

The Environment Bill: conservation covenants



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Conservation covenants: what are they?

A conservation covenant (“CC”) can be described as “an agreement between a landowner and a body like a charity or public body to do or not do something on their land for a conservation purpose.”

Conservations covenants: a new idea?

CCs are not a brand new idea

Section 8 of the National Trust Act 1937 allows a landowner to agree with the National Trust certain restrictions on activities on the land, but they can only involve obligations not to do something and they can be agreed only with the National Trust.

Note also section 5 of the Forestry Act 1967, which is a similar provision.

Law Commission project

Starting in 2012, the Law Commission investigated the case for introducing CCs into the law of England and Wales. There was a 2013 public consultation exercise.

On 24 June 2014, the Law Commission published its final Report (Law Com No 349) in which it recommended a new statutory scheme of CCs in England and Wales. Its recommended CCs would (i) be by way of two-party agreement, (ii) be able to contain positive as well as restrictive obligations, (iii) be capable of binding successors in title and (iv) be made for the public good.

The Report included a draft Conservation Covenants Bill.

Government response

Government's response was enthusiastic.

It committed to exploring the part that CCs could play in Defra's 25 year Environment Plan.

That 25 year Environment Plan pledged to review and take forward the Law Commission's proposals for CCs.

Environment Bill Part 7

Government is not pursuing a discrete Conservation Covenants Bill

Part 7 of the Environment Bill is devoted to CCs

Part 7 is clauses 102-124 in the original Bill

CCs defined in clause 103(1)

Clause 123 is a helpful index of defined terms in Part 7

CCs in more detail

A CC is so much of a “conservation covenant agreement” (“CCA”) as is given statutory effect by clause 103 (i.e. the future section 103, or as may be re-numbered).

- A CCA is an agreement between a landowner and “a responsible body” where:
- (a) the agreement contains provision which (i) is of a qualifying kind, (ii) has a conservation purpose and, (iii) is intended by the parties to be for the public good,
 - (b) it appears from the CCA that the parties intend to create a CC, and
 - (c) the agreement is in writing signed by the parties.

Responsible bodies

The Secretary of State is a responsible body.

A local authority (as defined, which excludes parish councils) may apply to be designated as a responsible body, as may other bodies.

A non-local authority may be designated if some of its main purposes or functions relate to conservation (in the case of public bodies or charities) and it is suitable to be a responsible body. In any other case, at least some of the body's main activities must relate to conservation and it must also meet the suitability test.

Provisions of a qualifying kind

Essentially, these are provisions in the CCA:

- (i) requiring the landowner to do, or not to do, something specified on land in England, or
- (ii) allowing the responsible body to do something on the land, or
- (iii) requiring the responsible body to do something on the land

Conservation purpose

- (a) To conserve the natural environment of land or the natural resources of land, or
- (b) To conserve land as a place of archaeological, architectural, artistic, cultural or historic interest, or
- (c) To conserve the setting of land with a natural environment or natural resources or which is a place of archaeological, architectural, artistic, cultural or historic interest.

Clearly broad in scope, not limited to biodiversity conservation and note the reference to conserving “setting”.

Miscellaneous

CCs will be a local land charge (clause 105)

Unless the CC provides for a shorter period, an obligation under a CC endures indefinitely if the qualifying estate is held freehold or for the remainder of the term if the qualifying estate is held on a lease granted for more than 7 years (clause 106)

A landowner's obligation under a CC is owed to the responsible body (clause 107(1)).

Generally, landowner obligations under CCs bind the landowner and successors (clause 107(2)).

Generally, responsible body obligations under a CC are owed to the landowner under the covenant or the successor (clause 108(1)).

In proceedings for enforcement of an obligation under a CC, the available remedies (clause 110(1)) are:

- (a) specific performance,
- (b) injunction,
- (c) damages, and
- (d) order for payment of an amount due under the obligation

The court must take into account the public interest in the performance of the obligation

Landowners and responsible bodies may discharge or modify their obligations by agreement (clauses 112-114)

The Upper Tribunal may do likewise, on application. No application may be made under section 84(1) of the Law of Property Act 1925 in relation to an obligation under a CC: clause 115

See Schedule 16 for further provisions on Upper Tribunal applications. It may discharge or modify an obligation on application, “if it considers it reasonable to do so in all the circumstances of the case”.

Thank you for listening

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