

Precedent clauses to be used in a will trust to protect private land for biodiversity/ecological purposes gifted to an individual following the landowner's death

Currently, there is no statutory footing on which to register a conservation covenant upon a parcel of land in Wales. Protecting the land in the hands of another individual in Wales currently requires a third party to enforce the restrictions placed upon the use of the land.

For gifts of land on the death of a landowner, the testator may gift the land to a set of named trustees to be held for the benefit of another (beneficiaries) subject to certain conditions and restrictions. The control as to the use of the land comes from the trustees' ability to bring the beneficiary's interest to an end should they fail to utilise the land in a way that protects and promotes local habitats and biodiversity.

The trustees would therefore hold the land upon trust for the benefit of a set of named beneficiaries. The trustees shall have the power to bring the trust to an end and thereby enforce the restrictions set out by the testator.

It would also mean that should the law change in Wales and conservation covenants are introduced by statute, the trustees may use their powers, if adequately drafted, to place such a covenant on the land and thereafter transfer the legal title to the beneficiary, thereby bringing the trust to an end.

Perhaps, however, a trust would provide the testator with more flexibility than just imposing a statutory covenant in any event. The testator may set out to the trustees exactly what they would like to achieve and protect, how the land should be cultivated sympathetically and habitats created and managed. It is recognised that legislation, regulation, guidelines and best practice change over time and that the occupier of the land may need to operate in a certain manner so as to obtain government subsidies and the need to secure reliefs for taxation is not underestimated. For this reason, it is better to provide the trustees with the necessary powers to control the way the land is used and managed but not to bind their hands by including in the will a strict set of conditions to follow.

To this end, the testator leaves the land to the trustees, provides the names of the beneficiaries, gives the trustees various powers, including the power to bring the trust in favour of the beneficiary to an end.

The testator would leave the trustees a Letter of Wishes, setting out what they are looking to achieve and their opinion on how this can best be achieved. This letter is for guidance only and trustees are not obliged to follow it. It means that trustees are given flexibility to follow contemporaneous legislation and guidelines and balance this with the needs of the beneficiary; it enables them to consider carefully whether the trust should be brought to an end where the conditions they set upon the beneficiary occupying the property are not being met or whether the beneficiary needs more time and assistance to change their ways. Alternatively, the trustees and the beneficiary may be happy for the land to be rented out and in which case there should be sufficient trust powers drafted in the will to enable this and for the trustees to set the terms.

The flexibility is of great benefit to change as required over time whilst following the testator's wishes as far as possible. However, due to the flexibility and power that the trustees will have, it is of vital importance to choose the right trustees. The appointment of professional trustees can help apply the right balance and ensure impartiality.

The will must be careful to include all the powers for the trustees to be able to fulfil their role and follow the guidelines set out in the Letter of Wishes. A full set of powers is advisable and should be

careful to include (but most definitely not limited to) powers relating to their control of the use of the land without discussion or recourse to any beneficiary, the power to exclude all beneficiaries from occupying the land, to employ another to manage the land and enter into any agreements required for this, or any other, purpose and the extension or clarification as to the power to hand over day to day management of the land to another, including a beneficiary, subject to the supervision of the trustees.

There are other elements to consider if employing such provisions in a will, such as whether the testator has a duty to financially provide for others and whether the provisions in their will, as a whole, meets their obligations. A beneficiary may for example be able to make a claim under the Inheritance (Provision for Family and Dependents) Act 1975 if not adequately provided for or possibly make an equitable claim where it may be considered by a court for it to be unconscionable for them not to benefit in a certain manner. Another element to consider is the application and effect of tax, such as but not limited to the availability of agricultural and business reliefs.

Please note:

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