

EXPLANATORY MEMORANDUM TO
THE LOCAL LAND CHARGES (AMENDMENT) RULES 2022

2022 No. 1149

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to help to implement a new form of local land charge, a conservation covenant, created by Part 7 of the Environment Act 2021 (the Act) following recommendations made by the Law Commission.

2.2 The instrument makes new rules in the Local Land Charges Rules 2018 (the 2018 Rules) to help to ensure that conservation covenants operate as intended.

2.3 Conservation covenant agreements are private, voluntary agreements between a landowner and a responsible body, such as a local authority or a charity, public or private sector organisation where some of its main purposes, functions or activities relate to conservation.

2.4 A conservation covenant is designed to deliver lasting conservation benefit for the public good. A conservation covenant sets out obligations in respect of the land which will be legally binding not only on the landowner but on subsequent owners of the land.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 The Act makes provision for a new form of local land charge, the conservation covenant. These covenants flow from conservation covenant agreements, as set out in section 117 of the Act, which are voluntary, private agreements between a landowner and a responsible body, executed as a deed, whose subject matter are the conservation of the natural environment and resources of land and/or places of archaeological, architectural, artistic, cultural or historic interest.

- 6.2 Specified conditions must be met for an agreement to qualify as a conservation covenant agreement – the agreement must have a conservation purpose and be intended by the parties to be for the public good.
- 6.3 Conservation covenants are those parts of a conservation agreement given effect as covenants by section 118 of the Act. Once created they bind both current and future landowners and the responsible body.
- 6.4 Under the Act the responsible body may be the Secretary of State or a body designated by the Secretary of State, which may be a local authority or a charity, public or private sector organisation where some of its main purposes, functions or activities relate to conservation.
- 6.5 Under section 120 of the Act, a conservation covenant is also a local land charge. The primary legislation governing local land charges is the Local Land Charges Act 1975. Local land charges are charges or restrictions on land, normally imposed by public authorities under statutory powers. They affect whoever owns the land and so are registrable to alert purchasers to their existence.
- 6.6 The Local Land Charges Rules 2018 make provision for how matters are to be registered as local land charges, and also about the form and content of applications relating to local land charges.
- 6.7 The 2018 Rules provide for the variation or cancellation of a local land charge, which are to be made by “the person by whom the charge is enforceable”. For most local land charges, this is the local authority who has imposed the charge. However, in the case of a conservation covenant – as a voluntary agreement between two parties – this could be either the responsible body or the landowner, both of whom may enforce the obligations of the other. Therefore, to ensure that only the responsible body or the Secretary of State, both of whom may enforce the obligations of a landowner, shall vary or cancel the local land charge, references in the Rules to “the person by whom the charge is enforceable” need to be amended.

7. Policy background

What is being done and why?

- 7.1 The overall aim of the Environment Act 2021 is to provide a legal framework for environmental governance and make provision for specific improvements and protection of the environment, such as by conservation covenants. In their absence, landowners and responsible bodies have had to rely on complex and often expensive legal workarounds, or the limited number of existing statutory covenants that enable certain covenants to be enforced by specified bodies (for example, the National Trust). Similar approaches to conservation covenants are found in other jurisdictions but had not been available in England and Wales prior to the Act.
- 7.2 The Law Commission were commissioned for a detailed law reform project to look at whether there was a case for introducing conservation covenants and if so the form of statutory scheme that should be adopted. The Law Commission reported in 2014 and published a draft Bill setting out recommendations for the introduction of conservation covenants. The Government made a commitment in 2016 to legislate to give effect to the reforms as part of its commitment to improve the environment. And to assist landowners with the means of conserving natural habitats and heritage assets for the long-term. In 2019 the Government consulted on the key features of the Law Commission’s scheme for conservation covenants.

- 7.3 The resulting conclusions, which were implemented by the Act, included that conservation covenants should be voluntary, private, legally binding agreements established between a landowner and a responsible body; and that the agreements should deliver a conservation purpose which is for the public good. The proposed covenants would contain obligations which could be either positive or restrictive on landowners and the responsible bodies and be binding on all future owners.
- 7.4 A conservation covenant will last indefinitely on freehold land, or until the end of the tenancy on leasehold land, unless the parties agree a shorter period. A conservation covenant could be modified or ended by agreement of the parties or, alternatively, upon a dispute between them that was referred to the Upper Tribunal of the Lands Chamber for determination.
- 7.5 The Act makes provision with respect to breaches of a conservation covenant and the remedies which may be pursued through the courts by the parties. Sanctions for breaches include an injunction to prevent damaging activity; an order requiring specific performance to deliver the conservation outcomes; and the payment of damages, including exemplary damages.
- 7.6 This instrument, which amends the 2018 Rules to make specific provision for conservation covenants, is designed to ensure the proper implementation of the policy intention underpinning the Act, which is to ensure that the obligations for variation and cancellation of local land charges are on the responsible body or the Secretary of State.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.7 Prior to the Act no specific conservation covenant was available or enforceable, as set out in 7.1 and therefore there were no specific rules in the 2018 Rules that applied.

Why is it being changed?

- 7.8 The legislation ensures an appropriate mechanism under the 2018 Rules for variation and cancellation of the registrations of conservation covenants on the local land charges register.

What will it now do?

- 7.9 The law will require that the variations and cancellations of the registrations of conservation covenants as local land charges are the responsibility of, and may only be actioned by, the responsible body or the Secretary of State.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no plans to consolidate the Rules at this point in time although their operation is kept under review.

10. Consultation outcome

- 10.1 The Law Commission originally consulted on conservation covenants in 2013 in developing law reform proposals, and this process informed the conclusions drawn and recommendations made in the Commission's final report in 2014. The Law Commission's consultation paper and the responses received are available online¹.
- 10.2 The Government undertook a further consultation in 2019 on the Law Commission's proposals for conservation covenants and sought additional information on the perceived benefits of the reforms, the safeguards which should be introduced and any possible unforeseen consequences. The Government's consultation is available online². 112 responses were received and the Government's response document is available online³. The response records the significant support expressed for the introduction of conservation covenants.

11. Guidance

- 11.1 The Secretary of State has developed guidance which will be published before the end of 2022.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the use of conservation covenants will be voluntary. Businesses are only likely to be involved in conservation covenants, either as a landowner, responsible body, or indirectly through an arrangement with the parties, where they consider there to be a benefit from doing so.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses, but no action is thought necessary to assist small businesses beyond publication of the guidance on the legislation.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation will be via the annual reports that responsible bodies are required to submit to Defra
- 14.2 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Peter Farr at the Ministry of Justice email: peter.farr@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Parkin, Deputy Director for Civil Justice and Law, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

¹ <https://www.lawcom.gov.uk/project/conservation-covenants/>

² <https://consult.defra.gov.uk/wildlife-management/conservation-covenants/>

³ <https://www.gov.uk/government/consultations/conservation-covenants/outcome/summary-of-responses-and-government-response>

15.3 The Parliamentary Under Secretary of State, Lord Bellamy, KC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.