CORRECTED MINUTES OF ORAL EVIDENCE

taken before the

MALVERN HILLS BILL COMMITTEE

PETITIONS AGAINST THE BILL

Wednesday, 18 March 2026 (Afternoon)

In Committee Room 2

PRESENT:

Lord Hope of Craighead (Chair)
Baroness Bakewell of Hardington Mandeville
Lord Evans of Guisborough
Lord Inglewood
Lord Ponsonby of Shulbrede

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FOR THE PROMOTER:

Jacqueline Lean, Counsel, Malvern Hills Conservators
Alastair Lewis, Roll A Parliamentary Agent
Susan Satchell, Governance Change Officer, Malvern Hills Trust

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(At 2.05 p.m.)

1. THE CHAIR: Good afternoon. Ms Lean, I think it is for you to continue now with your unopposed clauses.

Statement by Ms Lean

2. MS LEAN: Thank you, my Lord. We had got up to Clause 22, I think, which brought us towards the end of the "Who can be a trustee?" part, if I can put it in those very broad terms. The next one on our list as unopposed which has not already been touched on is Clause 25, the returning officer. I hope this clause is relatively self-explanatory. It is about the trustees appointing an individual to be a returning officer for elections, providing for payment of charges and expenses that are incurred in that regard, and for taking such steps as the returning officer may think appropriate to remedy any act or omission on their part, or of a relevant person.

3. Clause 26 is about legal proceedings relating to elections of trustees. I mentioned that briefly yesterday, in response to Mr Myatt: that it brings in the challenge by petition process for challenging local government elections in Part III of the Representation of the People Act 1983.

4. Clause 27, register of electors—this is a requirement for the relevant electoral registration officer to supply to the returning officer, free of charge and on publication, a copy of the relevant register, which will be needed to run the elections. In broad terms, the Trust is not one of the bodies that is currently included in general legislation as somebody who automatically has access to it, so this provision has gone in to make sure that it can get access to the information it needs for the elections to be run.

5. Clause 28, which is about benefits to trustees—this will capture the expenses but also the general provisions that you tend to find with things like charities around contracts, for example, that might be entered into with somebody who is a trustee or a connected person of the trustee, so essentially making clear that no part of the income or property of the Trust can be, transferred paid or applied by way of benefit except in accordance with rules that have been made under Section 7. I touched on that in Schedule 1.

6. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Under Clause 27, the register of electors—would that include email addresses for electronic purposes?

7. MS LEAN: No, I am told it does not—not at the moment.

8. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Is it a work in progress or a definite no?

9. MS LEAN: My Lady, my understanding is these will be the registers that are held currently by the local authority body, so what is on the registers will be what they are required to have on the registers. It is not something that the Trust can stipulate the contents of. That is my understanding.

10. In terms of benefits to trustees, that was picking up on the fact that, if there are any monies or suchlike for payment to trustees, it cannot be done except in accordance with specific rules that might be made under Section 7. I draw your attention in Schedule 1 part 1 to that proviso, the relevant sections of the Charities Act 2011, which again are the ones about payments or contracts with trustees or connected persons, and generally with the provisions of the Act.

11. Clause 29, interests of trustees—this is a requirement to have a policy about the declaration of interests of trustees and the management of conflicts of interest. In practice, you see that today in the Trust's own governance document, but this puts the requirement to have it on that express statutory footing, and also for a register to be maintained of all interests that are so declared.

12. My Lord, I think that then brings us on to 30 through to 31, which are essentially about ensuring that the Trust can take out insurance policies to indemnify a returning officer. I understand that may have arisen in the past due to a particular query that had been raised about a returning officer from another body acting on behalf of the Trust, and whether that was captured by that particular local authority's own insurance because it was providing it for a third party. It is about making absolutely clear that the Trust has the power to get that insurance for whoever is appointed to be the returning officer.

13. Then on Clause 31, limitation of liability of and indemnity for trustees or employees, this is essentially carrying forward the idea that is found already in the existing Acts and the Commissioners Clauses Act—I am sure Mr Lewis will tell me if I am wrong on that—which is about, where somebody is doing something as an employee or trustee of the body, and they are doing it in pursuance with their authority under that, essentially

on behalf of the Trust or with the authority of the Trust, that they do not get sued personally.

14. It is not a personal liability that attaches to that, except for the specific points that are carved out in subclause (2), which include, for example, criminal proceedings in which somebody might be "convicted of an offence arising out of any fraud or dishonesty", which is obviously something to be hoped that that event never occurs, but it is fairly standard and finds some previous basis for that in the Commissioners Clauses Act of 1847 and also, I am told, the Charities Act. It is in the table of origins, if that assists, at page 141, and that is where you will also find some further background on the clauses I have just run through, for example, in terms of Clauses 28, 29 and 30.

15. Then Clause 32 is in respect of giving of notices under Part 2. Again, a bit of a techy provision, but would capture things like, as I understand it, if nominations have to be received in writing or if votes have to be received by post. It carries through into things like when things are deemed to be delivered and suchlike.

16. THE CHAIR: I have one point, which is a minor point on wording that I have not picked up previously. If you look at 32(3)(b), it refers to the notice "being handed to the recipient where it is delivered to such recipient personally". I wonder whether the word "personally" should go into 32(1)(b). Do you see what I mean? You have "by post", and then "by delivering it personally to the person on whom it is to be served". That is what is referred to in (3)(b). It is just consistency between the two sub-provisions.

17. MS LEAN: Yes, my Lord. I am hearing "quite possibly" from my left.

18. THE CHAIR: Could you just make a note of that? It is not something on our list, but it is just something that might be worth tidying up.

19. MS LEAN: Yes. A lot of these bits, like with the notices, you will not find an exact precursor to them in the existing Acts, but it is reflecting modern best practice, so the provision going in about the giving of notices, when and timing and suchlike.

20. My Lord, in terms of Part 3, my note is that, even if they were not expressly down as opposed clauses, I think we have covered the substance of everything apart from potentially Clause 37. Clause 33 is the levy; Clauses 34 and 35 Mr Myatt mentioned

yesterday, and I know we touched on them in our positive case on this part of the Bill; and 36 is tied up with the levy.

21. Clause 37, as it says in the heading, "report and annual accounts"—first, in subclause (1), making clear that, despite any waivers or exemptions there might be under the Charities Act for incomes under certain amounts or suchlike, this body must every year arrange for its accounts to be audited annually.

22. At subclause (2)—this is one where there is potentially recognising that change that has been. What happens now is that the Trust's auditors must be appointed by the trustees at the annual meeting, and there is a requirement there that they can be appointed for such reasonable remuneration as the trustees think fit, which is obviously a change from the current arrangements, which are carried through into the Acts by the Commissioners Clauses Act, which says that the auditors may be appointed by the ratepayers, but they are limited to something like £2 and a shilling or something a day. Forgive me; I have lost the exact figure. Essentially, it is putting it on that more modern footing: that ordinarily you would expect the body to be appointing its own auditors and that they can arrange for the proper remuneration of that.

23. Subclause (3) makes clear that the report of the activities of the trust in the preceding year must take place at one of its meetings, and the accounts of the Trust for the year must be approved at one of its meetings.

24. Subclause (4)—this is one of the provisions I alluded to briefly about some meetings that have to be held solely in person. This is one, i.e. where there is a meeting where it is considering the report of the activities and approving the accounts, that is one that has to be held in such a way that only trustees who are present together in the same place may attend, speak and vote, unless there are exceptional circumstances that, in the opinion of the chief executive, mean it is not possible for any of the trustees to be present together at the same place for the purpose of attending, speaking and voting at the meeting. The default is all in the same room, but it is almost like the Covid proviso that has gone in that there may just be some previously unforeseen event that might mean that it is no longer permissible for everybody to attend the meeting in that way.

25. Subclause (5)—there is the express requirement for public notice to be given of that meeting at least 10 clear business days before the meeting, on the Trust website, local

newspapers if there are any in the area, stating that the report and the accounts referred to are available for inspection at the offices of the Trust. Although there is that shift from what is in the Commissioners Clauses Act, in that it moves away from that possibility of the ratepayers appointing, this is all still very open. These accounts are open to be looked at by members of the public. They have to be considered at a meeting that members of the public can attend. In substance, in that sense, this is still very much an open thing which people who are interested can look at and, in accordance with any rules or suchlike for the meetings, have their say about the Trust's financial activities.

26. THE CHAIR: I like the words "if there are any" in subclause (5) after "local newspapers". It is very cautionary.

27. MS LEAN: Indeed, my Lord, but I think it is probably fair to say that, unfortunately, certainly in some parts, there does seem to have been a falling away perhaps of local newspapers, and so it is merely reflecting the situation that hopefully will not come to pass, but if there is a situation that there is not a local newspaper, you are not bound to a statutory requirement that is no longer within your control.

28. LORD EVANS OF GUISBOROUGH: I assume there is case law about what is actually meant by a local newspaper.

29. MS LEAN: I am hearing not that Mr Lewis is aware of. None comes immediately to mind on my part, but it is a very well-established procedure for things to be published in local newspapers for all sorts of reasons. I am sure there is a body of practice as to what is meant, if not technically, even if we cannot put our hands on a single case that says "local" means it must be within X miles of such and such.

30. THE CHAIR: Publishing in the *Financial Times* would not suit the requirement.

31. MS LEAN: My Lord, I will be honest with you and say that my knowledge of any legislation relating to newspapers and what might constitute a local or a national or whether there are specific definitions is sadly lacking. My Lord, there is obviously the proviso that it is circulating in the area in which the Malvern Hills is situated. You have that proviso written into subclause (5), so that gives you, I think, a sense of what is meant by it in that regard.

32. LORD INGLEWOOD: Unlike Ms Lean, I actually chaired a local newspaper group for a time. The way these things are developing is that the paper copies are increasingly disappearing, and sometimes they are replaced by direct replacements from basically the same publisher in digital form, but there are also certain what you might call small, almost glorified parish newssheets that are coming into being—a certain amount of citizen journalism—and I would have thought, whatever it says here, it would be appropriate that notification was granted to those kinds of publications to get the news disseminated that this was going to happen.

33. LORD EVANS OF GUISBOROUGH: Does the Trust have its own newsletter?

34. MS SATCHELL: My Lord, we do, but it goes out to people who have put themselves down as wanting to have it. We do occasionally do a printed form newsletter that we circulate as widely as we can, but people basically have to opt in to receiving it. It might be included in that, but it would not be suitable as the means of disseminating it to everybody.

35. MS LEAN: My Lord, I think we can certainly take that away under advisement as to looking at a—

36. LORD INGLEWOOD: I am not even sure it is necessary to put it into the Bill, but it is just something that I think should be good practice.

37. MS LEAN: It is something to think about as good practice to make sure that this is taken forward, my Lord.

38. That probably then brings us on to Part 4 of the Bill, and this is where the public access and management of the Malvern Hills provisions are. Although we have been through a number of these clauses previously, there are quite a number of them that were not opposed but are largely carried forward from earlier Acts. My Lord, the first one in that category is "occupiers' liability".

39. THE CHAIR: 38 itself I think is not opposed.

40. MS LEAN: My Lord, 38 I had as opposed. I think it was Mr Cameron who raised it because he was concerned about the CROW provisions, but Clause 38 is a carry-forward, essentially, of Section 15 of the Malvern Hills Act 1995, subsection 1. I think,

my Lord, I may have referred to this. It is a carry-forward from Section 15, subsection 1, but there are some additional words on there about how, if you do so without breaking any wall, fence, etc, you "shall not be treated as a trespasser", which have been taken out because it was considered that those words were superfluous.

41. 39 on occupiers' liability—in very broad terms, if I may, this either follows or is based on the relevant provisions in the Occupiers' Liability Acts 1957 and 1984, as they have essentially been substituted, updated or applied by the CROW Act 2000. In even more headline terms, it is essentially about saying that the Trust is not liable if somebody is injured on Trust land, unless it is the result of a risk that the Trust created or was reckless as to whether it was created.

42. When we were trying to talk through an example of that, it might be that, if you are on common land or on the hills, there are natural dangers that are associated with natural features there—turning ankles and suchlike—but what it would not capture is if, for example, the Trust had some fencing up around, say, a sinkhole or the edge of a cliff, took it down to go and do some work, and somebody fell and injured themselves in that situation, because that would be a risk that essentially had arisen from something the Trust had done or it had been reckless about doing, as opposed to something arising from just the nature and state of the land that was in the Trust's control, bearing in mind, of course, that unlike a building or a shop or something, the Trust does not have the same ability to control who may or may not come on to its land or the terms with which they may do so because of the nature of it as open land.

43. LORD INGLEWOOD: It does not materially change the wider legal principles that apply elsewhere, does it? It is just slightly refining them.

44. MS LEAN: It is an application of usual principles but to the specific nature of the land here, in a similar way to what you find with the CROW Act and other access land. My Lord, if it assists, more detail about this is on the table of origins at page 149, which essentially paraphrases; it is to the same effect as the explanation I have just given.

45. The next clause I had down as an unopposed clause—I think it is one that has been touched on in our evidence previously—is the duty in Clause 40 to keep the Malvern Hills unenclosed. This was one of the ones that was touched on when the Malvern Environment Protection Group came in. My Lord, I was going to just flag in that that this is carried

forward from Section 3 of the Malvern Hills Act 1930, and to highlight that there is a definition of "unbuilt on", tying it back to the definition of "unbuilt on" that appeared in the objects clause in Clause 6.

46. The next clause, then, was Clause 41, protection of the Malvern Hills. Again, this carries forward duties about the Trust taking "any action it sees fit to protect trees, timber, shrubs", etc, and "to prevent any unlawful felling, cutting or damaging of those things", or to prevent "any unlawful digging on or removal of stone" or damage or suchlike. Those duties or those powers are carried forward from Section 21 of the Malvern Hills Act 1924, and also in part from Section 10 of the Malvern Hills Act 1884. Again, if it assists, these are in the table of origins note at page 150. These are the broad protection provisions, in terms of what the Trust can do to protect the hills from certain things, that have been in place for quite some time.

47. Clause 42 was down on my list as an opposed clause, because it was mentioned, I believe, in Mr Cameron's petition, so we addressed it in our positive case before we began hearing petitions on this part of the Bill. I was not proposing to touch on that again, but this is about the ability that the Trust has to take measures to remedy any enclosure or encroachment on the hills, and the jurisdiction of a county court in support of that. As I have touched on at the time, for some types of orders, it is not just the Trust that can apply for that; it is extended to any person. That broadly reflects the opening up that you find in the Commons Act 2006: where somebody does something on a commons without Commons Act consent, the power there for somebody to go to court and say, "Something has been done without consent", has been extended to any person from the position it was in under the previous legislation.

48. THE CHAIR: I think Mr Cameron's point was that there seemed to be an inconsistency between 42 and 48, but I do not think he has any substantive point against 42.

49. MS LEAN: My Lord, it was more that I think we touched on this clause in the context of Mr Cameron's petition because he had mentioned it. I was not proposing to go through it in any more detail because I think I did run through it in a little bit of detail on that previous occasion, even though it might technically be down as an unopposed clause.

50. THE CHAIR: There is nothing much to defend there, I think. It is fairly plain.

51. MS LEAN: Indeed. The next one I had down is Clause 43, the general power to regulate and manage the Malvern Hills. "The Malvern Hills shall be regulated and managed by the Trust under and in accordance with this Act"—hopefully quite straightforward as far as it goes, but that of course is the same in all material respects as the provisions you find in earlier legislation.

52. LORD INGLEWOOD: During the questioning of witnesses, I raised a point about whether or not there was a commons committee here. The more I have thought about it, I have been wondering whether it might not actually effect a much better relationship across the piece between all the parties involved if the Trust could not incorporate, as a sub-committee of itself, possibly running in parallel with the land management committee, something that would effectively embed a commons committee along the lines of what you see in other commons into the workings of the Trust so that, in turn, you would get a wider dialogue than seems to be happening at present between those affected.

53. There are an awful lot of commons rightsholders who do not seem to be exercising their rights, and there is obviously a degree of friction between the licensed graziers and some of the commoners. That cannot be a good thing. If you go back to the beginning of the story of the Malvern Hills Trust, this is effectively a successor to the manorial court that would have existed in respect of the commons before the conservators came into being. It just seems to me that if you could introduce something of that kind, which in turn would then fulfil the role of the manorial court in respect of the regulation of the practical use of the common, you would, in this way, benefit all kinds of people. I just float it as an idea to see what your reaction might be. You may not want to react now, which is fair enough.

54. MS SATCHELL: If I could just make a comment on that, I am not quite sure that what you said about friction between the licensed graziers and the commoners is something that I have picked up. I think Ms Wilkes certainly has a concern about actions that the Trust might take. I stand to be corrected here, but there are, I think, one or possibly two graziers—one tethers ponies so does not really interfere with anybody else—and I am not sure that there is anybody else grazing. On Castlemorton Common, where we have the active graziers, we have the Countryside Stewardship scheme there, and the requirements of the scheme are now that it is effectively run by the group and all the common graziers are members of that group. It has a separate bank account. We are one

of the parties to that group as the landowner, but it is effectively run in that way.

55. LORD INGLEWOOD: That, I am sure, is right, save for the fact that there are really quite a lot of people with common rights who, for one reason or another, do not seem to be exercising them at present, but they still have rights.

56. MS SATCHELL: They do have rights. They absolutely do have rights, and if anybody wants to come on to the common and start exercising those rights, they absolutely have to be accommodated. We did at one stage have a grazier on CL9 who said he was going to retire and dropped out but then changed his mind, and he was accommodated back into the group. We have to accommodate him back into the group.

57. LORD INGLEWOOD: I know. I understand what you are saying, but all I can say is that it was my sense, sitting here listening to the evidence, that there were tensions and things. If you look at the way these things are organised elsewhere, if instead of having the Malvern Hills Conservators—the lord of the manor—it was a straightforward common somewhere else, you might well have a commons committee, and it seems that, as far as I understand it, they perhaps work slightly better. I leave the thought to you all.

58. MS LEAN: The only thing I could say that came to mind—I think this may be in the note in response to Mr Cameron's written submissions that we put in that we had picked up on, because he referred to commons council—was that one of the places perhaps you have tended to have things like a commons council—I think the Dartmoor Commons Council was one that was put forward as a specific example—was almost where there was a gap or a lacuna because the manorial system had fallen away there was not something in place, but things that you have tended to have put in place are either things like wards or orders under the Commons Act or enclosures, or something like a private Bill, so the conservators are essentially standing in place of the old manorial court.

59. LORD INGLEWOOD: Dartmoor is an exception because it is so big.

60. MS LEAN: Indeed, yes.

61. LORD INGLEWOOD: Put it this way: in the north of England, where I come from, where they are relatively commonplace, they do seem to achieve worthwhile outcomes.

62. MS LEAN: My Lord, we will certainly take that away in terms of thinking about if

the Bill goes forward, and if the new Trust comes to be constituted, when looking at the working arrangements and what could be put in place.

63. LORD INGLEWOOD: It occurred to me that you did not need to establish a commons council under the provisions of the national legislation because, if you turned it into a sub-committee of the Trust, that would have the same practical outcome.

64. MS LEAN: Indeed, my Lord, and certainly what the Bill does provide a framework for is things like committees or advisory panels, and some of those may or may not have members who are trustees. I am sure that is certainly something that could be thought about as an option, or something that could be factored in and thought about when the Trust is looking at what arrangements to put in place for managing all of its functions going forward.

65. LORD INGLEWOOD: I am interested if you have any further thoughts.

66. MS LEAN: We were on Clause 43, the general power to regulate and manage. I just had a note that it is the same in all material respects as Section 20 of the Malvern Hills Act 1924 and the opening words in Section 3 of the Malvern Hills Act 1930, but what we now have is, "Just do it in accordance with this Act", not, "Do it in accordance with this and all the previous Acts that have come forward previously".

67. Clause 44 we have touched on as an opposed clause; that is regulating the exercise of rights of common. I think then the next four are about fencing.

68. THE CHAIR: Does 44 fall to be read with 94?

69. MS LEAN: Yes, of course, my Lord. 44 falls to be read with 94.

70. THE CHAIR: They are either side of the same coin, are they not?

71. MS LEAN: Yes, my Lord. Of course, there is also the by-law-making provisions that we touched on in Clause 65, which include specific provision for by-laws regulating the exercise of commons, but if it is not specifically a by-law exercising rights of common, other by-laws cannot interfere with the exercise of rights of common.

72. My Lord, Clause 50 is the next one I have down as an unopposed clause that we have not touched on; this is regulation of horse riding. This is the same in all material

respects as Section 16 of the Malvern Hills Act 1995. It is not opposed; it is a carry-forward. Essentially, in subclause (1), the Trust can, "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" if it is necessary to "prevent the injury or disfigurement of the Malvern Hills", or "protect the use of the Malvern Hills as an open space for the recreation and enjoyment of the public".

73. This has echoes in the clause we were looking at a couple of weeks ago in Clause 45, which was the power to regulate or prohibit access by the public for certain reasons in certain places, but this is a specific provision about horse riding, bearing in mind that the right of access enjoyed under the Act is on foot or on horseback.

74. MS LEAN: Then Clause 51, prevention of unauthorised access by vehicles—this is a new clause, but it is there to make clear that the Trust can take measures as it thinks fit to prevent unauthorised access by mechanically propelled vehicles, provided that it does not prevent access by people lawfully trying to access the Malvern Hills on foot or on horseback. My Lord, just to highlight, you do have, within bundle 7 and the photographs that Mr Bills provided, some examples of people who had been doing doughnuts or wheelies and causing damage to land down near Castlemorton Common. This is a power that would ensure that the Trust could take steps to try to prevent people going on to that land and doing that sort of thing.

75. Subclause (2)—that this is a power that would be subject to the Commons Act consent in the 2006 Act, even allowing for the fact that there would ordinarily be that statutory disregard. Just making clear, bearing in mind in particular the concerns that were raised on behalf of Mr Cameron, subclause (3), that "mechanically propelled vehicle" does not include an invalid carriage within the meaning of Section 20 of the 1970 Act referred to there.

76. LORD EVANS OF GUISBOROUGH: Does it include a bicycle?

77. MS LEAN: I think certainly not a pedal bicycle, my Lord, although the query I have just raised is an electric bicycle. I think that might count as a mechanically propelled vehicle. I know there is something in the legislation about that, so I would have to triple check that, but no, not an ordinary pedal cycle I think is what I am seeing to my left.

78. LORD EVANS OF GUISBOROUGH: I think we have had evidence that there is some erosion caused by bikes.

79. MS LEAN: Indeed, my Lord. From recollection, Ms Satchell and Mr Bills gave that as an example of where you might use the power in Clause 45 of the Bill, if it was necessary, to preclude, regulate or prohibit access by members of the public to an area because of erosion that had been caused for that purpose. I am certainly happy to take away and confirm.

80. LORD EVANS OF GUISBOROUGH: You are satisfied that you have the power to control bikes and e-bikes.

81. MS SATCHELL: My Lord, if I might say, it is really difficult to prevent bikes from going without preventing horse riders and pedestrians. It is a very knotty problem, and one that we have been trying to address for years. Because of not restricting other users, I am not sure that you could practically use this clause to stop unwanted bicycles.

82. THE CHAIR: You do mention, jumping ahead to 65(1)(f), by-laws preventing or regulating devices including cycles.

83. MS LEAN: Yes, indeed, my Lord. I was going to say that it did strike me that probably the clearest place for making a particular provision about bicycles or electric bicycles would be in the by-laws, but this provision is essentially about physically preventing certain types of vehicle going on to land.

84. LORD INGLEWOOD: Is the point that, whatever the law says, it is going to be very difficult to stop people who wish to bike over this in the middle of the night?

85. MS SATCHELL: The answer to that is yes, it is very difficult.

86. LORD INGLEWOOD: Which I know is a mischief in other parts of England.

87. MS SATCHELL: It is a mischief on the Malvern Hills, my Lord.

88. MS LEAN: My Lord, then coming on to Clause 52, which is "application of advertisement regulations to display of notices under Part 4", essentially what this clause does is to say that the Trust can put up signs, under Clause 50 in particular, without having to seek formal advertising consent under the Town and Country Planning (Control of

Advertisements) (England) Regulations 2007. In very headline terms, the provisions of those schedules say that you do not need to have advertising consent if it is this type of sign erected by this type of person, and one of them is a local authority for the purposes of saying people cannot go somewhere.

89. I paraphrase horribly, but essentially it says that that same proviso applies to the Trust in respect of its functions under Clauses 45 and 50. That is the horse riding and the one I mentioned a few minutes ago about regulating or prohibiting public access. If you want to do it, you are not in trouble if you have put the signs up without having got formal consent from the local planning authority.

90. The next one I have down as an unopposed clause is Clause 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". This finds its origins in Section 12 of the Malvern Hills Act 1884, but it has been updated to a post-ECHR world, if I can put it in those terms, because Section 12 of the Malvern Hills Act 1884 just talks about taking all necessary measures to prevent nuisances. The language that is used perhaps reflects the language that we are more used to seeing in such provisions, certainly during this century, of not just necessary but reasonable and proportionate measures to prevent nuisances.

91. THE CHAIR: What kind of measures do you have in mind? Making by-laws would be one way of dealing with it, but what other measures?

92. MS LEAN: I am going to look to Ms Satchell on that, I am afraid. As it is an existing provision, it may be that in practice it is broadly done through the by-laws.

93. MS SATCHELL: I think, my Lord, it is done through the by-laws. It is a general provision carried forward, but the way in which I think we would probably do it is through the other provisions in the Bill, so the by-laws and also that one on prevention of unauthorised vehicles—the preceding clause.

94. THE CHAIR: Yes. Obviously, if you are going to exercise powers that might give rise to prosecution and that kind of thing, you have to give notice of what they are. A by-law would be a way of doing that. You make it clear that something is a contravention that will be measured with some kind of penalty, but otherwise do you have a police force?

You do not have a police force.

95. MS LEAN: I think we have lost the ability to go down that route, my Lord, because obviously, if you remember, I think I mentioned that the 1884 Act, by reference to one of the earlier Acts, enabled people to essentially be the equivalent of special constables and have powers of arrest, but we have gone down a slightly less extreme route with the fixed penalty provisions in the Bill.

96. THE CHAIR: I think in practice Ms Satchell has answered the question, actually. By-laws are the way in which you would go, and then everything follows from that.

97. MS LEAN: My Lord, in very headline terms it might provide as well for the fact that, if you have a warden out, they can say to somebody, "You need to stop doing that because that is causing problems". If you needed authority for a warden to tell somebody to stop committing a nuisance even if it was not, strictly speaking, a breach of a by-law, that might be it, or littering or something like that. Again, that is likely to be caught in the by-laws, but it is just the general power that is carried forward to make sure that they can deal with that issue if needs be.

98. My Lord, then Clause 54, paths and ways—this is the same in all material respects as Section 4(c) of the Malvern Hills Act 1930, save I have a note that there is a slight updating of language, as it were, because Section 4(c) talks about the conservators having powers to "make and maintain or by agreement with the local authority may make and maintain footpaths and ways over the Malvern Hills".

99. What Clause 54 does is it makes clear that the Trust can make and maintain ways, and that it only needs the agreement of the relevant highway authority if it is going to do it for a public right of way. If it is a permissive path, it can just do it. If it is going to create a path or a way that is meant to be a public right of way with that status, it needs the agreement of the local authority to do it. The wording was a little bit less clear from the Malvern Hills Act 1930 and also referred, as it did in those days, to the local authority, whereas of course now it is the highway authority that has the statutory responsibility for public rights of way.

100. Clause 55—although this easements point is one that has loomed large in a number of the concerns and petitions that you have heard, it is not actually down as an opposed

clause in and of itself. As I think I have indicated when we have touched on it before, it pretty much carries forward what is in Section 8 of the Malvern Hills Act 1995, which put a new 7(a) into the Malvern Hills Act 1930, but to highlight that in subclause (2) of Clause 55, it has been essentially updated to say that "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)", whereas previously the provision in the 1995 Act referred to having regard to the natural aspect of the Malvern Hills.

101. Just to highlight that in subclause (7), if anything done under subclause (1)—so constructing, maintaining, altering or improving roads or ways—would need Commons Act consent under Section 38 of the Commons Act, then that consent is required at the disapplication for Acts of Parliament that you find in Section 38(6)(a). It does not apply to that. Again, that is a carry-across, because when the power to grant these easements for the construction or maintenance of ways was included in the 1995 Act, there was a general disapplication of the then equivalent of Section 38(6)(a) in the Commons Act to any of the powers of building or suchlike in the 1995 Act. It is a no change from that regard. It just obviously refers now to the 2006 Act, whereas previously it was the Law of Property Act 1925.

102. Clause 57 is the next one that I have down. This is the power for the Trust to "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". This is the same in all material respects as Section 4(a) of the Malvern Hills Act 1930. Again, these are covered off in the table of origins, starting at page 155 in that document, which is in bundle 1 that you have there. What is said in Section 4(a) of that Act is that the conservators "may drain any part or parts of the Malvern Hills so far as they may deem necessary or desirable and they may make temporary enclosures for the purposes of this subsection and for the purpose of protecting or renovating turf", so it is a carry-across.

103. THE CHAIR: That is really dealing with erosion, is it not, at least in part—the idea that you have to give a chance to the eroded part to reseed or at least regrow?

104. MS LEAN: My Lord, I think the driver for it is the drainage point, if it is necessary to drain any part of the land. That is Clause 57(1). Yes, my Lord is right that in subclause

(2) it also picks up the point about protecting or renovating turf, which may be the erosion situation or some other situation.

105. LORD PONSONBY OF SHULBREDE: Is there any turf cutting? No, okay.

106. MS LEAN: The next unopposed clause on the list is Clause 59, sheds, seats, shelters and watering points. Sheds you will find in Section 4(d) of the Malvern Hills Act 1930. Seats and shelters are in the 1909 Act, Section 7, except that previously had by-law-making powers, but that is now dealt with in the general by-law-making powers. What is new is subclause (3), watering points. My Lords and my Lady, you will have heard previously that that was one of the areas where it is necessary to be able to provide the watering points to support grazing, particularly on the hills, but there was a lack of clarity about whether the Trust had the power to do that, or which of its existing powers it could find that within. This now makes it express that the Trust can install watering points for animals at appropriate places.

107. Clause 60, lavatories—again, not a wholly new power, perhaps unsurprisingly. This came in in Section 5 of the 1930 Act, and the changes of substance, as highlighted in the table of origins, are that the consent of the Secretary of State is no longer required for the construction and maintenance of lavatories. Previously, the Act in 1930 referred to granting licences to local authorities to construct and maintain lavatories, but now the Trust can make arrangements for them to do so.

108. In terms of temporary lavatories, which is in subclause (3) of Clause 60, powers to do with temporary lavatories in subclause (2)—it slightly extends the purposes for which there can be temporary lavatories on the hills. It is not just events authorised by the Trust but can now also be used for the use of persons working temporarily in the Malvern Hills. Again, hopefully a relatively straightforward and obvious provision as to why it is helpful to have the power to provide facilities generally, but also why it may be needed to provide it in connection with certain temporary matters.

109. Clause 61, games, sports and exhibitions—not an opposed clause, not a new clause. It is the same in all material respects as Sections 4(e) and (f) of the Malvern Hills Act 1930. The 1930 Act was one of the ones where more powers came in that were specifically directed at the recreational use that was being made of the hills, and this provided for setting apart areas on Malvern Common and Malvern Link for things like exhibitions or

sports. The main change to flag is that there is now an express definition of Malvern Common and Malvern Link Common in this section. It is in the clause itself.

110. Clause 62 and 63 were dealt with during the opposed clauses sessions, so it is then Clause 64. This is based in part on Section 20 of the Malvern Hills Act 1995, but also finds precedent in the City of London Corporation (Open Spaces) Act 2018 that was referred to in the MEPG petition hearings. Essentially, this allows for the removal of any articles or objects placed or left on the hills without the Trust's permission or otherwise without lawful authority. People have to be given an opportunity to remove it first if there is someone who appears to be in control of it, and then the powers for the Trust to store it—a requirement to store it unless it thinks it has been abandoned or it is incapable of being of value or of being stored, and what can happen if it is not claimed, essentially. There is specific provision in subclause (5) about farm machinery, and specific provisions about motor vehicles in subclause (6).

111. THE CHAIR: You are not giving yourselves a power to recover the cost of this from anybody. In other clauses you do that, but not this one. Am I missing something?

112. MR LEWIS: My Lord, maybe I can intervene on this one, particularly with the motor vehicles. By incorporating those provisions of the Road Traffic Regulation Act 1984, that does give the Trust the power to recover the costs of removal and disposing of vehicles.

113. THE CHAIR: Right, but otherwise not. Other things you do not.

114. MR LEWIS: No, I do not think so.

115. THE CHAIR: There could be all sorts of articles.

116. MS LEAN: My Lord, if I may, I think this may be picked up slightly in subclause (4). If an article or object removed under subsection (1) "has been stored under subsection (3), and no person appearing to be the owner", there is a requirement if the person wants to get it back. They have to turn up and also pay "all expenses reasonably incurred by reason of its removal or storage". There is also the provision for the Trust to "dispose of it in such a manner as the Trust thinks fit". I will certainly look to Mr Lewis on this in case I have got it wrong, but I think in theory that would envisage the Trust being able to

sell or auction off the item in question, which would be a means by which costs could be recovered.

117. THE CHAIR: This is before you dispose of it.

118. MS LEAN: That would be on disposal, my Lord. Either if the person wants to get it back, you can say, "You can have it back, but first you have to pay my costs of having removed it from where it was and stored it", but if it is not claimed, one way you may be able to meet your costs that have been associated with removing it would be to sell the item and then take the costs out of that.

119. LORD INGLEWOOD: If the person who has abandoned the thing is identified but does not want it back, and it costs a great deal more to dispose of it under the costs incurred by the Trust, but he just says, "You can have it. I do not want anything to do with it anymore", are you potentially out of pocket? Does it matter?

120. MS LEAN: I think, my Lord, technically you could be out of pocket. It may be that then you are looking at whether or not there is a breach of by-law or something that you can find.

121. LORD INGLEWOOD: It is a possibility. I am not sure it matters, does it?

122. MS SATCHELL: Generally speaking, it is not an issue because normally these things are very portable and it is not a big deal. The only instance that was just going through my mind was when you get somebody tipping asbestos.

123. LORD INGLEWOOD: I am now speaking personally, but we have all read in the newspapers in the last few weeks about fly tipping.

124. MS SATCHELL: Yes, small amounts of fly tipping.

125. LORD INGLEWOOD: You say small amounts, but in fact it is jolly expensive to get rid of things that are abandoned.

126. MS SATCHELL: Yes. We have had asbestos tipped in the past, which is extraordinarily expensive to dispose of, but, generally speaking, you cannot.

127. LORD INGLEWOOD: I can see that you would notice it, unlike some people in

Oxfordshire.

128. MS LEAN: My Lord, just looking back to general rules or laws that apply outside of the Act, of course it may be as well, if you are dealing with that sort of situation, if the owner's identity becomes known, that the Trust would be able to pursue a civil action against that individual for trespass and then seek damages in that way.

129. LORD INGLEWOOD: Under the general law, it seems that, everything else being equal, it is the landowner on whom the stuff has been dumped who is responsible.

130. MS LEAN: Indeed, my Lord. If there is nobody who is identifiable, the responsibility for something like that would fall to the Trust as the landowner. I was just thinking more in terms of my Lord's point about, "Would you find yourself out of pocket if the person does it?" If there was a recourse that the Trust had, it would seem that you would have to look to the general law there, or if the person was identified or identifiable, but it would still fall on to the Trust to deal with the situation. It may be that they would have to look at pursuing a civil course of action in probably trespass against that individual, and try to recover any costs it had lost that way.

131. The next clause then comes into Part 5 on the by-laws. We have looked at the substantive provisions of the by-laws in Clause 65 in terms of what they can be made about. In Clause 67, the by-laws may provide that if you contravene a by-law it is an offence, and you are liable "on summary conviction to a fine not exceeding level 2 on the standard scale".

132. Clause 68, fixed penalty notices, and then Clause 69 about an authorised officer being able to ask for a person's identity—I think those have all been touched on in our submissions or evidence previously, including where there is power or authority today for somebody to ask for the name and address of somebody who is thought to be committing a breach of the by-law.

133. The one I think we did not touch on in this section previously was Clause 66, the procedure for by-laws. This essentially provides that the provisions in various sections of the Local Government Act 1972 that apply, for example, to the procedure for making by-laws by local authorities, apply to the Trust for when it is making its by-laws, with a requirement to publish the by-laws on the Trust's website. There is the proviso in

subclause (2) for confirmation of by-laws by the Secretary of State. That is essentially the procedure to be gone through.

134. There is a requirement in subclause (4) to consult the Sport and Recreation Alliance when making by-laws. As noted in the table of origins table, this essentially follows what is in Section 10 of the Malvern Hills Act 1930, as inserted by Section 13 of the Malvern Hills Act 1995. That is essentially what brought in the provisions about going through the procedures in the Local Government Act 1972, provisions for confirmation by the Secretary of State and any modification that the Secretary of State might think needed to be made.

135. The only other provision that is in this section on by-laws is Clause 70, seizure of stray animals. That follows on and is the same in all material respects as in Section 19 of the Malvern Hills Act 1995, except that there is a new power in subclause (6) that provides that the Trust "may take such action as it thinks fit in relation to the animal if it is ill or injured including seeking veterinary treatment". I think it previously had to make sure it was adequately fed and watered, but now there is the proviso in there as well about, "You can do what you think fit if it is ill or injured, including seeking veterinary treatment".

136. In very broad terms, it is not quite to say it applies the same sort of provisos we have just seen about stray objects or articles, but it makes a similar provision in terms of being able to seize an animal that should not be on the commons or is there in contravention of the by-laws. Notify the owners if they know who the owners are. Also notify the police. Keep a register of any animals that they have seized and what happened to them, and a power to dispose of the animal or sell the animal, including that they can take any expenses to do with the animal out of any proceeds of sale. If they sell the animal and it is for more than the cost of expenses, return that to the owner if it is asked for. Again, that is pretty much a carry on through from the previous Act with that slight update.

137. The next clause I had down is when we move into Part 6 on land. If I can just pick up one point on the powers relating to land in the clauses that we have already dealt with, when we were looking at Clause 73, disposal of land, I think Lord Evans asked about what situations that might cover. Ms Satchell gave the example of if the Trust had acquired or bought perhaps a large parcel of land that had a house on it and it wanted the land but not the house. That would enable it to potentially then sell off the house but retain

the land, which is what it wanted.

138. I think I suggested as well that it might also apply to any land you bought under Clause 75, ancillary land. Having gone back and looked at the transcripts from the 1995 Act proceedings, when this clause was introduced, yes, the example of the buying the house and the land and then not needing part of that was one of the examples that was given there as to why that power was sought. On the ancillary land, although looking at Clause 73, it does seem on its face that it would capture ancillary land, there is a specific power to dispose of ancillary land in Clause 75 itself, so actually disposal of ancillary land would be dealt with under Clause 75 as the specific power rather than falling under the general power in Clause 73. I apologise for my error that I made in suggesting that it would also capture that situation.

139. The unopposed clauses in Part 6 of the Bill are, first, in Clause 76, maintenance of buildings and structures. This is, broadly speaking, a new power that, "In addition to any other powers under this Act, the Trust may maintain any building or structure which it owns", which would seem perhaps like quite a sensible power for the Trust to be able to have, and to "repair, reconstruct or replace any building or structure which it owns or occupies, provided that any reconstruction or replacement shall be on the site of, and of a similar size and external character to, the existing building or structure, if it is located on the Malvern Hills". Essentially, it is a broadly like-for-like proviso if you need to do that.

140. Just to note, although it is down as being a new clause, in Section 9 of the Malvern Hills Act 1995, there was a power to provide buildings for use for the conservators—so to acquire, purchase, lease buildings, for example—and that did carry with it a power to "repair and maintain or reconstruct" and "execute such works as may be necessary", but as a freestanding clause about buildings and structure generally, that is a new provision, and hopefully a sensible one for the Trust to have. Clearly, what Clause 76 would not do is get rid of any need for planning permission that might be required. It is just a vires power, if I can put it in those terms.

141. Clause 77, St Ann's Well—this is based on Section 3 of the Malvern Hills Act 1995. The early parts are based on Section 3 of the Malvern Hills Act 1995, and what that provision did was to say that, "In the event of damage to or the destruction of the building known as St Anne's Well the conservators may repair, reconstruct or replace that

building", and that they could "maintain and operate a building constructed under this section and may at such a building sell meals and refreshments and provide such services", et cetera.

142. It ended up in a slightly odd situation that the Trust could not today operate St Ann's Well or operate a cafe there, but if it burned down and it had to be rebuilt, the Trust could then do that. Essentially, Clause 77 carries across this idea of the Trust being able to do things like that at St Ann's Well, but makes clear it could do it at the existing building and not just some building that might have to be reconstructed in the future. Essentially, subclauses (1) to (5) capture that situation. It carries forward this idea that, if it is necessary to reconstruct or repair, it can do that.

143. Subclauses (6) onwards are about the ability to dispose of St Ann's Well. That carries forward the provisions that essentially start in the 1930 Act, which are in Section 8 of the 1930 Act, which identified lands where the Trust could sell or dispose of—it had some provisions around things like first refusal to the local authority, but essentially this is broadly a carry-across from those provisions in Sections 8 and 11 of the 1930 Act, save to highlight that subclauses (9) through to (11) are new, which are essentially practical ways of dealing with—if there is any dispute between the Malvern Hills District Council and the Trust about any disposal of St Ann's Well, that that is how that would be dealt with.

144. LORD INGLEWOOD: Is St Ann's Well on common land? I do not think it can be. Is it on common land?

145. MS SATCHELL: It is, yes. I did check, my Lord.

146. LORD INGLEWOOD: It is a cafe. Is it a spring as well?

147. MS SATCHELL: There are both within the building. There is a café and there is, linked on to it, what we call the spring room.

148. MS LEAN: From recollection, there is a photograph of St Ann's Well in the slide pack that Mr Bills prepared on the first day as one of the key features of the hills. In that photograph, from memory, it does show that there is the open door that takes you into where there is a basin, as it were, which is where the spring is. Next to it, I think, is where

the café is, and I think there might have been an upstairs establishment at some point.

149. MS SATCHELL: There is a flat above.

150. LORD INGLEWOOD: I was slightly surprised that there is a building that is operating as a commercial premises. It is common land, which is subject, therefore, to all the rules relating to common land, but you have said it is, and there you are.

151. MS SATCHELL: My Lord, I think it is a bit of an anomaly, but it is as it is.

152. MS LEAN: I think, my Lord, it may be one of those things where it has been there, I think, for some considerable time.

153. MS SATCHELL: Prior to the Commons Registration Act, certainly.

154. MS LEAN: It is not, essentially, on open common, as it were. From the photograph, you will see it is in a hardstanding area and up a track, and things like that.

155. My Lord, Clause 78, grant of easement, et cetera, for utilities—again, not an opposed clause, not a new power. This came into the 1995 Act in Section 8, along with the provision on access roads that we have been to a few times. There are a couple of amendments or modifications to it from the 1995 Act, which is that, in Clause 6(a), which is that the Trust cannot exercise the powers unless the things specified in (a) to (d) are satisfied, (a) now just talks about, "In the opinion of the trustees it is not reasonably practicable for the service to be other than overground". The 1995 Act referred to the opinion of the local planning authority, but, of course, local planning authorities tend to be caught up now in the planning process itself.

156. Subclause (d) is also new. This is a requirement that, if the Trust is going to grant an easement for an overground utility, it has to "consult the body or bodies responsible for preparation and publication of an AONB management plan in respect of the Malvern Hills", again reflecting the AONB status of much of the Malvern Hills and the provisions in general legislation to do with that.

157. Quarrying materials we dealt with with Mr Myatt. The final provision in this section is Clause 82, saving for town and country planning. Again, this is a carry-forward from Section 24 of the Malvern Hills Act 1995 and, essentially, means that, apart from

development that is authorised under Clause 81, which is the ability for the Trust to use loose materials from the Malvern Hills, nothing knocks out any requirements that there may be generally to seek planning permission for any development that the Trust wishes to carry out.

158. General and miscellaneous powers, Part 7.

159. THE CHAIR: Can I go back to 81? If you look at 81(3), the quantity there—50 cubic metres—is an enormous amount of material, is it not? Where does this come from?

160. MS LEAN: Forgive me, my Lord. The 50 is a carry-forward.

161. THE CHAIR: What are you going to do with it?

162. MS LEAN: My Lord, forgive me. Subclause (3) is that the maximum that can be extracted or taken up in any year is up to 25 cubic metres from that year. It gets to 50 if you have not taken that amount in previous years.

163. THE CHAIR: I understand all that, absolutely. It is just that the quantity of material is very large and we are inclined to wonder whether it should be reduced.

164. MS LEAN: If I could turn again to Ms Satchell, because I am conscious that she gave a rough and ready figure for what 25 cubic metres might equate to in her evidence.

165. MS SATCHELL: Yes. The handy measure that we came up with was a Transit van is 15 cubic metres, so in terms of the entirety of the material on the Malvern Hills, a Transit van and three quarters.

166. THE CHAIR: Compared to the entirety, it is quite small, but it is a very substantial amount of material in itself. What is going to happen to it?

167. MS SATCHELL: My Lord, there has been a lot of frustration in the past because, if we wanted to repair paths, for example, we have to buy in material from elsewhere, and that material may not have the same pH, particularly in the SSSI, where that really matters. It may not be the same colour. We try to colour match as best we can. I believe I am right in saying that, generally speaking, on a common, the owner of the common can take material from his own land to use on his own land.

168. As I say, it stems from that frustration that, where, subject to health and safety considerations, for example, we get a rock fall and we could really do with some boulders, for example, to stop vehicles running off the common, we cannot use it at the moment. I would not suggest that we would necessarily use the whole 25 cubic metres every year, but it is so that we can use that material to maintain our own paths.

169. THE CHAIR: There is also another point that caught our eye. If you look at the top of the page, subclause 2(b), it is to be used for the "furtherance of the objects", in (a), and then "within the Malvern Hills", in (b), "or other land in its ownership". Where is that?

170. MS SATCHELL: That would be ancillary land. Some of the ancillary land, we do say that it might be closed at some times of year, but we might allow public access at other times where it was not dangerous. If we happen to want to put a path on ancillary land, we could use some of the material there. I think it would, undoubtedly, be mainly used for maintenance of paths on the hills.

171. THE CHAIR: Should it say "ancillary" rather than "other" land? I am just trying to achieve a little more precision here. That is all.

172. MS LEAN: I think, my Lord, there would not be an issue with changing that to "ancillary" land.

173. THE CHAIR: The thing is this is a forward-looking measure and there may be other acquisitions of land and so on, so I think one has to be quite careful how far that form of words is going to take you.

174. MS LEAN: We can certainly take that wording away, my Lord.

175. Moving through, then, into Part 7, the only power, I think, that is outstanding in Part 7 is Clause 85, the power to prosecute, defend and appear in legal proceedings. This is based on wording, as I understand it, that you will tend to find in the Local Government Act, which just makes it absolutely clear that a local authority can prosecute or defend legal proceedings. There was reference in previous Acts to, I think, provisions in the Public Health Act 1875, but there have been various repeals and suchlike over time, so it just seemed sensible to include, in terms, in the Bill that, if the Trust needs to appear in any legal proceedings or institute civil proceedings, it can do so, and that, if there is any

issue about whether it has the authority to do so, it can appear at a public inquiry that may be held by or on behalf of any Minister or public body under any enactment.

176. THE CHAIR: Looking at (a), do you need the words "civil proceedings" again? In any legal proceedings, that would cover both civil and criminal, would it not?

177. MS LEAN: My Lord, I think it is the "institute civil proceedings" that is the issue.

178. THE CHAIR: Sorry, yes, that is quite right.

179. MS LEAN: "Prosecute or defend or appear" is loath to capture the criminal or if you are on the wrong side of it, if I could put it in those terms, but the "institute" makes clear that they can start something civilly.

180. THE CHAIR: Yes, I am sorry. I misread it because it was in the middle of a bit that had been scored out. It is one remaining word, is it not?

181. MS LEAN: Yes. That brings us, then, to Part 8. It says "Final provisions", but then we get to the schedules, but these are all unopposed. I hope I do not need to go through them in any detail, but, first, Clause 86 is the same in all material respects as Section 22 of the Malvern Hills Act. It is essentially that the Secretary of State may cause such local inquiries to be held as he or she may consider necessary for the purpose of any of their functions under the Act. If an inquiry is held, then the provisions in Section 250 of the Local Government Act apply.

182. Clause 87 tells you what is repealed. That is in Schedule 5.

183. Clause 88 gives you some consequential amendments that are in Schedule 6. Schedule 6 is at page 83. There are, basically, some updating provisions in the Malvern Water Act of 1891 to refer to this Bill that it becomes an Act as opposed to what was previously there, and some updating of provisions in the Commons Registration (England) Regulations to replace this Act for reference to the Malvern Hills Act 1930.

184. Transitional provisions are in Schedule 7. That is Clause 89. Schedule 7 is at page 84. If I can, in quite headline terms, say that what this broadly does is it allows things to be carried forward as you move past the new constitution date. If there is something in an instrument or a document before the new constitution date that refers to the old Acts, it

includes any corresponding provisions of this Bill if it becomes an Act. Anything that you have started doing under the provisions of an old Act, you can carry on doing, and it is treated as carrying on as if it has begun under the corresponding provisions of this Bill. If time needs to start running for a particular period, and that starts while the old Acts are in force, that carries on running. That is paragraph 2(2). If things were done or left undone before, that is treated as carrying forward under the Bill if enacted.

185. Paragraph 3, if somebody has committed an offence under the by-laws or suchlike under the old Acts, that liability subsists. It is not wiped out by the new Bill. If proceedings are on foot, they can carry on. Subclause (4), anything that is done in terms of certificates under the old Act carries forward. These are fairly conventional, standard provisions that just make clear that it may be a clean change with a newly constituted board, but it is not a wiping away of everything that has gone before it.

186. Paragraphs 5, 6 and 7 make some transitional provisions, allowing for the fact that certain things may not be in place right away going forward. For example, any by-law that has been made under the old Acts remains in force and continues to have effect as if it is made under this Bill, until it is revoked by a by-law made under Section 75, so there is not a gap or a lacuna with the by-law suddenly disappearing. Similarly, powers to remove items or things that have been left on the hills.

187. Just to highlight as well that, in paragraph 7, any provision of the repealed Acts that makes provision with respect to a matter about which there have to be rules under Section 7 of this Act—things like quorums and calling of meetings—will stay in force until you have the new rules that are made under Section 7. Essentially, business can carry on being carried out under the existing arrangements in the Acts and suchlike until such time as you have the new rules in place under Section 7, bearing in mind, of course, the rules under Clause 7 would have to be approved by the Charity Commission. It means you are not left without any governing documents for carrying out your Trust business while you might be waiting for the Charity Commission to look at those new rules.

188. Going back, then, to Part 8, those were the transitional provisions and savings in Clause 89.

189. Clauses 90 through to 95 are, essentially, protected provisions for the interests or the entities mentioned there, which are carried forward from protections in the earlier

Acts, and you have the details in the table of origins note on the last page of that note.

190. Clause 96, again, carries forward reservations in respect of certain lands that were described in the 1884 Act. In very headline terms, if there was something that was specifically protected with reservations back in 1884, nothing in this Act changes it unless it expressly does so.

191. Your Lordships' committee may wonder why there was something in there for the Little Malvern Court Estate in Clause 97.

192. THE CHAIR: Yes. What happened to the owner?

193. MS LEAN: I am told that the Trust has now acquired the relevant parts of that, so that is why it no longer needs to be there.

194. My Lord, that is a bit of a whistle-stop tour through quite a lot of provisions that I realised when I was writing out my note, but I hope that has now covered off all of the clauses, opposed and unopposed, about the Bill.

195. THE CHAIR: Thank you very much. Where would you like to go from here? You have a closing statement to make.

196. MS LEAN: I do have a closing statement, my Lord.

197. THE CHAIR: How long do you think you will need?

198. MS LEAN: I am hoping I can get through it in about 35 minutes.

199. THE CHAIR: Please go ahead then.

200. MS LEAN: I will do my absolute best.

201. THE CHAIR: That is all right. Do not speak too fast.

202. MS LEAN: If I run over, I apologise. Just to flag, what I am not trying to do is to cover each and every clause that we have been through, or everything we have been through, but to try to capture some headline points.

203. My Lord, back in January 2026, your Lordships' committee commenced the first of

18, I think, days of hearings on this Bill. It is a long and a detailed Bill, and the promoter is grateful for the committee's careful scrutiny of its terms.

204. In promoting this Bill, the promoter is mindful of and is following the advice of this House during the progress of the previous Bill as to the need for and desirability of a consolidation exercise rather than having to continue to work within five Acts of Parliament spread out over 100 years. That is, essentially, what this Bill is seeking to do—to bring together the Trust's duties and powers into a single Act, and place the Trust on the statutory footing that it requires to continue the vital work of maintaining and protecting the Malvern Hills for the next 100-plus years.

205. As I said in opening, the Bill is, in part, a consolidating Act—perhaps, in large part, a consolidating Act—but it is not solely a consolidating Bill. I do not shy away from that, and the Trust has been absolutely clear, throughout the consultation and since, that this is not just consolidating. There are new powers that are needed and are sought.

206. Many of the powers contained in the Bill find their predecessors in the existing Acts, and we have given you some examples of that today and as we have gone through the hearings. Other provisions provide express authority for things where the Trust has had to look very carefully as to whether it can find a source for those activities in its existing Acts by reasonable implication from what is in the Acts, or because it is reasonably incidental to the things for which it has expressed or implied authority. Putting these matters on an express footing does away with that need for scrutinising whether something it needs to do, which is obviously in furtherance of its purposes, it really has the power to do.

207. Other powers are new, included because the Trust has a current need to do certain things or activities, or there is tangible reason to suppose it may be necessary or appropriate to do so in the future. It has sought, so far as reasonably practical, to identify various powers, administrative and otherwise, which it might need going forward into the future. Schedule 4 in particular bears testament to that endeavour.

208. There have been remarks on, "Why do you need to do this?" or, "Do you need all of these powers?" but what the Trust has really sought to do is go, "These are all the things that we think we might need to", so it is not in the position of having to come back again to Parliament in 10, 15 or 20 years' time because something has come up and it does not

have the authority for it, or having to try to go through a Section 73 scheme.

209. As history has shown, it is not always possible to identify every situation that the Trust might need to address or powers that might be needed to ensure the proper protection and management of the Trust over the coming decades. Thus, the Bill also contains a general power, in carefully drawn and tightly constrained terms, which would enable it to respond to those situations if they were to arise.

210. A number of petitioners have raised concerns about that power and what it could be used for. In particular, that it, or the powers in Schedule 4, could somehow be used to commercialise the hills. It is clear from the powers themselves why that is not the case.

211. In respect of Clause 83, as we have outlined previously, it can only be used to further the objects. It cannot be used where the Trust has a power elsewhere under the Bill or under other legislation to do the thing in question, and it cannot be used to acquire or dispose of land or grant any interest in land, to borrow or raise money, including by levy or precept, or erect any building, fencing or other type of enclosure on the Malvern Hills. It can thus be seen that concerns that have been expressed that the power could be used to sell off parts of the hills or to erect solar farms, or to install a cable car up to the beacon, are far wide of the mark.

212. As to the powers in Schedule 4, as is made clear in Clause 84 of the Bill itself, those powers can only be used in order to further the objects but not for any other purpose. Thus, again, any concern that powers in Schedule 4 would somehow permit the Trust to introduce raising money, for example, through selling off easements as part of its objects or part of its purposes is simply not borne out on the provisions of the Bill. To be absolutely clear, nothing in the Bill empowers the Trust to move towards commercialisation of the Malvern Hills or the prioritising of obtaining capital or other monies for the Trust above its core objects and its historic objects of protecting, conserving and maintaining the Malvern Hills and keeping them unbuilt on as open space for recreation of the public.

213. All functions and powers have to be exercised in accordance with the Act—that is Clause 5(4) of the Bill—and, in the way the trustees consider, in good faith, would be most likely to further the objects. That is Clause 8(3)(a).

214. During the course of hearings before your Lordships' committee, it became apparent that a core concern of a number of those petitioning against the Bill was that the changes it proposes would somehow open up the wider area around the Malvern Hills to development or remove previous precedents by which the Trust had refused applications for easements that might unlock such development. Clause 6—the objects clause—became a particular focal point for those concerns, and it was perhaps most clearly expressed by Mr Huskinson, appearing on behalf of Guarlford Parish Council on 11 March, where he said in his reply that one of the council's concerns is that, "If the objects are changed, then previous decisions will be forgotten because it is a different Act with different objects, and therefore we are very concerned that the Malvern Hills Trust could grant easements that would absolutely ruin and increase urbanisation of the Guarlford Road".

215. That is perhaps a useful point at which to turn to the provisions of Part 2 of the Bill and to Clause 6—the objects clause. As the promoter has set out in its case before you over the past few weeks, the objects set out in Clause 6 are an articulation of what the Trust considers to be its current objects, as derived from the existing Acts, expressed in modern language.

216. The objections to this clause are focused, first, on the fact that the term "natural aspect" is no longer used, and, secondly, the fact that the objects refer to keeping the Malvern Hills unbuilt on as an open space for recreation and enjoyment of the public without reference to the word "unenclosed". Those matters were particularly addressed by the promoter in response to the petition of the Malvern Environment Protection Group on 9 March 2026. I do not seek to go back over the submissions that were made on that occasion, but I would highlight five points, if I may.

217. First, where the term "unenclosed" appeared in the existing Acts, it did so in the context of a duty—specifically, the duty in Section 3(1) of the 1930 Act on the conservators, which was, "Except as in the Malvern Hills Acts otherwise provided ... at all times to keep the Malvern Hills unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public". That duty is found in the Bill. It is found in Clause 40.

218. Secondly, although the wording of Clause 6(1)(b) does not include the term

"unenclosed", in the promoter's submission, the terms of 6(1)(b) do clearly convey that core objective of keeping the Malvern Hills open and accessible to the public, which is the core feature of the duty, we would say, in Section 3 of the Act of 1930.

219. Thirdly, natural aspect—although much has been said about this being widely used, it is not a clearly defined term. The only case in which the meaning of the term appears to have been considered in this context—the National Trust v Midlands Electricity Board case—highlighted the lack of certainty as to how such a term would fall to be applied.

220. Fourthly, in terms of natural aspect, it is still not apparent what falls to be encompassed in the term "natural aspect" that is not captured in the drawing out or the spelling out of the particular matters you find in Clause 6(1)(b). A number of petitioners have asserted the term includes views out from the Malvern Hills, but, notably, no authority has been cited in support of that proposition, and it does not sit easily with consideration of the term in the National Trust case, which appeared to focus on the appearance of the land itself.

221. My Lords, just to note, I know I have referred to the National Trust case a couple of times. You do have the citation for that and some consideration of it in the consultation document from 2024, I believe, but also in the January 2020 working group report, which you have in bundle 4 at page 289.

222. Fifthly, in any event, Clause 6(1)(a) does not just refer to "natural appearance". That appeared to be the key dichotomy set up—natural appearance versus natural aspect. It is wider in its term and it has the other features, but, in particular, what falls to be read is the need to preserve, et cetera, landscape and natural appearance. In my submission, the terminology is clearly wide enough to bring in matters such as how land is experienced. It is not just natural appearance. There is that landscape consideration in there as well.

223. Further—and I should stress this—whilst it is clear that there are a number of individuals who may see the Trust as a body that can stand in the way of or prevent development that they do not want to see in their wider area, control of development or planning for areas around the Malvern Hills is not a function that has been conferred on the Malvern Hills Trust by the existing Acts. The Trust's obligation is to protect and maintain the land that falls under its jurisdiction. It is not given a wider responsibility for planning in the area more generally, and nor is it given the powers to do so.

224. It may acquire land within nine miles of Great Malvern Priory if it considers it should be preserved, unenclosed and free from building as part of the Malvern Hills—you see that going back to the 1884 Act—but it does not have the powers to do that compulsorily. Its only other power or means by which it could engage with this idea of development or stopping development on land it does not own is where an easement is required over its land, if that means development is to proceed, but, in deciding whether or not to grant such an easement, the Trust has to do so in accordance with the provisions of the Act, which confer the power to grant an easement and any other wider obligations it may have under those Acts as to how it exercises its powers, and in the manner the trustees consider, in good faith, would be most likely to further its objects. Again, that is Clause 5(4). It is not and never has been a power that falls to be exercised in the best interests of other landowners in the area, even though they may be levy payers.

225. Turning next to the constitution of the Trust in Clauses 8 to 23 of the Bill, forgive me. This is a slightly longer section, but it has been critical and of great importance in the matters being considered by your Lordships' hearings. I note the proposed changes to the governance of the Trust are the ones that have perhaps occupied more of the time during these hearings than any other provisions.

226. As Ms Satchell has explained in her evidence, the current arrangements are not workable. For a number of years, the Trust has rarely, if ever, had a full complement of trustees. There have been prolonged vacancies within appointed positions. There is a significant disparity between the size of an electorate in a particular ward or parish and the number of trustees elected or appointed from that area. Turnout in elections tends to be low. Elections are often uncontested.

227. Moreover, the current arrangements by which conservators are elected by specific parishes or wards gives rise to very real practical issues when there are changes to electoral areas, as Ms Satchell illustrated by reference to the 2023 changes in her evidence on 5 February 2026. As my Lord, Lord Ponsonby, helpfully summarised during the hearing on 10 February 2026, the changes that the Trust is looking to make would, first, reduce the disparity between the number of electors per individual conservator or trustee; the Trust would be more likely to get contested elections and it widens the pool of people who might look to become a trustee or who could look to become a trustee; and it would reduce the risks of problems in the future if there are further changes to parish boundaries

or ward boundaries.

228. The proposal to reduce the size of the board was generally supported in both the 2019 and 2024 consultations and, indeed, was not seriously opposed during any of the hearings before your Lordships' committee. Similarly, the proposal to reconstitute the board so as to comprise six appointed and six elected trustees also garnered support by those responding to the consultations.

229. My Lord, I think I have taken you yesterday to the working paper from 2020 and the paper that was prepared following the 2024 consultation, where you can see information about the objects clause. You do have information there as well about proposals to change the size of the board and what sort, so that is where you would find information about responses there.

230. It is, however, fair to say that those who disagree with the proposals in the Bill do so strongly—indeed, very strongly. What appears to lie at the heart of the objections that have been raised to the proposed changes is the view that the Trust, which is the body with statutory powers to levy and which is, in part, elected by those who pay the levy, is or should be treated as a democratically elected public body akin to a local authority, and that the changes proposed are an attempt to make it into a private charity that can tax but that is no longer accountable to its electorate.

231. Further, the idea or perception that the Trust and/or the trustees' role is and should be to represent the interest of the levy payers who fund it with those levy payers able to express their dissatisfaction with decision-making or to set the direction of Trust decision-making through the ballot box, and that that should be the core focus, not what is in the best interest of the Trust as a charity.

232. Thus, it has been variously contended by the petitioners before you that the board should be entirely made up of elected trustees—that was a position advocated by Malvern Town Council; that it should be a majority of elected trustees so that the elected trustees can "overrule any appointed trustees"—that was Councillor Gallagher who appeared with Councillor Owenson; or that there should be a majority of elected trustees with remaining trustees appointed by bodies such as Herefordshire Council, Worcestershire County Council, Malvern Hills District Council and/or Malvern Town Council, although I highlight, of course, that Malvern Town Council is not one of those bodies today.

233. That is, however, to misunderstand, in the promoter's submission, the nature and role of the Malvern Hills Trust. First, it is a body established by statute, but it is established for a specific and specified purpose—to protect and manage the Malvern Hills for the benefit of the public. The board of conservators constituted for that purpose by the Malvern Hills Act 1884 and reconstituted by the Malvern Hills Act falls within the class of trustees appointed under statutory authority, like those appointed under the Enclosure Acts 1845 to 1882, and the Metropolitan Commons Acts 1866 to 1898, and one given powers of managing common land, preventing encroachments, making by-laws for the protection of land, et cetera. You see that in Sections 10 and 12 of the Malvern Hills Act 1884. The reference to the Enclosure Acts and the Metropolitan Commons Act is set out in the note that we provided on the status of the conservators, including the question of whether it is a public body, on 10 February 2026.

234. That was the purpose for which it was established and the context in which it was established. In order to undertake those functions of managing and preventing encroachments, et cetera, on the Malvern Hills, it was empowered to raise monies by means of a levy, originally to be paid out of the poor rate of identified parishes, but now collected through the council tax.

235. That reflected a power that was provided in Section 14 of the Commons Act 1876, which said that a provisional order made for managing commons under that Act could provide for the raising of such amounts as the commissioners might need under that particular scheme to be applied in the common, including "by means of rates to be levied on the persons and in respect of the property who and which respectively will be benefited or principally benefited by such improvement or regulation".

236. Again, that is something that we have provided the details of in that note on the status of the conservators, including whether it is a public body, where you will find the passages from the text we have referred to and Section 14 of the Act. That is its statutory background, the context in which this Act came forward, the purposes that were specified in the Act, and the levying power and how that related to general legislation of that sort that was around at the time.

237. Secondly, as part of the context for the Malvern Hills Trust, it is also a charity. It has been registered as a charity since 1984 and, by virtue of Section 37 of the Charities

Act 2011, it is, for all purposes, other than rectification of the register, conclusively deemed to be and have been a charity at all times since it was registered. It was not, however, dependent upon registration for its charitable status. In order to be required to register under the Charities Act 1960, it had to meet the qualifying requirements, in particular that it was an institution established for charitable purpose.

238. It is a charity, but, as we have said in the notes we have provided, there is no inconsistency between a body like the Trust being established and governed by statute and also being a charity, and nor does its status as a charity prevent it being treated as exercising public functions or as if it was a public authority for certain purposes or under certain legislation.

239. My Lord, I do not propose to go into the public body point, because I know I have covered that in some detail, but, just to highlight, there is not this complete dichotomy where you cannot be a charity and also, potentially, be subject to judicial review or something for certain purposes or some of these provisions.

240. Thirdly, as part of the background to understanding the nature and role of the Act, the Malvern Hills Trust has never been part of the local government framework. When changes were made to the board in the earlier Acts in 1909, and the board was reconstituted in the 1924 Act, those Acts did reflect the changes that had happened in local government—in particular, the establishment of parish councils and urban district councils, and the transfer of secular functions from the vestries that you see referred to in the 1884 Act to those bodies through the Local Government Act of 1894.

241. Neither the local Acts nor general legislation has ever sought to designate or incorporate the Malvern Hills Trust as part of a local government structure or as a local government body like a parish council. Notably, when the board was reconstituted in the Malvern Hills Act 1924, it was not reconstituted as a fully or even majority elected board. There was clearly a conscious decision at that point not to constitute the board as one where all conservators were directly accountable to the levy-paying electorate through the ballot box, which, in the promoter's submission, reflects its fundamental status as a corporate body that was established to protect and manage the Malvern Hills for the benefit of the public and not as a body like a local council that was there to act on the mandate or direction of its electorate.

242. I reiterate in that context—forgive me; I am conscious I am recapping matters that I have covered in previous submissions—that, in both their capacity as conservators of the corporate body established by the Malvern Hills Acts and as charity trustees for the purpose of charity legislation, the conservators, the trustees, are to act in the way they consider will best carry out or further the statutory or, under a charity, charitable objects. In doing so, they must act impartially as between beneficiaries here and the public for whose benefit they hold and manage the hills.

243. In the event of a conflict between the interests or wishes of those who appointed or elected them, or those who provide funding for its work, and a decision which, in good faith and exercised with reasonable care and skill, the trustees consider is most likely to further the Trust's objects, the latter must prevail. As Lord Hope identified on 17 March, which was yesterday—forgive me; I have lost track of dates slightly—the interests of the levy payers, properly understood in this context, are the interests that are set out in the objects: preserving and managing the natural appearance and landscape aspect of the hills, maintaining it as unbuilt on, as open space for the recreation of the public.

244. The duties on the Trust today, under the existing Acts, are, essentially, the Trust's charitable objects today. The Charity Commission website makes clear the governance documents for the Trust as a charity are the Acts of Parliament. The objects in Clause 6 of the Bill, which modernise but do not materially change, in the promoter's submission, the objects that are set out or derived from the existing Acts, will be the charitable objects, if we want to use that terminology, of the Trust going forward if the Bill receives Royal Assent. There is no difference or dichotomy or tension between the two.

245. The Bill has sought to make clear that there is, in fact, no conflict between the Trust acting in its capacity as a statutory body and carrying out its statutory objects and acting as a charity, furthering its objects, nor between the trustees when they are acting under the Act, doing what they should be doing and filling out their functions under the Act, or as charity trustees as defined in charity legislation. That is sought to be made clear, for example, in Clause 8(3)(a) of the Bill.

246. The point remains that everything the Trust and/or trustees do, whether wearing a hat as a charity or wearing a hat as a statutory body, must be in pursuance of those objects and in the interest of best serving those objects. It is not what others may wish to see the

Trust do.

247. My Lord, I am sorry. That is a slightly long exposé of some matters I know I have covered before, but I have tried to pull them together a little bit into one place. That is the background against which the proposals in the Bill for the future constitution and governance do need to be considered.

248. The promoter explained in its evidence, particularly through Ms Satchell, why it considers a board comprised of 12 members, made of six directly elected and six appointed, is the right approach going forward. The levy payers retain a direct voice—or direct representation, to use that terminology—on the board through the six directly elected trustees, and that sits alongside the additional requirement in Clause 8(6) for a trustee to be appointed as a point of contact for each of the levy-paying parishes, with the requirement to report back to the Trust on those matters.

249. The levy payers do retain their ability to hold part of the board—indeed, an increased proportion of the board—to account through the ballot box, to use some of the language you have heard, and to do so every two years. Those provisions, retaining part of the board as directly elected, and that additional requirement now in Clause 8(6) to have that specific link for a trustee in particular parishes, stand quite apart from the Trust's longstanding practice of consultation on things like, for example, when an easement application comes in or on its land management plan, which has always been subject to public consultation. It is not an all-or-nothing situation. They are still there in the structure, but that sits alongside the Trust's general practice of going out and seeking views on what it is doing and being public and open about what it is doing.

250. In respect of the appointed trustees, this provides the Trust with the ability to appoint trustees with particular knowledge, experience or ability in one or more of the identified matters that are set out in Clause 14(6) of the Bill or that are otherwise appropriate to the efficient, effective and economic discharge by the trustees of their functions.

251. In particular, it will have the ability to do so in response to any particular skills or experience that might be needed at a particular point in time because of a decision that falls to be made or some things that are likely to have to be done in the foreseeable future, or where, because of having done an audit of the skill set amongst its existing trustees, it discloses a gap or a deficit that should be filled.

252. The Trust does not have that ability today. Ms Satchell has explained in her evidence how the nominations by the appointing bodies work today, the absence so far as the Trust is aware of any specific criteria that they may operate with regards to the individuals they appoint, so searching for particular skill sets, and how the Trust is, essentially, in a position of having to accept the individual those bodies put forward, even if it has said, "We have a specific need for this type of skill set" or to try to represent this type of demographic that is lacking in its board at a particular point in time.

253. Further and importantly, quite aside from the skills issue, the proposal for a board comprising six appointed and six elected—the 50-50 split—is, in the promoter's view, an important part of ensuring the Trust can and continues to act in the way that the Trust, acting in good faith and with reasonable care and skill, considers is most likely to further the objects of the Trust, and that that question does not, inadvertently or otherwise, become conflated with the views of those who elect part of the board as to what they would wish to see the Trust do.

254. That potential issue, or that potential risk, is perhaps best illustrated by the example that we raised in an earlier hearing about the situation of where an easement application came along, and where the position might be taken that it should just be refused, regardless of the merits of the particular application, because a material part of the board had been elected on a "no development anywhere" platform.

255. My Lord, I referred to this a moment ago, but the committee will no doubt recall in that regard Councillor Gallagher's view that elected trustees should be able to overrule appointed trustees. In the promoter's submission, that is a worrying suggestion and a worrying perception in the context of a body that is meant to act in the best interest of the land that it holds for the public as a whole, and that decisions as to what, objectively speaking, might best further the objects that are set out in Clause 6 of the Bill could be able to be overridden by, in effect, personal views of trustees who may have been elected on a particular platform and/or as part of a slate of candidates who shared a common view on a particular issue.

256. My Lord, that perception, which emerged clearly, it is submitted, from a number of the petitions before your Lordships' committee, that the Trust was there or should act on the direction or mandate of the levy payers further reinforces, in the promoter's

submission, why the six-six split is the right one and why it strikes the right balance between, on the one hand, ensuring a direct voice for the levy payers, who have always been an important part of the Trust's existence, but, on the other, ensuring that the Trust is able to fulfil its statutory and its corresponding charity obligations and to carry out its functions and duties in the way it is required to do under the Acts.

257. To adjust those proportions, even for an understandable aim of giving comfort to the levy payers, risks reinforcing that perception and risks being seen as endorsing the view that you have heard from a number of petitioners through the hearings that the Trust should be acting in the interests of the levy payers, or on what the levy payers think the Trust should be doing, which cuts across the core principle I mentioned a little while ago that trustees, regardless of their charitable status or not, are required to act impartially as between beneficiaries and are not to act in the interest or at the direction of any one particular person or persons within that wider group.

258. As I alluded to a few minutes ago, the Trust's objects and trustees' obligations are the same, whether it is wearing its statutory corporation hat or its charity hat, and the Bill does seek to make that clear. To introduce something into the Bill that purports to give a particular precedence to the levy payers or the interest of levy payers would, in the promoter's submission, risk suggesting that they are circumstances where they are not aligned and that, where they are not aligned, the levy payers' interests should perhaps prevail. That would, in the promoter's submission, be an undesirable outcome, particularly in the context of a Bill that is trying to make clear that the two sit together and run alongside each other.

259. My Lord, in addition, any alteration to the current 50-50 proportions of the board in the Bill would, to a greater or lesser extent, have the effect of chipping away at the safeguards in the Bill that are designed to protect against a situation whereby one group could, effectively, take control of the Trust—a form of the single-issue concern that I think was raised at Second Reading. I am merely highlighting that context because it was touched on during the course of earlier submissions—the requirements for the special resolution for rejecting recommendations of the nominations committee for appointed trustees or in disciplinary or removal provisions, and that you perhaps do not have to move very far from six-six to start getting a bit closer to it being easier for one group or another to hit that 25% marker.

260. My Lord, I do go on to say that the promoter clearly recognises that, in terms of appointed trustees today, they are primarily made by bodies in the local area that are themselves democratically elected and that there, therefore, seems to be at least some element of appointments being made by persons or bodies who are themselves accountable through the ballot box.

261. However, the trustees appointed by those bodies are not directly accountable through the ballot box. Even with those who are appointed by the Malvern Hills District Council—the elected councillors—there is no requirement for the councillors who are appointed to the Trust to represent the levy-paying areas, and Malvern Hills District Council's constituency is not limited to the levy-paying areas.

262. My Lord, the fact that the majority of appointments today are made by such bodies does not, in the promoter's view, provide a justified basis to adjust the proportions proposed in the Bill to give a built-in majority to trustees directly elected by the levy payers. Parliament clearly chose not to do that in 1924 when it reconstituted the board.

263. Looking at the position as it is in 2026 as to what it was historically, things have rather moved on from that historic link that you could see back in 1884 between the parishes on which the precept was levied and the commoners' interests and rights, which were clearly one of the drivers and considerations in the 1884 Act. I would just note that you can see that, for example, referred to in the article from the *Times* that Mr Myatt referred to yesterday, which talks about the ratepayers of those areas with the common lands brought into the Bill.

264. In circumstances where the land that the Trust is responsible for and is under its control is no longer so closely aligned with the levy-paying electoral area, and also in circumstances where the levy is no longer the sole funding source for the Trust's work, it is the promoter's submission that any justification for moving now to give a majority to directly elected trustees on the board, changing the position around from what it has been for the last 100 or so years, would be even less well-founded than it might potentially have been when the board was last reconstituted 100 years ago.

265. Now, my Lord, I am mindful of Lord Evans's points in particular around the nature of these bodies and these being local bodies. The promoter does not dispute that the appointing bodies today necessarily bring with them a local knowledge of and awareness

of the areas in which the Malvern Hills are situated, but the knowledge and awareness will remain in the Trust board through the elected trustees, who make up 50% of the board, and who will be voting on the appointed trustees. There is the potential for the appointed trustees themselves to be persons living within the area, and the Bill provides that, in deciding on the independent members, who are the ones who also make up the nominations committee, the trustees may well take into account any connection an individual may have with the Malvern Hills and the local area.

266. The point is that, although, yes, it is recognised that those bodies today have a particular local awareness or area, that is not necessarily lost by moving to the arrangements the board is proposing. You have elected trustees who will be voting on members. They will have to be living in the local area, and there is a provision, of course, for the others involved in that process to have that connection themselves.

267. I am moving on now. I am afraid that that is the longest part of my closing remarks, my Lord. With regards to the levy, this is not something that the Trust proposes to change in the Bill, and the committee has heard why. You have also heard from Ms Satchell the consideration that the Trust has given to this issue previously. It is not something the Trust has closed its eyes to or ignored. It has looked at it. As will be apparent from the evidence you have heard from Ms Satchell, and have seen and heard from others, there is no clear and obvious solution as to how to address the levy-paying area issue. Which areas should be brought in? Which areas should not be brought in? You have the table showing the amount of land that is held in different parishes, electorates and things like that.

268. Further, as the committee will be well aware and, I am sure, have well in mind, any changes to the levy would require an additional provision, and the Trust would have to go back to the Charity Commission for consent if it needed to spend monies on preventing any such changes. My Lord, that was all I was proposing to say on the levy and the finance provisions in closing, because I am conscious you have heard a lot from us on that, and on points of detail.

269. In respect of the provisions of Part 4—public access and management of the Malvern Hills—as the committee will be aware, and as we have outlined today, many of those provisions are not new. They include a number of powers the Trust has had and has been exercising to manage the hills for some time, including the power to make by-laws,

the powers to fence dangerous places, the power to grant easements, and the power to set aside areas for parking and for the licensing of stalls. In some instances, there are slight modifications and updating of the powers, but, in substance, a lot of these powers find their predecessors in the legislation today.

270. Some of the powers sought or carried forward with more substantive changes reflect needs or practices that have arisen since the last Act was passed. In particular, with the power to regulate or prohibit access by members of the public to parts of the Malvern Hills for specified purposes, that is the power in Section 15 of the Malvern Hills Act 1995. It is Clauses 45 to 46 of the Bill.

271. In the Bill, the Trust seeks changes that would enable it to regulate the access for the purposes required, including by erecting fences, to deal with the situation that has arisen, and then going out to consultation if it is likely the power will need to be exercised for more than 42 days. It moves it away from the situation in Section 15 of the anticipation of where you consult before you start doing anything, but then there is the emergency powers provision that seems to say, "You do not need to notify or consult these bodies if it is an emergency". That is one example of where there has been a power and it has been used, and the changes sought reflect what is needed to make that power work better and more effectively for the Trust to meet the particular situations it has to deal with.

272. Moving on to perhaps some of the newer clauses, which have been the focus of a particular debate before your Lordships' committee, Clause 48 is one you have heard much about. That is the clause that would give the Trust powers to secure the commons to prevent animals straying onto non-common land. Mr Bills' evidence addressed the very real issues that can arise with leaky commons in the 21st century—in particular, where livestock stray onto busy A or B roads outside of the commons.

273. You have also heard from Mr Gardner about the very real issues that he has had to deal with as somebody grazing his animals on the commons today—particularly those disappearing down into Welland and people's front gardens—and his support as somebody who is grazing that land today for the powers that the Trust is seeking through the Bill.

274. The power in Clause 48, which would require consent under Section 38 of the Commons Act, with the protections and procedures that that would entail, would give the

Trust the power to try to reduce and manage those issues where it is able to do so or where it is appropriate to do so. To be absolutely clear, that would not enable the Trust to fence against a road running through a common, except for the very specific situation at Old Hills that specific provision is made for in Clause 48(2)(a), nor would it enable the Trust to fence within registered common unit CL9 to separate the part of the common in the Trust's ownership from that in third-party ownership.

275. As to Clause 49, and specifically the power to fence common land for a period of not more than 60 days to regulate grazing in furtherance of the Trust objects, this would, for example, place on an express statutory footing the Trust's ability to manage the SSSIs on those parts of the Malvern Hills in the way it has been doing for the last 20 or so years by using these grazing compartments on a rotating basis with the temporary fencing in place to enable that to happen.

276. The power in Clause 49 would not be subject to consent under Section 38 of the Commons Act. That power also applies to non-common land, but the Commons Act consent does not apply there. It, essentially, provides a bespoke version of one of the exempted forms of fencing that you saw in the Common Land (Exemptions) (England) Order 2008. Again, in terms of the need for or the justification for this power and how it might be used, you have heard the evidence of Mr Gardner, as well as Mr Bills, on how it is working in practice today. You also, of course, have the letter from Mr Chance, who was grazing on the north and central hills under those arrangements, explaining how it works and why it needs to be able to carry on working as it is in terms of things like timings, sizing, and things like that.

277. With regard to commoners' rights and the exercise of rights of common more generally, Clause 44 was one that was raised in this context, which provides, "The Trust may by all lawful means regulate the exercise of any rights of common exercisable over the Malvern Hills". That power is not new. It goes back to Section 10 of the Malvern Hills Act 1884. The power to make by-laws regarding the user and enjoyment of any rights of common exercisable over the hills, again, is not new. That is precedented in the 1930 Act. Mr Bills has explained in evidence what, in practice, that has involved, and you have copies of the by-laws, which include provision for things like identifying animals and restrictions on turning out entire animals.

278. My Lord, I hope, by way of an illustration, those seem to be three of the most controversial clauses, but, particularly for the exercise of rights of common and by-laws, it is no change, as it were; it is about continuing what the powers are today.

279. Clauses 40 to 42 are important to mention because they carry forward the Trust's duties to keep the Malvern Hills unenclosed and carry forward the powers to do things to prevent the same, to protect trees, et cetera.

280. Clause 94 expressly provides that, "Except where specifically provided, nothing in this Act is to be deemed or construed to take away, prejudice or affect any right of common". Again, that is an important provision, my Lord, which, in my submission, should provide considerable comfort for concerns raised by a number of commoners about, "You might be able to do this or you might be able to do this". Clause 94 is an express protective provision. Estovers have been addressed in the note we have provided in response to Mr Cameron's written submissions.

281. On Clause 63, licensing of activities, another of the particularly controversial powers in this part, Ms Satchell explained in her evidence on 10 March, "Life at Malvern Hills Trust is almost entirely about managing competing interests … This power to license is not a money-making exercise. It is to manage those competing interests", and she referred in particular to, for example, having to manage the interests of grazers or those grazing and the public access and things like looking after habitat.

282. The ability to charge, which was a particular concern, is not an obligation or a requirement to charge, but it ensures that the Trust has the express statutory power or authority to do so, if appropriate, and in accordance with the conditions set out in Clause 63. It does mean that, if costs are incurred by the Trust in connection with a particular event, those do not necessarily and automatically fall to be dealt with from the Trust's general income, including through the levy.

283. If it is things like, for example, commercial photography or events like that on the hills you have heard today, why should that cost fall on the Trust and its general income and the levy payers and not be borne by the person who wants to undertake the commercial activity? If the Trust is to exercise the powers in Clause 63, it must do so in accordance with the published policy, and the Trust has offered, in draft undertaking, a form of words you have about consulting on that policy.

284. Moving briefly to Part 6 of the Bill and powers to do with land—another controversial part—Clause 71 retains the existing power of the Trust to acquire certain types of land within nine miles of Great Malvern Priory, but with the corresponding power for the Secretary of State to look at extending the levy-paying area if the land acquired is common land and there is not land currently in that parish.

285. Powers to adjust the boundaries of the Malvern Hills—another controversial provision—and to dispose of land are carried forward. They are in existing legislation and they are carried forward in Clauses 72 and 73 of the Bill, but subject to the very clear conditions and restraints that you have in the Bill.

286. Clause 75 retains and updates the power in respect of ancillary land, with the express inclusion of land for livestock and management. Powers to grant easements are materially unchanged.

287. My Lord, I hope that is just a quick résumé of some of perhaps the more controversial provisions in those parts of the Act, but if I may close by turning to the explanatory memorandum, which we have had on the front page of the Bill throughout these hearings but I am not sure we have ever had to go to, on page 1 of that document, there is a brief summary of what this Bill seeks to do.

288. It is the paragraph above the bit where it says "Part 1". "The Bill will repeal the existing Malvern Hills Acts and re-enact much of them in modern terms". It would "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 ... and updates those provisions of the Malvern Hills Act which are re-enacted, dispenses with provisions which the Trust no longer requires, and confer new powers which are now required for the Trust to discharge its functions".

289. Through the promoter's evidence over the past few weeks, it has sought to demonstrate that the Bill does all of those things, and to demonstrate why the changes sought through the Bill and the existing powers to carry forward are necessary and expedient to ensure that the Trust is placed on a sound statutory footing to carry on protecting and managing the iconic and beautiful lands for which it is responsible into the future.

290. My Lords, if I can just say, we are very grateful again for the committee's careful consideration of the Bill, and thank you. I am conscious I have run slightly over my time estimate.

291. THE CHAIR: Thank you very much indeed. I think what remains is to mention that we are going to put before you two papers about amendments. They are divided in two parts. The first is a list of proposed amendments, which are amendments we are minded to make, but I do stress that nothing is final until we produce our report. We prepared that before we listened to your closing submissions, which, of course, we will give careful consideration to.

292. The second part is a list of suggested amendments, a lot of which are making adjustments to protect the interests of commoners, fitting in with the lines that you are saying, and just bits of refinement and so on. Some of them, we would like to make, if you do not want to make them yourselves, but I hope that most of them are ones that you would feel able to adopt yourself.

293. I think, in this case, you have produced before us an assurance, but I think we would prefer not to rely on assurances and write things into the Bill. I think, given the nature of this and the long-term nature of what you are proposing, because we do not want to come back again in the next 10 years, it is better not to do it by assurance, if you do not mind, and we will do it in things in the Bill.

Sitting suspended for a Division in the House.

On resuming—

294. THE CHAIR: Ms Lean, you very kindly and very timely finished your closing address before the Division began. I said everything I was going to say about the amendment, so there is really nothing more to say except thank you very much for coming today, and we will sit again on Tuesday 24 March at 10.30. Thank you very much.