



Monken Hadley Common Act 2022

2022 CHAPTER ii

An Act to transfer the ownership and management of Monken Hadley Common to Monken Hadley Common Trust and for related purposes. [28 April 2022]

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”):
- (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”):
- (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:
- (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:
- (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:

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- (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:
- (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:
- (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:
- (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:
- (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:
- (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:
- (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:
- (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 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:
- (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:—

1 Citation

This Act may be cited as the Monken Hadley Common Act 2022.

2 Interpretation

In this Act—

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“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”;

“the appointed day” means a day fixed by the Churchwardens in accordance with section 13;

“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;

“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;

“land” includes any gates and fences or similar structures (without prejudice to Schedule 1 to the Interpretation Act 1978).

3 The primary objects of the Trust

- (1) On its incorporation as a charitable incorporated organisation, the objects of the Trust must include—
 - (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.
- (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.

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
 - (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.
- (2) Whilst the Common is in its ownership—

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- (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.
- (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).

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.

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”;
- (c) section 60 (powers for the parishes to make Rules and Orders concerning their respective allotments);
- (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);
- (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

- (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;
 - (b) execute works of draining, raising or levelling for the preservation and maintenance of the Common and fence off dangerous places;