



Environment Act 2021

2021 CHAPTER 30

PART 7

CONSERVATION COVENANTS

Creation of conservation covenant

117 Conservation covenant agreements

- (1) For the purposes of this Part, a “conservation covenant agreement” 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 agreement that the parties intend to create a conservation covenant, and
 - (c) the agreement is executed as a deed by the parties.
- (2) The reference in subsection (1)(a) to provision of a qualifying kind is to provision—
 - (a) requiring the landowner—
 - (i) to do, or not to do, something on land in England specified in the provision in relation to which the landowner holds a qualifying estate specified in the agreement for the purposes of the provision, or
 - (ii) to allow the responsible body to do something on such land, or
 - (b) requiring the responsible body to do something on such land.
- (3) For the purposes of subsection (1)(a)(ii), provision has a conservation purpose if its purpose is—
 - (a) to conserve the natural environment of land or the natural resources of land,
 - (b) to conserve land as a place of archaeological, architectural, artistic, cultural or historic interest, or

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- (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.

(4) In this Part—

a reference to conserving something includes a reference to protecting, restoring or enhancing it;

“qualifying estate” means—

- (a) an estate in fee simple absolute in possession, or
- (b) a term of years absolute granted for a term of more than seven years from the date of the grant and in the case of which some part of the period for which the term of years was granted remains unexpired;

a reference to “the qualifying estate”, in relation to an obligation under a conservation covenant, is to the estate in land by virtue of which the condition in subsection (1)(a)(i) was met in relation to—

- (a) if the obligation is not an ancillary obligation, the provision giving rise to the obligation, or
- (b) if the obligation is an ancillary obligation, the provision giving rise to the obligation to which it was ancillary;

(and for this purpose “ancillary obligation” means an obligation under provision falling within section 118(2)(b));

“natural environment”, in relation to land, includes—

- (a) its plants, animals and other living organisms;
- (b) their habitats;
- (c) its geological features.

118 Conservation covenants

- (1) A conservation covenant is so much of a conservation covenant agreement as is given statutory effect by this section.
- (2) The following provisions of a conservation covenant agreement have statutory effect as a conservation covenant—
 - (a) provisions in respect of which the conditions in section 117(1)(a) are met, and
 - (b) provisions ancillary to any provision falling within paragraph (a).
- (3) If the agreement includes provision for public access to land to which other provision of the agreement (being provision which meets the conditions in section 117(1)(a)) relates, the provision for public access is to be treated as ancillary to that other provision.
- (4) In this Part—
 - (a) references to an obligation under a conservation covenant are to an obligation of the landowner or the responsible body given statutory effect by this section as part of the conservation covenant, and
 - (b) references to the land to which an obligation under a conservation covenant relates are, in the case of an obligation given statutory effect by this section by virtue of being ancillary to another provision, to the land to which the obligation under the other provision relates.

119 Responsible bodies

- (1) The following are responsible bodies for the purposes of this Part—
 - (a) the Secretary of State;
 - (b) bodies which are designated under this section (referred to in this Part as “designated bodies”).
- (2) The Secretary of State may, on the application of a local authority or other body, designate it as a responsible body for the purposes of this Part.
- (3) The Secretary of State may only designate a local authority if satisfied that it is suitable to be a responsible body.
- (4) The Secretary of State may only designate a body that is not a local authority if satisfied that it—
 - (a) meets the condition in subsection (5), and
 - (b) is suitable to be a responsible body.
- (5) The condition is that—
 - (a) in the case of a public body or a charity, at least some of its main purposes or functions relate to conservation, or
 - (b) in any other case, at least some of the body’s main activities relate to conservation.
- (6) The Secretary of State may revoke a designation by notice to the body concerned if—
 - (a) the body has applied to the Secretary of State for its designation to be revoked,
 - (b) the Secretary of State is satisfied that the body is not suitable to remain as a responsible body, or
 - (c) in the case of a body other than a local authority, the Secretary of State is satisfied that the body does not meet the condition in subsection (5).
- (7) The Secretary of State may determine the criteria to be applied in deciding whether a body is suitable to be or to remain a responsible body (which may include criteria relating to the body’s connection with the United Kingdom).
- (8) The Secretary of State must publish (and keep up to date)—
 - (a) a document setting out the criteria applicable for the purposes mentioned in subsection (7), and
 - (b) a list of the bodies who are designated under this section.
- (9) In this section—

“charity” means a charity registered under the Charities Act 2011 or an exempt charity (within the meaning of that Act);

“conservation” means conservation of—
 - (a) the natural environment or natural resources of land,
 - (b) places of archaeological, architectural, artistic, cultural or historic interest, or
 - (c) the setting of land with a natural environment or natural resources or which is a place of archaeological, architectural, artistic, cultural or historic interest;

“local authority” means—
 - (a) a county or district council in England;
 - (b) a London borough council;

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- (c) the Common Council of the City of London;
- (d) the Council of the Isles of Scilly.

Effect of conservation covenant

120 Local land charge

- (1) A conservation covenant is a local land charge.
- (2) For the purposes of the Local Land Charges Act 1975 the originating authority, as respects a conservation covenant, is the person by whom an obligation of the landowner under the covenant is enforceable.
- (3) In section 2 of the Local Land Charges Act 1975 (matters which are not local land charges), the references in paragraphs (a) and (b) to a covenant or agreement made between a lessor and a lessee do not include a conservation covenant.
- (4) In its application to a conservation covenant, section 10(1) of the Local Land Charges Act 1975 (compensation for non-registration or defective official search certificate) has effect as if—
 - (a) in the words preceding paragraph (a), the words from the beginning to “but” were omitted,
 - (b) paragraph (a) (non-registration) were omitted, and
 - (c) in paragraph (b), for the words from “in existence” to the end there were substituted the words “registered in that register at the time of the search but was not shown by the official search certificate as so registered”.

121 Duration of obligation under conservation covenant

- (1) An obligation under a conservation covenant has effect for the default period, unless the covenant provides for a shorter period.
- (2) The default period for the purposes of subsection (1) is—
 - (a) if the qualifying estate in relation to the obligation is an estate in fee simple absolute in possession, a period of indefinite duration, and
 - (b) if the qualifying estate in relation to the obligation is a term of years absolute, a period corresponding in length to the remainder of the period for which the term of years was granted.

122 Benefit and burden of obligation of landowner

- (1) An obligation of the landowner under a conservation covenant is owed to the responsible body under the covenant.
- (2) Subject to the following provisions, an obligation of the landowner under a conservation covenant binds—
 - (a) the landowner under the covenant, and
 - (b) any person who becomes a successor of the landowner under the covenant.
- (3) In subsection (2)(b) “successor” (in relation to the landowner under the covenant) means a person who holds, in respect of any of the land to which the obligation relates—

- (a) the qualifying estate, or
 - (b) an estate in land derived (whether immediately or otherwise) from the qualifying estate after the creation of the covenant.
- (4) An obligation of the landowner under a conservation covenant ceases to bind the landowner under the covenant, or a person who becomes a successor of that landowner, in respect of—
 - (a) land which ceases to be land to which the obligation relates,
 - (b) in the case of the landowner under the covenant, land in relation to which the landowner ceases to be the holder of the qualifying estate, or
 - (c) in the case of a successor, land in relation to which the successor ceases to be the holder of the qualifying estate or of the estate derived from the qualifying estate, as the case may be.
- (5) Subsection (2)(b) does not apply if—
 - (a) the obligation is positive and the person becomes a successor by virtue of holding a term of years absolute granted for a term of seven years or less from the date of the grant,
 - (b) the conservation covenant was not registered in the local land charges register at the time when the successor acquired the estate in land concerned, or
 - (c) the successor’s immediate predecessor was not bound by the obligation in respect of the land to which the successor’s interest relates.
- (6) In the case of a conservation covenant relating to land in an area in relation to which section 3 of the Local Land Charges Act 1975 (as substituted by paragraph 3 of Schedule 5 to the Infrastructure Act 2015) does not yet have effect, the reference in subsection (5)(b) to the local land charges register is to the appropriate local land charges register.
- (7) The reference in subsection (5)(b) to the time when the successor acquired the estate in land concerned is, if the successor acquired that interest under a disposition which took effect at law only when registered in the register of title kept under the Land Registration Act 2002, to be read as a reference to the time when the disposition was made.
- (8) In subsection (5)(c) the successor’s “immediate predecessor” is, unless subsection (9) applies, the successor’s immediate predecessor in title.
- (9) If the successor is the first holder of an estate in land which is derived from another estate in land (whether the other estate is the qualifying estate or an estate derived, immediately or otherwise, from it) the successor’s immediate predecessor is the holder of that other estate when the derived estate was created.

123 Benefit of obligation of responsible body

- (1) Subject to the following provisions, an obligation of the responsible body under a conservation covenant is owed—
 - (a) to the landowner under the covenant, and
 - (b) to any person who becomes a successor of the landowner under the covenant.
- (2) In this section “successor” (in relation to the landowner under the covenant) means a person who holds, in respect of any of the land to which the obligation relates—
 - (a) the qualifying estate, or

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- (b) an estate in land derived (whether immediately or otherwise) from the qualifying estate after the creation of the covenant.
- (3) An obligation of the responsible body under a conservation covenant ceases to be owed to the landowner under the covenant, or to a person who becomes a successor of that landowner, in respect of—
 - (a) land which ceases to be land to which the obligation relates,
 - (b) in the case of the landowner under the covenant, land in relation to which the landowner ceases to be the holder of the qualifying estate, or
 - (c) in the case of a successor, land in relation to which the successor ceases to be the holder of the qualifying estate or of the estate derived from the qualifying estate, as the case may be.
- (4) Subsection (1)(b) does not apply if the obligation is ancillary to an obligation of the landowner under the covenant which does not bind the successor.

Breach and enforcement

124 Breach of obligation

- (1) A person bound by a negative obligation under a conservation covenant breaches the obligation by—
 - (a) doing something which it prohibits, or
 - (b) permitting or suffering another person to do such a thing.
- (2) A person bound by a positive obligation under a conservation covenant breaches the obligation if it is not performed.

125 Enforcement of obligation

- (1) In proceedings for the enforcement of an obligation under a conservation covenant, the available remedies are—
 - (a) specific performance,
 - (b) injunction,
 - (c) damages, and
 - (d) order for payment of an amount due under the obligation.
- (2) On an application for a remedy under subsection (1)(a) or (b), a court must, in considering what remedy is appropriate, take into account any public interest in the performance of the obligation concerned.
- (3) Subject to subsection (4), contract principles apply to damages for breach of an obligation under a conservation covenant.
- (4) In the case of breach of an obligation of the landowner under a conservation covenant, a court may award exemplary damages in such circumstances as it thinks fit.
- (5) For the purposes of the Limitation Act 1980, an action founded on an obligation under a conservation covenant is to be treated as founded on simple contract.

126 Defences to breach of obligation

- (1) In proceedings for breach of an obligation under a conservation covenant it is a defence to show—
 - (a) that the breach occurred as a result of a matter beyond the defendant’s control,
 - (b) that the breach occurred as a result of doing, or not doing, something in an emergency in circumstances where it was necessary for that to be done, or not done, in order to prevent loss of life or injury to any person, or
 - (c) that at the time of the breach—
 - (i) the land to which the obligation relates was, or was within an area, designated for a public purpose, and
 - (ii) compliance with the obligation would have involved a breach of any statutory control applying as a result of the designation.
- (2) If the only reason for the application of subsection (1)(c) was failure to obtain authorisation, the defendant must also show that all reasonable steps to obtain authorisation had been taken.
- (3) The defence under subsection (1)(c) does not apply if the designation was in force when the conservation covenant was created.
- (4) The defence of statutory authority (which applies in relation to the infringement of rights such as easements by a person acting under statutory authority) applies in relation to breach of an obligation under a conservation covenant.
- (5) In this section—

“authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general;

“statutory control” means control imposed by provision contained in, or having effect under, an Act.

Discharge and modification

127 Discharge of obligation of landowner by agreement

- (1) The responsible body under a conservation covenant and a person who holds the qualifying estate in respect of any of the land to which an obligation of the landowner under the covenant relates may, by agreement, discharge from the obligation any of the land in respect of which the person holds that estate.
- (2) Subsection (3) applies to—
 - (a) the responsible body under a conservation covenant, and
 - (b) a person who is a successor of the landowner under the covenant by virtue of holding an estate in land which—
 - (i) is an estate in respect of any of the land to which an obligation of the landowner under the covenant relates, and
 - (ii) is derived (whether immediately or otherwise) from the qualifying estate.
- (3) Those persons may, by agreement, discharge the estate in land mentioned in subsection (2)(b) from the obligation in respect of any of the land to which the obligation relates.

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- (4) Any power under this section is exercisable by agreement executed as a deed by the parties which specifies—
- (a) the obligation to which the discharge relates,
 - (b) the land to which the discharge relates, and
 - (c) the estate in land by virtue of which the power is exercisable.

128 Discharge of obligation of responsible body by agreement

- (1) A person to whom an obligation of the responsible body under a conservation covenant is owed by virtue of the person holding an estate in land may, by agreement with the responsible body, discharge the obligation, so far as owed in relation to that estate, in respect of any of the land in respect of which the person is entitled to the benefit of the obligation.
- (2) The power under this section is exercisable by agreement executed as a deed by the parties which specifies—
- (a) the obligation to which the discharge relates,
 - (b) the land to which the discharge relates, and
 - (c) the estate in land by virtue of which the power is exercisable.

129 Modification of obligation by agreement

- (1) A person bound by, or entitled to the benefit of, an obligation under a conservation covenant may, by agreement with the responsible body under the covenant, modify the obligation in its application to any of the land in respect of which the person is bound by, or entitled to the benefit of, it.
- (2) The power under subsection (1) does not include power to make a change which, had it been included in the original agreement, would have prevented the provision of the agreement that gave rise to the obligation being provision in relation to which the conditions in section 117(1) were met.
- (3) The power under this section is exercisable by agreement executed as a deed by the parties which specifies—
- (a) the obligation to which the modification relates,
 - (b) the land to which the modification relates, and
 - (c) the estate in land by virtue of which the power is exercisable.
- (4) If an obligation under a conservation covenant is modified by an agreement under this section, the modification binds—
- (a) the parties to the agreement, and
 - (b) any person who, as respects any of the land to which the modification relates, becomes a successor of a person bound by the modification.
- (5) In subsection (4)(b) “successor of a person bound by the modification”, means a person who holds, in respect of any of the land to which the modification relates—
- (a) the estate held by the person bound by the modification when the modification was agreed, or
 - (b) an estate in land derived (whether immediately or otherwise) from that estate after the modification is agreed.

130 Discharge or modification of obligation by Upper Tribunal

- (1) Schedule 18 makes provision about the discharge or modification of an obligation under a conservation covenant on application to the Upper Tribunal.
- (2) Where any proceedings by action or otherwise are taken to enforce an obligation under a conservation covenant, any person against whom the proceedings are taken may in such proceedings apply to the High Court or the county court for an order giving leave to apply to the Upper Tribunal under Schedule 18 and staying the proceedings in the meantime.
- (3) No application under section 84(1) of the Law of Property Act 1925 (which enables the Upper Tribunal on application to discharge or modify a restriction arising under covenant or otherwise) may be made in relation to an obligation under a conservation covenant.

Replacement etc of responsible body

131 Power of responsible body to appoint replacement

- (1) The responsible body under a conservation covenant may appoint another responsible body to be the responsible body under the covenant, unless the covenant otherwise provides.
- (2) The power under subsection (1) is exercisable by agreement executed as a deed by the appointor and appointee.
- (3) In the case of a conservation covenant registered in the local land charges register, an appointment under subsection (1) only has effect if the appointor supplies to the Chief Land Registrar the information necessary to enable the Registrar to amend the registration.
- (4) In the case of a conservation covenant relating to land in an area in relation to which section 3 of the Local Land Charges Act 1975 (as substituted by paragraph 3 of Schedule 5 to the Infrastructure Act 2015) does not yet have effect—
 - (a) the references in subsection (3) to the local land charges register and the Chief Land Registrar are to the appropriate local land charges register and the authority responsible for that register, but
 - (b) subsection (3) does not apply to an appointment by that authority.
- (5) Appointment under subsection (1) has effect to transfer to the appointee—
 - (a) the benefit of every obligation of the landowner under the conservation covenant, and
 - (b) the burden of every obligation of the responsible body under the covenant.
- (6) Appointment under subsection (1) does not have effect to transfer any right or liability in respect of an existing breach of obligation.
- (7) A body appointed under subsection (1) as the responsible body under a conservation covenant must notify its appointment to every person who is bound by an obligation of the landowner under the covenant.

132 Body ceasing to be a responsible body

- (1) Subsections (2) and (3) apply if a body which is the responsible body under a conservation covenant ceases to be a designated body.
- (2) The body ceases to be the responsible body under the conservation covenant.
- (3) The following transfer to the Secretary of State—
 - (a) the benefit of every obligation of the landowner under the covenant, and
 - (b) the burden of every obligation of the responsible body under the covenant.
- (4) Subsection (3) does not have effect to transfer any right or liability in respect of an existing breach of obligation.
- (5) If subsection (3) has effect in relation to a conservation covenant, the Secretary of State becomes custodian of the covenant until—
 - (a) an appointment under section 131(1) by the Secretary of State has effect in relation to the covenant, or
 - (b) the Secretary of State makes an election under subsection (6) in relation to the covenant.
- (6) If custodian of a conservation covenant, the Secretary of State may elect to be the responsible body under the covenant by giving written notice of election to every person who is bound by an obligation of the landowner under the covenant.
- (7) The Secretary of State may, as custodian of a conservation covenant—
 - (a) enforce any obligation of the landowner under the covenant, and
 - (b) exercise in relation to the covenant any power conferred by this Part on the responsible body under the covenant.
- (8) In relation to any period as custodian of a conservation covenant, the Secretary of State has no liability with respect to performance of any obligation of the responsible body under the covenant.

Miscellaneous

133 Effect of acquisition or disposal of affected land by responsible body

If the responsible body under a conservation covenant acquires an estate in land to which an obligation under the covenant relates (whether an obligation of the landowner or of the responsible body under the covenant)—

- (a) the acquisition does not have effect to extinguish the obligation,
- (b) section 122(2)(b) applies to the body as it would apply to any other person acquiring the estate in land in the same circumstances, and
- (c) any obligation of the responsible body under the covenant continues to bind the body in accordance with this Part.

134 Effect of deemed surrender and re-grant of qualifying estate

- (1) Subsection (2) applies if a term of years absolute which is the qualifying estate in relation to an obligation under a conservation covenant is deemed to be surrendered and re-granted by operation of law.

- (2) In the application of sections 122, 123 and 127 to the period after the deemed surrender, references to the qualifying estate are to be read as including a reference to the term of years deemed to be granted.

135 Declarations about obligations under conservation covenants

- (1) The court or Upper Tribunal may on the application of any person interested declare—
- (a) whether anything purporting to be a conservation covenant is a conservation covenant,
 - (b) whether any land is land to which an obligation under a conservation covenant relates,
 - (c) whether any person is bound by, or entitled to the benefit of, an obligation under a conservation covenant and, if so, in respect of what land,
 - (d) what, upon the true construction of any instrument by means of which an obligation under a conservation covenant is created or modified, is the nature of the obligation.
- (2) No application under section 84(2) of the Law of Property Act 1925 (which enables the court on application to make declarations about restrictions under instruments) may be made in relation to an obligation under a conservation covenant.
- (3) In this section “the court” means the High Court or the county court.

136 Duty of responsible bodies to make annual return

- (1) A designated body must make an annual return to the Secretary of State stating whether, during the period to which the return relates, there were any conservation covenants under which an obligation was owed to it as the responsible body.
- (2) If there were any such conservation covenants, the annual return must—
- (a) state the number of conservation covenants;
 - (b) state, for each conservation covenant, the area of the land in relation to which the body was owed any obligation as the responsible body.
- (3) The annual return must also give any information that is prescribed under subsection (4).
- (4) The Secretary of State may by regulations make provision about annual returns to be made by a designated body.
- (5) The provision which may be made under subsection (4) includes, in particular, provision—
- (a) prescribing information to be included in an annual return (but see subsection (10)), and
 - (b) provision as to the period to which an annual return is to relate and the date by which an annual return is to be made.
- (6) Subject to any provision made as mentioned in subsection (5)(b)—
- (a) the period to which an annual return is to relate, and
 - (b) the date by which an annual return is to be made,
- are such period and date as the Secretary of State may direct.

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- (7) On giving a direction under subsection (6) the Secretary of State must take all reasonable steps to draw the direction to the attention of each responsible body affected by it.
- (8) A direction under subsection (6) may be varied or revoked by a further such direction.
- (9) Regulations under subsection (4) and directions under subsection (6) may make—
 - (a) provision of general application, or
 - (b) provision applicable only to one or more particular responsible bodies or to responsible bodies of a particular description.
- (10) Any information prescribed for inclusion in an annual return made by a designated body must be information about or connected with—
 - (a) the designated body;
 - (b) its activities over the period to which the return relates;
 - (c) any conservation covenant under which an obligation was owed to it as the responsible body during that period;
 - (d) the land in relation to which it was owed such an obligation.
- (11) Regulations under this section are subject to the negative procedure.

Supplementary

137 Crown application

Schedule 19 makes provision about the application of this Part to Crown land.

138 Index of defined terms in Part 7

The following Table sets out expressions defined or explained in this Part for general purposes.

<i>Expression</i>	<i>Provision</i>
conservation covenant	section 118(1)
conservation covenant agreement	section 117(1)
conservation purpose	section 117(3)
conserving (something)	section 117(4)
designated body	section 119(1)(b)
natural environment (in relation to land)	section 117(4)
qualifying estate (generally)	section 117(4)
the qualifying estate (in relation to an obligation under a conservation covenant)	section 117(4)
responsible body	section 119

139 Consequential amendments relating to Part 7

Schedule 20 makes consequential amendments relating to this Part.