

Malvern Hills Bill [HL]

[AS AMENDED IN COMMITTEE]

EXPLANATORY MEMORANDUM

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

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

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

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

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

PART 1

INTRODUCTORY

Clause 1 sets out the short title of the Bill.

Clause 2 deals with commencement.

Clause 3 defines certain expressions used in the Bill.

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

The Malvern Hills includes the “existing Malvern Hills” which in turn is defined in *subsection (3)* as the land which is currently under the jurisdiction of the Trust under the Malvern Hills Acts. The existing

Malvern Hills is shown for the purposes of illustration on a map which was deposited with the Bill at the office of the Clerk of the Parliaments, the Private Bill Office of the House of Commons and the offices of the local authorities in whose areas the existing Malvern Hills are located.

PART 2

THE MALVERN HILLS TRUST

Change of name, continuity of functions and objects

Clause 5 renames (*by subsection (1)*) the Malvern Hills Conservators as the Malvern Hills Trust. *Subsection (2)* provides that the Trust is to continue to be a body corporate with a common seal with powers to own and manage land and other assets.

Subsection (3) provides that the Trust may continue to hold and administer property as a special trust within the meaning of section 353(4) of the Charities Act 2011. A “special trust” is defined in that section as property which is held and administered by or on behalf of a charity for any special purposes of the charity, and is so held and administered on separate trusts relating only to that property.

Subsections (2) and *(3)* reflect the position that the unrestricted assets of the Trust as a charity (namely those assets which can be used in furtherance of any of the Trust’s objects, rather than those which may only be used for specific purposes) are held as corporate property of the Trust as a corporate body rather than being held on trust.

Subsection (4) provides that references to the Malvern Hills Conservators in other legislation and documents are to be construed as references to the Trust. *Subsection (5)* provides that the Trust must exercise its functions in furtherance of the objects (see *clause 6*) and in accordance with the provisions of the Bill.

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

Clause 7 gives the Trust powers to make rules and regulations with respect to the administration of the Trust. *Clause 7(1)* requires the trustees to make rules about the matters specified in *Part 1*, and *paragraph 15(3)*, of *Schedule 1*. Those matters include the payment of benefits to trustees, interests of trustees, the management of conflicts of interest and certain administration or management arrangements of the Trust. *Clause 7(2)* allows the Trust to make provision for the administration and management of the Trust in regulations, provided that those regulations are not inconsistent with the rules. *Subsections (5) to (8)* make provision about the procedure to be followed when making and amending rules. *Subsection (12)*

introduces *Schedule 2*, which applies certain provisions of Part VA of and Schedule 12A to the Local Government Act 1972 (which includes provision about public access to certain meetings and documents) to the Trust.

Constitution

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

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

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

Subsection (7) requires the trustees to select one trustee to act as a point of contact between the Trust and the inhabitants of each of the parishes in its electoral area. The trustee appointed as the point of contact must report to the Board any representation made to them by an inhabitant of the relevant parish if, in that trustee's view, the representation merits consideration by the Board.

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

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

Clause 11 provides that trustees must make a declaration before their appointment or election takes effect. The matters that the declaration can cover are set out in *paragraphs (a) to (c) of subsection (1)* and are that the trustee will exercise all the powers and responsibilities vested in them solely and exclusively in order to advance the objects of the Trust, will comply with the Trust's code of conduct and will comply with requirements about disclosure of interests.

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

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

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

Clause 13 enables the trustees to impose alternative requirements or sanctions on a trustee as an alternative to the measures described in *subsection (2)* of *clause 12*, in cases where, for example, there is a breach of the trustees' code of conduct. The alternative sanctions include a requirement to undergo training and a formal reprimand.

Appointed Trustees

Clauses 14 to 17 are about appointed trustees.

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

Subsections (5) and (6) of *clause 14* provide that appointed trustees must be persons who the Trust considers to have special knowledge, experience or ability in one or more specified matters or matters which are otherwise appropriate for the discharge of their role. *Subsection (8)* places restrictions on who can be an appointed trustee. They must be at least 18 years old and must not be disqualified from being a charity trustee.

Clause 15(1) requires the trustees to establish and maintain a committee ("the Nomination Committee") for the purpose of recommending candidates for appointment as appointed trustees and interim appointed trustees and *subsection (3)* provides that the committee is to be comprised of five members, who between them must, in the opinion of the trustees, have a mix of skills and experience which will enable the committee to identify suitable candidates for appointment as trustees, taking into account the requirements of *clause 14* (selection of appointed trustees and interim appointed trustees).

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

Clause 17 relates to casual vacancies of appointed trustees. "Casual vacancy" is defined in *clause 3*. A casual vacancy could arise as a result of, for example, death, resignation or disqualification. *Subsection (1)* provides that, where a casual vacancy occurs in respect of an appointed trustee, the trustees must appoint another person to fill the vacancy. *Subsection (2)* provides that a trustee appointed to fill a casual vacancy is to hold office for the remainder of the term of the trustee who they replaced. *Subsection (3)*

enables the Trust to leave a post unfilled where the casual vacancy occurs less than 6 months before the end of the trustee's normal term.

Elected Trustees

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

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

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

Clause 20 requires ordinary elections to take place every two years, with four of the eight elected trustees being elected in each of these cycles. It makes provision about when elections are to take place and when the term of office of an elected trustee begins.

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

Clause 21 provides that, where there is a vacancy in the office of an elected trustee (Trustee A), and there is no other existing vacancy in the office of an elected trustee and there is no interim appointed trustee in office, Trustee A's vacancy must be filled by the appointment of an interim appointed trustee unless *subsection (2)* or *(3)* applies. *Subsection (2)* applies where the vacancy occurs less than nine months before Trustee A's term of office would have expired, in which case the office may be left unfilled (*subsection (2)*). *Subsection (3)* applies where *subsection (2)* does not apply and the vacancy occurs within 9 months of the next scheduled trustee elections. Where *subsection (3)* applies an election to replace Trustee A must take place at the same time as those next scheduled elections. An interim appointed trustee remains in office until an election is held to replace them, which could either be when the next scheduled ordinary elections take place or where an election is required because a second casual vacancy arises (see *clause 22*). *Subsection (4)* provides a list of matters which must be covered by the rules, including a requirement that election communications for electoral candidates must be distributed and published.

Clause 22 provides for circumstances in which a casual vacancy in the office of an elected trustee arises and there is another existing vacancy or an interim appointed trustee is in office. In these circumstances, *subsection (3)* of *clause 22* requires the Trust to hold an election to fill all the vacancies and thereby to

replace the interim appointed trustee (if there is one). As with *clause 21*, special provision is made for when the vacancy takes place less than nine months before the next election is due.

Clause 23 makes provision about who is entitled to vote at a trustee election. It provides that a person is entitled to vote as an elector in an election of a trustee if they would be entitled to vote as an elector at a local government election in the Trust's electoral area. The Trust's electoral area is defined in *subsection (3)* by reference to certain parishes, namely Colwall, Guarlford, Mathon, Malvern Town, Malvern Wells and West Malvern. This mirrors the current extent of the area within which people can vote for an elected trustee. *Subsections (4), (5) and (6)* make provision about what happens if a parish is renamed and ensure that the electoral area remains the same despite any parish boundary changes or abolition of a parish.

Elected trustees: holding of elections

Clause 24 provides that elections of elected trustees are to be conducted by postal voting or by a combination of postal voting and voting by electronic means, unless the trustees make rules providing otherwise. *Subsection (2)* requires the trustees to make rules governing the conduct of elections. *Subsection (3)* provides a list of matters which may be covered by the rules, including the nomination of candidates, obligations to declare interests, systems and methods of voting, supervision of elections, election expenses and publicity. *Subsection (4)* provides a list of matters which must be covered by the rules, including a requirement for the Trust to distribute and publish election communications for electoral candidates.

Clause 25 requires the trustees to appoint an individual to act as the returning officer for elections of trustees. *Subsection (2)* provides that all charges and expenses properly incurred by the returning officer must be paid by the Trust to the returning officer. *Subsections (4) to (6)* enable the returning officer to take steps to remedy any acts or omissions arising in relation to their functions (but *subsection (5)* provides that a returning officer may not re-count the votes given at an election after the result has been declared).

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

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

Interests of trustees

Clause 28 makes provision about the payment or transfer of Trust income or property to trustees. It provides that any such payment or transfer must be in accordance with rules made under *clause 7*, the

other provisions of the Bill, and provisions in the Charities Act 2011 which relate to receipt of remuneration (including any benefit in kind) by trustees.

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

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

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

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

PART 3

FINANCE

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

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

Subsection (5) specifies the parishes in respect of which the Trust may issue a levy, and they are the same parishes in respect of which the Trust currently issues a levy. *Subsections (6), (7) and (8)* make provision for what happens if the name of a parish changes, its boundaries change or it is abolished. *Subsection (9)* provides that the levy may be issued either before or after the Trust has become liable to any expenses, *subsection (10)* provides that the levy is to be raised by precept or by issuing the levy to the relevant Council and *subsection (11)* provides that the Councils must collect the levy from those persons who are liable to pay council tax in the relevant parishes.

Subsection (12) ensures continuity in the amount of levy payable by providing that the amount of the levy on the date on which *clause 33* comes into force is the same amount as it was immediately before that date. *Subsections (13) and (14)* ensure that annual increases in the maximum amount of the levy remain subject to the controls in the Levying Bodies (General) Regulations 1992.

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

Clause 35 enables the Trust to borrow or raise money against its property and revenues and grant securities (including mortgages over land). *Clause 35* differentiates between "existing relevant land" and ancillary land. "Existing relevant land" is defined in *subsection (7)* as any part of the Malvern Hills owned by the Trust at the date on which the Act is passed, other than ancillary land (as to which see *clause 75* (ancillary land)).

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

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

Clause 36 substantially reproduces section 9 of the 1909 Act by enabling Worcestershire County Council and Herefordshire Council to contribute to the funds of the Trust. *Subsection (2)* provides that the two councils can either treat any such contribution as a general expense, or treat all or part of the contribution as a special expense which may be levied upon parishes in their respective areas. *Subsection (3)* provides that the councils cannot raise a levy for these purposes in parishes in which the levy referred to in *clause 33* (the levy) is paid.

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

PART 4

PUBLIC ACCESS AND MANAGEMENT OF THE MALVERN HILLS

Public access and duty to keep unenclosed

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

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

Subsection (3) of clause 39 provides that the Trust owes no duty to a person exercising their rights of access in respect of risks resulting from natural features of the landscape, or risks of injury resulting from improper use of gates or stiles. This brings the Malvern Hills into line with other areas over which the public have a right of access, including access land under section 2(1) of the Countryside and Rights of Way Act 2000. *Subsection (5)* makes clear that this exclusion does not prevent the Trust from owing a duty in relation to risks which the Trust intentionally creates or recklessly causes.

Subsection (6) makes provision for the application of section 1 of the Occupiers' Liability Act 1984 to any occupier of premises in the Malvern Hills (including the Trust) and the duties which they may owe to a person exercising their rights of access under *clause 38* (public access to the Malvern Hills). It provides that, when determining the extent to which a duty is owed, regard should be had to specified factors including the need to avoid placing an undue burden on occupiers, the importance of maintaining the character of the Malvern Hills, and any code of conduct issued under section 20 of the Countryside and Rights of Way Act 2000.

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

Clause 41(1) enables the Trust to take action it sees fit to protect trees and other things growing on the Malvern Hills and prevent unlawful felling, cutting or damaging of those things. *Subsection (2)* enables

the Trust to take all necessary measures to prevent unlawful digging or removal of material and any other damage to land forming part of the Malvern Hills.

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

Regulation and management of the Malvern Hills: general

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

Clause 44 enables the Trust to regulate by any lawful means the exercise of any rights of common exercisable over the Malvern Hills.

Access to and fencing, etc of the Malvern Hills

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

Subsection (3) enables the Trust to fence or enclose land for some of the reasons specified in *subsection (2)*, for as long as appears necessary to the Trust. *Subsection (4)* enables the Trust to use the powers in *subsection (1)* to regulate or prohibit access to, over or along public rights of way for the prevention of fire or accidents and *subsection (5)* provides that, when exercising the powers in *subsections (1) and (3)* for some of the reasons specified in *subsection (2)*, the Trust may provide a gate or other appropriate means of access at places where the Trust considers it to be appropriate. *Subsection (7)* makes provision about the content of notices under *subsection (1)*.

Clause 46 makes further provision regarding the Trust's powers to regulate or prohibit access to the Malvern Hills under *clause 45*. *Subsections (1) to (7)* require the Trust to consult or seek the advice of certain statutory and other bodies and, except in an emergency, give notice by advertisement on its website and in a local newspaper, where it intends to regulate or prohibit access for a period exceeding 42 days. The Trust must consider any representations made in response to the advertisement. *Subsection (8)* provides that if the Trust has exercised its powers under *clause 45* to regulate or prohibit access to the Malvern Hills, it must carry out reviews of the regulation or prohibition at specified intervals and must publish a description of the nature and extent of the measures on its website.

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

Clause 48(1) enables the Trust to fence or otherwise enclose common land where it considers it desirable to do so to prevent animals straying from the common land onto land which is not common land. *Subsection (2)* provides that the fencing or other means of enclosure does not have to be installed on the exact boundary of the common land in question. *Subsection (6)* provides that the exercise of the power is subject to Part 3 of the Commons Act 2006, which regulates works on common land. It ensures that, under section 38 of that Act, the consent of the Secretary of State is required for works which prevent or impede access to registered common land (unless there is an exemption for the works under an order made by the Secretary of State under section 43). The use of cattle-grids in highways is excluded, because they are governed by a different procedure.

Subsection (7) of clause 48 requires the Trust to provide gates or other appropriate means of access at points where any fence or enclosure provided under *subsection (1)* crosses a public right of way or a road and at other places which the Trust considers appropriate to ensure public access to the Malvern Hills is maintained. *Subsection (9)* provides that no cattle-grid may be installed in a public right of way. By applying provisions of the Highways Act 1980, *subsection (10)* enables the highway authority to impose conditions on the provision of gates and other means of access which cross public rights of way and *subsection (12)* requires the Trust to have regard to the needs of those who are entitled to gain access between the areas crossed by a fence, including those on horseback and people with disabilities. *Subsections (14) and (15)* make special provision that applies where cattle-grids are proposed to be installed in the highway. *Subsection (14)* introduces *Schedule 3*, which makes provision with respect to the application of highways legislation to the installation of cattle-grids.

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

The powers to fence under *clause 49* cannot be exercised where doing so would prohibit the exercise of rights under an easement, and the Trust must provide gates or other appropriate means of access at points where public rights of way are crossed by any fence provided under *subsection (1)* and at other places which the Trust considers appropriate to ensure public access to the Malvern Hills is maintained. Before exercising the powers in the operation of a grazing scheme, the Trust must consult those who the Trust believes are exercising a right of common over the relevant part of the Malvern Hills and who are likely to be affected. *Subsection (4)* provides that where common land is fenced for longer than 42 days, the power to fence the same land cannot be exercised again for a period of six months, unless it is necessary for animal health or if the area involved is 1 hectare or smaller. *Subsection (8)* requires the Trust to have regard to the needs of those who would otherwise be able to gain access but for the fence, including those on horseback and people with disabilities. *Subsections (9) to (11)* make provision about notifying the highway authority in cases where public rights of way are affected.

Clause 50 enables the Trust to place notices or direction signs on the Malvern Hills to restrict or prohibit horse riding in certain circumstances for as long as may be reasonably necessary. The circumstances are

to protect the use of the Malvern Hills as an open space for the recreation and enjoyment of the public, or to prevent injury to or disfigurement of the Malvern Hills.

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

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

Management of the Malvern Hills

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

Clause 54 continues the Trust's power to make and maintain paths and ways over the Malvern Hills, including (by agreement with the highway authority) public rights of way.

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

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

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

Clause 57 enables the Trust to drain any part of the Malvern Hills where the Trust deems it necessary or desirable and to make temporary enclosures for that purpose and for the purpose of protecting or renovating turf.

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

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

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

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

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

Clause 63 makes new provision for the Trust to grant licences for the use of the Malvern Hills for specified purposes, including uses which would otherwise be in breach of the Trust's byelaws but only if to do so would be consistent with the provisions of the Bill. Activities that could be licensed include the use of the Hills in the course of a business or for organised activities. The clause provides that a fee may be charged for a licence and that any licence granted may be subject to such terms and conditions as the Trust sees fit. The uses of the Hills in respect of which licences may be issued under this clause are those specified in a policy published by the Trust under *subsection (4)*, following consultation. Those uses cannot include grazing of animals (see *subsection (3)*). *Subsection (8)* makes provision about the person to whom a licence is issued in respect of use of the Hills in the course of a business or for any organised activity. *Subsections (9) and (10)* make provision with respect to the circumstances in which fees may be charged for licences issued under this clause.

Removal and disposal of unauthorised articles

Under *clause 64*, objects left on the Malvern Hills without the Trust's permission or otherwise without lawful authority may be removed by the Trust. *Subsection (1)* contains the power of removal. *Subsection (2)* requires that a person who is present and appearing to be in control of an object is given reasonable opportunity to remove it before the Trust does so. *Subsection (3)* imposes a duty on the Trust to store

an object it has removed, unless it appears to have been abandoned or to be valueless, or it cannot reasonably be stored. *Subsection (4)* gives the owner of an object stored by the Trust fourteen days to claim it and pay the Trust's expenses, and otherwise enables the Trust to dispose of a removed object.

PART 5

BYELAWS

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

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

Subsection (4) provides that byelaws may amend or revoke previous byelaws and may relate to the whole or any part of the Malvern Hills, and may make different provision for different cases or different parts of the Malvern Hills. *Subsection (5)* provides that byelaws do not apply to any activity for which a licence has been granted under *clause 63* (licensing of other activities).

Subsection (6) provides that, except for the purpose of preserving the safety of persons, no byelaws may be made under *subsection (1)(f)* in respect of invalid carriages which meet certain requirements. *Subsection (1)(f)* enables byelaws to be made about preventing or regulating the use of vehicles or devices on the Hills.

Subsection (8) ensures that no byelaw made under *clause 65* may take away any right of common, and only byelaws made under the power in *subsection (1)(j)* to regulate the use and enjoyment of rights of commons may prejudice or affect such rights.

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

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

to be concerned with the modifications. *Subsection (4)* provides that, before making any byelaws, the Trust must consult the Sport and Recreation Alliance and others.

Clause 67 provides that byelaws made by the Trust under *clause 65* may provide that persons contravening the byelaws are liable to a fine not exceeding level 2 on the standard scale (currently £500) and, in the case of a continuing offence, a daily fine of up to ten percent of the amount which is equivalent to that level.

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

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

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

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

Subsections (3) to (8) of *clause 70* impose duties on, and give powers to, the Trust in relation to an animal which has been seized or impounded. *Subsection (6)* requires the Trust to ensure that the animal is properly fed and maintained and provides that the Trust may take such action as it thinks fit in relation to the animal if it is ill or injured. Where the owner of the animal has not, before the expiry of 7 days from the day after the date of its impounding, come forward to claim the animal and has not paid the

expenses incurred by the Trust as a result of its seizure, *subsection (4)* empowers the Trust to sell, or otherwise dispose of, the animal. *Subsection (5)* enables the Trust to destroy the animal if its owner has not, before the expiry of 14 days from the day after its impounding, claimed the animal and has not paid the Trust's expense of seizing, impounding and maintaining it. *Subsections (7) and (8)* provide that, where the Trust receives money for disposing of an animal, it may recover its expenses but will otherwise, save in the circumstances mentioned in *subsection (8)*, be accountable to the owner of the animal for any money arising from the disposal.

PART 6

LAND

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

Land which is of the type described in the last sentence of the paragraph above and which is common land or waste land of a manor may be added to the Malvern Hills by agreement with the Lord of the Manor but only with the written consent of the Secretary of State. Where land is added by such an agreement, the Secretary of State may make an order which has the effect of adding the parish within which the land is located to the Trust's electoral area and requiring the inhabitants of that parish to pay the levy under *clause 33* (the levy).

Clause 72 enables the Trust to sell or exchange any part of the Malvern Hills not exceeding 0.12 hectares. This power is subject to the Trust obtaining consent from the Secretary of State and may only be used for the purposes of adjusting, defining or improving the boundaries of the Malvern Hills. *Subsection (2)* specifies matters as to which the Secretary of State must be satisfied before giving consent to a sale or exchange. *Subsections (4) to (7)* make provision for the publication of a notice of any request made to the Secretary of State for consent, and for related matters. *Clause 72* is based on section 9 of the 1930 Act.

Clause 73 enables the Trust to sell, exchange or let certain land which it has acquired. *Clause 73* is based on section 6 of the 1995 Act. *Subsection (2)* enables the Trust, having obtained the consent of the Secretary of State, to sell land or any interest in land to which *clause 73* applies, to exchange any such land for other land and to let such land. The Trust must have decided no later than two years after the land was acquired that it is not desirable for the Trust to retain the land for the furtherance of its objects (or, in the case of letting, that it is not desirable to retain possession of the land for the furtherance of its objects).

Subsection (1) describes the land to which the clause applies and which can therefore be sold, exchanged or let by the Trust under *subsection (2)*. It is land which has not been owned by the Trust for a continuous

period of over 5 years and which does not form part of the existing Malvern Hills. *Subsections (3) and (4)* set out conditions that must be met if the Trust is to exercise the power under subsection (2). The conditions are that the Trust must have decided no later than two years after the land was acquired that it is not desirable for the Trust to retain ownership (or in the case of letting, to retain possession) of the land for the furtherance of its objects. Land must not be registered as common land or a town or village green. The “existing Malvern Hills” is defined in *clause 3* (interpretation) by reference to *clause 4* (the Malvern Hills) and (in broad terms) means the land which was under the management, control or jurisdiction of the Trust when the Bill was deposited (and is shown by way of illustration on the deposited map).

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

Clause 74 empowers the Trust to grant leases and licences over land and buildings in the Malvern Hills. The granting of leases and licences over ancillary land is dealt with in *clause 75* (ancillary land). *Subsections (1) and (2)* of *clause 74* enable the Trust to grant or renew leases of any part of the Malvern Hills that is not common land and to grant licences over any part of the Malvern Hills. They also enable the Trust to grant or renew leases of, or to grant licences over, any building (whether or not it is in the Malvern Hills). *Subsection (3)* provides that, where a lease is granted or renewed for a period exceeding 10 years, the written consent of the Secretary of State is required and *subsection (4)* ensures that leases and licences are subject to the public’s right of access over the Hills. *Subsection (5)* provides that statutory protections for commercial and assured tenancies do not apply to leases granted by the Trust in exercise of its powers under *subsection (1)* as regards the Malvern Hills or buildings on the Hills. An exception to that is provided for the renewal of a lease which was originally granted before the date on which the Bill is passed (*subsection (6)(a)*).

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

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

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

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

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

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

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

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

Clause 81 enables the Trust to extract, take and use loose natural material located in the Malvern Hills for purposes in furtherance of, or ancillary to, the objects of the Trust. *Subsections (3) and (4)* make provision for an allowance of 25 cubic metres of material that can be extracted or taken by the Trust in a calendar year and they provide that the maximum amount of material that can be extracted or taken in a calendar year is 50 cubic metres, made up of up to 25 cubic metres of that year's annual allowance and up to 25 cubic metres of any unused allowance carried forward from the previous calendar year. *Subsections (6) and (7)* require the Trust to keep a record of the exercise of its powers under this clause.

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

PART 7

GENERAL AND MISCELLANEOUS PROVISIONS

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

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

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

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

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

PART 8

FINAL PROVISIONS

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

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

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

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

Clause 90 provides protection for Crown interests.

Clause 91 provides protection for Network Rail Infrastructure Limited.

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

Clause 93 provides protection for Severn Trent Water Limited.

Clause 94 provides general protection for rights of common.

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

Clause 96 maintains rights, including to extract stone and minerals, that were protected under section 13 of the 1884 Act.

SCHEDULES

Schedule 1

Schedule 1 contains provisions relating to the administration of the Trust. *Part 1* sets out matters which must be included in rules made by the Trustees under *clause 7(1)*. Those matters include the payment, transfer or application of income or property of the Trust by way of benefit to trustees, the declaration of interests of trustees, the holding, calling and chairing of meetings of the trustees and the quorum required for votes at such meetings, the making of decisions by the trustees, the keeping of records, committees and advisory panels, the delegation of functions by the trustees to employees of the Trust, financial controls and the authentication of documents.

Part 2 of Schedule 1 sets out a non-exhaustive list of matters about which provision may be made by the trustees under *clause 7(2)* in regulations. The list of matters includes enabling committees and advisory panels to regulate their own procedures.

Part 3 of Schedule 1 is about the method of holding meetings of the trustees and the passing of special resolutions by the trustees. Paragraph 15 allows such meetings to be held in person, by electronic means or in a hybrid form that allows trustees to attend physically or by electronic means. It also provides that rules must be made under *clause 7(1)* about the procedure for conducting meetings held by electronic means. Paragraph 16 sets out the number of trustees required to pass a special resolution.

Part 4 of Schedule 1 contains definitions of terms used in *Schedule 1*.

Schedule 2

Schedule 2 provides for specified enactments to apply, with modifications, to the Trust.

Part VA of, and Schedule 12A to, the Local Government Act 1972 are applied, with modifications, to the Trust as though it were a principal council within the meaning of that Act. Part VA and Schedule 12A make provision about the admission of the public to council meetings and access to information relating to such meetings (including agenda, reports, minutes and other documents). The way that these enactments are applied to the Trust is similar to the way that they were applied under the 1995 Act, with the only significant changes being that a member of the public can be removed from a public meeting if they are being disruptive, and the public as a whole can be excluded from a public meeting if the conduct of members of the public generally is disruptive. In addition, provision is made so that the provision in Part VA with respect to the admission of members of the public to meetings and access to related documents does not extend to meetings of a committee or sub-committee at which no decision is to be made in exercise of a delegated function.

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

Schedule 3

Schedule 3 provides for specified provisions in the Highways Act 1980 that relate to cattle-grids to apply, with modifications, to the Trust. This affects the exercise of the Trust's powers under *clause 48* to install and maintain cattle-grids on highways. The applied provisions cover the provision, maintenance and removal of cattle-grids, agreements with highway authorities and landowners, protection of bridges and railways, and the procedure to be followed when determining whether it is expedient to install a cattle-grid.

Schedule 4

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

- employ staff, advisers and agents
- raise funds and solicit and accept donations and other income
- establish a supporters' organisation
- enter into contracts and licence or sponsorship agreements, open and operate banking facilities and conduct non-taxable trade
- co-operate and enter into joint ventures with other organisations, and establish or support charitable institutions and associations

- hold educational events, promote, conduct and disseminate research, provide advice and publish and distribute information
- make grants, set aside funds as reserves against future expenditure, invest funds and delegate investment management, insure property and take out other insurance policies
- establish or acquire subsidiary companies, sell surplus solar energy, take out insurance policies for trustees and employees and settle disputes.

Schedule 5

Schedule 5 specifies the enactments that are repealed and revoked by *clause 87*. The specified enactments are the Malvern Hills Acts and two statutory instruments.

Schedule 6

Schedule 6 makes amendments to enactments in consequence of provision made by the Bill.

Schedule 7

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

EUROPEAN CONVENTION ON HUMAN RIGHTS

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

Malvern Hills Bill [HL]

[AS AMENDED IN COMMITTEE]

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[AS AMENDED IN COMMITTEE]

A

B I L L

TO

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

WHEREAS –

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

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

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

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

PART 1

INTRODUCTORY

- 1 Short title** 25
- This Act may be cited as the Malvern Hills Act 202[].
- 2 Commencement**
- (1) This Act, except those provisions specified in subsection (2), comes into force at the end of the period of three months beginning with the day on which it is passed. 30
- (2) The following sections come into force on the day on which this Act is passed—
- (a) this section,
 - (b) section 3,
 - (c) section 5, 35

- (d) section 8(2),
- (e) section 10(1),
- (f) section 15,
- (g) section 25(1) to (3),
- (h) section 30, 5
- (i) section 32.

3 Interpretation

(1) In this Act—

- “the 1884 Act” means the Malvern Hills Act 1884,
- “the 1930 Act” means the Malvern Hills Act 1930, 10
- “the 1995 Act” means the Malvern Hills Act 1995,
- “the annual meeting” means the first ordinary meeting of the trustees held after—
 - (a) the new constitution date, and
 - (b) each anniversary of the new constitution date, 15
- “authorised officer” means any employee of the Trust who is authorised in writing by the Trust to act in relation to the relevant provision of this Act,
- “benefit”, as regards a trustee or a connected person means any payment of money or the provision or other application of any other direct or indirect benefit in money or money's worth, 20
- “the Board” means the board of trustees of the Trust,
- “bridleway” has the same meaning as in section 329 of the Highways Act 1980,
- “business day” means a day other than Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971, 25
- “byway open to all traffic” has the same meaning as in Part III of the Wildlife and Countryside Act 1981 (see section 66(1) of that Act),
- a “casual vacancy” means a vacancy in the office of an appointed or elected trustee that occurs before the end of the trustee's term of office, 30
- “cattle-grid” has the same meaning as in section 82(6) of the Highways Act 1980,
- “the chair of the Trust” means the person elected to chair meetings of the Board, 35
- “the chief executive” means the Chief Executive Officer of the Trust, or if there is no such person with that title, the employee of the Trust with the most senior management responsibilities,
- the “code of conduct for trustees” means the code of conduct for trustees approved and maintained by the trustees, 40
- “common land” means—
 - (a) land which is registered as common land under the Commons Registration Act 1965 and the registration of which under that Act has become final, and

- (b) land which is registered as common land under Part 1 of the Commons Act 2006,
- “conflict of interest”, as regards a trustee, means where an interest of a trustee (or any person connected to a trustee) conflicts, or possibly may conflict, with the interests of the Trust and its objects, including in particular the exploitation of any property, information or opportunity (and it is immaterial whether the Trust could take advantage of the property, information or opportunity), 5
- “connected person”, as regards a trustee, has the same meaning as it does for the purposes of sections 185 and 186 of the Charities Act 2011 (see section 188 of that Act) and any person who is a connected person in relation to any trustee is “connected” to them, 10
- “the Conservators” means the Malvern Hills Conservators as defined in the 1930 Act,
- “the existing Malvern Hills” has the meaning given by section 4(3), 15
- “the existing trustees” means those conservators elected or nominated under the Malvern Hills Acts 1884 to 1995 and in office between the day on which this Act is passed and the new constitution date,
- “footpath” has the same meaning as in section 329 of the Highways Act 1980, 20
- “horse” includes an ass, mule or hinny,
- “interest”, as regards a trustee, means any direct or indirect interest of a trustee (which includes any interest of any connected person as regards that trustee) in any matter, including any interest which arises or is otherwise attributable to— 25
- (a) any benefit a trustee or connected person has or may have in such matter, and
 - (b) any duty or loyalty which the trustee or connected person owes or may owe to any person (within the meaning given by the Interpretation Act 1978) other than the Trust, including as a consequence of any office or membership held by a trustee or connected person, 30
- “interim appointed trustee” means a trustee appointed under section 21(5),
- “the Malvern Hills” has the meaning given in section 4, 35
- “matter” as regards an interest, means any transaction, arrangement, situation or matter,
- “the new constitution date” means the date fixed by the trustees under section 8(2),
- “the objects” means the objects of the Trust, set out in section 6(1), 40
- “ordinary election” has the meaning given by section 20(3),
- an “ordinary meeting” of the trustees means one of the regularly timetabled meetings of the trustees, as opposed to a meeting that takes place outside the regular timetable and is arranged specially for the consideration of a specific matter or matters, 45

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

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

“the repealed Acts” means the Malvern Hills Acts 1884 to 1995, once they have been repealed by section 87,

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

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

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

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

a “special resolution” of the trustees means a resolution passed by at least the relevant number of the trustees present and voting at the meeting at which the resolution is considered according to the table set out in paragraph 16 in Part 3 of Schedule 1,

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

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

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

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

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

4 The Malvern Hills

- (1) In this Act, “the Malvern Hills”, over which the Trust has management and control under this Act, means the existing Malvern Hills, together with any land which is part of the Malvern Hills by virtue of subsection (2) or by virtue of section 71(1), (2) or (3) and taking into account any change arising from the operation of section 72, section 73 or section 74.

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

- (3) In this section, “the existing Malvern Hills” means the land which was, immediately before the day on which this Act is passed, under the jurisdiction, management or control of the Trust for the purposes of the repealed Acts, including—
- (a) the lands described in the first and third Schedules to the 1884 Act and shown on the deposited map referred to in that Act, 5
 - (b) the area described in section 5 of the Malvern Hills Act 1924, including those lands, rights and interests described in the first, second and third Schedules to that Act and shown upon the deposited plans referred to in those schedules, and 10
 - (c) any other land or lands, properties, quarries, manorial rights or interests which by virtue of the operation of the repealed Acts or otherwise were under the jurisdiction of the Trust immediately before the day on which this Act is passed.

PART 2 15

THE MALVERN HILLS TRUST

Change of name, continuity of functions and objects

5 The Malvern Hills Trust

- (1) The Malvern Hills Conservators are renamed the Malvern Hills Trust (in this Act referred to as “the Trust”). 20
- (2) The Trust is to continue to be a body corporate with a common seal and having power to hold and manage land and other assets.
- (3) Without prejudice to any other powers it has to hold and administer property, the Trust may continue to hold and administer property as a special trust within the meaning of section 353(4) of the Charities Act 2011. 25
- (4) Any reference in any enactment or other document to the Malvern Hills Conservators is from the day on which this section comes into force to be construed as a reference to the Trust.
- (5) The Trust is to exercise its functions in furtherance of the objects and otherwise in accordance with the provisions of this Act (and in accordance with the Malvern Hills Acts 1884 to 1995 so long as they remain in force). 30

6 The objects of the Trust

- (1) The objects of the Trust are, for the benefit of the public—
 - (a) to protect, conserve and maintain the landscape, natural aspect, habitats, flora and fauna, geology and archaeology of the Malvern Hills, and 35
 - (b) to keep the Malvern Hills unenclosed and unbuilt on as open space for recreation and enjoyment of the public.
- (2) The objects referred to in subsection (1) are the charitable objects of the Trust.

- (3) If in exercising their functions, it appears to the trustees that there is a conflict between the object specified in subsection (1)(a) and the object specified in subsection (1)(b), and the conflict cannot be resolved by the trustees, the trustees must attach greater weight to the object specified in subsection (1)(a).
- (4) Subsection (3) is subject to consideration by the trustees of the health and safety of persons. 5
- (5) In subsection (1), “unenclosed” means free from any fences or other means of enclosure other than those that the Trust is empowered, by virtue of this Act, to provide, construct, place, reconstruct, replace, install, erect, use or maintain (or cause to be provided, constructed, placed, reconstructed, replaced, installed, erected, used or maintained). 10
- (6) In subsection (1), “unbuilt on” means unbuilt on except for –
 - (a) any buildings in existence on the day on which this Act is passed,
 - (b) any buildings which replace them (so long as they are on the site of, and are of a similar size and external character to, the existing building), and 15
 - (c) any buildings or structures which the Trust is empowered to provide, construct, place, reconstruct, replace or erect by virtue of this Act.

7 Administration of the Trust

- (1) The trustees must make (and may amend, revoke or replace) rules about the matters specified in Part 1, and paragraph 15(3), of Schedule 1. 20
- (2) The trustees may, for the purposes of the administration and management of the Trust, make regulations (including about the matters specified in Part 1, and paragraph 15(3), of Schedule 1) but such regulations must not include provision that is inconsistent with anything in rules made under subsection (1). 25
- (3) Part 2 of Schedule 1 makes provision about matters which may be included in regulations made under subsection (2) (but not in rules made under subsection (1)), Part 3 of Schedule 1 makes provision about the method of holding meetings and Part 4 of Schedule 1 makes general provision about rules and regulations. 30
- (4) The trustees must not make provision in rules under subsection (1), or in regulations under subsection (2), which is inconsistent with anything in this Act, including the provisions of any enactments applied to the Trust by subsection (12). 35
- (5) Unless the Charity Commission otherwise agrees in writing in any particular case or type of case, the written agreement of the Charity Commission is required for the making, amendment, revocation and replacement of rules under subsection (1).
- (6) The powers in subsection (1) are exercisable by the passing of a special resolution at a meeting of the Trust of which not less than 15 clear business days’ notice has been given. 40

- (7) A notice under subsection (6) must set out the terms of any rule that the Trust proposes to make in exercise of the powers in subsection (1) at the meeting to which the notice relates.
- (8) The Trust must—
- (a) ensure that each exercise of the power under subsection (1) is identified in a written memorandum prepared by the Trust and that the memorandum is signed, at the meeting at which the power is exercised, by the person chairing the meeting, 5
 - (b) send to the Charity Commission a copy of the memorandum certified by a person authorised by the Trust to do so within three months of the date of the meeting, and 10
 - (c) retain a copy of the memorandum.
- (9) This section is without prejudice to the powers of the Charity Commission to settle a scheme under section 73 of the Charities Act 2011.
- (10) Any provision made in rules under subsection (1) or in regulations under subsection (2) must be consistent with sections 185 to 188 of the Charities Act 2011. 15
- (11) It is not necessary in legal proceedings to prove that the person or persons who sealed, signed or executed any document in accordance with this section or rules or regulations made under this section was or were duly authorised to do so, and such document is to be presumed to be duly signed, sealed or executed unless the contrary is proved. 20
- (12) The enactments specified in column 1 of Schedule 2 apply to the Trust in the manner specified in column 2 of that Schedule.

Constitution 25

8 Constitution of Trust and status of trustees as charity trustees

- (1) Subject to subsections (5) and (6), section 10, section 11, section 21 and section 22, on and after the new constitution date the Trust is to have a board of trustees, comprised of—
- (a) four trustees appointed by the trustees, and 30
 - (b) eight trustees elected by the electors of the Trust’s electoral area, each of whom is to be elected by the electors of the whole of the Trust’s electoral area.
- (2) The new constitution date is to be fixed by ordinary resolution of the existing trustees, and it must be a date that is in the period of nine months beginning with the day on which this Act is passed. 35
- (3) The trustees are the charity trustees of the Trust and are the persons having the general control and management of the administration of the Trust as mentioned in section 177 of the Charities Act 2011.

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- (4) Each trustee must exercise the powers and perform the functions that the trustee has in their capacity as a charity trustee in the way that the trustee decides, in good faith, would be most likely to further the objects.
- (5) Subject to subsection (6) and paragraph 7 of Schedule 1, the trustees may continue to act with their full powers as trustees and make decisions as trustees during any period in which the number of trustees is below the total number required under subsection (1). 5
- (6) If the number of trustees during any period has fallen below six, the trustees may continue to act as trustees but only –
- (a) to appoint or make arrangements for the election of, other trustees, or 10
- (b) to make decisions as trustees which in their opinion are required to be made in order to avoid prejudice of a financial, commercial, reputational or legal nature to the interests of the Trust.
- (7) For each parish that, in accordance with section 23, falls within the Trust’s electoral area, the trustees must appoint one trustee to act as a point of contact between the Trust and the inhabitants of that parish. 15
- (8) A trustee appointed under subsection (7) must report to the Board any representation that is made to the trustee by an inhabitant of the parish in respect of which the trustee is appointed under subsection (7) and which, in the trustee’s view, is a representation that merits consideration by the Board. 20
- (9) Subsection (8) does not affect the ability of any inhabitant of a parish that falls within the Trust’s electoral area to make representations to the Board or to any trustee other than the trustee appointed under subsection (7) to act as the point of contact for that parish. 25
- (10) No trustee may be an employee of the Trust.
- (11) Subsection (1)(a) applies, as respects the first appointments of trustees under that subsection, as if the second reference in that subsection to the trustees were a reference to the existing trustees.
- 9 Term of office of trustees** 30
- (1) Except as provided by sections 10, 16, 17, 21 and 22, every trustee is to be appointed or elected for four years.
- (2) Subject to subsections (3) and (4), upon ceasing to hold office, each appointed trustee and elected trustee is eligible for reappointment or re-election, as the case may be. 35
- (3) A trustee who has held office for two consecutive terms may not be appointed or elected as a trustee for a further term of office until the expiry of the period of one year beginning with the day after the date on which the second of the consecutive terms expired.
- (4) The following do not count for the purposes of calculating under subsections (2) and (3) the number of terms of office already held by a trustee – 40

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- (a) the first term of office of a trustee appointed or elected to fill a casual vacancy under section 17, 21 or 22, if that term is shorter than three years,
 - (b) a term of office of a trustee appointed or elected as one of the first trustees to be appointed or elected under section 8, if that term is shorter than three years (see sections 16 and 19). 5
- (5) Subject to the provisions of this Part of this Act, the term of office of a trustee –
- (a) begins on the date of the relevant anniversary of the new constitution date (“the start date”), 10
 - (b) ends at the end of the day before the date of the fourth anniversary of the start date.
- (6) In subsection (5), the “relevant anniversary” is calculated by reference to section 16 in the case of an appointed trustee and section 19 in the case of an elected trustee. 15

10 Transitional arrangements and co-opted trustees

- (1) The terms of office of each of the existing trustees expire at the end of the day preceding the new constitution date, no matter what their term of office was when they were appointed or elected for that term.
- (2) Subsection (3) applies if fewer than three of the existing trustees in total are appointed in accordance with section 16 or elected in accordance with section 19. 20
- (3) The existing trustees may, before the new constitution date, co-opt from their number no more than two trustees to serve, in addition to the trustees appointed in accordance with section 14, as co-opted trustees for a period of six months beginning on the new constitution date. 25

11 Declaration to be made by trustees

- (1) No appointment or election of a trustee takes effect until the prospective trustee has made a declaration in such form as the trustees may prescribe, and which may make provision about (and only about) – 30
 - (a) using reasonable care and skill to exercise the trustee’s functions solely and exclusively to advance the objects,
 - (b) complying with the code of conduct for trustees,
 - (c) complying with requirements as to disclosure of financial and other interests. 35
- (2) The trustees may cause a fresh appointment to be made or election to be held if the trustee in question fails to make that declaration within the period of seven days beginning with the day after the date on which their term of office would have commenced in accordance with the provisions of this Part.

12 Disqualification and resignation of trustees

- (1) The trustees may by special resolution remove a trustee from office and declare the office of the trustee to be vacant if they are satisfied that the trustee –
- (a) did not, on the date on which they were appointed as a trustee or an interim appointed trustee, satisfy the eligibility criteria set out in section 14(8), 5
 - (b) did not, on the date on which they were nominated for election, satisfy the eligibility criteria set out in section 18(1),
 - (c) has been disqualified from being a charity trustee by virtue of the law relating to charities, 10
 - (d) has, without the permission of the trustees, been absent from the meetings of the Trust for whichever is the longer of –
 - (i) a period during which three ordinary meetings of the trustees have been held, and 15
 - (ii) a period of six consecutive months,
 - (e) is incapable due to physical or mental illness of discharging the functions of a trustee, or
 - (f) is otherwise unable to discharge the functions of a trustee.
- (2) If subsection (3) applies, the trustees may request in writing the resignation of a trustee or, by special resolution, remove a trustee from office and declare the office of the trustee to be vacant and on receipt of the resignation or on such a resolution coming into effect, as the case may be, that office is to become vacant. 20
- (3) This subsection applies if the trustees are satisfied that – 25
- (a) a trustee has failed to comply, persistently or to a material extent, with the code of conduct for trustees,
 - (b) a trustee has acted in a manner which has seriously impeded or has prejudiced the Trust or a trustee in the performance of its or their functions, 30
 - (c) a trustee has acted in a manner which may bring the Trust into disrepute or which is otherwise inappropriate having regard to the functions of the Trust, or
 - (d) a trustee is otherwise unfit to discharge adequately the functions of a trustee. 35
- (4) Subject to subsection (5), a resolution under subsection (1) or (2) has immediate effect.
- (5) A resolution under subsection (1) or (2) must not be passed unless the trustee in question has –
- (a) been given notice in writing that the resolution is to be considered, specifying the circumstances alleged to justify removal from office, and 40

- (b) been afforded a reasonable opportunity of being heard by or of making written representations to the trustees (whichever the trustee in question prefers).
- (6) A notice given under subsection (5)(a) must be given—
 - (a) at least 10 clear business days before the meeting at which the resolution is to be considered, and 5
 - (b) in accordance with section 32.
- (7) A trustee may resign at any time by giving notice in writing to the chief executive.
- (8) This section is without prejudice to any enactment or rule of law relating to the disqualification of charity trustees or removal of charity trustees from office. 10

13 Disciplinary procedures

- (1) If section 12(3) applies, instead of the actions mentioned in section 12(2), the trustees may impose one or more alternative requirements or sanctions in respect of the trustee in question. 15
- (2) The trustees may also impose one or more requirements or sanctions on the trustee if the trustees find that the trustee has breached the code of conduct for trustees.
- (3) Without prejudice to the generality of subsections (1) and (2), the requirements and sanctions that may be imposed include— 20
 - (a) a requirement to undergo training,
 - (b) a formal reprimand.
- (4) A finding under subsection (2) may not be made unless the trustee in question has— 25
 - (a) been given notice in writing that the matter that may give rise to the finding is to be considered, specifying the circumstances alleged to justify the imposition of a requirement or sanction, as the case may be, and
 - (b) been afforded a reasonable opportunity of being heard by, or of making written representations to, the trustees (whichever the trustee in question prefers). 30
- (5) A notice given under subsection (4)(a) must be given—
 - (a) at least 10 clear business days before the meeting at which the matter is to be considered, and 35
 - (b) in accordance with section 32.

Appointed trustees

14 Selection of appointed trustees and interim appointed trustees

- (1) This section applies to appointments of trustees provided for by section 8(1)(a) and 17(1) and to appointments of interim appointed trustees provided for by section 21. 5
- (2) Appointments to which this section applies are to be made –
 - (a) on merit, and
 - (b) in accordance with a published recruitment policy.
- (3) Subject to section 15(11), in making an appointment to which this section applies, the trustees must have regard to the recommendation of the Nomination Committee and may only reject a recommendation for an appointment by passing a special resolution to that effect. 10
- (4) If the trustees reject a recommendation of the Nomination Committee –
 - (a) they must give their reasons for doing so in writing to the Nomination Committee before the expiry of the period of 5 clear business days beginning with the day after the date of their decision, and 15
 - (b) the Nomination Committee must make a further recommendation to the trustees.
- (5) Each trustee or interim appointed trustee appointed by the trustees under sections 8(1)(a), 17(1) or 21 must be a person who appears to the trustees to have special knowledge, experience or ability which –
 - (a) is in one or more of the matters mentioned in subsection (6), or
 - (b) is otherwise appropriate to the efficient, effective and economic discharge by the trustees of their functions as charity trustees and under this Act. 20 25
- (6) The matters are –
 - (a) charity governance,
 - (b) management of land,
 - (c) the protection or conservation of the environment,
 - (d) financial, human resources, public relations or legal matters. 30
- (7) In appointing a trustee or an interim appointed trustee under sections 8(1)(a), 17(1) or 21, the trustees may take into account whether the candidate has any connection with the Malvern Hills or the local area within which the Malvern Hills are situated, but the requirement on the trustees set out in subsection (5) takes precedence over the matter which the trustees may take into account under this subsection. 35
- (8) No person may be appointed as a trustee or an interim appointed trustee –
 - (a) unless they are 18 years of age or older,
 - (b) if they are disqualified from being a charity trustee.
- (9) In this section, “the Nomination Committee” means the committee of that name established under section 15. 40

- (10) Subsections (3) and (4) apply, as respects the first appointments of trustees under section 8(1)(a), as if the references in those subsections to the trustees were references to the existing trustees.

15 Nomination Committee

- (1) Subject to subsection (11), the existing trustees must establish, and maintain until the new constitution date, a committee of the Trust, the purpose of which is to recommend candidates for appointment as appointed trustees and interim appointed trustees. 5
- (2) Subject to subsection (11), the trustees must maintain, on and after the new constitution date, the committee referred to in subsection (1). 10
- (3) The committee is to be comprised of five members, who between them must, in the opinion of the trustees, have a mix of skills and experience which will enable the committee to identify suitable candidates for appointment as trustees, taking into account the requirements of section 14.
- (4) Of the committee members – 15
- (a) two members must be trustees (either elected or appointed trustees),
 - (b) two members (“the independent members”) must be individuals appointed by the Trust,
 - (c) the other member is the chief executive or such other employee with senior responsibilities as the trustees think fit. 20
- (5) Independent members must not be – 25
- (a) a trustee,
 - (b) a former trustee or a former Malvern Hills Conservator,
 - (c) an individual who has been elected or appointed to be a trustee but has not yet taken office, or
 - (d) a current employee of the Trust.
- (6) An appointment of an independent member is to be made –
- (a) on merit, and
 - (b) in accordance with a published appointment policy.
- (7) In appointing an independent member, the trustees – 30
- (a) must take into account whether the candidate has any connection with the Malvern Hills and the local area within which the Malvern Hills are situated,
 - (b) must take into account whether any conflict of interest is likely to arise as respects the independent member carrying out their functions on the committee. 35
- (8) The requirement set out in subsection (2) for the committee to be comprised of members with an adequate mix of skills and experience takes precedence over the matter which the trustees must take into account under subsection (7)(a). 40

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

-
- (a) been given notice in writing that the resolution is to be considered, specifying the circumstances alleged to justify removal from office, and
- (b) been afforded a reasonable opportunity of being heard by or of making written representations to the trustees (whichever the member in question prefers). 5
- (18) A notice given under subsection (17)(a) must be given—
- (a) at least 10 clear business days before the meeting at which the resolution is to be considered, and
- (b) in accordance with section 32. 10
- (19) The trustees may make such arrangements as they think fit for the administration of the committee, including for—
- (a) notifying the committee of when vacancies are to occur or have occurred,
- (b) notifying the committee of when it is expected to meet and by when recommendations for candidates are expected to be received, 15
- (c) the payment of reasonable remuneration for and the expenses of independent members.
- (20) The trustees must issue and maintain terms of reference for the committee which must be complied with by the committee and must include— 20
- (a) the reasons which may be relied on for the removal of members under subsection (15)(b),
- (b) provision about committee procedure including quorum (which must be no less than three, in addition to the member referred to in subsection (4)(c)) and decision making, 25
- (c) provision about a code of conduct for independent members and compliance with it.
- (21) Only reasons for removal that have been agreed by special resolution of the trustees may be included in the terms of reference under subsection (20)(a).
- (22) The trustees must prepare and, from time to time, review a policy in relation to the declaration of interests of independent members and the management of conflicts of interest of independent members. 30
- (23) The trustees must prepare and maintain a register of all interests declared by independent members in accordance with the policy prepared under subsection (22). 35
- (24) A policy prepared under subsection (22) must not be inconsistent with anything in this Act.
- (25) In this section, “the committee” means the Nomination Committee established under subsection (1).
- (26) Subsections (4)(a), (5)(a), (11), (19), (20), (22), (23) apply, as respects the period before the new constitution date, as if the references in those subsections to 40

a trustee or the trustees were references to an existing trustee or the existing trustees.

16 Appointment and terms of office of first appointed trustees

- (1) The first appointments of trustees under section 8(1)(a) must be made by the existing trustees as soon as reasonably practicable after the day on which this section comes into force, and the trustees so appointed are to hold office from the new constitution date. 5
 - (2) Of the first trustees appointed under section 8(1)(a) –
 - (a) two are to hold office from the new constitution date until the end of the day before the date of the first anniversary of the new constitution date, 10
 - (b) two are to hold office from the new constitution date until the end of the day before the date of the third anniversary of the new constitution date,
- as the existing trustees must specify when they make each of those appointments. 15

17 Casual vacancies in office of appointed trustees

- (1) Subject to subsection (3), if a casual vacancy occurs in the office of a trustee appointed under section 8(1)(a), the trustees must appoint another person to fill the vacancy. 20
- (2) Subject to sections 11 and 12, a person appointed to fill a casual vacancy is to hold office during the remainder of the term for which the person they replace was appointed.
- (3) A casual vacancy occurring less than six months before the end of the vacating trustee's normal term of office may at the discretion of the trustees be left unfilled. 25

Elected trustees

18 Eligibility to be elected

- (1) A person is eligible to stand for election as a trustee if on the date on which they are nominated for election in accordance with rules made under section 24 – 30
 - (a) they are 18 years of age or older,
 - (b) they are eligible to be a charity trustee, and
 - (c) they meet the requirements of subsections (2) and (3).
- (2) The requirements of this subsection are – 35
 - (a) the person is listed in the register of local government electors and their address in the register is –
 - (i) in a parish or former parish area in which any part of the Malvern Hills is located, or

- (ii) (if not included in sub-paragraph (i)) within one mile of the boundary of any parish or former parish area in which any part of the Malvern Hills is located, or
- (b) the person’s main place of work is in a parish or former parish area in which any part of the Malvern Hills is located. 5
- (3) The requirements of this subsection are that the person is nominated in writing in accordance with any rules made under section 24 by two people, each of whom is listed in the register of local government electors and whose address in the register is in the Trust’s electoral area.
- (4) It is for the returning officer to determine whether a nomination under subsection (3) is valid and whether the person nominated for election meets the requirements in subsection (2). 10
- (5) A person may not stand for election as a trustee unless they have within the specified period made a declaration in the specified form of the particulars of their qualification to stand as a trustee. 15
- (6) A person is guilty of an offence if they –
- (a) make a declaration under subsection (5) which they know to be false in a material particular, or
- (b) recklessly make such a declaration which is false in a material particular. 20
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) In this section –
- “former parish area” means an area which was a parish on the day on which this Act was passed but has since ceased to be a parish, 25
- “parish” means a parish for which there is a parish council or a parish meeting,
- “specified” means specified in rules made under section 24.

19 Election and terms of office of first elected trustees

- (1) The first elections of the trustees elected under section 8(1)(b) must be held before the new constitution date and the trustees so elected are to hold office from the new constitution date. 30
- (2) Of the first trustees elected under subsection (1) –
- (a) four are to hold office from the new constitution date until the end of the day before the date of the second anniversary of the new constitution date, 35
- (b) four are to hold office from the new constitution date until the end of the day before the date of the fourth anniversary of the new constitution date,
- as the existing trustees must specify when making the arrangements for those elections. 40

- (3) The date and time by which postal votes or votes cast electronically must be received by the returning officer (or if a method of election is used which requires a poll, the date on, and the time at, which the poll is to be held) at the first election of trustees is a date and time to be fixed by the returning officer and the date so fixed must be— 5
- (a) at least 10 clear business days before the new constitution date,
 - (b) no more than 20 clear business days before the new constitution date.

20 Ordinary elections

- (1) An election of four of the eight elected trustees is to be held so that their terms of office commence on the date of— 10
- (a) the second anniversary of the new constitution date (“date A”),
 - (b) each fourth anniversary of date A.
- (2) An election of the other four of the eight elected trustees is to be held so that their terms of office commence on the date of—
- (a) the fourth anniversary of the new constitution date (“date B”), 15
 - (b) each fourth anniversary of date B.
- (3) The elections under subsections (1) and (2) are referred to in this Act as “ordinary elections”.
- (4) The date and time by which postal votes or votes cast electronically must be received by the returning officer (or if a method of election is used which requires a poll, the date on which the poll is to be held) at an ordinary election of trustees is a date and time to be fixed by the returning officer and the date so fixed must be— 20
- (a) at least 10 clear business days before the relevant anniversary of the new constitution date, 25
 - (b) no more than 20 clear business days before the relevant anniversary of the new constitution date.

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

- (1) This section applies where— 30
- (a) a casual vacancy occurs in the office of an elected trustee (“Trustee A”),
 - (b) there is no unfilled vacancy in the office of another elected trustee, and
 - (c) there is no interim appointed trustee in office in respect of another elected trustee. 35
- (2) If the vacancy occurs within the period of nine months ending on the date on which Trustee A’s term of office would otherwise have expired, the vacancy may remain unfilled until that date.
- (3) If subsection (2) does not apply and the vacancy occurs within the period of nine months ending on the next expiry date— 40

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

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

- (11) In the case of a vacancy occurring in consequence of the failure of, or other irregularity in relation to, an election, subsections (4) and (5) have effect subject to any provision made by any relevant rule made under section 24.
- (12) In this section, “the next ordinary elections” means the ordinary elections next due to take place under section 20. 5

23 Persons entitled to vote

- (1) A person is entitled to vote at an election of a trustee if on the relevant date the person would be entitled to vote as an elector in a local government election and the address at which they are registered in the register of local government electors published under section 13(1) or (3) of the Representation of the People Act 1983 is in the Trust’s electoral area. 10
- (2) In subsection (1), the “relevant date” is the date on which the returning officer fixes the date of the election.
- (3) Subject to subsections (4), (5) and (6), the Trust’s electoral area comprises the following parishes – 15
- (a) the following parishes in the district of Malvern Hills –
- (i) Guarlford,
- (ii) Malvern Town,
- (iii) Malvern Wells,
- (iv) West Malvern, 20
- (b) the following parishes in the district of Herefordshire –
- (i) Colwall,
- (ii) Mathon.
- (4) If the name of any of the parishes mentioned in subsection (3) is changed, then the reference to that name in that subsection is to be read as the new name of the parish. 25
- (5) Any area which falls within a parish mentioned in subsection (3) before the day on which this Act is passed remains in the Trust’s electoral area on and after that day whether or not it continues to fall within that parish and whether or not that parish continues to exist. 30
- (6) Subject to section 71(7), any area which does not fall within a parish mentioned in subsection (3) before the day on which this Act is passed does not fall within the Trust’s electoral area whether or not it falls within any of those parishes on or after that day.

Elected trustees: holding of elections

35

24 Method of and rules about conduct of elections

- (1) Subject to subsection (3)(c), elections of trustees are to take place by –
- (a) postal voting, or
- (b) a combination of postal voting and voting by electronic means.

-
- (2) The trustees must make rules containing provision as to the conduct of elections of trustees.
- (3) The rules may, in particular, make provision with respect to—
- (a) nomination of candidates,
 - (b) obligations of candidates to declare their interests, 5
 - (c) systems and methods of voting at contested elections (including systems and methods other than by postal voting if the trustees so desire),
 - (d) filling of vacancies,
 - (e) supervision of elections, 10
 - (f) election expenses and publicity,
 - (g) (subject to section 26) questioning of elections and the consequences of irregularities.
- (4) Subject to subsection (5), the rules must include provision—
- (a) for the distribution by, or on behalf of, the Trust, to electors within the Trust’s electoral area (as defined in section 23(3)), of a candidate profile and statement for each candidate at an election, 15
 - (b) for the publication by the Trust on its website, and by other means (if any) that it considers appropriate, of the names of each candidate at an election, together with, for each candidate, the candidate profile and statement referred to in paragraph (a), 20
 - (c) prohibiting the alteration, editing or withholding from distribution or publication of any candidate profile and statement, except where the candidate profile and statement—
 - (i) contains material that, in the opinion of the Trust, is unlawful or defamatory, or 25
 - (ii) fails to meet any requirements in rules made under subsection (5).
- (5) The rules may make provision that a candidate profile and statement—
- (a) must be in such format (including maximum length) as the Trust considers appropriate, 30
 - (b) must be provided to the Trust by the candidate by a particular time,
 - (c) may be distributed in accordance with subsection (4)(a) by such means as the Trust considers appropriate, including—
 - (i) in a single communication containing all the candidate profiles and statements for the election in question, or 35
 - (ii) together with the ballot paper or other documents relating to the election in question.
- (6) Subsection (2) applies, as respects the period before the new constitution date, as if the reference in that subsection to the trustees were a reference to the existing trustees. 40

25 Returning officer

- (1) The trustees must appoint an individual to be the returning officer for elections of trustees.
- (2) All charges and expenses properly incurred by or in respect of the returning officer appointed under this section in relation to the holding of an election of a trustee must be reimbursed by the Trust. 5
- (3) The Trust may treat those expenses as including all costs properly incurred by the returning officer in connection with or in contemplation of any legal proceedings arising out of the election in question (including any criminal proceedings against the returning officer), whether or not the proceedings are in fact instituted. 10
- (4) The returning officer may take such steps as they think appropriate to remedy any act or omission on their part, or on the part of a relevant person, which—
 - (a) arises in connection with any function the returning officer or relevant person has in relation to the election, and 15
 - (b) is not in accordance with the rules made under section 24 or any other requirements applicable to the election.
- (5) But a returning officer may not under subsection (4) re-count the votes given at an election after the result has been declared.
- (6) In this section, “relevant person” means— 20
 - (a) a person providing goods or services to the returning officer,
 - (b) a deputy of any person mentioned in paragraph (a) or a person appointed to assist, or in the course of their employment assisting, such a person in connection with any function they have in relation to the election. 25
- (7) Subsection (1) applies, as respects the period before the new constitution date, as if the reference in that subsection to the trustees were a reference to the existing trustees.

26 Legal proceedings relating to elections of trustees

- (1) The provisions of Part III of the 1983 Act (legal proceedings) which apply to an election under the local government Act apply to an election of an elected trustee under this Act as if it were an election under the local government Act. 30
- (2) The provisions applied by subsection (1) are modified by the substitution, for any reference to the proper officer of the authority, of a reference to the returning officer. 35
- (3) The provisions applied by subsection (1) have effect with such further modifications as may be necessary.
- (4) Section 189 of the 1983 Act applies to an election of an elected trustee as it applies to an election under the local government Act. 40

- (5) In this section—
“the 1983 Act” means the Representation of the People Act 1983,
“the local government Act” has the same meaning as in section 203 (local government provisions as to England and Wales) of the 1983 Act.

27 Register of electors 5

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

Interests of trustees

28 Benefits to trustees 30

- No part of the income or property of the Trust may be paid, transferred or applied by way of benefit to any trustee except in accordance with—
(a) rules made under section 7,
(b) sections 185 to 189 of the Charities Act 2011, and
(c) the provisions of this Act.

29 Interests of trustees 35

- (1) The trustees must prepare and from time to time review a policy in relation to the declaration of interests of trustees and the management of conflicts of interest.

- (2) The Trust must prepare and maintain a register of all the interests declared by the trustees in accordance with rules made under section 7(1) and the policy prepared under subsection (1).
- (3) A policy prepared under subsection (1) must not be inconsistent with anything in this Act, with any rules made under section 7(1) or with any regulations made under section 7(2). 5
- (4) For the purpose of this Act and any rules made under section 7(1), no conflict of interest is to be taken to arise as respects a trustee solely for the reason that the trustee (or a connected person) is liable to pay the levy under section 33, in any case where the trustees are solely considering financial matters (including the budget of the Trust or the setting of the levy). 10

Insurance and limitation of liability

30 Indemnity insurance for returning officer

- (1) Subject to subsection (2), the Trust may subscribe to, and pay premiums for, a policy of insurance to indemnify any returning officer who exercises functions under this Act against personal liability arising from acts or omissions of the returning officer in relation to the holding of an election of a trustee. 15
- (2) The terms of insurance under subsection (1) must be so framed as to exclude the provision of any indemnity for a returning officer in respect of— 20
- (a) any costs which arise in whole or in part from any wrongful act or omission committed intentionally or recklessly by the returning officer,
 - (b) any penalty imposed in relation to a criminal offence.

31 Limitation of liability of and indemnity for trustees or employees

- (1) Subject to subsection (2), no trustee or employee of the Trust, by being party to or executing any contract, deed or other instrument in their capacity as a trustee or employee on behalf of the Trust or otherwise lawfully exercising any of the powers exercisable by the Trust may be sued or prosecuted either individually or with any other trustee or employee. 25
- (2) Subsection (1) does not extend to— 30
- (a) proceedings which could give rise to liability to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising),
 - (b) criminal proceedings in which the trustee or employee may be convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by the trustee or employee, or 35
 - (c) any proceedings in which the trustee or employee may be found liable to the Trust arising out of any conduct—
 - (i) which the trustee or employee knew (or must reasonably be assumed to have known) was not in the interests of the Trust, 40
 - or

- (ii) in the case of which the trustee or employee did not care whether it was in the best interests of the Trust or not.
- (3) Subject to subsection (4) and without prejudice to any indemnity to which they may otherwise be entitled, every trustee and employee of the Trust is indemnified out of the property and income of the Trust in respect of all claims made against them in respect of the exercise of their functions as a trustee or employee. 5
- (4) The indemnity under subsection (3) does not extend to—
 - (a) a fine imposed in criminal proceedings, or
 - (b) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising), 10
 - (c) any liability incurred by the trustee or employee in defending any criminal proceedings in which the trustee or employee is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by the trustee or employee, or 15
 - (d) any liability incurred by the trustee or employee that arises out of any conduct—
 - (i) which the trustee or employee knew (or must reasonably be assumed to have known) was not in the interests of the Trust, or 20
 - (ii) in the case of which the trustee or employee did not care whether it was in the best interests of the Trust or not.
- (5) No trustee or employee of the Trust is to be liable for any loss to the Trust except loss caused— 25
 - (a) as a result of the commission of an offence by the trustee or employee,
 - (b) as a result of any failure by the trustee or employee to comply with any requirement of a regulatory nature (of whatever nature),
 - (c) as a result of any fraud or dishonesty, or wilful or reckless misconduct, by the trustee or employee, or 30
 - (d) as a result of any conduct—
 - (i) which the trustee or employee knew (or must reasonably be assumed to have known) was not in the interests of the Trust, or
 - (ii) in the case of which the trustee or employee did not care whether it was in the best interests of the Trust or not. 35
- (6) For the purposes of subsection (4)(c)—
 - (a) the reference to a conviction is a reference to one that has become final,
 - (b) a conviction becomes final— 40
 - (i) if not appealed against, at the end of the period for bringing an appeal, or
 - (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of, and

- (c) an appeal is disposed of—
 - (i) if it is determined and the period for bringing any further appeal has ended, or
 - (ii) if it is abandoned or otherwise ceases to have effect.

Notices

5

32 Giving of notices under Part 2

- (1) A notice required or authorised to be given under any provision of this Part may be served—
 - (a) by post,
 - (b) by delivering it personally to the person on whom it is to be served or to whom it is to be given or supplied, or 10
 - (c) with the consent of the recipient and, subject to subsections (4) to (7), by electronic transmission to an address notified by the recipient to the Trust in writing.
- (2) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978 as it applies for the purposes of this section, the proper address of any person in relation to the giving to that person of a notice under subsection (1) is, if that person has given an address for the giving of notices, that address, and otherwise the last known address of that person at the time of giving notice. 15
20
- (3) Any notice required to be given under any provision of this Part is taken to have been delivered—
 - (a) 24 hours after being sent by electronic transmission, and
 - (b) on being handed to the recipient where it is delivered to such recipient personally. 25
- (4) Where a notice required to be given for the purposes of this Part is given by electronic transmission the requirement is to be taken to be fulfilled only where—
 - (a) the recipient of the notice to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission, 30
 - (b) the notice is legible in all material respects, and
 - (c) the notice or document is in a form sufficiently permanent to be used for subsequent reference.
- (5) Where the recipient of a notice given by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or part of that notice the sender must provide such a copy as soon as reasonably practicable. 35
- (6) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with subsection (7).
- (7) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Part— 40

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose, and
 - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given. 5
- (8) This section does not exclude the employment of any method of service not expressly provided for by it.
- (9) In this section, “legible in all material respects” means that the information contained in the notice is available to the recipient to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form. 10

PART 3

FINANCE

33 The levy

- (1) The Trust continues to be a levying body within the meaning of section 74(1) of the 1988 Act (levies). 15
- (2) Consequently, the Trust may continue to issue a levy to the Councils in respect of any financial year under and in accordance with levy regulations—
- (a) to meet the expenses of the Trust, and
 - (b) to provide for an amount for contingencies of up to 10 per cent. of the estimated expenditure of the Trust for the year in respect of which the levy is issued. 20
- (3) For the purposes of section 74 of the 1988 Act, the 1992 Regulations (as they continue to apply to the Trust) and any other levy regulations, this section is to be taken to be the enactment which includes the power which the Trust would have had, apart from section 117 of the 1988 Act, in respect of the financial year beginning in 1990 to issue a precept to, make a levy on, have its expenses paid by, or seek payment from a county council or a charging authority. 25
- (4) Any reference in levy regulations (including in regulation 3(1) of the 1992 Regulations) to the expenditure of the levying body in respect of which a power mentioned in section 74(1)(b) of the 1988 Act would have been exercisable is to be taken as a reference to the expenditure described in paragraphs (a) and (b) of subsection (2). 30
- (5) The area in respect of which a levy may be issued by the Trust comprises— 35
- (a) the following parishes in the district of Malvern Hills—
 - (i) Guarlford,
 - (ii) Malvern Town,
 - (iii) Malvern Wells,
 - (iv) West Malvern, 40
 - (b) the following parishes in the district of Herefordshire—

-
- (i) Colwall,
 - (ii) Mathon.
- (6) If the name of any of the parishes mentioned in subsection (5) is changed, then the reference to that name in that subsection is to be read as the new name of the parish. 5
 - (7) Any area which falls within a parish mentioned in subsection (5) immediately before the day on which this Act is passed remains in the area in respect of which a levy may be issued by the Trust on and after that day whether or not it continues to fall within that parish and whether or not that parish continues to exist. 10
 - (8) Subject to section 71(7), any area which does not fall within a parish mentioned in subsection (5) immediately before the day on which this Act is passed does not fall within the area in respect of which a levy may be issued by the Trust on and after that day whether or not it falls within any of those parishes on or after that day. 15
 - (9) The levy may be issued either before or after the Trust has become liable to any expenses.
 - (10) The amount due from each of the parishes mentioned in subsection (5) is to be raised by precept of or the issue of a levy by the Trust on the Council in whose area the parish is situated, requiring that Council to pay to the Trust the amount specified in the precept or specified by the Trust when it issues the levy in such manner as may be specified in the precept or by the Trust when it issues the levy. 20
 - (11) The Council must collect the amount of the precept or amount specified by the Trust when it issues the levy from those persons who are liable to pay council tax in the respective parishes. 25
 - (12) The amount of the levy on the day on which this section comes into force (and for the remainder of the financial year in which that day falls) is the same amount as it was immediately before that day.
 - (13) Annual increases in the maximum amount of levy that may be issued under levy regulations are to continue to be calculated in accordance with levy regulations. 30
 - (14) For the purposes of that calculation, the amount ascertained in accordance with regulation 5(2)(a) of the 1992 Regulations for the purposes of a levy issued in respect of the financial year beginning in 1993 was £296,716. 35
 - (15) Voluntary contributions or subscriptions paid to the Trust may be applied at the desire of the contributor or donor to reduce the amount of the levy issued in respect of any parish.
 - (16) The 1992 Regulations continue to apply to the Trust as a levying body and in relation to any levy to be issued by the Trust or anticipated by the Councils (or either one of them) in respect of any financial year to which those 40

Regulations apply and subsections (3), (4), (17) and (18) make provision about the application of those Regulations to the Trust.

- (17) The amount of the levy to be borne by each of the Councils is to be apportioned in accordance with levy regulations as though this section were a relevant Act which provides for the amount of the levy to be borne by the relevant authorities in a proportion calculated by reference to a factor connected with rating. 5
- (18) Subject to the provisions of this section, for the purposes of section 74 of the 1988 Act, the 1992 Regulations as they apply to the Trust, any other levy regulations and in relation to the levy – 10
- (a) “levying body” includes the Trust,
 - (b) “relevant Act” includes this section, and where the 1992 Regulations refer to the relevant Act imposing a requirement, or otherwise making provision for or about something which would have had effect apart from section 117 of the 1988 Act, the reference is to be taken instead to be a reference to this section imposing the requirement or making provision for or about that thing, 15
 - (c) Herefordshire Council and Malvern Hills District Council are both a “relevant authority”, in respect of the Trust,
 - (d) references to the relevant precepting power, (including references to a relevant precepting power which would have been exercisable apart from section 117 of the 1988 Act), are to be construed as references to the power to levy as continued by virtue of subsection (1). 20
- (19) In this section –
- “the 1988 Act” means the Local Government Finance Act 1988, 25
 - “the 1992 Regulations” means the Levying Bodies (General) Regulations 1992,
 - “the Councils” means Herefordshire Council and Malvern Hills District Council and “Council” is to be construed accordingly,
 - “the levy” means the levy which may continue to be issued under and in accordance with this section, 30
 - “levy regulations” means regulations made under section 74(2) of the 1988 Act.

34 Provision for capital and income

- (1) Capital money received by the Trust from the sale, letting, grant or other disposal of land or interests in land under the provisions of this Act may be applied by the Trust for the repayment of the principal of any amount borrowed or any purpose for which capital money may properly be applied. 35
- (2) Any sum received by the Trust from the sale, letting, grant or other disposal of land or interests in land under the provisions of this Act other than capital money is to be treated as income of the Trust. 40

35 Power to borrow and mortgage land

- (1) Subject to the provisions of this section, the Trust may by any method or methods borrow or raise money as may be required by them for the purposes of this Act.
- (2) Subject to subsections (4) and (5), money borrowed by the Trust may be borrowed upon the security of all or any of the revenues and property of the Trust (including the contributions authorised to be raised by the levy in accordance with section 33) and the Trust may mortgage or assign over to the persons by or on behalf of whom such money is advanced those revenues and property or any part of them. 5
10
- (3) Subject to subsections (4) and (5), the Trust may charge all or any of the revenues and property of the Trust (including the contributions authorised to be raised by the levy in accordance with section 33) as security for a grant or the discharge of an obligation.
- (4) The Trust’s powers under subsections (2) and (3) may not be exercised in relation to existing relevant land without the consent of the Secretary of State and may only be exercised in relation to such land on such terms and subject to such conditions and for such period as the Secretary of State may direct. 15
- (5) Despite section 101 of the Law of Property Act 1925 (powers incident to estate or interest of mortgagee) or anything in any deed, where the Trust mortgages or assigns over to any person any existing relevant land, the mortgagee or, as the case may be, the assignee does not have power to sell the land or power to cut and sell, or to contract for the cutting and sale of, timber or other trees on the land. 20
- (6) The Trust must comply with sections 124 to 126 of the Charities Act 2011 in relation to any mortgage of land, other than any mortgage in relation to which the consent of the Secretary of State is required under this section. 25
- (7) For the purposes of this section –
 “ancillary land” means land to which section 75 applies by virtue of subsection (1) of that section, 30
 “existing relevant land” means any part of the Malvern Hills, other than ancillary land, which is owned by the Trust on the day on which this Act is passed.

36 Contributions by Worcestershire County Council and Herefordshire Council

- (1) The Councils may each contribute to the funds of the Trust such sums as they may respectively fix by resolution. 35
- (2) The Councils may either –
 (a) treat the whole amount of any such contribution as general expenses, or
 (b) treat the whole or any part of any such contribution as special expenses to be levied upon such parish or parishes in their respective areas as the council in question thinks fit. 40

- (3) No rate, levy or charge of any nature may be raised for the purposes of this section in respect of any of the parishes in respect of which a levy may be issued by the Trust under section 33.
- (4) In this section, “the Councils” means Worcestershire County Council and Herefordshire Council. 5

37 Report and annual accounts

- (1) Despite anything in Part 8 of the Charities Act 2011 to the contrary, the Trust must always arrange for its accounts in respect of any financial year to be audited annually, whatever its gross income and the aggregate value of its assets. 10
- (2) The Trust’s auditors must be appointed by the trustees at the annual meeting for such period and for such reasonable remuneration as the trustees think fit.
- (3) Each year at one of its meetings, the Trust must consider a report of the activities of the Trust in the preceding financial year and approve the accounts of the Trust for that year. 15
- (4) The meeting referred to in subsection (3) must be held in such a way that only trustees who are present together at the same place may attend, and speak and vote at, the meeting (so it cannot be held in such a way that trustees who are not present together at the same place may by electronic means attend, and speak and vote at, the meeting) unless there are exceptional circumstances which, in the opinion of the chief executive, mean that it is not possible for any of the trustees to be present together at the same place for the purpose of attending, and speaking and voting at, the meeting. 20
- (5) At least 10 clear business days before the meeting referred to in subsection (3), the Trust must give public notice of the meeting, including by advertisement published on the Trust’s website and in one or more local newspapers (if there are any) circulating in the area in which the Malvern Hills is situated, stating in the advertisement that the report and accounts referred to in that subsection are available for inspection at the offices of the Trust. 25 30

PART 4

PUBLIC ACCESS AND MANAGEMENT OF THE MALVERN HILLS

Public access and duty to keep unenclosed, etc

38 Public access to the Malvern Hills

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

39 Occupiers' liability, etc

- (1) The operation of section 38 in relation to any land does not increase the liability, under any enactment not contained in this Act or under any rule of law, of a person interested in the land or any adjoining land in respect of the state of the land or of things done or omitted to be done on the land. 5
- (2) A person entering the Malvern Hills in accordance with section 38 is not, for the purposes of the Occupiers' Liability Act 1957 (or any successor legislation), a visitor of any occupier of the Malvern Hills or of the Trust.
- (3) Subject to subsection (5), at any time when the right conferred by section 38 is exercisable, the Trust owes no duty by virtue of this section to any person in respect of— 10
- (a) a risk resulting from the existence of any natural feature of the landscape, or any river, stream, ditch or pond whether or not a natural feature, or
- (b) a risk of that person suffering injury when passing over, under or through any wall, fence or gate, except by proper use of the gate or of a stile. 15
- (4) For the purposes of subsection (3), any plant, shrub or tree, of whatever origin, is to be regarded as a natural feature of the landscape.
- (5) Subsection (3) does not prevent the Trust from owing a duty by virtue of this section in respect of any risk where the danger concerned is due to anything done by the Trust— 20
- (a) with the intention of creating that risk, or
- (b) being reckless as to whether that risk is created.
- (6) In determining whether any, and if so what, duty is owed by virtue of section 1 of the Occupiers' Liability Act 1984 by any occupier of premises in or forming part of the Malvern Hills or by the Trust at any time when the right conferred by section 38 is exercisable in relation to those premises, regard is to be had, in particular, to— 25
- (a) the fact that the existence of that right ought not to place an undue burden (whether financial or otherwise) on the occupier or the Trust as the case may be, 30
- (b) the importance of maintaining the character of the Malvern Hills, including features of historic, traditional, geological or archaeological interest, and 35
- (c) any code of conduct issued under section 20 of the Countryside and Rights of Way Act 2000 (and for the purposes of this paragraph any such code of conduct is to be taken to apply to the Malvern Hills as it applies to access land within the meaning of Part 1 of that Act).
- (7) For the purposes of subsection (1), "interest", in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an estate or interest in land or by virtue of a licence or agreement, and in particular includes rights of common and sporting rights 40

exercisable over the Malvern Hills, and references to a person interested in land are to be construed accordingly.

40 Duty to keep the Malvern Hills unenclosed

- (1) Except as otherwise provided in this Act, no enclosure may be made or building erected on the Malvern Hills. 5
- (2) Except as otherwise provided in this Act, the Trust must –
 - (a) at all times keep the Malvern Hills unenclosed and unbuilt on as open space for the recreation and enjoyment of the public, and
 - (b) by all lawful means prevent, resist and abate –
 - (i) all enclosures and encroachments upon and all attempts to enclose or encroach upon the Malvern Hills or any part of the Malvern Hills, and 10
 - (ii) any attempt to appropriate or use the Malvern Hills or the timber on the Malvern Hills for any purpose inconsistent with this Act. 15
- (3) In subsection (2), “unbuilt on” has the same meaning given by section 6(6).

41 Protection of the Malvern Hills

- (1) Subject to the provisions of this Act, the Trust may take any action it sees fit to –
 - (a) protect trees, timber, shrubs, herbage, turf or any other thing growing on the Malvern Hills, and 20
 - (b) prevent any unlawful felling, cutting or damaging of those things.
- (2) Subject to the provisions of this Act, the Trust may take all necessary measures to prevent –
 - (a) any unlawful digging on or removal of stone, soil, gravel and turf from land forming part of the Malvern Hills, or 25
 - (b) any other damage to land forming part of the Malvern Hills.
- (3) This section is without prejudice to the generality of section 40.

42 Enclosure, encroachment and building: enforcement

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

- (a) discontinue or refrain from any unlawful enclosing or building upon any part of the Malvern Hills,
 - (b) remove any unlawful enclosure or building from any part of the Malvern Hills, or
 - (c) discontinue or refrain from taking any of the actions referred to in section 41(1)(b) or (2). 5
- (4) No application may be made for an order under subsection (3)(b) after the expiration of 12 years from the making of the enclosure or the erection of the building in question.
- (5) An application for an order under subsection (3)(a) or (b) may be made by any person, but an application under subsection (3)(c) may only be made by the Trust. 10
- (6) No order under subsection (3) may be made in respect of anything done by the Trust in pursuance of any of its functions under any enactment (including the provisions of this Act) or other rule of law. 15
- (7) Where an order made under subsection (3) requiring a person to remove any enclosure or building has not been complied with, the Trust may remove the enclosure or building itself or arrange for it to be done.
- (8) Any expenses reasonably incurred by the Trust in removing any enclosure or building under subsection (7) or arranging for it to be done may be recovered by it from the person who was required by the order to do so. 20

Regulation and management of the Malvern Hills: general

43 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. 25

44 Rights of common

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

Access to and fencing, etc of the Malvern Hills

45 Regulation and prohibition of access to the Malvern Hills 30

- (1) Subject to subsection (5), the Trust may, by notices posted in such places on the Malvern Hills as it thinks fit, regulate or prohibit, for such period as may be reasonably necessary, access by the public or any section of the public to any part of the Malvern Hills for any one or more of the reasons mentioned in subsection (2). 35
- (2) Those reasons are –

-
- (a) for the protection, so far as is reasonably necessary, of any ancient monument or any area of archaeological or historical interest,
- (b) for the protection or restoration of the natural beauty of the Malvern Hills or their suitability for grazing or recreation,
- (c) for the preservation of trees on the Malvern Hills, 5
- (d) for the protection or preservation of flora or fauna or any site of special scientific interest on the Malvern Hills,
- (e) after consultation with the chief officer of police and the chief fire officer, for the prevention of the risk of fire on the Malvern Hills,
- (f) for the prevention of accidents or injury or other damage to health, 10
in the case where the part of the Malvern Hills in question is, in the opinion of the Trust, a temporary source of danger.
- (3) The Trust may (despite anything in this Act to the contrary) fence and enclose, or cause to be fenced and enclosed, parts of the Malvern Hills for as long as appears necessary to the Trust for the regulation or prohibition of access as is mentioned in subsection (1) for any one or more of the reasons mentioned in subsection (2)(a), (b), (c), (d) or (f). 15
- (4) In exercise of the powers in subsections (1) and (3), but only for the reasons mentioned in subsection (2)(e) or (f), the Trust may regulate or prohibit access by the public to, over or along any public right of way on or over the Malvern Hills. 20
- (5) In any case where the Trust exercises the powers in subsections (1) and (3) for any of the reasons mentioned in subsection (2)(a), (b), (c) or (d), a gate or other appropriate means of access may be provided at any place which the Trust considers appropriate, taking into account the reason for the fencing. 25
- (6) When providing a gate or other appropriate means of access under subsection (5), the Trust must have regard to the needs of those who would otherwise be entitled to gain access between the areas crossed by the fence, including those on horseback and people with disabilities.
- (7) A notice posted in accordance with this section must include a statement of the reasons for the regulation or prohibition and of its intended duration. 30
- (8) Nothing in subsection (1) authorises the Trust to regulate or prohibit access to any part of the Malvern Hills by any person going with good reason to or from any land which is accessible only over that part of the Malvern Hills.
- (9) Nothing in this Part of this Act prejudices or affects the exercise of powers by any person under any enactment by virtue of which access to the Malvern Hills is or may be regulated or prohibited. 35
- (10) In this section—
- “chief fire officer” means the person with responsibility for managing the fire and rescue service for the fire and rescue authority in whose area the relevant part of the Malvern Hills is situated, 40
- “chief officer of police” means the chief officer of the police force in whose area the relevant part of the Malvern Hills is situated,

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

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

- 46 Regulation and prohibition of access to the Malvern Hills: supplementary** 5
- (1) Before exercising the powers in section 45(1) in respect of a period exceeding 42 days, the Trust must—
- (a) consult the Historic Buildings and Monuments Commission for England if the reason mentioned in section 45(2)(a) is a reason for the exercise of the power, 10
 - (b) seek the advice of Natural England if the reason mentioned in section 45(2)(d) is a reason for the exercise of the power.
- (2) Except in an emergency, before exercising the powers in section 45(1) in respect of a period exceeding 42 days, the Trust must consult—
- (a) the Sport and Recreation Alliance, 15
 - (b) at least one body representing the interests of people with disabilities,
 - (c) any person who the Trust believes is exercising a right of common which entitles that person to graze animals on the part of the Malvern Hills in which the Trust proposes to exercise those powers, and who the Trust believes is likely to be affected by the exercise of those powers, and 20
 - (d) at least one local association, authority or other body having a substantial interest in—
 - (i) the area to be affected by the exercise of those powers, and
 - (ii) the use of the Malvern Hills for recreational purposes. 25
- (3) Except in an emergency, before exercising the powers in section 45 for any of the reasons mentioned in section 45(2)(a), (b), (c) or (d) in respect of a period exceeding 42 days, the Trust must give notice of the proposed regulation or prohibition, including—
- (a) its intended duration, 30
 - (b) the reasons for which it is proposed to be made, and
 - (c) an indication that written representations relating to the regulation or prohibition may be made to the Trust within a period specified in the notice.
- (4) A notice required by subsection (3) must be published— 35
- (a) on the Trust’s website,
 - (b) by advertisement in one or more local newspapers (if there are any) which circulate in any part of the Malvern Hills, and
 - (c) in a newsletter or similar publication published by the Trust.
- (5) In subsection (4)(c), “published” includes published or issued electronically. 40

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

47 Fencing dangerous places

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

48 Fencing and other means of securing common land

- (1) Subject to the provisions of this section and without prejudice to section 49(1)(b), the Trust may fence common land within the Malvern Hills or install or use and maintain any other means of enclosure (or cause the common land in question to be fenced or enclosed) if the Trust considers that doing so is desirable for the prevention of animals straying from the common land in question onto land which is not common land.

- (2) A fence or other means of enclosure installed under subsection (1) need not necessarily be installed at the location of the boundary of the common land in question.
- (3) The power in subsection (1) may also be exercised to prevent animals straying onto the B4424 road from that part of the common land known as Old Hills which lies to the west of that road. 5
- (4) In any case where it exercises the power under subsection (1), the Trust must have regard to the matters to which, under section 39(1) of the Commons Act 2006, the appropriate national authority must have regard in determining an application for consent under section 38(1) of that Act. 10
- (5) The power in subsection (1) may not be exercised to erect or maintain a fence or install, use or maintain any other means of enclosure between Castlemorton Common and Coombe Green Common.
- (6) Despite section 38(6)(a) of the Commons Act 2006, the exercise of the power under subsection (1) is subject to the provisions of Part 3 of that Act except in relation to the provision of a cattle-grid in a highway. 15
- (7) Subject to subsection (11), in any case where it exercises the power under subsection (1), the Trust must provide a gate or other appropriate means of access –
- (a) at (or in the case of a cattle-grid, adjacent to) any point where the fence or other means of enclosure crosses any road, whether or not the road is a highway, 20
 - (b) at any point where the fence or other means of enclosure crosses any public right of way, and
 - (c) at any other place which the Trust considers is appropriate for ensuring public access to the Malvern Hills is maintained, taking into account the purpose of the fencing or other means of enclosure. 25
- (8) No later than 14 days after the day on which a gate or other appropriate means of access is provided under subsection (7)(a) in respect of a highway or under subsection (7)(b), the Trust must notify the highway authority for the highway or public right of way in question in writing of the location of the gate or other appropriate means of access. 30
- (9) No cattle-grid may be installed as a means of enclosure under subsection (1) in a public right of way (whether or not the public right of way is within a road). 35
- (10) No gate or other appropriate means of access may be provided under subsection (7)(b) in respect of a public right of way unless the Trust represents to a competent authority as respects the public right of way that it is expedient that the gate or other appropriate means of access should be erected on the public right of way, and the provisions of subsections (2) to (4) and (6) of section 147 of the Highways Act 1980 have effect in relation to such a representation as though it were a representation made under subsection (1) of that section and as though references in that section to a footpath or 40

- bridleway include references to a byway open to all traffic and a restricted byway.
- (11) Section 146 of the Highways Act 1980 applies to a gate or other appropriate means of access provided under subsection (7)(b) as though references to the owner of land were references to the Trust. 5
- (12) When providing a gate or other appropriate means of access under subsection (7)(c), the Trust must have regard to the needs of those who are entitled to gain access between the areas crossed by the fence or other means of enclosure, including those on horseback and people with disabilities.
- (13) Before exercising the power under subsection (1) in respect of any part of a highway which is not a public right of way, the Trust must— 10
- (a) obtain the consent in writing of the highway authority for the highway in question (subject to such reasonable conditions as the highway authority may impose), and
- (b) consult such owners and occupiers of land as the highway authority consider requisite. 15
- (14) The provisions of the Highways Act 1980 specified in column 1 of Schedule 3 apply to the Trust in the manner specified in column 2 of that Schedule where the means of enclosure used or proposed to be used by the Trust in exercise of the power under subsection (1) is a cattle-grid to be provided wholly or partly in a highway. 20
- (15) The Trust may enter into agreements with a highway authority for the purpose of securing, in connection with this section, the provision, alteration, improvement, maintenance or removal of cattle-grids and by-passes by that authority under the powers conferred by Part V of the Highways Act 1980 including by way of an agreement under section 87, 88 or 278 of that Act. 25
- (16) This section is without prejudice to any duty on the occupier of land which adjoins common land to fence that land against any animals lawfully depastured on the common land in question.
- (17) In this section— 30
- “Castlemorton Common” and “Coombe Green Common” mean the areas of common land with those names which form part of the common land registered with number CL9 in the register kept under section 1 of the Commons Act 2006 by Worcestershire County Council,
- “competent authority” has the same meaning as in section 147 of the Highways Act 1980, 35
- “highway” and “highway authority” have the same meaning as in the Highways Act 1980,
- “means of enclosure” includes cattle-grids and other measures to prevent animals passing along a road, 40
- “Old Hills” means the common land registered with number CL28 in the register kept under section 1 of the Commons Act 2006 by Worcestershire County Council.

49 Fencing: further powers

- (1) Subject to subsections (2), (3), (4) and (5), the Trust may fence (or cause to be fenced) any part of the Malvern Hills –
- (a) that is not common land, if the Trust considers that doing so is necessary or desirable for the management or control of animals, 5
 - (b) that is common land, for a period not exceeding 60 days, if the Trust considers that doing so is necessary or desirable for the purpose of regulating grazing and is in furtherance of the objects.
- (2) Before exercising the power in subsection (1) in the operation of a grazing scheme that it proposes to establish (whether or not the grazing scheme is to include fencing which crosses any public right of way), the Trust must consult any person who the Trust believes –
- (a) is exercising a right of common which entitles that person to graze animals on the part of the Malvern Hills in which the Trust proposes to exercise the power, and 10 15
 - (b) is likely to be affected by the exercise of the power.
- (3) The Trust may not exercise the powers under subsection (1) if doing so would prohibit the exercise by any person of a private right in respect of an easement or would interfere with a highway other than a footpath or bridleway.
- (4) Where the Trust exercises the power under subsection (1)(b) in respect of a period exceeding 42 days (“period A”) over any land, it may not exercise that power again over any part of the same land within a period of six months beginning with the day after the date on which period A ended, except –
- (a) if the area of land in question is 1 hectare or smaller, 20
 - (b) in the case of an emergency relating to animal health but only for such period as may be reasonably required for the purpose of responding to the emergency, or 25
 - (c) if the Trust is required to fence the land in question for reasons relating to animal health in order to comply with any other enactment or any direction or requirement given or made under any other enactment. 30
- (5) In any case where it exercises the power under subsection (1), the Trust must provide gates or other appropriate means of access –
- (a) at any point where any public right of way is crossed by the fence, and
 - (b) at any other places which the Trust considers are appropriate for ensuring public access to the Malvern Hills is maintained, taking into account the purpose of the fencing. 35
- (6) No gate or other appropriate means of access may be provided under subsection (5)(a) unless the Trust represents to a competent authority as respects the public right of way that it is expedient that the gate or other appropriate means of access should be erected on the public right of way, and the provisions of subsections (2) to (4) and (6) of section 147 of the Highways Act 1980 have effect in relation to such a representation as though it were a representation made under subsection (1) of that section. 40

- (7) Section 146 of the Highways Act 1980 applies to a gate or other appropriate means of access provided under subsection (5)(a) as though references to the owner of land were references to the Trust.
- (8) When providing a gate or other appropriate means of access under subsection (7)(c), the Trust must have regard to the needs of those who would otherwise be entitled to gain access between the areas crossed by the fence, including those on horseback and people with disabilities. 5
- (9) Before exercising the power in subsection (1)(a) in a case where a fence would cross any public right of way, the Trust must notify the relevant highway authority in writing of the proposed exercise of the power. 10
- (10) Before exercising the power in subsection (1)(b) in a case where a fence would cross any public right of way, the Trust must—
- (a) where it proposes to exercise the power in the operation of a grazing scheme that it proposes to establish, notify the relevant highway authority in writing of the proposed scheme, specifying— 15
 - (i) the area within which the scheme is proposed to operate, and
 - (ii) the approximate location of any fences which the Trust proposes to erect within that area in the course of the operation of the scheme and which would cross a public right of way, or 20
 - (b) in any other case, notify the relevant highway authority in writing of the proposed exercise of the power.
- (11) As soon as reasonably practicable after the removal of a fence which crosses a public right of way, the Trust must notify the relevant highway authority of the removal. 25
- (12) This section is without prejudice to any other powers that the Trust has as regards the fencing of land under this Act or any other enactment or rule of law.
- (13) In this section—
- “competent authority” has the same meaning as in section 147 of the Highways Act 1980, 30
 - a “grazing scheme” is a scheme—
 - (a) which makes provision for an area within the Malvern Hills to be set aside for grazing using a system of compartments which are grazed in rotation, 35
 - (b) which will require the powers in subsection (1)(b) to be exercised at various times for the fencing of those compartments, and
 - (c) which will or may require that fencing to cross one or more public rights of way, 40
- “the relevant highway authority” means the highway authority for the public right of way in question.

50 Regulation of horse riding

- (1) If one or more of the circumstances in subsection (2) apply, the Trust may, subject to subsection (3), 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. 5
- (2) The circumstances are that, in the opinion of the Trust, it is necessary to exercise the power in subsection (1) to—
- (a) prevent injury to or disfigurement of the Malvern Hills,
 - (b) protect the use of the Malvern Hills as an open space for the recreation and enjoyment of the public. 10
- (3) Nothing in this section authorises the Trust to restrict or prohibit the lawful use of any bridleway shown on a definitive map and statement which includes any part of the Malvern Hills.
- (4) In subsection (3) “definitive map and statement” means a definitive map and statement operative under Part III of the Wildlife and Countryside Act 1981. 15

51 Prevention of unauthorised access by vehicles

- (1) The Trust may take such measures as it thinks fit to prevent unauthorised access by mechanically propelled vehicles to any part of the Malvern Hills, provided that the measures do not prevent access by persons lawfully exercising a right to access the part of the Malvern Hills in question on foot or on horseback. 20
- (2) Despite section 38(6)(a) of the Commons Act 2006, the exercise of the power under subsection (1) is subject to the provisions of Part 3 of that Act.
- (3) In this section, “mechanically propelled vehicle” does not include an invalid carriage within the meaning of section 20 of the Chronically Sick and Disabled Persons Act 1970. 25

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

For the purposes of regulation 6 of, and Description 1A under Class 1 in Part 1 of Schedule 3, to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and any similar provision in regulations replacing those regulations, the Trust is, as respects its functions under sections 45 and 50, deemed to be a local authority. 30

Management of the Malvern Hills

53 Nuisance and public order

The Trust may take any necessary, reasonable and proportionate measures to prevent nuisances and preserve order in the Malvern Hills. 35

54 Paths and ways

- (1) The Trust may make and maintain paths and ways over the Malvern Hills but, in the case of a public right of way, may only do so by agreement with the relevant highway authority.
- (2) In this section, “the relevant highway authority” means, for any part of a public right of way that the Trust proposes to make or maintain, the highway authority for the area in which that part of the public right of way is located. 5

55 Access roads

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

56 Trees and shrubs

- (1) The Trust may acquire and plant trees and shrubs on the Malvern Hills or on any other land under their ownership, management or control and may fence or protect them and remove or transplant any of them. 35

- (2) No rights of estover are exercisable in relation to any tree planted by the Trust on the Malvern Hills before, on or after the day on which this Act is passed except in relation to the gathering of fallen wood.

57 Drainage and turf

- (1) The Trust may drain any part of the Malvern Hills so far as it may deem necessary or desirable and it may make temporary enclosures for that purpose. 5
- (2) The Trust may make temporary enclosures for the purpose of protecting or renovating turf.

58 Parking places

- (1) The Trust may set apart any part of the Malvern Hills adjoining or near any highway and may use any land so set apart as parking places for vehicles for use by persons resorting to the Malvern Hills for the purpose of recreation and enjoyment. 10
- (2) The Trust may provide and maintain all necessary equipment in connection with the exercise of the powers in subsection (1) and may make regulations as to the use of parking places provided under that subsection. 15
- (3) A copy of any regulations made under subsection (2) must be exhibited on or near any parking place to which the regulations relate.
- (4) The Trust may make such reasonable charges for the use of parking places provided under this section as it may determine. 20
- (5) In this section “parking places” means places where vehicles or vehicles of any particular class or description may wait.

59 Sheds, seats, shelters and watering points

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

60 Lavatories

- (1) The Trust may construct and maintain lavatories or may make arrangements for any local authority to construct and maintain lavatories in such places as the Trust thinks fit either above or below ground on the Malvern Hills with all necessary drains and works in connection therewith and may make all necessary provision for their construction, use and maintenance. 30
- (2) Subject to subsection (3), the Trust may, without other authority – 35

- (a) place or erect temporary lavatories in such positions and places on the Malvern Hills as it thinks fit,
 - (b) grant licence upon such terms and conditions as it thinks fit to any person to place or erect temporary lavatories in such positions and places on the Malvern Hills as the Trust thinks fit and as may be specified in the licence. 5
- (3) The powers in subsection (2) may only be exercised if the temporary lavatories are to be provided –
 - (a) in connection with an event authorised by the Trust which in its opinion is likely to attract such a number of people onto the Malvern Hills that such facilities will be required (in which case a licence may be granted only for a period not exceeding 14 days), or 10
 - (b) for the use of persons working temporarily in the Malvern Hills.
- (4) Temporary lavatories placed or erected on the Malvern Hills for the reason mentioned in subsection (3)(a) must be removed from the Malvern Hills as soon as reasonably practicable after the event in connection with which they are provided has ended and in any case must not remain on the Malvern Hills for a period exceeding 14 days. 15
- (5) Temporary lavatories placed or erected on the Malvern Hills for the reason mentioned in subsection (3)(b) must be removed from the Malvern Hills as soon as reasonably practicable after the need for them has ended and in any case must not remain on the Malvern Hills for a period exceeding 14 days after the work in question has been completed. 20

61 Games, sports and exhibitions, etc

- (1) The Trust may set apart land on Malvern Common and Malvern Link Common upon which persons may play games or hold meetings or gatherings for sports. 25
- (2) The area of land which may be set apart under subsection (1) at any point in time must not exceed 20 hectares in the aggregate.
- (3) The Trust may enclose land on Malvern Link Common for the purpose of the holding of an agricultural or horticultural or other exhibition, circus, fair or show and may let the land for those purposes on such terms as it thinks fit. 30
- (4) The Trust may not enclose any part of Malvern Link Common under subsection (3) for a continuous period exceeding one month and the total number of days in any calendar year on which there is any land on Malvern Link Common that is enclosed under subsection (3) must not exceed 90. 35
- (5) The area of land which may be enclosed under subsection (3) at any point in time must not exceed 20 hectares in the aggregate.
- (6) In this section, “Malvern Common” and “Malvern Link Common” mean the areas of common land registered by reference to those names, and numbered CL17, CL18 and CL19, in the register kept under section 1 of the Commons 40

Act 2006 by Worcestershire County Council immediately before the day on which this Act is passed.

62 Licensing of stalls

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

63 Licensing of other activities

- (1) The Trust may if it thinks fit issue licences for the use of the Malvern Hills for specified purposes, including uses which would otherwise be in breach of byelaws made under section 65, but only if to do so would be consistent with the provisions of this Act. 30
- (2) Licences issued under subsection (1) may be issued on such terms and conditions and subject to such restrictions as the Trust thinks fit and, without prejudice to the generality of the foregoing, such terms, conditions and restrictions may include or relate to—
 - (a) the locations on the Malvern Hills where the use for a specified purpose may take place, 40
 - (b) a requirement for insurance,

- (c) the display of advertisements,
 - (d) the charging of a fee by the Trust to the licence holder.
- (3) No licence may be issued under subsection (1) in respect of the grazing of animals.
- (4) In subsection (1), “the use of the Malvern Hills for specified purposes” means such use as may be specified by the Trust in a policy published and made available by the Trust in accordance with subsection (7) and this may include—
 - (a) the use of any part of the Malvern Hills in the course of a business,
 - (b) the use of any part of the Malvern Hills for any organised activity.
- (5) A licence to which this section applies cannot be granted unless the policy referred to in subsection (4) has been approved by special resolution of the trustees.
- (6) Before the policy referred to in subsection (4) can be approved in accordance with subsection (5), the Trust must consult—
 - (a) at least one body representing the interests of people with disabilities, and
 - (b) such other persons as it thinks fit.
- (7) A copy of the policy mentioned in subsection (4) must be—
 - (a) published on the Trust’s website,
 - (b) made available for inspection at all reasonable hours at the Trust’s offices, and
 - (c) provided to any person on reasonable request.
- (8) A licence issued under subsection (1) for the use of the Malvern Hills for a purpose falling within subsection (4)(a) or (b) is to be issued to a person involved in the carrying on of the business in question or, as the case may be, a person responsible for organising the activity in question.
- (9) Where a licence is issued under subsection (1) for the use of the Malvern Hills for a purpose falling within subsection (4)(a) or (b), the person to whom the licence is issued may be charged a fee for the licence, whether or not the use of the Malvern Hills to which the licence relates involves the exercise of the public right of access to the Malvern Hills on foot or horseback for the purpose of open-air recreation that is conferred by section 38.
- (10) Where a licence is issued under subsection (1) for the use of the Malvern Hills for a purpose that does not fall within subsection (4)(a) or (b), the person to whom the licence is issued may be charged a fee for the licence, if the use of the Malvern Hills to which the licence relates does not involve the exercise of the public right of access to the Malvern Hills on foot or horseback for the purpose of open-air recreation that is conferred by section 38.

*Removal and disposal of unauthorised articles***64 Removal and disposal of unauthorised articles and objects**

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

- (7) In subsection (6) –
“the 1984 Act” means the Road Traffic Regulation Act 1984,
“motor vehicle” has the meaning given by section 136 of that Act.

PART 5

BYELAWS

5

65 Power to make byelaws

- (1) The Trust may make and enforce byelaws to regulate the use of the Malvern Hills as the Trust considers to be necessary or desirable in furtherance of the objects, including, in particular, to comply with its duties under section 40 and to exercise its powers under sections 41, 43 and 53 and, without prejudice to that, byelaws may be made for any of the following purposes – 10
- (a) preventing nuisances and preserving order in the Malvern Hills,
 - (b) prohibiting any enclosure of any part of the Malvern Hills or the erection of any unauthorised building, shed, tent or other structure on the Malvern Hills, 15
 - (c) preventing any interference with the rights of common or other rights to graze exercisable over the Malvern Hills,
 - (d) regulating the use of any seats and shelters for the time being provided by or under the control or management of the Trust and preventing damage to them, 20
 - (e) prohibiting any person from placing or depositing and leaving without lawful authority any refuse or litter on the Malvern Hills,
 - (f) preventing or regulating vehicles or devices, including cycles, being parked, driven, ridden or flown on or over any part of the Malvern Hills not set apart for that purpose, and regulating the use of parking places on any part of the Malvern Hills set apart for parking, 25
 - (g) prohibiting or regulating the placing on the Malvern Hills of any show, exhibition, swing, roundabout or other similar thing,
 - (h) regulating games and other means of recreation on the Malvern Hills,
 - (i) regulating assemblies of persons on the Malvern Hills, 30
 - (j) regulating the user and enjoyment of any rights of common exercisable over the Malvern Hills,
 - (k) without prejudice to sections 62 and 63, prohibiting or regulating the use of any part of the Malvern Hills for the purposes of carrying on a business, 35
 - (l) preventing any unlawful digging on, or taking of stone, gravel or soil from, the Malvern Hills,
 - (m) preventing any unlawful cutting or taking of turf or sods, or the growth or produce of the Malvern Hills, from the Malvern Hills,
 - (n) preventing any other injury to the Malvern Hills, 40
 - (o) prohibiting any person without lawful authority from turning out or permitting to remain on the Malvern Hills any cattle, sheep, pigs, goats or other animals and authorising an authorised officer or other

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- individual appointed for the purpose by the Trust to remove from the Malvern Hills any such animal being on the Malvern Hills in contravention of the byelaws or suffering from disease,
- (p) subject to the provisions of section 79, regulating quarrying in, upon or under the Malvern Hills, 5
- (q) prohibiting or regulating the erection of cranes, works and machinery on the Malvern Hills,
- (r) prohibiting the hindrance or obstruction of an authorised officer in the exercise of their powers or duties under this Act or under any byelaw made by the Trust. 10
- (2) The Trust may make byelaws providing that any person who, without reasonable excuse, contravenes a notice posted under section 45 is guilty of an offence.
- (3) The Trust may make byelaws providing that any person who, without reasonable excuse, contravenes a notice or direction sign posted under section 50 is guilty of an offence. 15
- (4) Byelaws made under this section may –
- (a) be made so as to relate to the whole or any part of the Malvern Hills,
- (b) make different provision for different cases and in relation to different parts of the Malvern Hills, 20
- (c) amend or revoke other byelaws made under this section or under the repealed Acts.
- (5) Byelaws made under this section do not apply to any activity in respect of which a licence has been issued by the Trust under section 63.
- (6) Byelaws made under subsection (1)(f) may not be made in respect of relevant invalid carriages except for the purpose of preserving the safety of persons (including persons in charge of relevant invalid carriages). 25
- (7) In subsection (6), a “relevant invalid carriage” means an invalid carriage –
- (a) which is not mechanically propelled, or
- (b) which complies with (or falls within a class of invalid carriages that complies with) any prescribed requirements as mentioned in section 20(1) of the Chronically Sick and Disabled Persons Act 1970 which are requirements about the maximum speed of invalid carriages. 30
- (8) No byelaw made under this section may prejudice or affect (except as provided by subsection (1)(j)), or take away, any right of common which is exercisable by any person over the Malvern Hills. 35
- (9) In this section, “invalid carriage” has the same meaning as in section 20(2) of the Chronically Sick and Disabled Persons Act 1970.
- 66 Procedure for byelaws**
- (1) Subsections (3) to (8) and (11) of section 236, and section 238, of the Local Government Act 1972 (which respectively relate to the procedure for making 40

byelaws by local authorities and provide for the proof of byelaws in legal proceedings) apply to any byelaws made by the Trust under section 65 as if –

- (a) the Trust were a local authority in England,
 - (b) there were additional requirements to publish the byelaws on the Trust’s website –
 - (i) after the byelaws have been made, and
 - (ii) after they have been confirmed, and
 - (c) the chief executive were the proper officer (within the meaning of the Local Government Act 1972) of that local authority.
- (2) Subject to subsection (3), the Secretary of State may confirm byelaws made by the Trust under section 65 with such modifications as the Secretary of State thinks fit.
- (3) Where the Secretary of State proposes to make a modification to byelaws made by the Trust under section 65 which appears to the Secretary of State to be substantial (or proposes to make modifications which, taken together, appear to the Secretary of State to be substantial), the Secretary of State –
- (a) must inform the Trust and require it to take any steps the Secretary of State considers necessary for informing persons likely to be concerned with the modification or modifications, and
 - (b) must not confirm the byelaws until such period has elapsed as the Secretary of State thinks reasonable for consideration of, and comment upon, the proposed modification or modifications by the Trust and by other persons who have been informed in accordance with paragraph (a).
- (4) Before making any byelaws under section 65 the Trust must consult –
- (a) the Sport and Recreation Alliance,
 - (b) at least one body representing the interests of people with disabilities,
 - (c) any person who the Trust believes is exercising a right of common which entitles that person to graze animals on the Malvern Hills, and
 - (d) such other persons as it thinks fit.

67 Penalty for contravening byelaws

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

68 Fixed penalty notices

- (1) An authorised officer may issue a fixed penalty notice to any person who the officer has reason to believe has committed an offence against any byelaw made under this Act.

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

- (11) In any proceedings, a certificate that –
- (a) purports to be signed by or on behalf of the chief executive or the employee of the Trust responsible for the Trust’s financial affairs, and
 - (b) states that payment of a fixed penalty was, or was not, received by the date specified in the certificate,
- is evidence of the facts stated. 5

69 Further provision as to enforcement of byelaws

- (1) An authorised officer who has reason to believe that a person has committed an offence against any byelaw made under this Act may require that person to give their name and address with a view to – 10
- (a) the service of a summons on that person, or
 - (b) the issuing of a fixed penalty notice to that person under section 68, in relation to that offence.
- (2) A person who, without reasonable excuse, fails to provide information required under subsection (1) or, without reasonable excuse, provides inaccurate information commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 15
- (3) Where the driver of a vehicle is alleged to be guilty of an offence against any byelaw made under section 65 which relates to the driving or parking of vehicles on the Malvern Hills – 20
- (a) the person keeping the vehicle must give such information as to the identity of the driver as they may be required in writing by or on behalf of the Trust to give, and
 - (b) any other person must, if required to give the information mentioned in paragraph (a), give any information which it is in their power to give and which may lead to the identification of the driver. 25
- (4) A person who fails to comply with the requirements of subsection (3)(a) is guilty of an offence unless they show to the satisfaction of the court that they did not know, and could not with reasonable diligence have ascertained, the identity of the driver of the vehicle. 30
- (5) A person who fails to comply with the requirements of subsection (3)(b) is guilty of an offence.
- (6) A person guilty of an offence under subsection (4) or (5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (7) An authorised officer may, after due warning, remove or exclude from the Malvern Hills any person who, in the view of that officer, has committed an offence against byelaws made under this Act. 35

70 Byelaws: seizure of stray animals

- (1) The Trust may seize and impound any animal to which this section applies which is on the Malvern Hills in contravention of any byelaw made by the Trust. 40

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- (2) The Trust must, no later than 24 hours after impounding any animal under this section, notify the police and also give notice to the owner of the animal if the owner’s identity is known to the Trust or can reasonably be ascertained.
- (3) The Trust must—
- (a) keep a register of all animals seized by the Trust under this section containing a brief description of each animal, the date of seizure and a statement as to whether the animal was sold or otherwise disposed of or destroyed, 5
 - (b) make the register available for public inspection at all reasonable times.
- (4) If, after the expiry of the period of seven clear days beginning with the day after the date of its impounding, the owner has not claimed an animal and paid all expenses incurred by the Trust in seizing, impounding and maintaining it, the Trust may sell or otherwise dispose of the animal otherwise than by destruction. 10
- (5) If, after the expiry of the period of 14 clear days beginning with the day after the date of its impounding, the owner has not claimed the animal and paid all the expenses mentioned in subsection (4), the Trust may destroy the animal in a manner to cause as little pain and distress to the animal as possible. 15
- (6) Whilst any animal is impounded by the Trust under this section, the Trust must cause it to be properly fed and maintained and may take such action as it thinks fit in relation to the animal if it is ill or injured, including seeking veterinary treatment. 20
- (7) If any sums received on disposal of the animal are less than the expenses of the Trust in seizing and maintaining the animal, the Trust may recover the difference from the owner of the animal. 25
- (8) If the Trust disposes of any animal under subsection (4), it must be accountable to the owner of the animal for any money arising from its disposal after deducting all expenses incurred by reason of its seizure, impounding, maintenance and disposal, but nothing in this subsection shall render the Trust so accountable if it has accounted to any other person whom it reasonably believed to be the owner. 30
- (9) The animals to which this section applies are cattle, horses, sheep, goats, pigs and domestic fowl.
- (10) In subsection (9) “domestic fowl” includes turkeys, geese, ducks, guinea fowl, peacocks and quails. 35

PART 6

LAND

71 Acquisition of land, bequests and agreements

- (1) In furtherance of the objects, the Trust may acquire (by purchase or grant) land of the type described in subsection (4) and, on and after the date of acquisition, any land so acquired is part of the Malvern Hills. 40

- (2) Any land of the type described in subsection (4) which is vested in the Trust by virtue of a gift or bequest is, on and after the date of vesting, part of the Malvern Hills.
- (3) Any land of the type described in subsection (4) that is common land or that is waste land of a manor may become part of the Malvern Hills by agreement between the Trust and the lord of the manor of which the land forms part. 5
- (4) The type of land which may be acquired under subsection (1) or become vested in the Trust under subsection (2) or be subject to an agreement under subsection (3) is land –
 - (a) which is situated within nine miles of Great Malvern Priory, and 10
 - (b) which the Trust considers should be preserved unenclosed and free from building as part of the Malvern Hills.
- (5) No agreement may be made under subsection (3) unless the Secretary of State has given consent in writing to the agreement.
- (6) Any agreement to which consent is given by the Secretary of State under subsection (5) must be published in such manner as the Secretary of State directs. 15
- (7) The Secretary of State may, on or after giving consent under subsection (5) in relation to any land, by order –
 - (a) amend section 23(3) so as to include in the Trust’s electoral area any parish within which the land in question is situated (if that parish is not already in the Trust’s electoral area), 20
 - (b) amend section 33(5) so as to include in the list of parishes in respect of which a levy may be issued any parish within which the land in question is situated (if that parish is not already in that list). 25
- (8) An order under subsection (7) is to be made by statutory instrument and any such statutory instrument may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

72 Power to adjust boundaries of the Malvern Hills 30

- (1) For the purpose of adjusting, defining or improving the boundaries of the Malvern Hills, the Trust may, with the consent of the Secretary of State, sell or exchange any part of the Malvern Hills not exceeding 0.12 hectares in area in the case of any one sale or exchange.
- (2) Consent may not be given under subsection (1) unless – 35
 - (a) in the case of an exchange, the Secretary of State is satisfied that, in the place of the land proposed to be exchanged, other land not less in area and equally or more advantageous to the persons (if any) entitled to exercise rights of common and to the public is offered in exchange, or 40
 - (b) in the case of a sale, the Secretary of State is satisfied that all money received in respect of it will be paid into a special fund and used or

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

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

73 Disposal of land

- (1) This section applies to land that –
- (a) is owned by the Trust, but has not been owned by the Trust for a continuous period of more than five years, 30
 - (b) did not form part of the existing Malvern Hills, and
 - (c) is not registered as common land or a town or village green.
- (2) Without prejudice to any other powers the Trust has to sell, exchange, let, charge or otherwise dispose of land, and despite anything in this Act, the Trust may, with the consent in writing of the Secretary of State –
- (a) sell (including sell free of any restrictions) the whole or any part of, or the whole or any part of any interest in, land to which this section applies, if the conditions set out in subsection (3) are met in relation to the land, 40
 - (b) exchange (including exchange free of any restrictions) land to which this section applies for other land, either with or without paying or

- receiving any money by way of equality of exchange, if the conditions set out in subsection (3) are met in relation to the land to which this section applies that is to be exchanged,
- (c) let, subject to such terms and conditions, covenants or arrangements as the Trust thinks fit, land to which this section applies if the conditions set out in subsection (4) are met in relation to the land. 5
- (3) The conditions referred to in subsection (2)(a) and (b) are that—
- (a) the trustees have decided that it is not desirable to retain ownership of the land for the advancement of the objects, and
 - (b) the trustees made that decision on a date not later than two years after the date of acquisition of the land by the Trust. 10
- (4) The conditions referred to in subsection (2)(c) are that—
- (a) the trustees have decided that it is not desirable to retain possession of the land for the advancement of the objects, and
 - (b) the trustees made a decision on a date not later than two years after the date of acquisition of the land by the Trust. 15
- (5) The provisions of section 72 do not apply as respects any sale or exchange under subsection (2).
- (6) Where land has become vested in the Trust by virtue of a gift or bequest, the powers conferred by this section shall not be exercisable as respects that land in any manner inconsistent with any condition attached to the gift or bequest, except with the consent of the donor or the personal representatives or trustees of the donor or where, after diligent enquiry, the Trust is unable to discover the identity of the donor or the personal representatives or trustees of the donor. 20
- (7) The terms and conditions, covenants or arrangements mentioned in subsection (2)(c) may include terms and conditions, covenants or arrangements relating to whether the land in question is to be treated as being part of the Malvern Hills for any of the purposes of this Act during the period of any letting under that subsection. 30
- (8) Part II of the Landlord and Tenant Act 1954 (which provides security of tenure for commercial tenancies) and section 5 of the Housing Act 1988 (which provides security of tenure for assured tenancies) do not apply to any letting under subsection (2)(c).
- (9) Despite subsection (1)(a), where the Trust has let land in exercise of its powers under subsection (2)(c), the powers in subsection (2) continue to be exercisable by the Trust in relation to that land on or after the date on which the letting was terminated whether or not the Trust has owned the land for a continuous period of more than five years. 35

74 Leases and licences of land and buildings

- (1) Without prejudice to any other powers the Trust has to let or otherwise dispose of land, and notwithstanding anything in this Act, the Trust may, on such terms and conditions as the Trust thinks fit, grant or renew a lease of—
- (a) any part of the Malvern Hills that is not common land, 5
 - (b) any building (whether or not it is in the Malvern Hills).
- (2) Without prejudice to any other powers the Trust has to dispose of land, and notwithstanding anything in this Act, the Trust may, for such period and on such terms and conditions as the Trust thinks fit, grant licences over—
- (a) any part of the Malvern Hills, 10
 - (b) any building (whether or not it is in the Malvern Hills).
- (3) A lease granted or renewed under subsection (1) may be for any period but the consent in writing of the Secretary of State is required for any lease or renewal of a lease for a period exceeding 10 years.
- (4) Any lease granted or renewed under subsection (1)(a) and any licence granted under subsection (2)(a) is subject to the public right of access under section 38 (where it applies). 15
- (5) Part II of the Landlord and Tenant Act 1954 (which provides security of tenure for commercial tenancies) and section 5 of the Housing Act 1988 (which provides security of tenure for assured tenancies) do not apply to a lease granted under subsection (1) in respect of any part of the Malvern Hills or any building on the Malvern Hills. 20
- (6) In subsection (5), the reference to a lease granted under subsection (1)—
- (a) does not include a lease granted by way of renewal (or subsequent renewal) of a lease which was originally granted before the day on which this Act is passed, but 25
 - (b) includes a lease granted by way of renewal (or subsequent renewal) of a lease which was originally granted after the day on which this Act is passed.

75 Ancillary land 30

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

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

76 Maintenance of buildings and structures

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

- (a) maintain any building or structure which it owns,
- (b) repair, reconstruct or replace any building or structure which it owns, provided that any reconstruction or replacement shall be on the site 40

of, and of a similar size and external character to, the existing building or structure, if it is located on the Malvern Hills.

77 St. Ann’s Well

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

- (11) Unless otherwise agreed between the parties, any difference between them as to the terms of a sale must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Royal Institution of Chartered Surveyors. 5
- (12) In this section—
- “the Council” means Malvern Hills District Council,
 - “the parties” means the Council and the Trust,
 - “St. Ann’s Well” means the land of that name referred to in the Schedule to the 1930 Act which comprises the land conveyed to the Conservators by a conveyance dated 1 April 1925 between Dame Catherine Sarah Grey on the one part, Dame Catherine Smith Grey and Lionel Foley Lambert on the second part and the Conservators on the third part (including, without prejudice to Schedule 1 to the Interpretation Act 1978, any buildings or structures on that land), 10
 - “the St. Ann’s Well building” means the building of that name which is the principal building located at St. Ann’s Well and (where the context requires) any replacement of that building. 15

78 Grant of easements etc. for utilities

- (1) Subject to subsections (2), (6) and (7), the Trust may grant, upon such terms and conditions and for such periods as it thinks fit, easements, rights, privileges or licences in, under or over the Malvern Hills for the provision of public or private underground or overground services relating to water, electricity, gas, oil, telecommunications, drainage and sewerage. 20
- (2) It shall be a term of any grant under subsection (1) that the surface of any part of the Malvern Hills that may be disturbed in connection with the exercise of any easement, right, privilege or licence so granted must be restored as soon as practicable by and at the expense of the person to whom the easement, right, privilege or licence is granted. 25
- (3) Subject to subsection (4), the Trust may, with the consent of the owner, exercise the powers in this section in relation to any land forming part of the Malvern Hills that is not owned by the Trust as though the Trust is the owner of that land. 30
- (4) The consent of the owner under subsection (3) is not required in any case where the owner is not known. 35
- (5) For the purposes of this section, the owner of land is not known where, after diligent enquiry, the Trust is unable to discover the owner’s identity.
- (6) The Trust may not exercise the powers in this section for the provision of any service, other than a temporary service, overground unless— 40
- (a) in the opinion of the trustees it is not reasonably practicable for the service to be other than overground,
 - (b) the service is to be provided to a domestic property that was in existence on 28 June 1995,

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

79 Notice of quarrying

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

80 Power of highway authority to get materials

The powers in section 45 of the Highways Act 1980 (power to get materials for repair of publicly maintainable highways) may not be exercised in respect of any waste or common land in the Malvern Hills. 25

81 Power for Trust to use material

- (1) Subject to the provisions of this section, the Trust may extract, take, work, process and otherwise use loose natural material located in the Malvern Hills, including material from spoil heaps and rock falls. 30
- (2) Any material of the type mentioned in subsection (1) may be used by the Trust only –
 - (a) in furtherance of the objects or for purposes ancillary to the objects, and
 - (b) within the Malvern Hills or on ancillary land. 35
- (3) The maximum amount of material that may be extracted or taken by the Trust under subsection (1) in a calendar year is 50 cubic metres, made up of –
 - (a) up to 25 cubic metres from that calendar year’s annual allowance; and

- (b) up to 25 cubic metres of unused allowance carried forward from the previous calendar year.
- (4) In subsection (3)–
- a “calendar year’s annual allowance” means 25 cubic metres of material which may be extracted or taken by the Trust in that calendar year, 5
 - “unused allowance” means the amount, in cubic metres of material, of a calendar year’s annual allowance that is not extracted or taken by the Trust in that calendar year.
- (5) Except where, in the reasonable opinion of the trustees, the amount of material to be extracted or taken is of such insignificance that no such consultation is required, the trustees must, before exercising the power in subsection (1) to extract or take material, consult– 10
- (a) the body or bodies responsible for the preparation and publication of an area of outstanding natural beauty management plan in respect of the Malvern Hills under section 89 of the Countryside and Rights of Way Act 2000, and 15
 - (b) such other bodies (if any) as the Trust sees fit.
- (6) The Trust must keep a record of the exercise of the powers in subsection (1) to extract or take material, and the record must set out– 20
- (a) the dates on which material was extracted or taken, and
 - (b) an estimate of the amount (in cubic metres) of material that was extracted or taken on each of those dates.
- (7) Records kept under subsection (6) must be retained by the Trust for a period of no less than 6 years and must be made available for inspection on reasonable request by the mineral planning authority. 25
- (8) In this section, “the mineral planning authority” has the same meaning as in the Town and Country Planning Act 1990 (see section 1(4) of that Act).

82 Saving for town and country planning

- (1) Subject to subsection (2), no development authorised by this Act or which was authorised before the day on which section 87 comes into force by any of the repealed Acts is to be deemed for the purposes of the 2015 Order to be development authorised by an Act which designates specifically both the nature of the development authorised and the land upon which it may be carried out. 30
- (2) Subsection (1) does not apply to any development carried out under section 81(1) and, for the purposes of the 2015 Order, any development carried out under section 81(1) is deemed to be development authorised by a provision of a local or private Act of Parliament which designates specifically the nature of the development authorised and the land upon which it may be carried out. 35 40
- (3) In this section, “the 2015 Order” means the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any general Order

superseding that Order made under section 59 of the Town and Country Planning Act 1990, or any corresponding provision of an Act repealing that section).

PART 7

GENERAL AND MISCELLANEOUS PROVISIONS

5

83 General power of the Trust

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

84 Miscellaneous powers of the Trust

In addition to any other powers it has, the Trust may exercise any of the powers set out in Schedule 4 in order to further the objects (but not for any other purpose). 25

85 Power to prosecute, defend and appear in legal proceedings

- (1) Where the Trust considers it expedient—
 - (a) it may, in its own name, prosecute or defend or appear in any legal proceedings and institute civil proceedings, and 30
 - (b) it may, in its own name, make representations at any public inquiry held by or on behalf of any Minister or public body under any enactment.
- (2) Any trustee or employee of the Trust who is authorised by the Trust to prosecute or defend on its behalf, or to appear on its behalf, in proceedings before a court is entitled to prosecute or defend or to appear in any such proceedings, as the case may be, and to conduct any such proceedings. 35

PART 8

FINAL PROVISIONS

86 Local inquiries

- (1) The Secretary of State may cause such local inquiries to be held as the Secretary of State may consider necessary for the purpose of any of their functions under this Act. 5
- (2) Subsections (2) to (5) of section 250 of the Local Government Act 1972 apply in relation to any inquiry under subsection (1) as if it were an inquiry held in pursuance of subsection (1) of that section and the Trust were a local authority. 10

87 Repeals

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

88 Consequential amendments

Schedule 6 contains consequential amendments. 15

89 Transitional provisions and savings

The transitional provisions and savings in Schedule 7 have effect.

90 Protection of Crown interests

Nothing in this Act affects prejudicially any estate, interest, right, power, privilege, authority or exemption of the Crown. 20

91 Protection of Network Rail Infrastructure Limited

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

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

Nothing in this Act shall in any way prejudice or affect any right or power of National Grid Electricity Distribution (West Midlands) PLC (as successor to the Shropshire, Worcestershire and Staffordshire Electric Power Company) or its successors or beneficiaries under the Bromyard and Ledbury Rural Electricity Special Order 1929 to place electric works or lines upon or over the Malvern Hills or any part of the Malvern Hills. 25
30

93 Protection of Severn Trent Water Limited

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

94 Protection of rights of common

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

95 Protection of lords of the manor

- (1) Subject to subsection (2), nothing in this Act prejudices or affects any rights of any lord of the manor on or over any part of the Malvern Hills where those rights –
 - (a) existed immediately before this Act comes into force, and 15
 - (b) were protected by virtue of section 26 of the 1884 Act.
- (2) Subsection (1) is subject to any agreement made under section 71(3) between the lord of the manor in question and the Trust made under.

96 Reservations relating to certain land described in the 1884 Act

- (1) Subject to subsection (2), any specified rights which existed immediately before the day on which this Act is passed continue to be reserved to the Owner. 20
- (2) The Owner must cause as little injury as possible to the surface of any land in the exercise of any specified rights reserved by subsection (1) and must keep all open pits, shafts and quarries securely fenced where necessary for the protection of the public. 25
- (3) If the Owner has complied with subsection (2), they are not liable to make any compensation or other payment in respect of the lawful exercise of the specified rights, including for any damage to the Malvern Hills resulting from such exercise. 30
- (4) There continue to be reserved to any relevant person, any rights to springs of water naturally flowing or arising from the surface of any land forming part of the King's third and all such powers as they had for the enjoyment of that land.
- (5) In this section – 35
 - “the King's third” means the land as was so defined in section 2 of the 1884 Act, read with the preamble to that Act,
 - “the Owner” means the lord of the manor or other owner of any specified rights as referred to in subsection (1),

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

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

- (a) extract, by digging mines or by open quarrying or otherwise, any stone or other minerals, and
- (b) carry away, sell and dispose of such stone or other minerals for their own benefit.

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SCHEDULES

SCHEDULE 1

Sections 3 and 7

ADMINISTRATIVE PROVISIONS

PART 1

MATTERS WHICH MUST BE INCLUDED IN RULES 5

Introduction

- 1 (1) Paragraphs 2 to 5(1), 6 to 8(1), 8(3) to 13(1), 13(3) and 15(3) specify matters about which the trustees must make provision in rules made under section 7(1).
- (2) Paragraphs 5(2), 8(2) and 13(2) specify provision that may be included in such rules with respect to the matters specified in paragraphs 5(1), 8(1) and 13(1) respectively. 10

Benefits to trustees

- 2 The payment, transfer or application of income or property of the Trust by way of benefit to trustees or connected persons, including payment under contracts with the Trust for the supply of goods or services by trustees or connected persons. 15

Interests of trustees

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

Meetings of the trustees

- 4 (1) The frequency of ordinary meetings of the trustees.
- (2) The means by which meetings of the trustees are held (including holding such meetings in such a way that persons who are not present together at the same place may by electronic means attend, speak and vote at the meetings). 25

Calling meetings

- 5 (1) The making of arrangements for the date, giving of notice, time and place of meetings. 30
- (2) The arrangements referred to in sub-paragraph (1) may include different provision about different types of meeting.

Chairing of meetings

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

Quorum

- 7 (1) That, subject to section 8(5), in order for a meeting of the Board to be quorate—
- (a) there must be six or more trustees present and able to vote, and
- (b) of those, at least two must be appointed trustees unless— 10
- (i) for any reason, it is only practicable for one appointed trustee to be present and vote, in which case only one of the six or more trustees must be an appointed trustee, or
- (ii) for any reason, it is not practicable for any appointed trustees to be present and vote, in which case there is no requirement for any of the six or more trustees to be an appointed trustee. 15
- (2) The making of decisions by the trustees during any period in which the number of trustees has fallen below six (see section 8(6)).

Decisions of the trustees

- 8 (1) Requirements for the making of decisions of the trustees. 20
- (2) The requirements referred to in sub-paragraph (1) may include provision for—
- (a) the chair of a meeting of the trustees to have a casting vote,
- (b) the making of a decision to elect the chair or vice-chair of the Trust in circumstances where there is a tied vote, 25
- (c) the making of decisions on urgent business, including the making of such decisions otherwise than at a meeting.
- (3) The validity of any proceedings of the trustees or any committee in cases where there is a vacancy among the trustees or committee members or a defect in the appointment of a trustee or committee member. 30

Records

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

Committees and advisory panels

- 10 (1) The establishment and dissolution by the Board of committees and advisory panels.
- (2) The composition of committees and advisory panels, including the inclusion, on committees and advisory panels, of persons who are not trustees. 5
- (3) The delegation to committees of such functions of the trustees as the trustees think fit except—
- (a) setting the amount of the levy under section 33,
- (b) approving the Trust’s budget,
- (c) appointing trustees, 10
- (d) exercising the powers in section 7.
- (4) Requirements on committees about reporting to the trustees.

Delegation to employees

- 11 (1) The delegation, subject to the provisions of this Act, to such employees of the Trust as the trustees think fit, of such functions of the trustees (save for the functions specified in paragraph 10(3)(a) to (d)) as the trustees think fit. 15
- (2) Reporting by employees to the trustees in accordance with any instructions given by the Trust.

Financial controls 20

- 12 Financial controls and accounting policies and procedures.

Authentication of documents

- 13 (1) Procedures for the sealing, signature or other methods of execution, on behalf of the Trust, of documents of any kind.
- (2) The procedures referred to in sub-paragraph (1) may be different for different kinds of documents, and may specify the person or persons, being trustees or employees of the Trust, who may seal, sign or execute different kinds of documents. 25
- (3) If rules made under section 7(1) permit records of the Trust to be kept in electronic form and require any such record to be signed by a trustee, a method of recording the trustee’s signature. 30

PART 2

MATTERS ABOUT WHICH PROVISION MAY BE INCLUDED IN REGULATIONS

- 14 Without prejudice to the generality of section 7(2), regulations made under that section may include provision— 35
- (a) specifying the quorum for any committee or advisory panel,

- (b) about voting rights for members of committees who are not trustees,
- (c) about the calling of meetings,
- (d) for methods of making decisions in cases of urgency when a meeting is impractical,
- (e) about the custody of documents, 5
- (f) about the keeping of records, and
- (g) enabling any committee or advisory panel to regulate its own procedure.

PART 3

METHOD OF HOLDING MEETINGS, ETC 10

Method of holding meetings

- 15 (1) Meetings of the trustees may be held –
- (a) in such a way that only persons who are present together at the same place may attend, and speak and vote at, such meetings, or
 - (b) in such a way that persons who are not present together at the same place may by electronic means attend, and speak and vote at, such meetings. 15
- (2) At least one meeting of the trustees in each year (in addition to the meeting referred to in section 37(3)) must be held in accordance with sub-paragraph (1)(a) unless there are exceptional circumstances which, in the opinion of the chief executive, prevent this. 20
- (3) The trustees must make provision in rules under section 7 about the following matters as regards meetings of the trustees held in accordance with sub-paragraph (1)(b) –
- (a) ensuring that trustees who attend such meetings are able to communicate with each other, 25
 - (b) the means by which trustees who attend such meetings are to communicate with each other,
 - (c) the giving of notice of meetings,
 - (d) the method of casting votes, 30
 - (e) any other requirements that must be met in order for a person to be regarded as being present or in attendance at a meeting,
 - (f) in the case of a meeting which, by virtue of section 7(12) and Schedule 2 (which apply certain provisions of local government legislation to the Trust), is open to the public, ensuring that any trustee who by, electronic means, attends and speaks at the meeting can be seen and heard by members of the public who attend the meeting. 35

Special resolutions

- 16 For the purposes of the definition of “special resolution” of the trustees in section 3, “the relevant number” of trustees at a meeting at which the number of trustees specified in Column 1 of the following table is present and voting is the number specified in the corresponding entry in Column 2 of the table. 5

<i>Column 1</i> <i>Number of trustees present and voting at the meeting at which the resolution is considered</i>	<i>Column 2</i> <i>The relevant number of trustees</i>	
12	9, of whom at least 3 must be appointed trustees	
11	8, of whom at least 3 must be appointed trustees	
10	8, of whom at least 2 must be appointed trustees	
9	7, of whom at least 2 must be appointed trustees	15
8	6, of whom at least 2 must be appointed trustees	
7	5, of whom at least 2 must be appointed trustees	
6	5, of whom at least 2 must be appointed trustees.	

PART 4

GENERAL 20

Interpretation

- 17 (1) In this Schedule—
 “electronic means” means any means which uses or is facilitated by electronic or similar communication or information technology,
 “signature” includes an electronic signature. 25
- (2) References in this Schedule to a committee are references to a committee of the trustees and include references to a sub-committee of the trustees.

SCHEDULE 2

Section 7

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

(1) Name of enactment	(2) Manner in which applied to the Trust	
Part VA of and Schedule 12A to the Local Government Act 1972	<p>The whole of Part VA and Schedule 12A are to apply as if the Trust were a principal council within the meaning of Part VA, references to a committee or sub-committee of a principal council included references to any committee or sub-committee appointed by the Trust, and references to a member of a principal council included references to a trustee.</p>	5
	<p>This is subject to the following modifications –</p>	
	<p>(a) section 100A applies as if –</p>	
	<p>(i) in subsection (1), the words “or (2A)” were inserted after “subsection (2)”,</p>	15
	<p>(ii) after subsection (2) there were inserted –</p>	
	<p>“(2A) Any member of the public may be excluded from a meeting of the Trust if, in the opinion of the chair of the meeting, the conduct of the member of the public in question disrupts or is likely to disrupt the normal conduct of the business of the meeting and the public may be excluded from a meeting of the Trust if, in the opinion of the chair of the meeting, the conduct of the public generally disrupts or is likely to disrupt the normal conduct of the business of the meeting.”,</p>	20
	<p>(iii) in subsection (6)(b), at the beginning, there were inserted “subject to subsection (2A).”,</p>	25
	<p>(iv) the reference in subsection (6)(c) to premises not belonging to a principal council shall be construed as a reference to premises not belonging to the Trust or not used as the offices of the Trust,</p>	
	<p>(b) the proper officer for the purposes of sections 100B, 100C, 100D and 100F is the chief executive or such other person as is designated for the purpose in question by the Trust,</p>	30
	<p>(c) section 100E applies as if at the end of subsection (1), there were inserted “except in relation to a meeting of a committee or sub-committee at which it is not intended that the committee or sub-committee is to make any decision in exercise of a function that has been delegated to it, and accordingly no such decision may be made”,</p>	35
	<p>(d) section 100G applies as if –</p>	
	<p>(i) for subsection (1)(a) and (b) there were substituted –</p>	40
	<p>“(a) the name of every trustee for the time being, and</p>	

(1) Name of enactment	(2) Manner in which applied to the Trust	
Section 228 of the Local Government Act 1972	(b) the name of every member of each committee or sub-committee of the Trust for the time being.”,	
	(ii) in subsection (2)(b), after “exercisable” there were inserted “, save in the case of any such power that is exercisable in whole or in part by an officer as a result of sub-delegation by any officer”.	5
Section 228 of the Local Government Act 1972	Section 228 applies with the omission of the reference to any proper officer and as if the Trust were a parish council and references to a local government elector for the area of a local authority are to be construed as references to a local government elector for the Trust’s electoral area.	10

SCHEDULE 3

Section 48

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

15

(1) Provision of Highways Act 1980	(2) Manner in which applied to the Trust	
The sections and Schedule mentioned below	All of the sections and the Schedule to apply as if—	
Section 82 (Provision of cattle-grids and by-passes)	(a) the Trust were the highway authority for the highway in question (except in the case of section 84 (maintenance of cattle-grids and by-passes)),	20
	(b) a cattle-grid provided under section 48 were a cattle-grid provided under the Highways Act 1980, and subject to any further modifications set out below.	25
Section 83 (Removal of cattle-grids and discontinuance of by-passes)	Only subsections (2) to (8) apply and they apply as if the powers in subsection (7) were exercisable by the highway authority as well as the Trust.	
Section 83 (Removal of cattle-grids and discontinuance of by-passes)	The whole section applies but as if—	30
	(a) the powers under it were exercisable by the highway authority as well as the Trust	
Section 84 (Maintenance of cattle-grids and by-passes)	(b) at the end of subsection (1), there were inserted “to the reasonable satisfaction of the highway authority”	35
	The whole section applies but as if—	

(1) Provision of Highways Act 1980	(2) Manner in which applied to the Trust	
	(a) subsection (1), at the end there were inserted “, and, subject to any agreement between the Trust and the highway authority to the contrary, such maintenance shall be at the expense of the Trust”	5
	(b) in subsection (2), for the words “maintainable at the public expense for which that authority are the highway authority”, there were substituted “maintainable at the expense of the Trust, subject to any agreement between the Trust and the highway authority to the contrary”	10
Section 85 (Exercise of powers by agreement between neighbouring authorities)	The whole section applies	15
Section 87 (Agreements for use of land for cattle-grids or by-passes)	The whole section applies	
Section 90 (Protection of bridges and railways)	The whole section applies	20
Schedule 10 (Procedure for Determination by Highway Authority of Certain Questions Arising in Connection with Provision of Cattle-Grid or By-Pass)	The whole Schedule applies but as if—	25
	(a) in paragraph 1(1), “or 86” were omitted,	
	(b) paragraph 1(1)(c) were omitted, and	
	(c) paragraph 5 were omitted	

SCHEDULE 4

Section 84 30

MISCELLANEOUS POWERS OF THE TRUST

The Powers

- | | | |
|---|---|----|
| 1 | Subject to section 8(10), employing and remunerating such staff as are necessary for carrying out the work of the Trust. | |
| 2 | Engaging volunteers. | 35 |
| 3 | Raising funds. | |
| 4 | Soliciting and accepting grants, donations, endowments, gifts, legacies and bequests of assets on terms (if any) which are acceptable to the Trust. | |

- | | | |
|----|--|----|
| 5 | Establishing and maintaining a supporters' organisation to which individuals or bodies may pay subscriptions. | |
| 6 | Co-operating with, and entering into joint ventures, collaborations and partnerships with, charitable and non-charitable bodies. | |
| 7 | Establishing or supporting any charitable trusts, associations or institutions formed for any of the charitable purposes included in the objects. | 5 |
| 8 | Acquiring or affiliating with or entering into any partnership or joint venture arrangement with any other charity formed for any of the charitable purposes included in the objects. | |
| 9 | Establishing, supporting or acquiring subsidiary companies. | 10 |
| 10 | Holding seminars, conferences, lectures, tours and courses. | |
| 11 | Promoting or carrying out research and disseminating such research. | |
| 12 | Providing advice. | |
| 13 | Publishing or distributing information in any form. | |
| 14 | Making grants. | 15 |
| 15 | Setting aside funds as reserves against future expenditure, but only in accordance with a written policy on reserves. | |
| 16 | Depositing or investing funds in any manner (but to invest only after taking such advice as the Trust considers to be reasonably necessary from a person who the Trust reasonably believes to be qualified to give it by their ability in and practical experience of financial and other relevant matters). | 20 |
| 17 | Designating funds for particular purposes, including designating capital money received by the Trust for any purpose for which capital money may properly be applied in accordance with section 34. | |
| 18 | Entering into any derivative arrangement in connection with any investment provided that the derivative arrangement is ancillary to the investment (being entered into in order to manage the risk or transaction costs associated with the investment) and is not a speculative venture. | 25 |
| 19 | Delegating the management of investments to any person, provided that— | |
| | (a) the delegate is authorised to carry on investment business under the provisions of the Financial Services and Markets Act 2000, | 30 |
| | (b) the investment policy is set out in writing by the Trust, | |
| | (c) the performance of the investments is reviewed regularly with the Trust, | |
| | (d) the investment policy and the delegation arrangements are reviewed at least once a year, | 35 |
| | (e) all payments due to the delegate are on a scale or at a level which is agreed in advance and the delegate notifies the Trust promptly upon receipt of any such payments, and | |
| | (f) the delegate does not do anything outside the powers of the Trust. | 40 |
| 20 | Entering into any contract or agreement (including any finance lease). | |

21	Insuring the property of the Trust against any foreseeable risk and taking out other insurance policies to protect the Trust when required.	
22	Subject to section 28 and rules made under section 7, employing paid or unpaid agents or advisers.	
23	Opening and operating bank accounts and banking facilities.	5
24	Entering into any licence or sponsorship agreement.	
25	Carrying on any trade in so far as the trade is – (a) exercised in the course of the carrying out of the objects, (b) ancillary to the carrying out of the objects, or (c) not trade of the sort described in sub-paragraph (a) or (b) and is not taxable trading.	10
26	Without prejudice to section 30, taking out policies of insurance (including indemnity insurance for trustees).	
27	Compromising or settling – (a) any disputes of any nature, or (b) any claims made by or against the Trust in any legal proceedings or prospective legal proceedings.	15
28	Selling surplus renewable energy.	
29	Acquiring, keeping, managing and disposing of grazing livestock.	
	<i>Interpretation</i>	20
30	In paragraph 25, “taxable trading” means carrying on a trade or business in such manner or on such a scale that some or all of the profits are subject to corporation tax.	
31	In paragraph 28 “surplus renewable energy” means electrical energy which is – (a) unused by the Trust, and (b) generated by plant or equipment which is – (i) located on ancillary land or on buildings on other land owned or under the control of the Trust, and (ii) installed and used for the purpose of supplying energy for the Trust’s own purposes.	25 30
32	In paragraph 29, “grazing livestock” means any creature which is or is to be kept by the Trust for purposes which include grazing land.	

SCHEDULE 5

Section 87

REPEALS AND REVOCATIONS

Provision	Extent of repeal or revocation	
The Malvern Hills Act 1884 (c. clxxv)	The whole Act	
The Malvern Hills Act 1909 (c. xxxvii)	The whole Act	5
The Malvern Hills Act 1924 (c. xxxvi)	The whole Act	
The Malvern Hills Act 1930 (c. lxxii)	The whole Act	
The Malvern Hills Act 1995 (c. iii)	The whole Act	
The Malvern Hills (Amendment of Local Enactment) Order 1958 (S.I. 1958/1986)	The whole Order	10
The Hereford and Worcester (Structural, Boundary and Electoral Changes) Order 1996 (S.I. 1996/1867)	Article 18	

SCHEDULE 6

Section 88

CONSEQUENTIAL AMENDMENTS

Malvern Water Act 1891 (c.xcvi) 15

- 1 In section 10 of the Malvern Water Act 1891, for “the Malvern Hills Act 1884”, in both places where those words appear, substitute “the Malvern Hills Act 202[X]”.
- 2 In section 33 of the Malvern Water Act 1905, for “the Malvern Hills Act 1884” substitute “the Malvern Hills Act 202[X]”. 20

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

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

<i>Column 1 – Enactment</i>	<i>Column 2 – Dispositions</i>	<i>Column 3 – Relevant Instrument</i>	<i>Column 4 – applicant</i>	
The Malvern Hills Act 202[X], section 73(1) (disposal of land)	The sale, lease, exchange or absolute disposal free from any rights or restrictions of any part or parts of the Malvern Hills	The deed or other instrument made by the Malvern Hills Trust (with the consent of the Secretary of State)	The Malvern Hills Trust	25 30

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

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SCHEDULE 7

Section 89

15

TRANSITIONAL PROVISIONS AND SAVINGS

General provisions

- 1 Where an instrument or document created before the day on which this Act comes into force refers, either expressly or by implication, to a provision of any of the repealed Acts, the reference is, except where the context otherwise requires, to be construed, on and after the day on which this Act comes into force, as, or as including, a reference to the corresponding provision of this Act. 20
- 2 (1) Anything which, immediately before the day on which this Act comes into force, is in the process of being done under a provision of any of the repealed Acts may be continued, on and after that day, under the corresponding provision of this Act as if it were begun under that corresponding provision. 25
 - (2) Where, in relation to any matter, any period of time specified in, or having effect in relation to, a provision of any of the repealed Acts is running immediately before the day on which this Act comes into force, the corresponding provision of this Act has effect in relation to that matter, on and after that day, as if it were in force when that period began to run. 30
 - (3) Reference in this Act to things done, left undone, suffered or occurring in the past shall, so far as the context requires for the continuity of operation between a provision of any of the repealed Acts and any corresponding provision of this Act, be construed as including reference to things done, left undone, suffered or occurring before the day on which this Act comes into force. 35

- 3 (1) The repeal by this Act of the repealed Acts does not affect the liability of any person for any offence under any provision of the repealed Acts or any byelaw made under any of the repealed Acts committed before the day on which this Act comes into force.
- (2) Any proceedings under the repealed Acts (including proceedings for an offence such as is referred to in sub-paragraph (1)) may be continued, on and after the day on which this Act comes into force, notwithstanding the repeal, by this Act, of the repealed Acts. 5
- 4 Any application, approval, certificate, consent, document, exemption, notice or warrant made, submitted, given, granted or issued under any provision of the repealed Acts continues to have effect, on and after the day on which this Act comes into force, as though it had been made, submitted, given, granted or issued under the corresponding provision of this Act until it expires or is revoked or otherwise ceases to have effect in accordance with this Act. 10 15

Byelaws, regulations and rules

- 5 (1) Subject to sub-paragraph (2), any byelaw made under the repealed Acts before the day on which this Act comes into force continues to have effect, on and after that day, as if it was made under section 65 of this Act and until it is revoked by a byelaw made under that section. 20
- (2) Subsections(3) to (6) of section 64 of this Act apply, on and after the day on which this Act comes into force, in relation to any article or thing removed from the Malvern Hills on or after that day in pursuance of any byelaw which continues to have effect by virtue of sub-paragraph (1), as if the article or thing had been removed by the Trust under subsection (1) of that section. 25
- (3) Despite the repeal by this Act of section 20 of the 1995 Act—
- (a) subsections (2) and (10) of that section continue to apply, on and after the day on which this Act comes into force, in relation to any item, other than a vehicle, removed under subsection (1) of that section before that day, and 30
- (b) subsections (4) to (10) of that section continue to apply, on and after the day on which this Act comes into force, in relation to any vehicle removed under subsection (1) of that section before that day.
- (4) In this paragraph, “vehicle” has the same meaning as in section 20 of the 1995 Act. 35
- 6 Any regulation made under section 6(1) of the Malvern Hills Act 1930 before the day on which this Act comes into force continues to have effect, on and after that day, as if it was made under section 58 of this Act and until it is revoked by a regulation made under that section. 40
- 7 Any provision of the repealed Acts which makes provision with respect to a matter about which provision must be made in rules under section 7(1) continues to have effect with respect to that matter on and after the

day on which this Act comes into force and until the day on which the first rules under that section which make provision with respect to that matter come into force.

Malvern Hills Bill [HL]

[AS AMENDED IN COMMITTEE]

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B I L L

TO

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

SESSION 2024-26

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