

Natural Resources Wales

Board Meeting

9th July 2013

Paper Title	Law Commission Conservation Covenants Consultation
Paper Reference:	NRW B (O) 23.13
Paper Sponsored By: Paper Authored By:	Trefor Owen Mari Sibley

Purpose of Paper:	Discussion /Decision
Recommendation:	1. That Natural Resources Wales supports the creation of a statutory conservation covenant regime. 2. That Natural Resources Wales is aware that it has been identified in the consultation document as a public body likely to be nominated by the Welsh Ministers to enter into, regulate and enforce the conservation covenants. 3. That Natural Resources Wales should only accept the nomination on condition of being able to fully recover its costs.
Decision Required:	That the Board support the Recommendations

Impact:	Impact on the Environment: A simple legal method of protecting or enhancing the conservation value of land will have a positive effect on private conservation activity. Impact on the Economy: A mechanism for ensuring biodiversity offsetting commitments are met will enable development and increase land values around areas subject to conservation covenants. Impact on Community: Individuals and groups will be able to enter into covenants with the Welsh Ministers to protect land used by communities. Impact on Knowledge: A register of conservation covenants on privately owned land will improve knowledge of conservation efforts and aid data collection.
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Issue

1. The UK Government sponsored Law Commission has issued a consultation document to obtain views on the creation of conservation covenants in England and Wales. Natural Resources Wales is a key consultee. The document proposes that a conservation covenant may be created between the Welsh Ministers and a private landowner. The Welsh Ministers will then nominate a 'responsible body' whose purpose is to protect and enhance the natural environment and its natural resources to manage and enforce the covenant. The consultation identifies Natural Resources Wales as a potential 'responsible body' along with suitable charities such as the National Trust and local authorities.
2. This paper outlines the functions that Natural Resources Wales may undertake if appointed as a 'responsible body' together with opportunities and associated resource implications.

Background

3. There is currently no simple legal mechanism by which a private landowner can protect land for conservation purposes or bind future owners to conservation obligations.
4. The Law Commission is proposing the creation of a statutory conservation covenant scheme. A conservation covenant will be a voluntary private agreement to create a long-lasting obligation to preserve and enhance the special features of land. The covenant will bind all future owners of the land and may only be lifted or varied by agreement between the parties or by a decision of the Lands Chamber of the Upper Tribunal.
5. Potential uses for conservation covenants for landowners are (i) as a way of providing a permanent offsetting obligation imposed as a planning condition for development (ii) as an alternative to a financial donation or (iii) as a way of securing payment for conservation action. A payment could, for example, be made to a farmer in exchange for a conservation covenant not to use chemical pesticides on land adjacent to a meadow and river. Public bodies may wish to use conservation covenants to protect elements of land sold to a private developer.
6. Statutory conservation covenants schemes currently exist in Scotland, the USA, Canada, Australia and New Zealand and have proven to be useful tools for protecting land and promoting private conservation efforts. The Scottish Ministers currently have 263 conservation covenants registered.

Proposals

7. If the Recommendations are agreed, Natural Resources Wales should respond positively to the Law Commission's consultation exercise and support the implementation of the statutory scheme, conditional upon obtaining additional Grant in Aid to enable full cost recovery. Natural Resources Wales should then work with Welsh Government colleagues to agree the terms of the nomination as a 'responsible body'. Welsh Government colleagues confirm that there will be no formal response to the consultation from Welsh Government but agree that Natural Resources Wales is the likely 'responsible body' nominee.

Risks

8. The Law Commission envisage that the 'responsible body' will perform a range of functions on behalf of the Minister. These include advising the landowner on the nature of the covenant and negotiating its terms, monitoring and regulating the covenant and enforcing any breach. Natural Resources Wales's actions in undertaking those functions will be subject to judicial review and reputational risk.

Financial Implications

9. Natural Resources Wales should only agree to be the responsible body on strict condition of being able to fully recover all its administration costs through additional Grant in Aid from the Welsh Government. The mostly costly aspects of the role would be legal fees for creating the covenant document and for any enforcement action. If it became necessary for Natural Resources Wales to seek an injunction to prevent activity that breached a covenant then legal costs could be in the range of £2,000 - £10,000.

10. The Law Commission consultation provides the example of New Zealand where there is 95.1% adherence to 1,723 covenants but notes that the probability of a breach increases slightly when land changes hands. The Law Commission therefore expects to see a slight increase in the need for enforcement action as the covenants mature.

11. Natural Resources Wales should mitigate the additional financial implications by negotiating the payment of its legal fees for establishing the covenant by the landowner and a percentage of costs may be reclaimed in the event of successful court action.

Legal and Compliance Issues

12. Conservation covenants would be a statutory scheme with duties enshrined in the enabling legislation.

13. Other legal issues such as enforcement are outlined in paragraph 9.

14. The remedy of judicial review of Natural Resources Wales's actions as the responsible body is available to a party with sufficient standing.

Communications

15. The Law Commission consultation document will be completed following the Board's decision.

17. A communications strategy will be developed to provide advice to interested landowners and to publicise Natural Resources Wales's role in the new statutory scheme.

Equality impact assessment (EqIA)

An EqIA is not required for this proposal.

Annex 1

The Law Commission Consultation on Conservation Covenants is available at

<http://lawcommission.justice.gov.uk/areas/conservation-covenants.htm>