 15
  - (d) regulating the use of any seats and shelters for the time being provided by or under the control or management of the Trust and for preventing damage to them,
  - (e) prohibiting any person from placing or depositing and leaving without lawful authority any refuse or litter on the Malvern Hills, 20
  - (f) preventing or regulating vehicles or devices, including cycles, being parked, driven, ridden or flown on or over any part of the Malvern Hills not set apart for that purpose, and for regulating the use of parking places on any part of the Malvern Hills set apart for parking,
  - (g) prohibiting or regulating the placing on the Malvern Hills of any show, exhibition, swing, roundabout or other similar thing, 25
  - (h) regulating games and other means of recreation on the Malvern Hills,
  - (i) regulating assemblies of persons on the Malvern Hills,
  - (j) regulating the user and enjoyment of any rights of common,
  - (k) without prejudice to sections 62 and 63, prohibiting or regulating the use of any part of the Malvern Hills for the purposes of carrying on a business, 30
  - (l) preventing any unlawful digging on, or taking of stone, gravel or soil from, the Malvern Hills,
  - (m) preventing any unlawful cutting or taking of turf or sods, or the growth or produce of the Malvern Hills, from the Malvern Hills, 35
  - (n) preventing any other injury to the Malvern Hills,
  - (o) prohibiting any person without lawful authority from turning out or permitting to remain on the Malvern Hills any cattle, sheep, pigs, goats or other animals and for authorising an officer of the Trust to remove from the Malvern Hills any such animal being on the Malvern Hills in contravention of the byelaws or suffering from disease, 40

- (p) subject to the provisions of section 79, regulating quarrying in, upon or under the Malvern Hills,
  - (q) prohibiting or regulating the erection of cranes, works and machinery on the Malvern Hills,
  - (r) authorising an authorised officer after due warning to remove or exclude from the Malvern Hills any person who in the view of the officer commits an offence against any byelaw made by the Trust, 5
  - (s) prohibiting the hindrance or obstruction of an authorised officer in the exercise of their powers or duties under this Act or under any byelaw made by the Trust. 10
- (2) The Trust may make byelaws providing that any person who, without reasonable excuse, contravenes a notice posted under section 45 is guilty of an offence.
- (3) The Trust may make byelaws providing that any person who, without the authority of the Trust and without reasonable excuse, contravenes a notice or direction sign posted in pursuance of section 50 or, without reasonable excuse, fails to comply with a direction given under section 50 is guilty of an offence. 15
- (4) Byelaws made under this section may –
  - (a) be made so as to relate to the whole or any part of the Malvern Hills, 20
  - (b) make different provision for different cases and in relation to different parts of the Malvern Hills,
  - (c) amend or revoke other byelaws made under this section or the repealed enactments.
- (5) The Trust may revoke byelaws made under this section or under the repealed Acts. 25
- (6) Byelaws made under this section do not apply to any activity in respect of which a licence has been granted by the Trust under section 63.
- (7) Nothing in this section or any byelaw made under it prejudices or affects (except as provided by subsection (1)(j)) or takes away any rights of common which are exercisable by any person. 30
- (8) This section is without prejudice to the generality of section 53.

## 66 Procedure for byelaws

- (1) Subsections (3) to (8) and (11) of section 236 and section 238 of the Local Government Act 1972 (which respectively relate to the procedure for making byelaws by local authorities and provide for the proof of byelaws in legal proceedings) apply to any byelaws made by the Trust under section 65 as if –
  - (a) the Trust were a local authority in England, and
  - (b) there was an additional requirement to publish the byelaws, after having been made and after having been confirmed, on the Trust’s website. 40

- (c) the chief executive were the proper officer (within the meaning of the Local Government Act 1972) of that local authority.
- (2) Subject to subsection (3), the Secretary of State may confirm the byelaws with such modifications as the Secretary of State thinks fit.
- (3) Where the Secretary of State proposes to make a modification to the byelaws which appears to the Secretary of State to be substantial, the Secretary of State –
  - (a) must inform the Trust and require them to take any steps he considers necessary for informing persons likely to be concerned with the modification, and
  - (b) must not confirm the byelaws until such period has elapsed as the Secretary of State thinks reasonable for consideration of, and comment upon, the proposed modification by the Trust and by other persons who have been informed of it.
- (4) Before making any byelaws under section 65 the Trust must consult the Sport and Recreation Alliance.

## 67 Penalty for contravening byelaws

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

## 68 Fixed penalty notices

- (1) An authorised officer may issue a fixed penalty notice to any person who the officer has reason to believe has committed an offence against any byelaw made under this Act.
- (2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the Trust.
- (3) A fixed penalty notice must be in writing and state –
  - (a) the particulars of the circumstances alleged to constitute the offence,
  - (b) the amount of the fixed penalty,
  - (c) the name and address of the person to whom payment of the fixed penalty may be sent,
  - (d) the permissible methods of payment (which include the method laid down by subsection (9)), and
  - (e) the effect of subsection (6).
- (4) A fixed penalty notice may be issued in person or by post, and must identify by name the person to whom it is issued unless the authorised officer cannot reasonably ascertain the person's name.

- (5) Where a fixed penalty notice is issued by post, it is regarded as having been issued at the time at which it would be delivered in the ordinary course of post.
  - (6) Where a person is issued with a fixed penalty notice—
    - (a) no proceedings may be taken in respect of the alleged offence in relation to which the notice was issued before the end of the period of 14 days following the date on which the notice was issued, and
    - (b) the person may not be convicted of that offence if the fixed penalty is paid to the Trust before the end of that period.
  - (7) The amount specified under subsection (3)(b) is to be an amount prescribed by the Trust, which—
    - (a) may prescribe different amounts in relation to different classes of case, but
    - (b) may not prescribe an amount exceeding the higher of—
      - (i) £100,
      - (ii) the amount mentioned in section 237B(1)(b) of the Local Government Act 1972,
      - (iii) such other amount as may be specified by the Trust with the approval in writing of the Secretary of State.
  - (8) Subsections (3) and (4) of section 237B of the Local Government Act 1972 apply in respect of the powers under subsection (7) as they apply in respect of the powers under subsections (1)(a) and (2) of that section.
  - (9) Payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under subsection (3)(c), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).
  - (10) Where a letter is sent in accordance with subsection (9), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
  - (11) In any proceedings, a certificate that—
    - (a) purports to be signed by or on behalf of the chief executive or the officer of the Trust responsible for the Trust’s financial affairs, and
    - (b) states that payment of a fixed penalty was, or was not, received by the date specified in the certificate,is evidence of the facts stated.
- 69 Further provision as to enforcement of byelaws**
- (1) An authorised officer who has reason to believe that a person has committed an offence against any byelaw made under this Act may require that person to give their name and address with a view to—
    - (a) the service of a summons on that person, or
    - (b) the issuing of a fixed penalty notice to that person under section 68,in relation to that offence.

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- (2) A person who, without reasonable excuse, fails to provide information required under subsection (1) or without reasonable excuse provides inaccurate information commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) Where the driver of a vehicle is alleged to be guilty of an offence against any byelaw made under section 65 which relates to the driving or parking of vehicles on the Malvern Hills – 5
- (a) the person keeping the vehicle must give such information as to the identity of the driver as they may be required in writing by or on behalf of the Trust to give, and 10
- (b) any other person must, if required as mentioned in paragraph (a), give any information which it is in their power to give and which may lead to the identification of the driver.
- (4) A person who fails to comply with the requirements of subsection (3)(a) is guilty of an offence unless they show to the satisfaction of the court that they did not know, and could not with reasonable diligence have ascertained, who was the driver of the vehicle. 15
- (5) A person who fails to comply with the requirements of subsection (3)(b) is guilty of an offence.
- (6) A person guilty of an offence under subsection (4) or (5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale. 20
- (7) An authorised officer of the Trust may, after due warning, remove or exclude from the Malvern Hills any person who in the view of that officer has committed an offence against byelaws made under this Act.
- 70 Byelaws: seizure of stray animals** 25
- (1) The Trust may seize and impound any animal to which this section applies, which is on the Malvern Hills in contravention of any byelaw duly made by the Trust.
- (2) The Trust must, no later than 24 hours after impounding any animal under this section, notify the police and also give notice to the owner of the animal if his identity is known to the Trust or can reasonably be ascertained. 30
- (3) The Trust must –
- (a) keep a register of all animals seized by them under this section containing a brief description of each animal, the date of seizure and a statement as to whether the animal was sold or otherwise disposed of or destroyed, 35
- (b) make the register available for public inspection at all reasonable times.
- (4) If after the expiry the period of seven clear days beginning with the day after the date of its impounding the owner has not claimed an animal and paid all expenses incurred in seizing, impounding and maintaining it, the Trust may sell or otherwise dispose of the animal otherwise than by destruction. 40

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

## PART 6

### LAND

#### 71 Acquisition of land, bequests and agreements

- (1) In furtherance of the objects, the Trust may acquire (by purchase or grant) land of the type described in subsection (3) and on and after the date of acquisition any land so acquired is part of the Malvern Hills. 25
- (2) Land of the type described in subsection (3) which is vested in the Trust by virtue of a gift or bequest is, on and after the date of vesting, part of the Malvern Hills. 30
- (3) The type of land which may be acquired under subsection (1) or become vested in the Trust under subsection (2) or be subject to an agreement under subsection (4) is land –
  - (a) which is situated within nine miles of Great Malvern Priory, and
  - (b) which the Trust considers should be preserved unenclosed and free from building as part of or in connection with the Malvern Hills. 35
- (4) Any common land or waste land of the type described in subsection (3) may become part of the Malvern Hills by agreement between the Trust and the lord of the manor of which the land forms part.

- (5) No agreement may be made under subsection (4) unless the Secretary of State has given consent in writing to the agreement.
- (6) The Secretary of State may, on or after giving consent under subsection (4) in relation to any land, by order—
  - (a) amend section 23(3) so as to include in the Trust’s electoral area any parish within which the land in question is situated (if that parish is not already in the Trust’s electoral area), 5
  - (b) amend section 33(4) so as to include in the list of parishes in respect of which a levy may be issued any parish within which the land in question is situated (if that parish is not already in that list). 10
- (7) An order under subsection (6) is to be made by statutory instrument and any such statutory instrument may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (8) Any order or agreement approved or made by the Secretary of State under this section must be published in such manner as the Secretary of State directs. 15

## 72 Power to adjust boundaries of Malvern Hills

- (1) For the purpose of adjusting, defining or improving the boundaries of the Malvern Hills, the Trust may by agreement, and with the consent of the Secretary of State, sell or exchange any part of the Malvern Hills not exceeding 0.12 hectares in area in the case of any one sale or exchange. 20
- (2) Consent may not be given under subsection (1) unless—
  - (a) in the case of an exchange, the Secretary of State is satisfied that in the place of the land proposed to be exchanged, other land not less in area and equally or more advantageous to the persons (if any) entitled to common rights and to the public is offered in exchange, or 25
  - (b) in the case of a sale, the Secretary of State is satisfied that all money received in respect of it will be paid into a special fund and used or set aside for use in the future by the Trust only for the purchase of other land in the vicinity of the Malvern Hills and which on completion will become part of the Malvern Hills. 30

## 73 Disposal of land

- (1) Without prejudice to any other powers the Trust has to sell, exchange, let, charge or otherwise dispose of land, and despite anything in this Act the Trust may, with the consent in writing of the Secretary of State, do any of the things mentioned in subsection (2) in respect of any land to which this subsection applies by virtue of subsection (3). 35
- (2) Those things are to—
  - (a) sell (including sell free of any restrictions) the whole or any part of or the whole or any part of any interest in any such land which is not required by the Trust, 40

- (b) exchange (including exchange free of any restrictions) any such land which is not required by the Trust for other land either with or without paying or receiving any money by way of equality of exchange,
  - (c) let any such land subject to such terms and conditions, covenants or arrangements as the Trust thinks fit. 5
- (3) Subsection (1) applies to land that falls within all of the following paragraphs—
  - (a) it is owned by the Trust,
  - (b) it has not been owned by the Trust for a continuous period of more than five years, 10
  - (c) it did not form part of the existing Malvern Hills,
  - (d) it is not registered as common land or a town or village green, and
  - (e) the trustees have not later than two years after the date of acquisition of the land by them decided that it is not desirable to retain the land for the advancement of the objects. 15
- (4) The provisions of section 72 do not apply as respects any sale or exchange under subsection (1).
- (5) Where land has become vested in the Trust by virtue of a gift or bequest the powers conferred by this section shall not be exercisable as respects that land in any manner inconsistent with any condition attached to the gift or bequest, except with the consent of the donor or the personal representatives or trustees of the donor or where after diligent enquiry the Trust is unable to discover the identity of the donor, the personal representatives or trustees. 20
- (6) The terms and conditions, covenants or arrangements mentioned in subsection (2)(c) may include terms and conditions, covenants or arrangements relating to whether the land in question is to be treated as being part of the Malvern Hills for any of the purposes of this Act during the period of any letting under that subsection. 25
- (7) Part II of the Landlord and Tenant Act 1954 (which provides security of tenure for commercial tenancies) and section 5 of the Housing Act 1988 (which provides security of tenure for assured tenancies) do not apply to any letting under subsection (2)(c). 30
- (8) Where the Trust exercises its powers under subsection (2)(c) in relation to any land, all the powers under subsection (2) continue to be available to the Trust in relation to that land on the termination of the letting whether or not at that termination, the Trust has owned the land for more than five years. 35

## 74 Leases and licences of land

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

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- (2) Without prejudice to any other powers the Trust has to dispose of land and buildings, and notwithstanding anything in this Act, the Trust may, for such period and on such terms and conditions as the Trust thinks fit, grant licences over –
- (a) any part of the Malvern Hills, 5
  - (b) any building (whether or not is in the Malvern Hills).
- (3) A lease granted under subsection (1) may be for any period but the consent in writing of the Secretary of State is required for any lease or renewal of a lease for a period exceeding 10 years.
- (4) Any lease granted or renewed under subsection (1)(a) or (2)(a) is subject to the public right of access under section 39 (where it applies). 10
- (5) Part II of the Landlord and Tenant Act 1954 (which provides security of tenure for commercial tenancies) and section 5 of the Housing Act 1988 (which provides security of tenure for assured tenancies) do not apply to a lease granted under subsection (1) after the date on which this Act was passed in respect of any part of the Malvern Hills or building on the Malvern Hills. 15
- (6) In subsection (1) “registered common land” means –
- (a) land which is registered as common land under the Commons Registration Act 1965 and whose registration under that Act has become final, and 20
  - (b) land which is registered as common land under Part 1 of the Commons Act 2006.

## 75 Ancillary land

- (1) This section applies to any land –
- (a) acquired by the Trust before the relevant date – 25
    - (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, 30
  - (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, staff and volunteer facilities or information centres, 35
  - (b) the provision of refreshments,
  - (c) the retail sale of goods (including for the purpose of raising funds for the Trust),
  - (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, 40
  - (e) storage,

- (f) the keeping or management of livestock.
- (4) The Trust may use any ancillary land acquired before the relevant date for any purpose for which land may be acquired under subsection (3).
- (5) Subject to subsection (3), the Trust has all the powers of an absolute owner in relation to ancillary land including, but without prejudice to the foregoing, limitation, power to –
  - (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 the date on which this section comes into force.

## 76 Maintenance of buildings and structures

- In addition to any other powers under this Act, the Trust may –
- (a) maintain any building or structure which it owns or occupies,
  - (b) repair, reconstruct or replace any building or structure which it owns or occupies, provided that any reconstruction or replacement shall be on the site of, and of a similar size and external character to, the existing building, if it is located on the Malvern Hills.

## 77 St Ann’s Well

- (1) The Trust may maintain and operate St. Ann’s Well and may use it for any use which is ancillary to the objects, including, without limitation, for the provision of refreshments.
- (2) In the event of damage to or the destruction of the St. Ann’s Well building, the Trust may repair, reconstruct or replace it provided that any reconstruction

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- or replacement shall be on the site of, and of a similar size and external character to, the existing building.
- (3) The powers of subsection (2) extend to any reconstructed or replacement building constructed under that subsection.
- (4) The Trust may enter into and carry into effect agreements with respect to the exercise of the powers contained in subsections (1) and (2) by any other person including the defraying of, or the making of contributions towards, the costs of the Trust or any other person in connection with the exercise of those powers. 5
- (5) Section 74 applies to St. Ann’s Well subject to the provisions of this section. 10
- (6) Subject to the provisions of this section, the Trust may, with the consent in writing of the Secretary of State, sell, exchange or absolutely dispose of St Ann’s Well free from any rights or restrictions and upon such terms and conditions, subject to the consent of the Secretary of State, as the trustees consider expedient in the best interests of the Trust. 15
- (7) Before exercising the powers of subsection (6) to sell, exchange or absolutely dispose of St Ann’s Well to any person other than the Council, the trustees must give notice in writing of their intention to do so to the Council.
- (8) If before the expiry of the relevant period the Council give notice in writing to the Trust that the Council wishes to purchase St Ann’s Well, the Trust must, unless the parties agree otherwise or the Council withdraws that notice, sell St. Ann’s Well to the Council. 20
- (9) Both parties must use reasonable endeavours to complete the sale of St. Ann’s Well as soon as reasonably practicable after a notice is received by the Trust under subsection (8). 25
- (10) Unless the parties agree otherwise, the obligation on the Trust to sell St. Ann’s Well to the Council under subsection (8) ceases at the expiry of the period of one year beginning with the date on which the Trust received notice from the Council under subsection (8) if by then—
- (a) the purchase of St Ann’s Well has not been completed, and
  - (b) no reference has been made by either party under subsection (11) as to the terms of the sale. 30
- (11) Unless otherwise agreed between the parties, any difference between them under this section (including any difference as to the terms of a sale) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Royal Institution of Chartered Surveyors. 35
- (12) In this section—
- “the Council” means Malvern Hills District Council,
  - “the parties” means the Council and the Trust, 40

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

“St. Ann’s Well” means the land of that name referred to in the Schedule to the 1930 Act and comprising the land conveyed to the Conservators by a conveyance dated 1 April 1925 between Dame Catherine Sarah Grey on the one part, Catherine Smith Grey and Lionel Foley Lambert on the second part and the Conservators on the third part, 5

“the St. Ann’s Well building” means the principal building of that name located at St Ann’s Well and (where the context requires) any replacement of that building and the land on which it is situated. 10

## 78 Grant of easements etc. for utilities

(1) Subject to subsections (2) and (6), the Trust may grant upon such terms and conditions and for such a period as it thinks fit easements, rights, privileges or licences in, under or over the Malvern Hills for the provision of public or private underground or overground services relating to water, electricity, gas, oil, telecommunications, drainage and sewerage. 15

(2) It shall be a term of any grant under subsection (1) that the surface of any part of the Malvern Hills that may be disturbed in connection with the exercise of any easement, right, privilege or licence so granted must be restored as soon as practicable by and at the expense of the person to whom the easement, right, privilege or licence is granted. 20

(3) Subject to subsection (4), the Trust may, with the consent of the owner, exercise the powers of this section in relation to any land forming part of the Malvern Hills not owned by them as though it was the owner of that land. 25

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

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

(6) The Trust may not exercise the powers of this section for the provision of any service, other than a temporary service, overground unless – 30

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

(b) the service is to be provided to a domestic property that was in existence on 28 June 1995, 35

(c) in the opinion of the trustees the provision of the service overground is reasonable, and

(d) the Trust has consulted the body or bodies responsible for the preparation and publication of an area of outstanding natural beauty management plan in respect of the Malvern Hills under section 89 of the Countryside and Rights of Way Act 2000. 40

(7) The Trust may not exercise the powers of this section for the provision of any service overground except by way of determinable licence.

- (8) In this section, “area of outstanding natural beauty” means an area designated under section 82 of the Countryside and Rights of Way Act 2000.

## **79 Notice of quarrying**

- (1) The Trust must be consulted before any application for planning permission is made for the carrying out of quarrying in the Malvern Hills. 5
- (2) The consultation under subsection (1) must include the giving to the Trust of a notice in writing of the intention to make the application and a plan showing the intended position of the proposed quarrying.
- (3) The notice under section (2) must be given no later than 3 months before the application for planning permission is made. 10
- (4) Any proposal for a new quarry in the Malvern Hills must provide that the quarry be located and designed so as to cause as little injury and disfigurement to the Malvern Hills as reasonably practicable and any new quarry must be fenced for the protection of the public to the reasonable satisfaction of the Trust. 15

## **80 Power of highway authority to get materials**

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

## **81 Power for Trust to use materials**

20

- (1) Subject to the provisions of this section, the Trust may extract, take, work, process and otherwise use loose natural materials located in the Malvern Hills, including material from spoil heaps and rock falls.
- (2) Any material taken under subsection (1) may be used by the Trust only –
  - (a) in furtherance of the objects or for purposes ancillary to the objects, 25
  - and
  - (b) within the Malvern Hills or other land in its ownership.
- (3) Subject to subsection (4), no more than the maximum amount of material may be extracted or taken under subsection (1) in any period of one calendar year. 30
- (4) If in any calendar year, the Trust does not extract or take the maximum amount of material, then the difference between the amount extracted or taken and the maximum amount may be carried forward and added to the maximum amount that may be extracted or taken in the next calendar year and successive calendar years, subject to an overall maximum amount of 50 cubic metres in any calendar year. 35
- (5) Except where in the reasonable opinion of the trustees the amount of material to be extracted or taken is of such insignificance that no such consultation is required, the trustees must consult –

- (a) the body or bodies responsible for the preparation and publication of an area of outstanding natural beauty management plan in respect of the Malvern Hills under section 89 of the Countryside and Rights of Way Act 2000,
  - (b) such other bodies (if any) as the Trust sees fit. 5
- (6) In this section “the maximum amount” means 25 cubic metres.

## 82 Saving for town and country planning

- (1) Subject to subsection (2), no development authorised by this Act or any of the repealed enactments is to be deemed for the purposes of the 2015 Order to be development authorised by an Act which designates specifically both the nature of the development and the land upon which it may be carried out. 10
- (2) Subsection (1) does not apply to any development carried out under section 81(1), and for the purposes of the 2015 Order, any development carried out under section 81(1) is deemed to be development authorised by a provision of a local or private Act of Parliament which designates specifically the nature of the development authorised under that section and the land upon which it may be carried out. 15
- (3) In this section, “the 2015 Order” means the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any general order superseding that order made under section 59 of the Town and Country Planning Act 1990, or any corresponding provision of an Act repealing that section). 20

## PART 7

### GENERAL AND MISCELLANEOUS PROVISIONS 25

## 83 General power of the Trust

- (1) Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, the Trust has power to do any lawful thing (whether or not involving the expenditure of money) to further the objects, including anything which is calculated to facilitate, or is conducive or incidental to, the furtherance of the objects. 30
- (2) The Trust must not exercise the power in subsection (1) if it can exercise a power contained in another provision of this Act or any other enactment to do the thing in question. 35
- (3) Subsection (1) does not confer power to—
  - (a) acquire or dispose of land, or grant any interest in land,
  - (b) borrow or raise money,
  - (c) erect any building, fencing or other type of enclosure on the Malvern Hills. 40

- (4) Despite section 38(6) of the Commons Act 2006, the prohibition in section 38(1) of that Act applies in relation to anything done under the power in subsection (1).

#### **84 Miscellaneous powers of the Trust**

In addition to any other powers it has, the trustees may exercise any of the powers set out in Schedule 4 in order to further the objects (but not for any other purpose). 5

#### **85 Power to prosecute, defend and appear in legal proceedings**

- (1) Where the Trust considers it expedient—
- (a) it may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in its own name, and 10
  - (b) it may, in its own name, make representations at any public inquiry held by or on behalf of any Minister or public body under any enactment. 15
- (2) Any trustee or officer of the Trust who is authorised by the Trust to prosecute or defend on its behalf, or to appear on its behalf in, proceedings before a court is entitled to prosecute or defend or to appear in any such proceedings, and, to conduct any such proceedings.

### **PART 8** 20

#### **FINAL PROVISIONS**

#### **86 Local inquiries**

- (1) The Secretary of State may cause such local inquiries to be held as the Secretary of State may consider necessary for the purpose of any of their functions under this Act. 25
- (2) Subsections (2) to (5) of section 250 of the Local Government Act 1972 apply in relation to any inquiry under subsection (1) as if it were an inquiry held in pursuance of subsection (1) of that section and the Trust were a local authority.

#### **87 Repeals** 30

The provisions specified in Schedule 5 (which include provisions that are spent) are repealed or revoked to the extent specified.

#### **88 Consequential amendments**

Schedule 6 contains consequential amendments.

## **89 Transitional provisions and savings**

- (1) The transitional provisions and savings in Schedule 7 have effect.
- (2) The inclusion in this Act of any express transitional provision or saving is without prejudice to the operation of sections 15 to 17 of the Interpretation Act 1978.

5

## **90 Protection of Crown interests**

Nothing in this Act affects prejudicially any estate, interest, right, power, privilege, authority or exemption of the Crown.

## **91 Protection of Network Rail Infrastructure Limited**

Nothing in this Act shall prejudice or affect the property or rights of Network Rail Infrastructure Limited.

10

## **92 Protection of National Grid Electricity Distribution (West Midlands) PLC**

Nothing in this Act shall in any way prejudice or affect any right or power of National Grid Electricity Distribution (West Midlands) PLC (as successor to the Shropshire Worcestershire and Staffordshire Electric Power Company) or its successors or beneficiaries under the Bromyard and Ledbury Rural Electricity Special Order 1929 to place electric works or lines upon or over the Malvern Hills or any part of the Malvern Hills.

15

## **93 Protection of Severn Trent Water Limited**

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

20

## **94 Protection of rights of commoners**

25

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

## **95 Protection of lords of the manor**

30

- (1) Subject to subsection (2), nothing in this Act prejudices or affects any rights of any lord of the manor on or over any of the Malvern Hills where those rights—
  - (a) existed immediately before this Act came into force, and
  - (b) were protected by virtue of section 26 of the Malvern Hills Act 1884.

35

- (2) Subsection (1) is subject to any agreement between the lord of the manor in question and the Trust made under section 71(4).

## 96 Reservations relating to certain land described in 1884 Act

- (1) Subject to subsection (2), any specified rights which existed immediately before the passing of this Act continue to be reserved to the Owner. 5
- (2) The Owner must cause as little injury as possible to the surface of any land in the exercise of any specified rights reserved by subsection (1) and must keep all open pits, shafts and quarries securely fenced where necessary for the protection of the public.
- (3) If the Owner has complied with subsection (2), they are not liable to make any compensation or other payment in respect of any workings carried out in accordance with any rights reserved by subsection (1) or any damage resulting from them. 10
- (4) There continue to be reserved to any relevant person, any rights to springs of water naturally flowing or arising from the surface of any land forming part of the King's third and all such powers as they or any of them respectively had for the enjoyment of that land. 15
- (5) In this section –
- “the 1884 Act” means the Malvern Hills Act 1884,
- “the King’s third” means the land as was so defined in section 2 of the 1884 Act, read with the preamble to that Act, 20
- “the Owner” means the lords of the manor or other owner of any specified rights as referred to in subsection (1),
- “a relevant person” means any person who, immediately before this Act was passed was, by virtue of section 13 of the 1884 Act, entitled to exercise the rights mentioned in subsection (4) or was entitled to exercise the powers mentioned in that subsection, 25
- “specified rights” means rights in respect of the soil of any land that were reserved under section 13 of the 1884 Act, being rights to –
- (a) dig and get by open quarrying or otherwise any stone, mines or other minerals, and 30
- (b) carry away, sell and dispose of such stone or other minerals for their own benefit.

## 97 Protection of owner of Little Malvern Court Estate

- (1) The owner shall be entitled for building or road purposes on the Little Malvern Court Estate at any time to take stone sand and gravel from any quarry existing at the date of the passing of the Malvern Hills Act 1924 in the areas where mineral rights were acquired within Little Malvern Court Estate by the Conservators pursuant to the Malvern Hills Act 1924. 35
- (2) No byelaws made under section 66(1)(p) shall apply to or in any way affect the property or rights of the owner. 40

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

## SCHEDULES

### SCHEDULE 1

Section 7

#### ADMINISTRATIVE PROVISIONS

#### PART 1

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

##### *Introduction*

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

##### *Benefits to trustees* 10

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

##### *Interests of trustees*

- 3 (1) The declaration of interests of trustees and of connected persons. 15  
 (2) The management of conflicts of interest, including the participation by trustees in discussions or decisions of the trustees and the receipt of information by trustees.

##### *Ordinary meetings of the trustees*

- 4 (1) The frequency of ordinary meetings. 20  
 (2) The means by which meetings are held (including by electronic means).

##### *Calling meetings*

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

##### *Chairing of meetings* 25

- 6 (1) The election of the chair and vice-chair of the trustees and their responsibilities.  
 (2) Arrangements if there is a vacancy in the position of chair or vice-chair or their absence.  
 (3) The removal of the chair or vice-chair from office. 30

### *Quorum*

- 7 (1) The quorum required for a vote at a meeting of the trustees.
- (2) The making of arrangements for the appointment or election of new trustees, where the number of trustees has fallen to the extent that those requirements cannot be met. 5
- (3) The making of decisions during any period in which those requirements are not met.

### *Decisions of the trustees*

- 8 (1) Requirements for the making of decisions of the trustees.
- (2) Requirements under sub-paragraph (1) may include provision for – 10
  - (a) the chair of the meeting having a casting vote,
  - (b) where the decision is to elect the chair or vice-chair of the trustees and there is a tied vote,
  - (c) decisions on urgent business, including about the requirements for and validity of decisions made otherwise than at a meeting. 15
- (3) The validity of any proceedings of the trustees or any committee or sub-committee of the Trust in cases where there is a vacancy among the trustees or committee members or a defect in the appointment of a trustee or committee member.

### *Records* 20

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

### *Committees, sub-committees and advisory panels*

- 10 (1) The establishment and dissolution by the Board of committees, sub-committees and advisory panels. 25
- (2) The composition of committees and advisory panels, including provision about the inclusion of persons who are not trustees.
- (3) The delegation of functions to committees except – 30
  - (a) setting the amount of the levy under section 34,
  - (b) approving the Trust’s budget,
  - (c) appointing trustees,
  - (d) exercising the powers of section 7,
  - (e) such other functions as may be specified in regulations made under paragraph 1. 35
- (4) Requirements on committees, including requirements about –
  - (a) acting in accordance with any regulations made by the trustees under paragraph 1,

- (b) reporting to the trustees.

*Delegation to employees*

- 11 (1) The delegation (subject to the provisions of this Act) of the trustees' functions to any employee of the Trust except the functions specified in sub-paragraphs 10(3)(a) to (d) and such other functions as may be specified in regulations made under paragraph 1. 5
- (2) Reporting by employees to the trustees in accordance with any instructions given by the Trust.

*Financial controls*

- 12 Financial controls and accounting policies and procedures. 10

**PART 2**

REGULATIONS

- 13 (1) The regulations that may be made by the trustees under section 7(1) include regulations for the management and administration of the Trust and for the conduct of its business and of any committee, sub-committee or advisory panel. 15
- (2) Without prejudice to the generality of sub-paragraph (1), regulations may include provision –
- (a) specifying the quorum for any committee, sub-committee or advisory panel, 20
  - (b) about voting rights for members of committees or sub-committees who are not trustees,
  - (c) about the calling of meetings,
  - (d) for methods of making decisions in order to deal with cases of urgency when a meeting is impractical, 25
  - (e) about the custody of documents, and
  - (f) about the keeping of records.
- (3) Subject to this Schedule, and to any other regulations made under sub-paragraph (1), provision may be made in regulations under sub-paragraph (1) enabling the trustees, and any committee, sub-committee or advisory panel of the trustees each to regulate their own procedures. 30

**PART 3**

METHOD OF HOLDING MEETINGS

*Method of holding meetings*

- 14 (1) Meetings of the trustees may be held – 35
- (a) involving only the physical presence of those trustees who attend the meeting,

- (b) by electronic means only, or
  - (c) by a combination of the methods described in sub-paragraphs (a) and (b).
- (2) At least one of the meetings in each year (in addition to the meeting to be held under section 38(3)) must involve only the physical presence of those trustees who attend the meeting. 5
- (3) Rules made under section 7 must include provision about the following as regards meetings held wholly or partly by electronic means –
  - (a) ensuring participating trustees are able to communicate with each other and about the means by which they do, 10
  - (b) the giving of notice of meetings,
  - (c) the method of casting votes,
  - (d) about how a person is to be regarded as being present or in attendance at the meeting,
  - (e) in the case of meetings which by virtue of section 7(11) of the Act (which applies certain provisions of local government legislation to the Trust) are open to the public, ensuring that the public is able to see and hear the trustees if they are using electronic means. 15

#### PART 4

#### GENERAL 20

##### *Authentication of documents*

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

##### *Interpretation*

- 16 (1) In this Schedule –
  - “electronic means” includes any means which uses or is facilitated by electronic or similar communication or information technology, 35
  - “regulations” includes standing orders and instructions,
  - “signed” includes signed electronically, and “signatures” is to be construed accordingly.
- (2) References in this Schedule to a committee of the trustees include references to a sub-committee of the trustees. 40

## SCHEDULE 2

## Section 7

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

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

| (1) Name of enactment                        | (2) Manner in which applied to the Trust                                                                                                                                                                                                                                                                                                                                   |    |
|----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Section 228 of the Local Government Act 1972 | “(a) the name of every trustee for the time being, and<br>(b) the name of every member of each committee or sub-committee of the Trust for the time being.”,<br>(e) in subsection (2)(b) of section 100G, after “exercisable” there were inserted “, but not an officer by whom such a power is exercisable at least partly as a result of sub-delegation by any officer”. | 5  |
|                                              | Section applies with the omission of the reference to any proper officer and as though the Trust were a parish council and (as regards elected trustees) references in the section to a local government elector for the area of a local authority are to be construed as references to a local government elector for the Trust’s electoral area.                         | 10 |
|                                              |                                                                                                                                                                                                                                                                                                                                                                            | 15 |

## SCHEDULE 3

Section 48

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

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

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

## SCHEDULE 4

Section 84

### MISCELLANEOUS POWERS OF THE TRUST

#### *The Powers*

- |   |                                                                                                                                                                               |    |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 1 | Subject to section 28 and rules made under section 7, employing and remunerating such staff as are necessary for carrying out the work of the Trust and to engage volunteers. | 35 |
| 2 | Raising funds.                                                                                                                                                                |    |

- |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                              |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 3  | Establishing and maintaining a supporters' organisation to which individuals or bodies may pay subscriptions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                              |
| 4  | Co-operating with and entering into joint ventures, collaborations and partnerships with charitable and non-charitable bodies.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                              |
| 5  | Establishing or supporting any charitable trusts, associations or institutions formed for any of the charitable purposes included in the objects.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 5                            |
| 6  | Acquiring, merging or affiliating with or entering into any partnership or joint venture arrangement with any other charity formed for any of the objects.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                              |
| 7  | Holding seminars, conferences, lectures, tours and courses.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 10                           |
| 8  | Promoting or carrying out research and disseminating such research.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                              |
| 9  | Providing advice.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                              |
| 10 | Publishing or distributing information in any form.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                              |
| 11 | Making grants.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                              |
| 12 | Setting aside funds for special purposes or as reserves against future expenditure, but only in accordance with a written policy on reserves.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 15                           |
| 13 | Depositing or investing funds in any manner (but to invest only after taking such advice as the Trust consider is reasonably necessary from such person as is reasonably believed by the Trust to be qualified to give it by their ability in and practical experience of financial and other relevant matters).                                                                                                                                                                                                                                                                                                                                                                                                | 20                           |
| 14 | Designating funds for particular purposes, including designating capital money received by the Trust for any purpose for which capital money may properly be applied in accordance with section 34.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                              |
| 15 | Entering into any derivative arrangement in connection with any investment provided that the derivative arrangement is ancillary to the investment (being entered into in order to manage the risk or transaction costs associated with the investment) and is not a speculative venture.                                                                                                                                                                                                                                                                                                                                                                                                                       | 25                           |
| 16 | Delegating the management of investments to any person, provided that—<br>(a) the delegate is authorised to carry on investment business under the provisions of the Financial Services and Markets Act 2000,<br>(b) the investment policy is set out in writing by the Trust,<br>(c) the performance of the investments is reviewed regularly with the Trust,<br>(d) the investment policy and the delegation arrangements are reviewed at least once a year,<br>(e) all payments due to the delegate are on a scale or at a level which is agreed in advance and are notified promptly to the Trust on receipt by the delegate, and<br>(f) the delegate must not do anything outside the powers of the Trust. | 30<br><br><br><br><br><br>35 |
| 17 | Insuring the property of the Trust against any foreseeable risk and taking out other insurance policies to protect the Trust when required.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 40                           |

- 18 Subject to section 28 and rules made under section 7, employing paid or unpaid agents or advisers.
- 19 Opening and operating bank accounts and banking facilities.
- 20 Soliciting and accepting grants, donations, endowments, gifts, legacies and bequests of assets on any terms. 5
- 21 Entering into any licence or sponsorship agreement.
- 22 Entering into any contract or agreement (including any finance lease).
- 23 Carrying on any trade in so far as the trade is – 10
  - (a) exercised in the course of the carrying out of the objects, or
  - (b) ancillary to the carrying out of the objects, or
  - (c) not taxable trading.
- 24 Establishing, supporting or acquiring subsidiary companies.
- 25 Selling surplus renewable energy.
- 26 Acquiring, keeping, managing and disposing of grazing livestock.
- 27 Without prejudice to section 30, taking out policies of insurance. 15
- 28 Compromising or settling –
  - (a) any disputes of any nature, or
  - (b) any claims made by or against the Trust in any legal proceedings or prospective legal proceedings.

*Interpretation* 20

- 29 In paragraph 23, “taxable trading” means carrying on a trade or business in such manner or on such a scale that some or all of the profits are subject to corporation tax.
- 30 In paragraph 24 “surplus renewable energy” means electrical energy which is – 25
  - (a) unused by the Trust, and
  - (b) generated by plant or equipment which may only be –
    - (i) is located on ancillary land owned or under the control of the Trust or on buildings on other land owned or under the control of the Trust, and 30
    - (ii) installed and used for the purpose of supplying energy for the Trust’s own purposes.
- 31 In paragraph 26, “grazing livestock” includes any creature which is or is to be kept by the Trust for purposes which include grazing land.

SCHEDULE 5

Section 87

REPEALS AND REVOCATION

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

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SCHEDULE 6

Section 88

CONSEQUENTIAL AMENDMENTS

*Malvern Water Act 1891 (c.xcvi)*

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

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

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

| <i>Column 1 – Enactment</i>                                    | <i>Column 2 – Dispositions</i>                                                                                  | <i>Column 3 – Relevant Instrument</i>                                                 | <i>Column 4 – applicant</i> |
|----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-----------------------------|
| The Malvern Hills Act 202[X], section 73(1) (disposal of land) | The sale, lease, exchange or absolute disposal free from any rights or restrictions of any certain parts of the | The deed or other instrument made by the Malvern Hills Trust (with the consent of the | The Malvern Hills Trust     |

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

## SCHEDULE 7

Section 89

### TRANSITIONAL PROVISIONS AND SAVINGS

#### *General provisions*

- 1 Where an instrument or document refers, either expressly or by implication, to a provision of any of the repealed Acts, the reference is, except where the context otherwise requires, to be construed as, or as including, a reference to any provision of this Act relating to the same matter. 20
- 2 (1) Anything begun under a provision of any of the repealed Acts may be continued under any provision of this Act as if begun under that provision of this Act. 25
  - (2) Where any period of time specified in, or having effect in relation to, a provision of any of the repealed Acts is current at the date of the repeal, any provision of this Act relating to the same matter has effect as if it were in force when that period began to run.
  - (3) Reference in this Act to things done, left undone, suffered or occurring in the past shall, so far as the context requires for the continuity of operation between a provision of any of the repealed Acts and any provision of this Act relating to the same matter, be construed as including reference to the things done, left undone, suffered or occurring before the coming into operation of that provision of this Act. 30  
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- 3 (1) The repeal by this Act of the repealed Acts does not affect the liability of any person for any offence under any provision of the repealed Acts or

- any byelaw made under any of the repealed Acts committed before the day on which the repealed Act was repealed.
- (2) Any proceedings under the repealed Acts (including proceedings for an offence such as is referred to in sub-paragraph (1)) may be continued notwithstanding the repeal, revocation or amendment of the repealed Acts. 5
- 4 Any application, approval, certificate, consent, document, exemption, notice or warrant made, submitted, given, granted or issued under any provision of the repealed Acts continues to have effect after the date on which the relevant provision of the repealed Act took effect as though it had been made, submitted, given, granted or issued under the corresponding provision of this Act until it expires or is revoked or otherwise ceases to have effect in accordance with this Act. 10
- 5 (1) Subject to sub-paragraph (2), any byelaw made under the repealed Acts continues to have effect as if made under section 65 until revoked by a byelaw made under that section. 15
- (2) Subsections (2) to (4) of section 64 apply in relation to anything removed from the Malvern Hills in pursuance of any byelaw which continues to have effect by virtue of sub-paragraph (1).

# Malvern Hills Bill [HL]

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[AS INTRODUCED]

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## B I L L

TO

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

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SESSION 2024-25

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