MALVERN HILLS BILL

NOTE ON LIABILITY TO THE LEVY AND ELGIBILITY TO VOTE

Liability to pay the levy through council tax

1. The areas which are subject to the levy payable to the Malvern Hills Conservators are currently specified in s.19 of the Malvern Hills Act 1884 **[R181]** (with the amendments made by s.4 of the Malvern Hills Act 1909) and clause 33(a) of the Malvern Hills Act 1924 **[R211]**.

2. Those Acts provide for those monies to be collected through a precept levied on the overseers of each parish, to be paid out of the poor rate of such parishes.

3. The poor rates of parishes were replaced by the Rating and Valuation Act 1925 which instead provided that:

   a. the council of every county borough and the council of every urban and rural district shall be the rating authority for the borough or county district and that after the appointed day no authority or person other than that council should have the power to make or levy any rate within the borough or district (s.1(1));
   b. as from the appointed day all powers and duties of the overseers of the poor in relation to the making, levying, and collection of rates were to be exercised and performed by the rating authority for that area (s.1(2)); and
   c. the rating authority of each rating area, in lieu of the poor rate and any other rate which they had power to make, was to make and levy for their area a consolidated rate termed “the general rate" (s.2(1) & 2(2)).

4. The Rating and Valuation Act 1925 was superseded by the General Rates Act 1967. That, in turn, was replaced by the Local Government Finance Act 1988 which abolished the “general rate” and replaced it with (1) a “community charge” (poll tax) payable by adults residing in a council’s area and (2) the current system of rates liability for non-domestic property (business rates).

5. The community charge was replaced by Part 1 of the Local Government Finance Act 1992 which provided for councils to levy and collect a council tax to be payable in respect of dwellings in their areas.

6. The Local Government Finance Act 1988 also made provision (in Part IX) in respect of 'leving bodies' which had previously had powers to issue precepts to, make a levy on or have expenses paid by a county council or charging authority. The Levying Bodies (General) Regulations 1992 **[R471]** , which now govern the levy payable to the Malvern Hills Conservators, were made under the powers contained in that Part. These Regulations provide (inter alia) for the levy to be apportioned between charging authorities (in the case of Malvern Hills District Council between Malvern Hills District Council and Herefordshire Council) (see regulation 6).

7. S.6 of the Local Government Finance Act 1992 specifies who is liable to pay the council tax in respect of a particular dwelling:

"(1) The person who is liable to pay council tax in respect of any chargeable dwelling and any day is the person who falls within the first paragraph of subsection (2) below to apply, taking paragraph (a) of that subsection first, paragraph (b) next, and so on.

(2) A person falls within this subsection in relation to any chargeable dwelling and any day if, on that day—

(a) he is a resident of the dwelling and has a freehold interest in the whole or any part of it;

(b) he is such a resident and has a leasehold interest in the whole or any part of the dwelling which is not inferior to another such interest held by another such resident;

(c) he is both such a resident and a statutory, secure or introductory tenant of the whole or any part of the dwelling;

(ca)in the case of a dwelling in Wales, the person is both such a resident and has a tenancy of the whole or any part of the dwelling which is a secure contract or an introductory standard contract;

(d) he is such a resident and has a contractual licence to occupy the whole or any part of the dwelling;

(e) he is such a resident; or

(f) he is the owner of the dwelling.

(3) Where, in relation to any chargeable dwelling and any day, two or more persons fall within the first paragraph of subsection (2) above to apply, they shall each be jointly and severally liable to pay the council tax in respect of the dwelling and that day. […]"

8. "Resident" is defined in s.6(8) as meaning "an individual who has attained the age of 18 years and has his sole or main residence in the dwelling".

9. The primary position which emerges from s.6(2) - that council tax liability is linked to residence of a dwelling - is subject to some prescribed exceptions or amendments (for example, in respect of students,[1] dwellings used to accommodate asylum seekers,[2] and, more recently, HMOs[3]). However, in broad terms, the primary liability for payment of council tax rests with the occupier/s of a dwelling, and that liability is joint and several in respect of the residents of that dwelling (being persons aged 18 or above for whom it is their sole or main residence) subject to the qualifications and exceptions as set out in the legislation.

Eligibility to vote for Malvern Hills Conservators

10. The provisions governing entitlement to vote in elections for directly elected conservators are currently found in s.7 of the Malvern Hills Act 1924 **[R203]** as amended by the Malvern Hills (Amendment of Local Enactment) Order 1958 **[R309]**. In summary:

    a. Seven persons to be elected by the local government electors for the urban district of Malvern (one person by each of the seven wards of the said district);
    b. Two persons to be elected by the local government electors for the parish of Colwall;
    c. One person to be elected by the local government electors for the parish of Mathon; and
    d. One person to be elected by the local government electors for the parish of Guarlford.

11. By s.2 of the Representation of the People Act 1983 a person is entitled to vote as an elector at a local government election in England if, at the date of the poll, that person is:

    a. registered in the register of local government electors for that area;

[1] Local Government Finance Act 1992 Sch 1 para 4
[2] The Council Tax (Liability for Owners) Regulations 1992 reg. 2 read with s.8(3) of the Local Government Finance Act 1992
[3] The Council Tax (Chargeable Dwellings and Liability for Owners) (Amendment) (England) Regulations 2023 which provides that HMOs are to be treated as a single dwelling for the purposes of council tax and liability rests with the owner of the HMO and not the individual occupants through amendments to the relevant statutory instruments.

b. not subject to any legal incapacity to vote (age apart);

c. a Commonwealth citizen, a citizen of the Republic of Ireland or a qualifying EU citizen or an EU citizen with retained rights;

d. of voting age (18 year or over).

12. S.4(2) sets out the criteria for persons entitled to be entered on the register of local government electors for an electoral area. In broad terms, a person is entitled to be registered (in England) on such register if they are:

    a. resident in that area;

    b. not subject to any legal incapacity to vote (age apart);

    c. a qualifying Commonwealth citizen, a citizen of the Republic of Ireland or a qualifying EU citizen or EU citizen with retained rights; and

    d. of voting age.

13. There does not appear to be any limit as to how many adults meeting the qualifying criteria are entitled to be registered as local government electors within a single property. Thus, there could be a number of adults living at a single property within the levy paying area who could be eligible to vote in elections for the Malvern Hills Conservators (if registered on the relevant register of local government electors) regardless of which of the adults in that household actually pays the levy demanded through the council tax bill for the property.

JACQUELINE LEAN

3 February 2026