

Monken Hadley Common Bill

EXPLANATORY MEMORANDUM

The Bill deals with an area of open space in the London Borough of Barnet called Monken Hadley Common (“the Common”). By virtue of an Act of 1777, the Common is owned by the Churchwardens of Monken Hadley Parish Church (“the Churchwardens”). The 1777 Act contains provisions about the making of rules for the management of the Common and other provisions which are no longer required or are outdated. Most of the Common was registered as common land under the Commons Registration Act 1965. The statutory protection afforded by that status will be unaffected by the Bill.

The Bill will transfer the ownership and management of the Common to Monken Hadley Common Trust (“the Trust”) and will disapply and in some cases replace provisions of the 1777 Act in relation to the Common.

Clause 1 deals with citation.

Clause 2 deals with interpretation. It includes definitions of “the Trust” (which is Monken Hadley Common Trust), “the Churchwardens” and the “1777 Act”. It defines the land to which the Bill applies (by defining “the Common”) and it defines “the appointed day” (i.e. the date on which certain of the provisions take effect) as the day to be fixed under *clause 13*.

Clause 3 defines the “primary objects”, which is a term used in various places in the Bill. The two primary objects are first, the preservation of the Common as a place for peaceful open air public recreation and enjoyment and secondly, the conservation, protection and improvement of the physical and natural environment of the Common for the benefit of the public, having regard to the requirements of good forestry and the desirability of conserving flora and fauna. *Subsection (3)* says that the objects of the Trust (and any transferee under *clause 12*) must always include the primary objects. *Subsection (4)* says that the Trust and its successors can have other objects, but they must be charitable and *subsection (5)* requires the consent of the Charity Commission to any alteration of the objects.

Clause 4 provides for the transfer of the ownership of the Common (and property associated with it) from the Churchwardens to the Trust on the appointed day, free of any trusts established under the 1777 Act. *Subsection (2)* requires the Trust, while it owns the Common, to remain a charity and requires that the objects of the Trust must include the primary objects (see *clause 3*). Following the transfer, the Churchwardens will have no interest in the Common and will be free of any liability for any obligations arising in relation to it before the appointed day.

Clause 5 provides that on the appointed day the Churchwardens will cease to be incorporated under the 1777 Act, and that the 1777 Act will cease to apply to them. This will not affect the Churchwardens’ ability to carry on their functions as respects the parish church.

Clause 6 disapplies those provisions of the 1777 Act which are no longer required as a result of the transfer of the ownership of the Common or because they are obsolete or outdated.

Clause 7 says that the Trust will be responsible for the management of the Common and it sets out a number of things that the Trust may do which may otherwise conflict with or be required to supplement the general law relating to common land and other open spaces. Those things include works for the preservation, restoration or maintenance of the Common, planting, fencing, and providing buildings, seats, fences, notice boards and other structures. The Trust will have other powers of management in its Constitution.

Clause 8 enables the Trust to grant easements or other rights over the Common to owners or occupiers of land adjacent to the Common on such terms as it thinks fit. This replaces a similar provision in the 1777 Act, and *subsection (3)* preserves the rights of those owners and occupiers which were granted under that provision.

Clause 9 enables the Trust to grant and renew leases over of any part of the Common which is not registered common land (a very small part of the Common) to an owner or occupier of land adjoining the Common. There is a restriction of 7 years on the term of any lease or renewal term, and a requirement on the Trust to ensure that the land which is the subject of the lease will not be altered significantly in its appearance or in its use. There are requirements about consultation in *subsection (4)* and restrictions preventing the grant of leases protected by the Landlord and Tenant Act 1954 and the Housing Act 1988 in *subsection (5)*.

Clause 10 enables the Trust to make regulations to secure the good management of the Common. Regulations may be made for general purposes including the conservation of the natural state of the Common, the preservation of order and prevention of nuisances, the exercise of rights of common and for public safety.

Subsection (2) of *clause 10* gives examples of regulations which the Trust could make. They include regulating or prohibiting the lighting and tending of fires or using the Common for particular purposes, controlling dogs and other animals and allow for the making of charges. *Subsection (3)* of *clause 10* sets out specified purposes for which charges can be made.

Subsection (5) of *clause 10* makes general provision about the application of the regulations and provides that a person contravening the regulations is liable on summary conviction to a fine not exceeding level 2 (currently £500).

Clause 11 is about the procedure for making regulations. *Subsection (1)* applies (with minor modifications) the byelaw making procedures used by district councils in the Local Government Act 1972. One of the effects of that is that the Trust must apply to the Secretary of State for confirmation of the regulations.

Clause 12 enables further transfers of the ownership and management of the Common. *Subsection (2)* provides that a transferee must be another charity.

Clause 13 makes provision about publicising the appointed day by publication of a notice in the London Gazette.

Clause 14 makes transitional provision preserving existing rules and orders made under the 1777 Act until they are revoked by regulations made under *clause 10*.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Barbara Taylor and Arthur John Turton Gillman, the incorporated Churchwardens of the Parish Church of Monken Hadley in the County of Middlesex, as the promoter of the Bill, have made the following statement required by Standing Order 38(3) of the Standing Orders relating to Private Business:

In our view the provisions of the Monken Hadley Common Bill are compatible with the Convention rights.

Monken Hadley Common Bill

CONTENTS

- 1 Citation
- 2 Interpretation
- 3 The primary objects and the general duty of the Trust
- 4 Transfer of ownership of Common
- 5 Ending of statutory incorporation of Churchwardens
- 6 Disapplication of provisions of 1777 Act
- 7 Management of Common
- 8 Easements and other rights
- 9 Leases
- 10 Regulations
- 11 Procedure for making regulations
- 12 Further transfers of the Common
- 13 Appointed day
- 14 Transitional provision

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B I L L

To transfer the ownership and management of Monken Hadley Common to Monken Hadley Common Trust and for related purposes.

WHEREAS—

- (1) The Churchwardens of the Parish Church of Monken Hadley, in the County of Middlesex (“the Churchwardens”) were incorporated by section 115 of an Act of Parliament passed in the seventeenth year of the reign of His Majesty King George the Third, entitled “An Act for dividing the Chase of Enfield, in the County of Middlesex; and for other purposes therein mentioned” (“the 1777 Act”): 5
- (2) The 1777 Act made provision for the dischisement of the former Enfield Chase and to make allotments of the dischased land to the several parishes involved, including the area now known as Monken Hadley Common (“the Common”): 10
- (3) Section 5 of the 1777 Act provided for the vesting of the ownership of the Common in the Churchwardens and their successors forever, in trust for and for the sole benefit of the owners and proprietors of freehold and copyhold messuages, lands and tenements, within the parish of Monken Hadley, their heirs and assigns, and their lessees, tenants and undertenants, for the time being, entitled to a right of common, or other rights within Enfield Chase, according to their several estates and interests therein: 15
- (4) Section 6 of the 1777 Act provided that all trees then growing or thereafter planted for shelter or ornament situated within 60 yards of the ancient Chase boundary shall be the property of the owners of houses and lands next to which the trees are standing or are planted: 20

- (5) Section 60 of the 1777 Act provided that the Churchwardens (together with ten or more persons residing within the parish of Monken Hadley and assessed to the Poor's Rates respectively at the rate of ten pounds or upwards each) could form rules and orders for the governance and management of the Common:
- (6) Section 60 of the 1777 Act also provided that the Churchwardens and the rate payers mentioned above could call meetings of those entitled to a right of common, and that any rules and orders made under section 60 would need to be approved by a majority of those entitled to rights of common attending such a meeting, and that the rules and orders would then need to be confirmed in writing by a majority of owners of land who are entitled to a right of common and who are assessed to the Land Tax at ten pounds or more per annum: 5
- (7) Section 70 of the 1777 Act provided that certain owners and occupiers of land in the parish of Monken Hadley may bring and defend legal proceedings in the name of the Churchwardens: 10
- (8) Section 71 of the 1777 Act provided that no owner or occupier of any lands bordering the Common shall have or be entitled to have, make or use any gates, ways and passages onto or over the Common without first obtaining an Order of Vestry of the parish. There is a saving for any gate, way or passage already in existence in 1777: 15
- (9) The 1777 Act was repealed in error by the Statute Law Repeals Act 1978 and was reinstated by the Statute Law Repeals Act 1993: 20
- (10) The Common is a Metropolitan Common within the meaning of section 193 of the Law of Property Act 1925 and therefore the public have rights of access for air and exercise over it: 25
- (11) The Commoners have not exercised their rights of common to graze animals on the Common for many years, and the Common has for many years been used only as a place of public recreation:
- (12) Funding for the upkeep of the Common comes almost entirely from donations from the Friends of Hadley Common, income from the granting of access ways and leases under the said section 71 and income from investments: 30
- (13) The Churchwardens have no desire to continue to play any further part in the ownership or management of the Common and, whilst involved in the management committee of the Common and the execution of legal documents, have played no active role in the day to day management of the Common for many years: 35
- (14) Since 1981 the management of the Common has been exercised under the authority of the Churchwardens by a management committee established under rules made under the said section 60:
- (15) The identity of most of the Commoners who may be entitled to agree to and confirm rules and orders under the said section 60 is unknown: 40
- (16) There is therefore some doubt over the validity of the existing rules and orders given the lack of participation of the Commoners:
- (17) It is expedient that the ownership of the Common be transferred to a new charitable body, that the new body be provided with functions that are cast 45

in modern terms and that certain provisions of the 1777 Act be disapplied in relation to the Common:

- (18) A body known as the Monken Hadley Common Trust has been formed and an application has been made to the Charity Commission for it to be registered as a charitable incorporated organisation: 5
- (19) The objects of this Act cannot be attained 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:— 10

1 Citation

This Act may be cited as the Monken Hadley Common Act 2020.

2 Interpretation

In this Act—

- “the 1777 Act” means the Act of Parliament passed in the seventeenth year of the reign of His Majesty King George the Third, entitled “An Act for dividing the Chase of Enfield, in the County of Middlesex; and for other Purposes therein mentioned”; 15
- “the appointed day” means a day fixed by the Churchwardens in accordance with section 13; 20
- “the Trust” means Monken Hadley Common Trust which was formed on 30 September 2019 and the first trustees of which were Andrew Peter Walker, Barbara Taylor and Arthur John Turton Gillman;
- “the Churchwardens” means the Churchwardens of the Parish Church of Monken Hadley, in the County of Middlesex, who were incorporated by section 115 of the 1777 Act; 25
- “the Common” means so much of the land that was vested in the Churchwardens under section 5 of the 1777 Act together with other land adjoining it and which in both cases was in their ownership on the date on which the petition for the Bill for this Act was deposited in Parliament; 30
- “land” includes any gates and fences or similar structures (without prejudice to Schedule 1 to the Interpretation Act 1978).

3 The primary objects and the general duty of the Trust

- (1) On its incorporation as a charitable incorporated organisation, the objects of the Trust must include— 35
 - (a) the preservation of the Common as a place for peaceful open air public recreation and enjoyment; and
 - (b) the conservation, protection and improvement of the physical and natural environment of the Common for the benefit of the public, having regard to the requirements of good forestry and the desirability of conserving flora and fauna. 40
- (2) In this Act, those objects are referred to as the “primary objects”.

- (3) The objects of the Trust and any transferee under section 12 must always include the primary objects.
- (4) The Trust and any transferee may have other objects but they must be charitable objects.
- (5) Any alteration to the objects of the Trust or of a transferee requires the written consent of the Charity Commission. 5

4 Transfer of ownership of Common

- (1) On the appointed day—
 - (a) the Common and all other property which immediately before that date was the property of the Churchwardens and was used or held in connection with the Common; and 10
 - (b) all rights and liabilities of the Churchwardens subsisting immediately before that date which were acquired or incurred in connection with the Common,
 are transferred to and vest in the Trust free of any trusts established under the 1777 Act. 15
- (2) Whilst the Common is in its ownership—
 - (a) the Trust must remain a charity;
 - (b) the objects of the Trust must include the primary objects.
- (3) From the appointed day the Churchwardens shall not be liable for any act, event, failure to act or omission so far as the act, event, failure to act or omission relates to the Common and occurred before the appointed day. 20
- (4) Where the transfer and vesting of the Common or any part of the Common effected by subsection (1) is a registrable disposition under the Land Registration Act 2002, the Trust must apply to the Chief Land Registrar for registration in the register of title of a restriction to reflect section 12(2). 25

5 Ending of statutory incorporation of Churchwardens

On the appointed day, the Churchwardens shall cease to be incorporated under the 1777 Act and section 115 of the 1777 Act ceases to apply in relation to the Churchwardens. 30

6 Disapplication of provisions of 1777 Act

On the appointed day, the following provisions cease to have effect in relation to the Common—

- (a) section 6 (proviso relating to ownership of trees);
- (b) in section 12 (steward, etc. may remove Pinfolds, with consent of Churchwardens) the words “by and with the Consent of the Churchwardens of the Parish wherein such Pound or Pinfold is situate”; 35
- (c) section 60 (powers for the parishes to make Rules and Orders concerning their respective allotments); 40
- (d) section 70 (freeholders, etc. to have the same Rights to recover as the Crown would have);

- (e) section 71 (no new gates to be set up, or ways made, without leave of the Vestry);
- (f) section 121 (penalty for destroying fences);
- (g) section 122 (method of recovering penalties);
- (h) section 123 (how justices to proceed for conviction of offender); 5
- (i) section 127 (copies of survey);
- (j) section 128 (persons aggrieved may appeal to quarter sessions);
- (k) section 129 (limitation of actions);
- (l) section 130 (general issue may be pleaded to actions).

7 Management of Common 10

- (1) On and after the appointed day the Trust shall be responsible for the management of the Common.
- (2) Without prejudice to the generality of subsection (1), the Trust may—
 - (a) do any works necessary for preserving, restoring, planting and maintaining the turf, trees, shrubs, plants and grass for landscaping and temporarily fence off such parts of the Common as it thinks necessary; 15
 - (b) execute works of draining, raising or levelling for the preservation and maintenance of the Common and fence off dangerous places;
 - (c) construct, place or erect and maintain, or permit the construction, placing or erection and maintenance of buildings, seats, fences, notice boards, gates and other structures. 20
- (3) The prohibition in section 38(1) of the Commons Act 2006 applies in relation to the construction, placing or erection of any buildings, fences or other structures under subsection (2). 25
- (4) Subject to subsection (5), the only purposes for which fences may be erected under subsection (3) are—
 - (a) the conservation, protection and improvement of the physical and natural environment of the Common and its suitability for recreation;
 - (b) the preservation of trees on the Common; 30
 - (c) the prevention of the risk of fire on the Common;
 - (d) the prevention of accidents or injury or other damage to health at any place, which is in the opinion of the Trust a source of danger, on the Common;
 - (e) any other purpose necessary, in the reasonable opinion of the Trust, for the furtherance of the primary objects. 35
- (5) Nothing in subsection (4) prejudices or affects the exercise of powers under any enactment whereby access to the Common may be regulated or prohibited.

8 Easements and other rights 40

- (1) On and after the appointed day the Trust may, over any part of the Common, grant to an owner or occupier of any land adjoining the Common easements, licences or other rights for access (with or without vehicles), maintenance or services to or in connection with the land as the Trust thinks fit.

- (2) Easements, licences or other rights may be granted on such terms (including the payment of charges, whether periodic or otherwise) and subject to such conditions as the Trust thinks fit.
- (3) Nothing in this Act affects any rights of owners and occupiers of land adjoining the Common in respect of gates, ways or passages lawfully erected or used before the appointed day. 5
- (4) Nothing in this section affects the application of sections 117 to 123 of the Charities Act 2011 (restrictions on dispositions of land) in relation to the Trust.

9 Leases 10

- (1) On and after the appointed day the Trust may grant or renew a lease of any part of the Common that is not registered common land to an owner or occupier of any land adjoining the Common.
- (2) A lease granted under subsection (1) may be for any period not exceeding 7 years and the period of any renewal may not exceed 7 years. 15
- (3) In exercising the power in subsection (1), the Trust must ensure that the land which is the subject of the lease will not be altered significantly in its appearance or in its use.
- (4) Before granting a lease under subsection (1), the Trust must consult such persons or bodies as it thinks appropriate (which must include any committee or group established by statute for the purpose of consultation about the management of the Common). 20
- (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). 25
- (6) The exercise of the power under subsection (1) is not a disposition falling within section 117(3) of the Charities Act 2011 and nothing in this section affects the application of sections 117 to 123 of the Charities Act 2011 in relation to the Trust. 30
- (7) In subsection (1) “registered common land” means—
 - (a) land which is registered as common land under the Commons Registration Act 1965 and whose registration under that Act has become final; and
 - (b) land which is registered as common land under Part 1 of the Commons Act 2006. 35

10 Regulations

- (1) On and after the appointed day, the Trust may make regulations to secure the good management of the Common including for the following purposes— 40
 - (a) the conservation of the natural state of the Common;
 - (b) the preservation of order and the prevention of nuisances on the Common;
 - (c) the exercise of rights of common; and

- (d) to secure public safety.
- (2) Regulations under subsection (1) may include provision—
 - (a) to regulate or prohibit the lighting and tending of fires;
 - (b) to regulate or prohibit the use of the Common for any particular purpose which is incompatible with the primary objects; 5
 - (c) about the control of dogs and other animals;
 - (d) about the use of vehicles;
 - (e) for the making of reasonable charges for the use of the Common for specified purposes.
- (3) In subsection (2)(e), “the use of the Common for specified purposes” 10 includes—
 - (a) the use of any part of the Common in the course of a business;
 - (b) the use of any facilities provided by the Trust (including leisure and parking facilities);
 - (c) the use of any part of the Common for any organised activity. 15
- (4) Subject to subsection (3), charges may not be made for the exercise by members of the public of rights of access for air and exercise as mentioned in section 193(1) of the Law of Property Act 1925.
- (5) Regulations under subsection (1) may—
 - (a) make provision that a person contravening the regulations is liable on summary conviction to a fine not exceeding level 2 on the standard scale; 20
 - (b) be made so as to relate to the whole or any part of the Common;
 - (c) make different provision for different cases and in relation to different parts of the Common; 25
 - (d) amend or revoke other regulations made under that subsection;
 - (e) revoke rules and orders made under section 60 of the 1777 Act.

11 Procedure for making regulations

- (1) Sections 236 and 238 of the Local Government Act 1972 (which respectively relate to the procedure for making byelaws by local authorities, the revocation of those byelaws and provide for the proof of byelaws in legal proceedings) shall apply to regulations made by the Trust under section 10 as they apply to byelaws made by a district council, as if—
 - (a) references to byelaws were references to regulations under section 10;
 - (b) references to a district council were references to the Trust; 35
 - (c) references to the area to which the byelaws are to apply were references to the Common;
 - (d) references to the making of byelaws under the common seal of a district council were references to the making of regulations under the hand of two persons appointed for that purpose by the Trust; 40
 - (e) references to the offices of a district council were references to the offices of the Trust or (if there are no such offices) the address of a person nominated by the Trust;
 - (f) references to the proper officer of a district council were references to a person appointed for that purpose by the Trust; 45
 - (g) there was an additional requirement to publish a copy of the regulations

on the Trust's website in every case where there is a requirement to deposit one at the offices of a district council.

- (2) The confirming authority for the purposes of section 236 is the Secretary of State.

12 Further transfers of the Common 5

- (1) Subject to subsections (2), (4) and (6), the Trust may transfer its interest in the Common and any property, rights and liabilities relating to the Common to another person ("a transferee").
- (2) A transferee must be a charity.
- (3) Where a transfer has been made, references in this Act (including subsection (1)) to the Trust are to be construed as references to the transferee. 10
- (4) A transfer under subsection (1) is not a disposition falling within section 117(3)(a) of the Charities Act 2011 (restrictions on dispositions of land: general).
- (5) Where a transfer of an interest in the Common or any part of the Common under this section includes a registrable disposition of land under the Land Registration Act 2002, the transferee must apply to the Chief Land Registrar for registration in the register of title of a restriction to reflect subsection (2). 15
- (6) Nothing in this section affects the operation of regulations made under section 245 of the Charities Act 2011 (regulations about winding up, insolvency and dissolution of charitable incorporated organisations). 20

13 Appointed day

- (1) The appointed day is fixed by a decision of the Churchwardens.
- (2) The appointed day must not be before the Trust is registered by the Charity Commission as a charity. 25
- (3) Before the appointed day, the Churchwardens must publish notice of the day appointed in the London Gazette, stating that it is the appointed day for the purposes of the relevant provision of this Act.
- (4) The publication of a notice under subsection (3) is conclusive evidence of the date of the appointed day in question, and a photocopy or other reproduction, certified by one of the Churchwardens or the clerk to the Churchwardens, of a page or part of a page of the London Gazette containing the notice is conclusive evidence of publication. 30

14 Transitional provision

- (1) Any rules and orders made under section 60 of the 1777 Act continue to have effect until revoked by regulations made under section 10. 35
- (2) Those rules and orders include the rules and orders made by the Commoners of Monken Hadley Common on 8 April 1981.

Monken Hadley Common Bill

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B I L L

To transfer the ownership and management of Monken Hadley Common to Monken Hadley Common Trust and for related purposes.

Brought from the Commons 16 June 2021

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