

## Conservation Covenants - a new way to protect land for conservation?

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On 22 February 2019, the Department for Environment, Food and Rural Affairs (DEFRA) published a consultation on a new statutory scheme for conservation covenants. This consultation has now ended and DEFRA will be mulling over responses to their questions regarding the demand for conservation covenants, and how they would be used, their enforcement, and any potential downsides to the proposals.

Conservation covenants were first mooted in 2014 when the Law Commission published a report setting out its recommendations for their introduction, including a draft Conservation Covenants Bill. The Law Commission explained that the aim of these covenants was to make it easier for people to enter agreements which conserve the natural environment.

In essence, a conservation covenant is a voluntary agreement between a landowner and a conservation organisation or council to do, or not do, something on their land for a conservation purpose. The real benefit is that conservation covenants don't just bind the current landowner who entered into the agreement, but run with the land and bind future landowners. These obligations would be overseen by responsible conservation organisations to ensure that they are delivered.

Conservation covenants are already used in many other jurisdictions, but do not exist in the law of England and Wales. Such arrangements can currently be made with relative ease in respect of covenants that bind future landowners not to do something. However the law isn't as accommodating where parties intend to bind future landowners by way of positive covenants, which require them actively to do something. Currently a handful of special conservation bodies such as the National Trust have special statutory instruments in order to achieve this but others must rely on bespoke and expensive legal solutions. However, by encouraging positive environmental actions, a conservation covenant may achieve a lasting legacy for land management for generations to come.

Examples of when conservation covenants could be used include:

- Private owners and conservation organisations agreeing to ensure places are maintained and/or to allow public access, or refraining from doing something, for instance using pesticides in an area of native vegetation.

- Securing the protection of heritage sites, including archaeological sites. These have traditionally been difficult heritage areas to protect, hence the low uptake in the Areas of Archaeological Importance designations.
- Often conservation organisations are faced with no option but to purchase land, for instance where land contains the habitat of rare species. Conservation covenants would allow conservation organisations to pay landowners to agree to maintenance obligations instead.
- Conservation organisations will also be more comfortable when it comes to disposal of their land, as they can ensure that covenants to maintain etc. will run with the land.
- Conservation covenants will allow payment for ecosystem services, for instance to a landowner whose maintenance of woodland can mitigate localised flooding downstream.
- To allow a net-gain for biodiversity. For instance, where a development will cause some damage to a site with conservation value, the local authority can use a conservation covenant to require the developer to agree to improve habitats elsewhere in the local area to ensure the development leads to a net positive impact on wildlife habitats before granting permission.

Environment Secretary, Michael Gove sees the introduction of conservation covenants as a major part of his plan "to be the first generation to leave the environment in a better state than we found it". We await the results of the consultation.

Maples Teesdale advise on all aspects of Town and Country Planning and environmental law, including conservation matters. Should you need advice on conservation matters please contact Partner [John Bosworth](#).



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