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## THE ANCIENT MONUMENTS ACTS OF ENGLAND

P. S. Bellwood

The purpose of this paper, which was presented at the New Zealand Archaeological Association Conference at Turangi in May 1970, is to outline the powers of the English Ministry of Works with regard to the preservation of ancient monuments. For the purposes of the English acts, an Ancient Monument is any building, structure, cave or excavation whose preservation is deemed by the Minister of Works to be in the National interest.

The English laws concerning Ancient Monuments have developed in a rather piecemeal fashion from 1882, and have advanced from ineffectuality to a position of strength. While piecemeal development is surely better than no development, it is nevertheless certain that many monuments were lost in the period between 1882 and 1913, when the laws were finally provided with "teeth". While no figures for destruction in England can be provided, Clark (1934: 419) points out the sad case of a province in Germany (Ulzen, Hanover) where, of 219 megalithic monuments surviving in 1846, only 14 survived in 1914. All this took place before the days of massive earthmoving machines, and without legal powers to stop destruction a country such as England would soon be deprived of a great part of its heritage of monuments.

### THE ENGLISH ACTS

1. Under the Ancient Monuments Protection Act of 1882, 68 prehistoric monuments were listed as being of national importance. For all persons except the owner a fine for defacement was fixed at £5. The Commissioners of Works (predecessors of the present-day Minister of Works) had no rights to the titles of these monuments but, if an owner wished, he could constitute the Ministry of Works as guardian of a monument, in which case the Commissioners would be responsible for its upkeep. With the consent of the owner, the Commissioners could also purchase any monument. As Clark (1934: 415) pointed out, this act was virtually ineffectual in stopping destruction because the rights of the owner remained unimpaired.

2. A further Act of 1910 empowered the Commissioners of Works to become guardians at the request of the owner of any monument, excepting occupied dwelling-houses.

3. The Ancient Monuments Consolidation and Amendment Act 1913 was a turning point in English ancient monuments legislation, because it gave the Commissioners of Works powers to ensure compulsory preservation of any monument, if deemed necessary. The powers given by the 1913 Act remain as the core of the powers of the Ministry of Works today.

The terms of the 1913 Act make it clear that it was realised by this time that a situation in which the Ministry of Works could undertake guardianship of a monument only with the consent of the owner, was a situation unfavourable for the preservation of monuments. An Ancient Monuments Advisory Board was set up and empowered to inspect any monument of national importance which appeared to be in danger. If necessary, the Commissioners could then serve an eighteen-month preservation order, which could be extended by Parliament. Damage to any monument under a preservation order, by the owner or anyone, was punishable by a fine of £5 or imprisonment. Furthermore, if a monument under a preservation order was in clear danger from decay, then the Commissioners were empowered to make themselves guardians of the monument for the duration of the preservation order. They would then be responsible for upkeep, although title to the monument would still remain in the owner's hands.

The 1913 Act also instituted the scheduling system which still continues at present. The Minister of Works is responsible for the preparation of a list of scheduled monuments, i.e. monuments whose preservation is deemed to be of national importance. If the owner of any monument on the list wishes to carry out alterations of any kind, he must give one month's notice to the Minister, who may then serve a preservation order if it is deemed necessary. Failure to give notice is punishable by a fine of up to £100.

Hence the 1913 Act empowered the Commissioners of Works to stop destruction of any Ancient Monument (i.e. scheduled monument) in England. In many cases of course destruction cannot be stopped, especially in the case of large modern civil engineering projects. The work of scheduling has also been rather slow, so that monuments are still being destroyed because they are unrecorded. However, the 1913 Act gave the necessary "teeth" to the Ancient Monuments legislation, even though they cannot be guaranteed to bite in every situation.

4. The Ancient Monuments Act of 1931 extended the powers of the Commissioners of Works to the surrounds of the monument, so that sites could be preserved in their correct settings. These powers were slightly extended in 1966 by a Mines Act which prohibited any mining which would endanger the supports of an Ancient Monument.

Clearly, the 1931 Act imposed more restrictions on the owners of Ancient Monuments, and the Act allowed the Commissioners to provide compensation in cases of hardship.

5. In 1953 the Historic Buildings and Ancient Monuments Act empowered the Minister of Works to make grants for the maintenance of buildings of architectural or historic importance in private ownership. This was clearly an important step, for it enabled the Ministry to take action to stop decay of monuments which were not under its guardianship.

The powers of the Minister of Works with respect to Ancient Monuments at the present day derive mainly from the 1913 Act. The following section of this paper will examine the responsibilities of, firstly, the Ministry, secondly, local authorities, and, thirdly, the landowner, towards ancient monuments in England at the present day.

#### THE RESPONSIBILITIES OF THE MINISTRY OF WORKS

Approximately 11,000 monuments are listed today by the Ministry of Works as scheduled monuments, and some 600 of these are actually under the guardianship of the Ministry. In 1959-60 the Ministry spent almost £1,500,000 on upkeep and administration under the Ancient Monuments Acts; the sum today would certainly be much higher.

As defined above, a monument is any building, structure, cave or excavation, and an Ancient Monument for the purposes of the Acts is any monument scheduled by the Ministry of Works. Dwelling-houses cannot qualify as Ancient Monuments, and their preservation is partly the concern of the Minister of Housing and Local Government through the Town and Country Planning Acts. There are no age stipulations for a monument to qualify as an Ancient Monument, and Ministry lists usually include the following categories:

- Burial mounds and megaliths
- Camps and settlements
- Roman remains
- Linear earthworks
- ecclesiastical buildings
- Crosses
- Castles
- Other secular sites and buildings
- Bridges
- Miscellaneous

The scheduling of Ancient Monuments is apparently a slow process. In 1933 there were 2,205 scheduled monuments, 6,961 in 1950, 10,500 in 1963 and possibly 11,000 today (no accurate figures are available to me) in

England, Scotland and Wales together. It is estimated that England alone has some 15,000 monuments worthy of scheduling, and that the process of scheduling will not be completed until the year 2000. The Ancient Monuments Acts do require that monuments be scheduled by the Ministry, and it cannot be denied that scheduling is a lengthy and expensive process. If a scheduling system be instituted in New Zealand, then similar problems would immediately arise here.

Information on the staffing and organisation of the Ancient Monuments Branch of the Ministry of Works may be found in the Fifth Report of the Select Committee on Estimates, pages 6 and 7. The Ancient Monuments Architects Branch is responsible for making technical reports on monuments for the Ministry, and the Ancient Monuments Superintendents of Works are responsible for actual upkeep of monuments. The Inspectorate of Ancient Monuments provides reports for the Minister of monuments for which guardianship may be assumed, or a grant given. The Inspectorate also prepares lists of monuments to be considered for scheduling by the Ancient Monuments Board, commissions the writing of guide-books, and provides a laboratory staff for the treatment of finds from excavations. For rescue excavations, the Ministry employs a staff of field archaeologists on a part-time basis.

The recording of Ancient Monuments is not entirely the responsibility of the Ministry, and it should be noted that the Ordnance Survey, since its foundation in 1792, has been actively concerned with the surveying of ancient sites, and has published excellent period maps of Iron Age, Roman and Dark Age Britain (Phillips, 1959).

The powers and responsibilities of the Minister have already been detailed, but they will be summarised here. Due notice must be given to the owners of a monument of intent to schedule that monument, and the Minister is required to publish lists, at intervals, of scheduled Ancient Monuments. He may purchase or bequeath any monument, and may accept guardianship, although this does not give right to the title.

He may also contribute to the cost of upkeep of monuments not in his guardianship, and has powers to compensate in cases where scheduling may bring hardship. If a monument is in danger of decay he may serve an Interim Preservation Order, which will hold for 21 months unless extended by a Preservation Order. If deemed necessary, the Minister may become guardian of a monument under an Interim Preservation Order, without the consent of the owner.

#### THE RESPONSIBILITIES OF LOCAL AUTHORITIES

Local Authorities have many of the powers of the Ministry of Works. They can use the machinery described above to become guardians of monuments, and they can contribute towards the cost of upkeep of monuments in private ownership. However, they are not permitted to serve Interim Preservation Orders.

## THE RESPONSIBILITIES OF PRIVATE OWNERS AND THE GENERAL PUBLIC

An owner must give three months' notice to the Minister of intent to carry out alterations to an Ancient Monument. If he defaces a monument in any way, he may be punished if he has given no notice of intent, or if the monument is under a preservation order. Otherwise he is within his legal rights. Members of the public other than owners cannot deface an Ancient Monument.

If a monument is under threat of destruction the Minister of Works may persuade the owner to adopt other arrangements, enter into guardianship of the monument with the owner's consent, serve an Interim Preservation Order, or simply record the monument and allow destruction.

The Ancient Monuments Acts may be consulted in Halsbury's Statutes of England, volumes 17 and 33. General information concerning the Acts and their administration may be found in the Fifth Report from the Select Committee on Estimates, pages 1 to 13.

### RELEVANT PUBLISHED MATERIAL

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