



# Ancient Monuments and Archaeological Areas Act 1979

1979 CHAPTER 46

## PART I

### ANCIENT MONUMENTS

#### *Guardianship of ancient monuments*

#### **12 Power to place ancient monument under guardianship**

- (1) Subject to subsection (4) below, a person who has—
  - (a) an interest of any description mentioned in subsection (3) below in an ancient monument situated in England and Wales; or
  - (b) any heritable interest in an ancient monument situated in Scotland;may, with the consent of the Secretary of State, constitute him by deed guardian of the monument.
- (2) Subject to subsection (4) below, a person who has any such interest in an ancient monument may with the consent of any local authority in or in the vicinity of whose area the monument is situated constitute that authority by deed guardians of the monument.
- (3) The interests in an ancient monument situated in England and Wales which qualify a person to establish guardianship of the monument under subsection (1) or (2) above are the following—
  - (a) an estate in fee simple absolute in possession;
  - (b) a leasehold estate or interest in possession, being an estate or interest for a term of years of which not less than forty-five are unexpired or (as the case may be) renewable for a term of not less than forty-five years ; and
  - (c) an interest in possession for his own life or the life of another, or for lives (whether or not including his own), under any existing or future trust for sale

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*Status: This is the original version (as it was originally enacted).*

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under which the estate or interest for the time being subject to the trust falls within paragraph (a) or (b) above.

- (4) A person who is not the occupier of an ancient monument may not establish guardianship of the monument under this section unless the occupier is also a party to the deed executed for the purposes of subsection (1) or (2) above.
- (5) Any person who has an interest in an ancient monument may be a party to any such deed in addition to the person establishing the guardianship of the monument and (where the latter is not the occupier) the occupier.
- (6) In relation to any monument of which the Secretary of State or any local authority have been constituted the guardians under this Act, references below in this Act to the guardianship deed are references to the deed executed for the purposes of subsection (1) or (as the case may be) subsection (2) above.
- (7) A guardianship deed relating to any ancient monument situated in England and Wales shall be a local land charge.
- (8) A guardianship deed relating to any ancient monument situated in Scotland may be recorded in the Register of Sasines.
- (9) Every person deriving title to any ancient monument from, through or under any person who has executed a guardianship deed shall be bound by the guardianship deed unless—
  - (a) in the case of a monument in England and Wales, he derives title by virtue of any disposition made by the person who executed the deed before the date of the deed; or
  - (b) in the case of a monument in Scotland, he is a person who in good faith and for value acquired right (whether completed by infertment or not) to his interest in the monument before the date of the deed.
- (10) The Secretary of State or a local authority shall not consent to become guardians of any structure which is occupied as a dwelling house by any person other than a person employed as the caretaker thereof or his family.
- (11) Except as provided by this Act, any person who has any estate or interest in a monument under guardianship shall have the same right and title to, and estate or interest in, the monument in all respects as if the Secretary of State or (as the case may be) the local authority in question had not become guardians of the monument.

### **13 Effect of guardianship**

- (1) The Secretary of State and any local authority shall be under a duty to maintain any monument which is under their guardianship by virtue of this Act.
- (2) The Secretary of State and any local authority shall have full control and management of any monument which is under their guardianship by virtue of this Act.
- (3) With a view to fulfilling their duty under subsection (1) above to maintain a monument of which they are the guardians, the Secretary of State or any local authority shall have power to do all such things as may be necessary for the maintenance of the monument and for the exercise by them of proper control and management with respect to the monument.

- (4) Without prejudice to the generality of the preceding provisions of this section, the Secretary of State or any local authority shall have power—
- (a) to make any examination of a monument which is under their guardianship by virtue of this Act;
  - (b) to open up any such monument or make excavations therein for the purpose of examination or otherwise; and
  - (c) to remove the whole or any part of any such monument to another place for the purpose of preserving it.
- (5) The Secretary of State or any local authority may at any reasonable time enter the site of a monument which is under their guardianship by virtue of this Act for the purpose of exercising any of their powers under this section in relation to the monument (and may authorise any other person to exercise any of those powers on their behalf).
- (6) Subsections (2) to (4) above are subject to any provision to the contrary in the guardianship deed.
- (7) In this Part of this Act " maintenance " includes fencing, repairing, and covering in, of a monument and the doing of any other act or thing which may be required for the purpose of repairing the monument or protecting it from decay or injury, and " maintain " shall be construed accordingly.

#### **14 Termination of guardianship**

- (1) Subject to the following provisions of this section, where the Secretary of State or a local authority have become guardians of any monument under this Act, they may by agreement made with the persons who are for the time being immediately affected by the operation of the guardianship deed—
- (a) exclude any part of the monument from guardianship; or
  - (b) renounce guardianship of the monument;
- but except as provided above the monument shall remain under guardianship (unless it is acquired by its guardians) until an occupier of the monument who is entitled to terminate the guardianship gives notice in writing to that effect to the guardians of the monument.
- An occupier of a monument is entitled to terminate the guardianship of the monument if—
- (a) he has any interest in the monument which would qualify him to establish guardianship of the monument under section 12 of this Act; and
  - (b) he is not bound by the guardianship deed.
- (2) A local authority shall consult with the Secretary of State before entering into any agreement under this section.
- (3) Neither the Secretary of State nor a local authority may enter into any such agreement unless he or they are satisfied with respect to the part of the monument or (as the case may be) with respect to the whole of the monument in question—
- (a) that satisfactory arrangements have been made for ensuring its preservation after termination of the guardianship; or
  - (b) that it is no longer practicable to preserve it (whether because of the cost of preserving it or otherwise).

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- (4) An agreement under this section must be made under seal in the case of a monument situated in England and Wales.
- (5) Where in the case of a monument situated in Scotland the guardianship deed has been recorded in the Register of Sasines in accordance with section 12 of this Act an agreement under this section relating to that monument may also be so recorded.