



Malvern Hills Act 1995

1995 CHAPTER iii

An Act to amend certain enactments relating to the Malvern Hills Conservators and the management of the Malvern Hills; to confer further powers on the Malvern Hills Conservators; to make further provision in relation to the Malvern Hills; and for other purposes.

[28th June 1995]

WHEREAS—

- (1) By the Malvern Hills Act 1884 the Malvern Hills Conservators (in this Act called “the Conservators”) were incorporated and were invested with certain powers of protection, control and management with regard to the lands in that Act specified and provision was made for restricting the user and enjoyment of the said lands:
- (2) By the Malvern Hills Act 1909, the Malvern Hills Act 1924 and the Malvern Hills Act 1930 further powers were conferred upon the Conservators and further provision was made in relation to the lands under the Conservators' jurisdiction and commonly known as the Malvern Hills:
- (3) 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:
- (4) The Malvern Hills have been widely known and admired for their natural beauty and have formed a centre of attraction to the inhabitants of the county of Hereford and Worcester and to visitors coming from all parts of the country for the purposes of health, recreation and enjoyment:
- (5) The area of land under the Conservators' jurisdiction has increased as has the number of visitors resorting to the Malvern Hills:
- (6) The existing powers of the Conservators are insufficient to enable the Conservators to make suitable provision to meet the convenience and requirements of the public, and to carry out their functions and to manage and deal with the Malvern Hills effectively and appropriately in the light of present day circumstances:
- (7) It is desirable that further provision should be made enabling certain facilities to be constructed or provided on the Malvern Hills:
- (8) It is expedient that further powers of protecting, controlling, regulating, managing and dealing with the Malvern Hills should be conferred upon the Conservators as in this Act provided:

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(9) It is expedient that the other powers of this Act should be conferred upon the Conservators and that the other provisions contained in this Act should be enacted:

(10) 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 Queen'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:—

1 Short and collective titles

(1) This Act may be cited as the Malvern Hills Act 1995.

(2) The Malvern Hills Acts 1884 to 1930 and this Act may be cited together as the Malvern Hills Acts 1884 to 1995.

2 Interpretation

In this Act—

“the Act of 1884” means the Malvern Hills Act 1884;

“the Act of 1909” means the Malvern Hills Act 1909;

“the Act of 1924” means the Malvern Hills Act 1924;

“the Act of 1930” means the Malvern Hills Act 1930;

“the Board” means the Board of the Conservators;

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

“domestic fowl” includes turkeys, geese, ducks, guinea fowl, peacocks and quails;

“the existing Malvern Hills” means the lands under the jurisdiction of the Conservators for the purposes of the existing Malvern Hills Acts at the time of the passing of this Act;

“the existing Malvern Hills Acts” means the Malvern Hills Acts 1884 to 1930;

“horse” includes any mare, gelding, pony, foal, colt, filly or stallion and also any ass, mule or jennet;

“the Malvern Hills” means the lands from time to time under the jurisdiction of the Conservators for the purposes of the Malvern Hills Acts;

“the Malvern Hills Acts” means the Malvern Hills Acts 1884 to 1930 and this Act.

3 Provision of refreshment facilities

(1) (a)

In the event of damage to or the destruction of the building known as St. Anne's Well the Conservators may repair, reconstruct or replace that building provided that any reconstruction or replacement shall be on the site of, and of a similar size and external character to, the existing building.

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- (b) The powers of this subsection shall extend in relation to any reconstruction or replacement building constructed under paragraph (a) above.
- (2) The Conservators may maintain and operate a building constructed under this section and may at such a building sell meals and refreshments and provide such services and facilities as are reasonably ancillary to the use of the building as a restaurant or cafeteria.
- (3) The Conservators may let a building constructed under this section and may enter into and carry into effect agreements with respect to the exercise of the powers contained in subsections (1) and (2) above by any other person including the defraying of, or the making of contributions towards, the costs of the Conservators or any other person in connection with the exercise of such powers.

4 Licensing of stalls

The following paragraph is hereby substituted for paragraph (g) of section 4 (Powers exercisable over the Malvern Hills) of the Act of 1930 and the provisos thereto:—

“(g) They may grant leave or licence for any period not exceeding one year upon such terms and conditions and subject to such restrictions as they think fit to any person or persons to erect, maintain and operate temporary or mobile stalls not exceeding six in all at any one time on the Malvern Hills for the purpose of purveying food and refreshment to the public, and without prejudice to the generality of the foregoing such restrictions may relate to locations on the Malvern Hills where such a stall may be erected or from where it may be operated and 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.”.

5 Provision of temporary lavatories

- (1) Subject to subsection (2) below, the Conservators may, without other sanction or authority—
 - (a) place or erect temporary lavatories in such positions and places on the Malvern Hills as they think fit;
 - (b) grant licence for any period not exceeding 14 days upon such terms and conditions as they think fit to any person to place or erect temporary lavatories in such positions and places on the Malvern Hills as the Conservators think fit and as may be specified in the licence.
- (2) The powers of this section may only be exercised if the temporary lavatories are to be provided in connection with an event authorised by the Conservators which in their opinion is likely to attract such a number of people onto the Malvern Hills that such facilities will be required.
- (3) Temporary lavatories placed or erected on the Malvern Hills under this section shall 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 shall not remain on the Malvern Hills for a period exceeding 14 days.

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6 As to disposal of land

- (1) Without prejudice to any other powers the Conservators have to sell, exchange, let, charge or otherwise dispose of land, and notwithstanding anything in the existing Malvern Hills Acts the Conservators may, with the consent of the Secretary of State, in respect of any land which—
- (a) is owned by them but has not been so owned for a continuous period of more than five years;
 - (b) does not form part of the existing Malvern Hills;
 - (c) is not registered as common land or a town or village green; and
 - (d) the Conservators have not later than two years after the date of acquisition of it by them decided it is not desirable to retain for the benefit or recreation of the public as part of the Malvern Hills;
- do any of the following:—
- (i) sell the whole or any part of or the whole or any part of any interest in any such land which is not required by them;
 - (ii) exchange any such land which is not required by them for other land either with or without paying or receiving any money by way of equality of exchange;
 - (iii) let any such land subject to such terms and conditions, covenants and arrangements as they think fit;
- and the provisions of section 9 (Power to adjust boundaries) of the Act of 1930 shall not apply as respects any such sale or exchange.
- (2) Where land has become vested in the Conservators 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.
- (3) Where the Conservators exercise their powers under subsection (1) above in relation to any land by letting it, all the powers under that subsection shall continue to be available to them in relation to that land on the termination of the letting whether or not, at that termination, they have owned the land for more than five years.

7 Provision for capital and income

- (1) Capital money received by the Conservators from the sale, letting, grant or other disposal of land or interests in land under the provisions of this Act may be applied by them for any purpose for which capital money may be properly applied.
- (2) Any sums received by the Conservators from the sale, letting, grant or other disposal of land or interests in land under the terms of this Act other than capital money shall be treated as income of the Board and shall be used in defraying expenses incurred by the Conservators in the execution of their powers and duties.

8 Power to grant easements, etc

The following sections are hereby substituted for section 7 (Power to grant easements) of the Act of 1930:—

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“7 Power to grant easements

- (1) Subject to subsection (5) below, the Conservators may grant upon such terms and conditions and for such a period as they think 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:

Provided that it shall be a term of any such grant 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 shall be restored as soon as practicable by and at the expense of the person to whom the easement, right, privilege or licence is granted.

- (2) Subject to subsection (3) below, the Conservators may with the consent of the owner exercise the powers of this section in relation to any land forming part of the Malvern Hills not owned by them as though they were the owners of that land.
- (3) The consent of the owner under subsection (2) above shall not be required in any case where the owner is not known.
- (4) For the purposes of this section and section 7A below the owner of land is not known where after diligent enquiry the Conservators are unable to discover his identity.

- (5) (a)

The Conservators shall not exercise the powers of this section for the provision of any service, other than a temporary service, overground unless—

- (i) in the opinion of the Conservators it is not reasonably practicable for the service to be other than overground;
 - (ii) the service is to be provided to a domestic property in existence at the time of the passing of this Act; and
 - (iii) in the opinion of the Conservators and the local planning authority the provision of the service overground is reasonable.
- (b) The Conservators shall not exercise the powers of this section for the provision of any service overground except by way of determinable licence.

7A Access roads

- (1) Subject to subsection (2) below, the Conservators may on such terms and conditions as they think 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 being land lying within or adjacent to any part of the Malvern Hills and appearing to the Conservators to lack satisfactory access.
- (2) In granting authorisation under subsection (1) above the Conservators shall have regard to the effect of the works being so authorised on the natural aspect of the Malvern Hills and shall impose such terms and conditions as are necessary to ensure that any adverse effect is minimised.