

# Legal Developments

## Understanding guardianship

Many of the wonderful properties which English Heritage visitors and members enjoy are not actually owned by either the government or English Heritage but are in their guardianship. At some time in the past the actual owner has asked the relevant government department to become the guardian of the property and take over responsibility for its maintenance and management. English Heritage now manages these properties on behalf of DCMS and approximately two-thirds (260) of all the properties in its care are in guardianship. Generally, guardianship agreements have been used at the request of the owner to ensure the continued preservation of the most important examples of our heritage where the owner was unable or disinclined to commit the resources necessary to preserve the property. The government agreed to accept responsibility for management and maintenance and in return acquired certain rights over the property.

Guardianship was first introduced by the Ancient Monuments Act 1882 and has been developed and refined by subsequent legislation. The basic principle is that by accepting guardianship a guardian takes on full responsibility for the repair and maintenance of an ancient monument and gains extensive rights of 'control and management'; these, however, fall short of outright ownership of the property.

The Ancient Monuments and Archaeological Act 1979 is the legislation governing guardianship today and s12–15 contain the main provisions. Under s12 the Secretary of State, English Heritage and local authorities all have the power to become guardians of 'ancient monuments'. The organisation concerned takes on responsibility for maintaining the monument and also acquires control and management of the monument, but the freehold ownership is not disturbed by guardianship arrangements.

Once the monument has been taken into guardianship the guardian is under a statutory duty to maintain the property and has very wide powers to exercise 'control and management' and to do everything necessary for its

maintenance including archaeological investigation and the power to remove any part of the monument to another place to preserve it.

There is also a responsibility to provide public access and visitor facilities. Under the 1979 Act, a guardianship agreement can only be made by the person who owns absolutely the monument in question or has a leasehold interest with not less than 45 years remaining.

The powers in the Act are subject to any terms set out in the guardianship deed, although in practice this has usually done little more than constitute the relevant body as guardian and provide for access and/or rights of way to the monument for maintenance and/or the public. Very few guardianship deeds contain any greater detail. Guardianship is used rarely nowadays and only one property (Wigmore Castle in Hereford and Worcester) has been taken into guardianship in the last 10 years.

It is not thought that the current review of heritage protection legislation is likely to have any implications for the concept of guardianship.

For many years, guardianship took effect in perpetuity, similar to the National Trust's power to hold land inalienably. The intention was to give assurance to the owner placing a monument into guardianship that the future of their property was secure. The 1979 Act introduced for the first time the possibility of rescinding guardianship in certain closely specified circumstances, although no guardianship has been terminated to date. In view of the historical nature of some guardianships it may even be difficult to identify the current freehold owner of some monuments let alone consider returning responsibility for the monument to them, and English Heritage will therefore continue to safeguard these properties for public enjoyment and education.

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