



Department
for Environment
Food & Rural Affairs

Environment Act

Conservation Covenants

Key Facts

- The Law Commission examined the need for conservation covenants in 2013 and concluded that legislation should be introduced. They published their report and a draft Bill in 2014.
- Conservation covenants are private agreements entered into voluntarily, but which become legally binding once agreed. They are made between a landowner and responsible body, such as a conservation charity or public body or for-profit body. They conserve (protect, restore or enhance) the natural or heritage features of the land for the public good.
- Conservation covenants provide flexibility - the parties agree the terms to suit their particular circumstances, including the duration. We expect most of those agreeing conservation covenants will want to do so for the long term.
- They will be overseen by 'responsible bodies' to ensure the delivery of obligations within them. A local authority or other organisation with conservation among its core purposes or activities can apply to become a responsible body. The Secretary of State will assess applications against published criteria to decide if an applicant should be designated.
- Conservation covenants are used by landowners as a private and voluntary mechanism for conservation in a range of countries such as the USA, New Zealand, Canada and Scotland.
- Conservation covenants can be used to secure the benefits delivered by biodiversity net gain and other measures for the long term, including investment informed by Local Nature Recovery Strategies.

What does the Act do?

- The Environment Act legislates for conservation covenants – which are a simple legal tool which will make it easier to secure long-term management of land for the conservation of its natural and heritage features.
- Landowners can make an important contribution to leaving our environment in a better state than we found it for future generations. Historically some landowners have used costly and complex workarounds to conserve our wildlife, habitats and heritage assets.
- Defra consulted on conservation covenants in early 2019. Responses from a range of sectors, including landowners and conservation organisations showed significant support for conservation covenants. The vast majority saw them as a useful tool for delivering lasting conservation outcomes.

- Similarly, responses to Defra's Biodiversity Net Gain consultation in early 2019 showed overwhelming agreement that conservation covenants would be useful for securing long term benefits from biodiversity net gain.
- Conservation covenants will enable landowners and responsible bodies, (such as a conservation charity, government body, local authority or for-profit body) to voluntarily make binding legal agreements to secure positive conservation management. This means that conservation management can be maintained when the land changes hands. It may also help landowners secure funding for their own positive management of the land.

How will conservation covenants work?

- Conservation covenants can contain positive and restrictive obligations to fulfil conservation objectives for the public good. They will be able to bind subsequent landowners, so have the potential to deliver long-lasting conservation benefits. They are a flexible tool – the parties can negotiate the terms (including the duration) of a conservation covenant to suit their circumstances.
- We expect that the most likely uses will be those with a commercial component, such as providing for payments for ecosystem services and for biodiversity net gain.
- They also have the potential to be used by charities, public authorities or altruistic landowners wishing to conserve land for the future.
- Our legislation is largely in line with the Law Commission's 2014 draft Bill. The principal change is that we will allow a wider range of bodies, including 'for-profits', to apply to be responsible bodies. We believe that there is a range of organisations with expertise in land management that are likely to be interested in using covenants to deliver long term conservation outcomes.
- The Secretary of State will be able to designate organisations as responsible bodies if some of their main purposes, functions or activities relate to conservation and if the Secretary of State considers them to be suitable to become responsible bodies. Responsible bodies will play an important role in ensuring that the land management obligations within conservation covenants deliver conservation for the public good.

FAQs

Would it be possible to unknowingly enter into a conservation covenant?

- No. The Act requires it to be apparent from the conservation covenant agreement that it is the parties' intention to create the covenant. The agreement must also be executed as a deed by the parties. Our guidance will encourage parties to secure legal advice before entering into a conservation covenant.

How will conservation covenants impact landowners?

- The use of conservation covenants will be voluntary and in general only impact landowners who choose to use them on their land or acquire land already bound by a conservation covenant.

Does a conservation covenant have to be in perpetuity / very long term?

- No - it is for the parties to agree whether to apply a time limit and what that should be. Requiring all conservation covenants to be in perpetuity would very significantly limit their use as a flexible tool by landowners, who are likely to want to agree these covenants for a range of reasons.
- They could be short-term, although they are unlikely to have any advantage over simple contractual arrangements if it is not envisaged that the landowner will sell or transfer the land before the end of the conservation covenant.
- Where the conservation covenant is entered into by a leaseholder, the lease must be for a term of more than seven years and the covenant cannot last beyond the term of the lease.

Who can become a responsible body?

- A local authority or another body which has conservation among its main functions, purposes, or activities can apply to become a responsible body. Their suitability to be designated will be assessed by the Secretary of State against published criteria.
- We will work with key stakeholders on the criteria before they are finalised and published.

How will conservation covenants be enforced?

- Where one party breaches a conservation covenant, it falls to the other party to take enforcement action. They can aim to resolve the breach themselves, use alternative dispute-resolution mechanisms or, ultimately, take the matter to court. A range of court remedies are potentially available, including injunctions to stop damaging activities, orders requiring performance of the covenant and awards of exemplary damages to ensure there is no financial gain from the breach.

Can a conservation covenant be modified or discharged?

- Yes, the parties to a conservation covenant can agree to modify or discharge it. If the parties cannot agree, they will be able to apply to the Upper Tribunal for an order modifying or discharging the conservation covenant. There are likely to be legitimate grounds for some conservation covenants to be modified or discharged. This might be the case if, for example, there has been a change in circumstances since the conservation covenant was created or the conservation covenant no longer serves its conservation purposes or the public good.

Can conservation covenants include provision for public access?

- Yes. The Act provides for public access provisions included in a conservation covenant to be enforceable in the same way as any other covenant provision. However, we are not requiring public access to be a feature of covenants – it will be for the parties to decide whether public access is appropriate.

What level of demand do you expect?

- We cannot predict the level of demand, but responses to our consultation indicated that there is the demand and potential for conservation covenants to make a key contribution to lasting conservation.

Will government encourage joined up use of conservation covenants to maximise benefits?

- Our guidance will encourage the parties to consider how their conservation covenants can complement the activities of other priorities, bodies and schemes across wider areas.. Many of the bodies that we expect to become responsible bodies undertake joined up conservation activity, so are likely to secure a joined-up approach where possible. Some conservation benefits will be very local such as the protection of a small historic site even if they are not part of a wider conservation scheme.

Can a third party challenge a conservation covenant?

- An interested third party can apply to a court or the Lands Chamber of the Upper Tribunal for a declaration about the validity of a conservation covenant, whether any land or any person is bound by a conservation covenant and the interpretation of a conservation covenant. It is for the court or Tribunal to decide whether a person has a sufficient interest to be able to make an application for a declaration which the court or Tribunal will consider. The court or Tribunal could make a declaration about any of the above matters, including declaring that a conservation covenant is not valid.

Is it possible to revoke a conservation covenant on land I want to purchase?

- No. You would not be able to make changes to a conservation covenant as a third party – although you could apply for a declaration in relation to certain aspects of it (including whether it is actually a valid conservation covenant). You would have to acquire the land and then approach the responsible body to agree to modify or discharge the covenant. If you and the responsible body could not agree, you could ultimately refer the matter to the Lands Chamber of the Upper Tribunal.

Will tax incentives be made available to landowners to encourage uptake of conservation covenants?

- We have no plans to change tax arrangements to incentivise uptake. Responses to our consultation suggested that there will be demand for conservation covenants without the need for tax incentives. The experience of countries such as New Zealand show that demand can exist without them.

How can you be sure conservation covenants won't be used to block development?

- Conservation covenants provide a mechanism that can secure long term environmental management obligations on land. Conservation covenants can therefore help developers and planning authorities to agree and implement robust compensation plans for negative environmental impacts, including the agreement of compensation requirements arising from mandatory biodiversity net gain.
- There are also safeguards. For example, section 203 of the Housing and Planning Act 2016 will allow conservation covenants to be overridden in certain circumstances, such as where land has been appropriated by a local authority for planning purposes.