

# Conservation Covenants

This online resource paper provides information about Conservation Covenants, in which landowners can agree to do or not do something on their land in the interests of conservation

## Definition and Purpose

A conservation covenant is an agreement between a landowner and a public body or charity (or other organisation) to do or not do something on their land for a conservation purpose. This may be, for example, an agreement to maintain woodland and allow public access to it, or to refrain from using certain pesticides on native vegetation. The **Environment Act 2021** (<https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted>) (Part 7: Conservation Covenants) states that conservation covenants are voluntary but legally binding agreements between a landowner and a designated 'responsible body' such as a conservation charity, public body or for-profit body to conserve the natural or heritage features of the land. Their purpose is to:

- Conserve the natural environment of land or the natural resources of land; or
- Conserve land as a place of archaeological, architectural, artistic, cultural or historic interest; or
- 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.

Hence, it is clearly broad in scope, not limited to biodiversity conservation, and the reference to the conservation of "setting" should be noted. The 'responsible bodies' which are entitled to enter into conservation covenants are the Secretary of State, local authorities and other bodies designated by the Secretary of State as suitable to act as responsible bodies. For bodies other than local authorities to be designated, they must have some main function or activity which relates to conservation. The Government has, in contrast to the Law Commission's proposals, enabled for-profit companies to become responsible bodies as well as charities and public bodies.

## Key points to consider

- Conservation covenants are long lasting and can continue after the landowner has parted with the land, ensuring that its conservation value is protected for the public benefit;
- Conservation covenants are seen to complement statutory or policy-based conservation designations, such as Sites of Special Scientific Interest or National Parks, providing a means of privately protecting land which has conservation value, but which does not fall within the public system of land designation;

- Conservation covenants are to be used in two different scenarios. In the first, a landowner who has undertaken a great deal of conservation work on their land (such as rewilding, or restoring a historic building) could enter into a covenant with a Responsible Body – the covenant would bind later owners of the land, thereby preventing a purchaser (or inheritor) from undoing all of the original owner’s efforts;
- In the second scenario, an organisation which funds wildlife or heritage conservation work could use a conservation covenant to protect the funded improvements;
- At present, there is little to prevent a landowner from, for example, ploughing up wildflower meadows or destroying newly-established hedges once a funding agreement or environmental stewardship scheme has run its course – a conservation covenant can secure both its investment and the environmental or heritage benefits.

## **What this means for spatial planning and development management**

The landowner, and also any future owners of the land, will be bound by the agreement made under the conservation covenant. Obligations of this type would be enforceable by a responsible body such as a charity, public body or local or central government and would continue in full force even after the original landowner who entered into the obligation parted with their interest in the land. In many cases, landowners may already be undertaking conservation activity of the type that the proposed changes envisage on their land. However, by entering into a formal obligation of this kind, the landowner could also help secure future continuation of these practices by their successors in title.

Conservation covenants can contain positive and restrictive obligations to fulfil conservation objectives for the public good. They are a flexible tool – the parties can negotiate the terms (including the duration) of a conservation covenant to suit their circumstances. Generally, they will bind subsequent landowners and therefore have the potential to deliver long-lasting conservation benefits. Conservation covenants can be used to secure the benefits delivered by biodiversity net gain and other measures for the long term. It seems likely that conservation covenants could quickly become commonplace, especially for those landowners using government grant schemes for conservation and land management.

The full extent of the positives and negatives for farmers and landowners are likely to become apparent when the system is in place and ‘bedded in’. When will this be? A few potential issues can already be identified:

- Firstly, those landowners who agree to a conservation covenant will have to take care that the covenant does not put them in breach of the terms of any leases they have granted over the land;
- Conversely, tenants (who will also be able to enter into conservation covenants if their lease is for seven years or more, although such covenants would not bind the landlord after the end of the lease) could be at risk of forfeiting their lease entirely if they agree to a conservation covenant which is contrary to its terms;
- Another issue for landowners is that the default position will be for conservation covenants on freeholds to last forever, meaning that they will bind all future purchasers of the land for the

rest of time;

- Agreeing to an onerous conservation covenant could hence make it difficult for an owner to sell his/her land, or noticeably reduce its value. This would be particularly true for land with development potential.

In terms of how conservation covenants can help deliver BNG, the Planning Advisory Service (PAS) website states that conservation covenants are a possible tool to secure biodiversity gains, and they are specifically referred to in the net gain clauses in the Environment Act. PAS expects this will make them a valuable tool for local authorities and developers to ensure that compensatory habitats are maintained in the long term, even if the relevant land is sold.

According to the PAS website, Defra intends to commence the conservation covenant provisions (Part 7 and Schedules 18-20) of the Environment Act 2021 in the autumn of 2022. This will allow time for important secondary legislation to be put in place so that conservation covenants can function correctly. More information is available **here**

(<https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain/biodiversity-net-gain-faqs-frequently-asked-questions#conservation-covenants>).

## Relevant Craven Local Plan policies

- **ENV4: Biodiversity** (/planning/accessible-craven-local-plan/#BIODIVERSITY)
- **ENV5: Green Infrastructure** (/planning/accessible-craven-local-plan/#GREENINFRASTRUCTURE)

## Relevant Craven Local Plan policy guidance

- **Green Infrastructure and Biodiversity Supplementary Planning Document**

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March 2022. This webpage provides general information about relevant planning topics and we hope you find it helpful. Please be aware that it is not a statement of Council policy and does not provide formal policy guidance. For those things, please refer to the Craven Local Plan and supplementary planning documents.