

Law Commission Report on Conservation Covenants

Government Response

January 2016

The Government is grateful to the Law Commission for the work it has done to examine the case for introducing conservation covenants into the law of England and Wales and for considering what elements might be needed in a new statutory scheme. The consultation the Law Commission held in 2013 and the comprehensive report, impact assessment and draft bill it published on 24 June 2014 are valuable contributions to the evidence base on this issue. At present, this response is in regard to England only but we will keep this position under review.

The Government's aim is for England to have a world-leading natural environment which benefits people and our economy. Under a clear national framework, conservation covenants could allow people to make contributions to local-level conservation which produce a positive cumulative result in the public interest. For example, a local authority could use a conservation covenant to secure an agreement with a landowner to maintain an area of wetland for flood prevention purposes.

The Government's forthcoming 25 Year Environment Plan will equip people at all levels with tools to make environmental improvements. The Government believes that conservation covenants could be a key element of such a toolkit.

The Law Commission's report recommends the introduction of a statutory scheme of conservation covenants which would enable conservation agreements to be made between a landowner and a responsible body. Crucially, these agreements would remain in place after the land is sold and would have to be in the public interest. For example:

- a developer could use a conservation covenant to secure the long-term protection of a new nature site as compensation for any loss of biodiversity caused by the proposed development
- a landowner who wishes to sell a woodland she has spent years managing for wildlife could use a conservation covenant to ensure it is maintained in the same way after she sells it, thus ensuring the conservation efforts are sustained. In this example the landowner could be a private individual, NGO or public body.
- a local authority could use a conservation covenant to secure an agreement with a landowner to maintain an area of wetland for flood prevention purposes, in

return for an annual payment. A water company could do the same for water quality purposes, leading to a reduction in the need to treat the water.

- a heritage group could use a conservation covenant to protect the historic features of a Georgian house they have restored – allowing them to sell the house while preserving the heritage value of the property

The Law Commission's report asserts that, without conservation covenants, there is no optimal cost-effective provision in English law to facilitate long-term conservation agreements like those described above, so inefficient workarounds are being used or the conservation opportunities are being lost.

Their recommendations provide for the modification and discharge of conservation covenants under certain circumstances to ensure land does not remain tied-up when it is no longer in the public interest, should circumstances change after a covenant is put in place.

The Government broadly agrees with the Law Commission that a statutory scheme of conservation covenants could contribute to the protection of England's natural and historic assets. The Law Commission's public consultation demonstrated the wide range of interested people and organisations. Over the coming months, we will work with them and others to test further the concept of conservation covenants, in the context of delivering on our manifesto commitment to develop a 25 Year Environment Plan. In doing this, the Government will use the Law Commission's recommendations and draft Bill as our starting point.