



## **Game & Wildlife Conservation Trust<sup>1</sup> response to the Defra consultation on Conservation Covenants**

### **Introduction**

We remain of the view, as expressed in our submission to the Law Commission consultation in June 2013, that conservation covenants have the potential to create and preserve conservation assets through a partnership between private landowners and conservation organisations acting as responsible bodies; and, to provide an alternative to compulsory designation as participation is voluntary and the agreement parties retain responsibility for drawing up and implementing the covenant. In our experience such an approach is more likely to deliver positive environmental outcomes at no cost to the public purse.

Conservation covenants should:

- be a simple, low cost solution to conserving our conservation assets for future generations;
- be a voluntary contract entered into by two parties that binds future title without the need for neighbouring land to benefit from it; and,
- have effective safeguards against breaches and mechanisms to achieve appropriate remedy as public confidence that conservation covenants offer a secure way of protecting nature is essential.

As a general point we are concerned that the direction the consultation paper is indicating has the potential to limit the use of conservation covenants through over-complicating their creation and oversight. Given that the

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<sup>1</sup> The Game & Wildlife Conservation Trust (GWCT) is a leading UK charity conducting conservation science to enhance the British countryside for public benefit. For over 80 years we have been researching and developing game and wildlife management techniques. We use our research to provide training and advice on how best to improve the biodiversity of the countryside. We promote our work to conservationists, including farmers and landowners and offer an on-site advisory service on all aspects of game and wildlife management, so that Britain's countryside and its wildlife are enhanced for the public benefit.

concept of conservation covenants is new, we suggest that Government should seek to review progress after a period of say 5 years and allow for adjustment in the light of experience.

**Question 1: Should conservation covenants be introduced into the law of England?**

Yes we support their introduction subject to comments below.

**Question 2: What demand do you foresee for conservation covenants? What is the basis for your view?**

No response.

**Question 3: What potential do you foresee for conservation covenants to deliver lasting conservation outcomes? What is the basis for your view?**

See introduction.

**Question 4: What use would you make of conservation covenants?**

The Game & Wildlife Conservation Trust would seek to work with landowners in a number of areas, for example:

1. As an alternative to compulsory designation where a voluntary approach to conservation and the creation of a supporting management plan would protect the way in which the land has traditionally been managed;
2. To protect the legacy of significant, long term investment in habitat and species conservation on individual estates/farms;
3. To support and ensure the appropriate delivery of biodiversity offsetting initiatives;
4. To support alternative conservation approaches such as Community Orchards to preserve genetic resources; and,
5. To look for opportunities to develop PES (Payment for ecosystem services) schemes which encourage farmers/landowners to manage their natural resources (soils, water etc) sustainably.

**Question 5: What, if any, unintended consequences might there be? What is the basis for your view?**

In some situations where a landowner may wish to create a voluntary conservation covenant in order to avoid the possibility of a SSSI designation (a likelihood given the prescriptive nature of designations – see answer to Q4 above), the landowner may have no particular interest in the conservation asset in question. In such instances it may be that the responsible body is the only “active party” with responsibility for all aspects of the conservation covenant. Such situations may be more likely to result in breaches or applications to discharge. Other examples might also be long term covenants which perpetuate family differences or fail to adapt to changing attitudes to conservation.

The role of the Lands Chamber as a forum for resolving issues will be important in this context.

**Question 6: What changes, if any, to the Law Commission proposals do you consider necessary to make conservation covenants more effective tools?**

We believe that the existing wording describing the conservation purpose should specifically refer to “the creation, restoration or enhancement of appropriate habitat provision for species conservation”.

**Question 7a: Should tenants be able to enter into conservation covenants?**

Yes subject to landowner/freeholder consent (see 8a below) although such a possibility will ultimately depend upon the terms of the tenancy.

**Question 7b: If so, do you agree that the qualifying threshold for the remaining length of a lease should be set at a minimum of 15 years?**

**Question 7c: If not, what level would you set it at and why?**

Whilst the 7 year term proposed by the Law Commission could be considered too short given the long term nature of conservation, setting a statutory minimum is considered unwise as it may result in some proposals not being taken forward, particularly where there is a joint ambition between tenant and freeholder. In addition, given the ambitions for conservation covenants, the

proposed minimum could exclude many agricultural tenancies (both AHA 1986 and FBTs) given current agricultural tenancy terms.

We propose that accompanying non-statutory guidance (and model terms) advises a minimum of 15 years and that it sets out the pros and cons of establishing conservation covenants with a shorter period involved. Given it is recommended that freeholder consent be required and that tenancy law protects against any impact on the landlord's reversion, this would provide sufficient protection against a tenant entering into a conservation covenant where the outcome would affect the land's value to the owner or subsequent tenants (despite the conservation covenant ceasing to exist at the end of the lease) e.g. re-wetting land thereby taking it out of agricultural production.

**Question 8a: Should tenants be required to secure the agreement of the freeholder before entering into a covenant?**

Yes (and we suggest tenants and freeholders should be required to inform all rights holders within a specified notice period).

**Question 8b: If not, what is the basis for your view?**

n/a

**Question 8c: Should freeholders be required to secure the consent of a tenant before entering into a covenant when the land affected is leased?**

Yes or at least advise the tenant (and other rights holders) although we note that the extent to which a landlord can subscribe to a conservation covenant will be limited by the terms of the tenancy.

**Question 9a: Should public oversight provisions require responsible bodies to provide details of the location and headline conservation objectives of conservation covenants held by them?**

Yes.

**Question 9b: If not, what would you propose and what is the basis of your proposed alternative?**

n/a

**Question 10a: Should for-profit bodies be able to hold conservation covenants?**

No. We do not support this amendment to the Law Commission proposals as currently drafted due to the inherent nature of a for-profit entity and our concern that this might impact on its ability to operate in the public interest. However we recognise that it is important not to limit the range of responsible bodies involved as some for-profit companies have the necessary expertise in this area and as conservation covenants have a role in payment for ecosystem services schemes and biodiversity offsetting initiatives where for-profit companies will be involved. Therefore we suggest that for-profit companies could be permitted to establish a charity for this very purpose, perhaps in combination with a charitable third party. In this respect we draw Government's attention to the following point made in the Law Commissions report on Conservation Covenants – "It is ... possible that a private organisation might wish to set up a charity for conservation purposes, which could then apply to become a responsible body."<sup>2</sup> Public confidence that covenants offer a secure way of protecting nature is essential.

**Question 10b: Should there be additional mechanisms introduced for for-profit bodies which provide assurances that the covenants they hold are delivering conservation outcomes for the public good? If so, what mechanisms would you suggest?**

See answer to 10a above.

**Question 11a: Do you consider the Law Commission proposals, with the proposed amendments set out above, as containing sufficient safeguards to ensure they are not abused?**

Yes although if for-profit companies are included as responsible bodies additional safeguards requiring the discharge of their public interest duty as specified in the conservation covenant should be considered.

**Question 11b: If not, what changes would you make?**

See answer to 11a above.

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<sup>2</sup> Paragraph 4.56, p60.

**Question 12a: Do you consider the Law Commission proposals, with the proposed amendments set out above, as simple, practical and capable of delivering lasting conservation outcomes?**

Yes subject to previous comments.

**Question 12b: If not, what changes would you make to them?**

n/a

**Question 13a: Do you consider the Law Commission proposals, with the proposed amendments set out above, contain sufficient safeguards to ensure they are not used to block development, or otherwise abused?**

Yes.

**Question 13b: If not, would you support additional safeguards? Please give details.**

n/a

**Question 14: What alternative or supplementary processes might be used to seek remedies against breaches of conservation covenants? If so, what do you see as their advantages and drawbacks?**

We consider, given the voluntary nature of conservation covenants and the involvement of a responsible body approved by the Secretary of State, that significant breaches are likely to be minimal and so the existing Law Commission proposals are sufficient.

However breaches of the conservation covenant could simply be failure to undertake specified actions in the management plan rather than flagrant breaches leading to damage or neglect. Proportionality is therefore important and in the case of a minor breach a simple, alternative, low-cost solution to ensure compliance is required.

We suggest that there could be a role for application to the Lands Chamber, which has relevant experience and expertise, whereby the approach would be to seek a consensus remedy, such as a modification to the conservation covenant or some other form of remedial action, with the objective of ensuring the delivery of the public interest rather than seeking punitive damages.

We envisage that an alternative or supplementary process should be a low cost option in order to ensure that opportunities to address minor breaches/disputes are taken before the damage/neglect reached significant levels and an injunction is required.

***Game & Wildlife Conservation Trust***  
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