

# Desecration of War Memorials (Scotland) Bill

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## Policy Memorandum

### Introduction

1. As required under Rule 9.3.3A of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Desecration of War Memorials (Scotland) Bill, introduced in the Scottish Parliament on 14 May 2025.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 68–EN);
  - a Financial Memorandum (SP Bill 68–FM); and
  - statements on legislative competence made by the Presiding Officer and the Member in charge of the Bill (SP Bill 68–LC).
3. This Policy Memorandum has been prepared by the Non-Government Bills Unit (NGBU) on behalf of Meghan Gallacher MSP (the Member) to set out the Member's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

## Policy objectives of the Bill

### Context

4. War memorials exist across Scotland to commemorate the impact of war, including the lives of people from Scotland who died in armed conflict. To many individuals, groups and communities – in particular serving Armed Forces personnel, veterans, bereaved families and wider communities – these memorials carry a special meaning and significance. They often occupy prominent sites in local communities, such as in parks and town squares, and are considered by many to be important public sites for remembrance. War memorials can also have educational and historical significance, by informing people about the impact of past wars on their communities.
5. To some bereaved relatives and friends of people who lost their lives in a war, but whose bodies were not recovered or repatriated, a war memorial is symbolic of a grave site and is viewed by them as such. As a result of the sentimental and emotional value that many people ascribe to war memorials, any attempt to vandalise or otherwise desecrate them can cause significant distress to those affected.

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6. At present, the desecration of war memorials is dealt with under the offence of vandalism, and related offences, which generally attracts what the Member considers to be relatively minor penalties. Given the significant meaning that war memorials have for many people, it is the Member's view that the vandalism or desecration of war memorials has a more significant negative impact on individuals, groups and communities than other, more common, types of vandalism such as the vandalism of a telephone box or a park bench. She considers that the negative impact and distress that the desecration of a war memorial can provoke ought to be recognised – above and beyond the cost of repair or restoration – in the charging, prosecuting and sentencing of individuals who engage in these acts.

## Rationale for new offence

7. The Member considers that, in the existing legal context and sentencing landscape, cases in which a war memorial has been destroyed, damaged or desecrated are treated no differently to cases in which a less significant or sentimental structure – such as a park bench, a lamppost or a public bin – has been vandalised. As highlighted in the Member's consultation document, she believes that this treatment “fails to take into account the emotive value of war memorials”,<sup>1</sup> which deserve an enhanced level of protection due to the negative effect that acts of desecration of these memorials can cause to serving Armed Forces personnel and veterans, as well as their families and wider communities. In other words, the Member believes that the current level of penalties at the courts' disposal in relation to such offences does not reflect the scale of the impact of the offence and, therefore, the punishment does not fit the crime.

8. To that end, this Bill introduces the new offence of “destroying, damaging or desecrating a war memorial” into Scots law, along with an associated range of penalties, giving courts the option to impose longer custodial sentences and/or higher fines than are currently available under the law of vandalism and related offences. Prosecutorial decisions in Scotland are a matter for the Crown Office and Procurator Fiscal Service. As in all cases, this means that it will be up to the prosecutor to decide which offence to prosecute an accused person under. However, the Member envisages that prosecutorial guidance could be produced to ensure that the new offence is used in all appropriate circumstances. The Member believes that this will have the effect of deterring such acts and providing greater protection for war memorials in Scots law, as well as increasing general awareness of the significance of war memorials and encouraging improved education on this matter.

9. In line with the Member's aim to provide an effective deterrent and enhance the level of protection afforded to war memorials, the Bill provides for the imposition of up to an unlimited fine and/or a maximum custodial sentence of 10 years' imprisonment upon those who are prosecuted and convicted under the new offence. The new maximum penalties will bring the options available to courts in line with those available to courts in England and Wales in relation to criminal damage of a memorial, under the Police,

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<sup>1</sup> [Proposed Desecration of War Memorials Prevention Scotland Bill Consultation Summary | Scottish Parliament](#) Section 4: Member's Commentary, page 34

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Crime, Sentencing and Courts Act 2022. The legislative context in England and Wales is set out in greater detail below, at paragraphs 21 to 26.

10. Following engagement with the veterans community, the Member considers that “lower level” offences – for instance, those committed by first-time offenders, young offenders, or those convicted of minor offences – could more usefully lead to the issuing of community payback orders (CPOs), which could potentially include compulsory attendance on an educational programme, rather than imprisonment.<sup>2</sup> However, the Member recognises that this is not a matter for legislation, but a decision for the courts to make on a case-by-case basis.

11. By introducing a specific offence into Scots law, with the possibility of higher penalties, the Member believes that, in addition to the monetary value of any damage caused, courts will be better equipped to consider the greater significance of war memorials to certain individuals and communities, as well as the distressing impact that the destruction, damage or desecration of a war memorial can have on them. The Member considers that, by taking these factors into account and with a wider range of sentences available, the courts will be able to impose more appropriate, higher penalties on individuals who intentionally or recklessly desecrate war memorials. It is hoped that this, in turn, will create a powerful deterrent to taking part in such acts, while also raising greater public awareness of the significance of war memorials, including their symbolic and cultural value, and encouraging the protection and preservation of them.

## Background

### Definition of a war memorial

12. At present, there is no agreed definition of what constitutes a war memorial. During the development of the Member’s Bill proposal, the following definitions were considered:

- “Any physical object created, erected or installed to commemorate those involved in or affected by war or conflict. This includes memorials to civilians and animals. [...] The main thing that makes an object a war memorial is if it marks the impact of war on people or animals. It is not a piece of military memorabilia or an object that remembers an anniversary of a conflict or somewhere people lived in wartime. It must commemorate people whose lives have been impacted by war.” (War Memorials Trust);<sup>3</sup>

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<sup>2</sup> Section 227A of the Criminal Procedure (Scotland) Act 1995, as amended by the Criminal Justice and Licensing (Scotland) Act 2010, contains provision about CPOs. Under section 227A(2), a “programme requirement” is one of the requirements that can be imposed on an offender through a CPO. A programme is defined by section 227P(2) of the 1995 Act as “a course or other planned set of activities, taking place over a period of time, and provided to individuals or groups of individuals for the purpose of addressing offending behavioural needs”.

<sup>3</sup> [About Us | War Memorials Online](#)

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- “any physical object, including a grave or headstone, created, erected or installed to commemorate those involved in or affected by a conflict or war, including civilians and animals” (Desecration of War Memorials Bill, UK Parliament);<sup>4</sup> and
- “A war memorial is any tangible object which has been erected or dedicated to commemorate war, conflict, victory or peace; or casualties who served in, were affected by or killed as a result of war, conflict or peacekeeping; or those who died as a result of accident or disease whilst engaged in military service.” (Imperial War Museum).<sup>5</sup>

13. Under these varying definitions, a wide range of items, monuments and other structures could be considered war memorials, for example: cenotaphs and sculptures; books of remembrance; dedicated buildings; church fittings; trophies and relics; additions to gravestones; and musical instruments.<sup>6</sup> However, it is generally agreed that for something to be considered a war memorial it must have a commemorative purpose relating to the impact of armed conflict.

14. The Member’s preferred definition of a war memorial, for the purposes of this Bill, is “a building or other structure, or any other thing, erected or installed on land (or in or on any building or other structure on land), or a garden or any other thing planted or grown on land, which has a commemorative purpose in respect of armed conflict”. She considers that this definition includes the examples set out above. Details of the Bill’s definition of a war memorial are set out later in this Memorandum, at paragraphs 43 to 47.

## Impact of war memorial desecration

15. As set out in the consultation document accompanying the Member’s draft proposal for this Bill, research carried out by the Member’s office found that, since 1996, there had been 66 “attacks” on war memorials in Scotland reported in the online media.<sup>7</sup> According to this research, almost 70% of these had occurred since 2014.<sup>8</sup> The Member considers that this data highlights an increase in the occurrence of such acts in recent years.

16. Some high-profile examples of war memorial desecration, identified by the Member in her consultation document, include the following:

- In November 2022, Edinburgh’s War Memorial was set on fire less than 24 hours after Remembrance Sunday services were held in the city, resulting in multiple wreaths being completely burnt and the city’s Stone of Remembrance being blackened with soot. This incident provoked widespread condemnation, including

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<sup>4</sup> [Desecration of War Memorials Bill - Parliamentary Bills | UK Parliament](#)

<sup>5</sup> [War Memorials Register Guidelines | Imperial War Museums](#)

<sup>6</sup> This list is not exhaustive. The Imperial War Museum’s definition includes a more detailed list, which is also non-exhaustive: [War Memorials Register Guidelines | Imperial War Museums](#).

<sup>7</sup> [Consultation | Meghan Gallacher](#)

<sup>8</sup> [Proposed Desecration of War Memorials \(Prevention\) \(Scotland\) Bill - consultation | Scottish Parliament](#), page 9

from the then First Minister, Nicola Sturgeon MSP, and Edinburgh's Lord Provost, Robert Aldridge;<sup>9</sup>

- In June 2021, a memorial commemorating volunteers who fought against the Franco regime in the Spanish Civil War, located in the Duchess of Hamilton Park in Motherwell, was graffitied with what appeared to be pro-fascist symbols and messages;<sup>10</sup> and
- In August 2018, a war memorial in Alexandra Park in Dennistoun, Glasgow, was reportedly petrol bombed a month before it was due to be unveiled.<sup>11</sup> Following this incident, the Friends of Dennistoun War Memorial group lodged a petition in the Scottish Parliament calling for the introduction of “legislation which recognises desecration or vandalism of war memorials as a specific criminal offence”.<sup>12</sup>

17. In June 2022, the Member held a members' business debate in the Scottish Parliament on the topic of better protection for Scotland's war memorials.<sup>13</sup> During the debate, MSPs from several political parties – including the Scottish National Party (SNP), the Scottish Conservative and Unionist Party and Scottish Labour – shared their concern regarding various acts of vandalism or desecration of war memorials in the areas they represent, and the distress that such incidents can cause to individuals and communities. Highlighting the impact of these offences and the perceived inadequacy of existing laws, the Member stated during her debate that:

“[M]any of the leading veterans charities in Scotland have condemned the attacks. Poppyscotland and Legion Scotland have regularly condemned the attacks on war memorials, and they are especially concerned about the detrimental impact that such attacks have on the mental health of the veteran community that they so passionately represent. [...]

“I do not feel that [existing] laws are tough enough, and they do not provide the necessary deterrents to stop such events from happening in the first place. If the legislation was adequate, there would not be an increasing number of attacks on the memorials.

“There is a massive difference between the graffiti and vandalism of a picnic table and that of a war memorial, yet under the current legislation both events are categorised in the same manner. That cannot be right.”<sup>14</sup>

18. Concerns have also been raised regarding the impact and cost of war memorial vandalism or desecration on volunteers who take responsibility for the maintenance of such memorials, particularly in light of the perceived increase in the frequency of such incidents. Media reporting of some incidents identified in the Member's research also referred to individual members of the public cleaning memorials following graffiti or other

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<sup>9</sup> [Edinburgh's War Memorial set on fire by vandals | BBC News](#)

<sup>10</sup> [Father and son clean Spanish Civil War memorial graffiti | BBC News](#)

<sup>11</sup> [Police hunt vandals after war memorial 'petrol bombed' | BBC News](#)

<sup>12</sup> [PE1893 Introduce legislation to protect Scotland's war memorials | Scottish Parliament](#)

<sup>13</sup> [Meeting of the Parliament: 15/06/2022 | Scottish Parliament](#)

<sup>14</sup> [Meeting of the Parliament: 15/06/2022 | Scottish Parliament](#)

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forms of vandalism.<sup>15</sup> In the foreword to her consultation document, the Member outlined her view that:

“Often it is community members who come together to clean up the damage. However, it can often require specialist equipment and experienced stone masons to carry out the repair work.

Local councils usually act quickly to restore these memorials to their previous condition, often within a matter of days. Due to the number of attacks targeting war memorials across Scotland, local action groups, such as Friends of Dennistoun War Memorial, have formed so they can take direct action [...]”<sup>16</sup>

19. Therefore, it is the Member’s position that the perceived increase in the vandalism or desecration of war memorials in recent years necessitates the creation of a specific criminal offence – and an associated scale of penalties that go beyond those currently available under existing offences – to provide a stronger deterrent against this type of offence and enhance the protection afforded to war memorials.

20. The Member hopes that this would have the outcome of war memorials being more likely to remain well-kept and maintained in good condition. Where any future vandalism or desecration of war memorials occurs, the increased range of penalties included in the Bill is aimed at ensuring that courts’ sentencing decisions are not limited to considering the monetary value of the damage inflicted, but that the emotive significance of the memorial – and the greater negative impact that their vandalism or desecration can have on communities – can also be considered.

## Legislative precedent: elsewhere in the UK

### Desecration of War Memorials Bill

21. In 2020, then MP Jonathan Gullis introduced a Private Member’s Bill in the House of Commons “to create the specific offence of desecrating a war memorial; and for connected purposes”.<sup>17</sup> The Bill sought to amend the Criminal Damage Act 1971 to provide that anyone “who without lawful excuse destroys, damages or otherwise desecrates a war memorial shall be guilty of an offence”.<sup>18</sup> The Bill provided for maximum penalties of an unlimited fine and/or 10 years’ imprisonment.

22. In the context of the criminal law of England and Wales, Mr Gullis’s Bill aimed to achieve this through the disapplication of the damage threshold for the offence of desecration of a war memorial, which would have had the effect of exempting this offence from the £5,000 damages threshold required under the 1971 Act. This

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<sup>15</sup> For example: [Father and son clean Spanish Civil War memorial graffiti | BBC News](#); [Glasgow's Cenotaph has been 'vandalised' twice in two weeks | Glasgow Times](#)

<sup>16</sup> [Proposed Desecration of War Memorials \(Prevention\) \(Scotland\) Bill - consultation | Scottish Parliament](#)

<sup>17</sup> [Desecration of War Memorials Bill - Parliamentary Bills | UK Parliament](#)

<sup>18</sup> Desecration of War Memorials Bill, clause 1: [Desecration of War Memorials Bill - Parliamentary Bills | UK Parliament](#)

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amendment would have meant that the monetary value of criminal damage to a war memorial would not have needed to exceed £5,000 in order to be triable on indictment (i.e. solemn procedure) rather than summarily. Therefore, this would have allowed for the offence to be punishable by an unlimited fine (rather than a maximum fine), and for the maximum custodial sentence of 10 years' imprisonment to be established.

23. Meghan Gallacher's Bill seeks to achieve the same desired outcome in Scots law as Mr Gullis's Private Member's Bill sought to achieve in the England and Wales jurisdiction.

## Police, Crime, Sentencing and Courts Act 2022

24. The Desecration of War Memorials Bill was withdrawn by Jonathan Gullis on 23 March 2021, as the UK Government agreed to give effect to the Bill's aims through the Police, Crime, Sentencing and Courts Act 2022 ("the 2022 Act").<sup>19</sup> Unlike the Private Member's Bill discussed above, this Act did not create a specific offence of desecration of a war memorial. Rather, the 2022 Act amended provisions of the Magistrates' Courts Act 1980 relating to the mode of trial for the existing offence of criminal damage, insofar as they relate to cases in which a memorial has been damaged.<sup>20</sup> Prior to the 2022 Act coming into force, criminal damage cases in England and Wales where the damage value was less than £5,000 were required to be tried summarily, which restricted the court to handing down a maximum sentence of 3 months' imprisonment and/or a fine of up to £2,500.

25. The intention of these provisions of the 2022 Act was explained by the UK Government as follows:

"Concern has been voiced in Parliament and society that the law focuses too heavily on the monetary value of the damage with insufficient consideration given to the emotional or wider distress caused by this type of offending, and as a result, the punishments do not fit the crime.

"We intend, where there is damage to a memorial, to remove the consideration of monetary damage, which would otherwise, in some cases, determine venue and limit sentencing powers.

"Instead, in cases where a memorial has been damaged, mode of trial will not be determined by the monetary value of the damage caused and the maximum sentence of imprisonment will be ten years' imprisonment."<sup>21</sup>

26. In other words, these provisions – which extend only to England and Wales – allow courts to consider imposing a maximum sentence of 10 years' imprisonment for criminal damage to a memorial, irrespective of the monetary value of the damage caused to the memorial. According to the Explanatory Notes to the 2022 Act, a "memorial" is defined "to include buildings, other structures, moveable objects, gardens

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<sup>19</sup> [Criminal damage to memorials: Police, Crime, Sentencing and Courts Act 2022 factsheet | GOV.UK](#)

<sup>20</sup> [Police, Crime, Sentencing and Courts Act 2022 | legislation.gov.uk](#), section 50

<sup>21</sup> [Criminal damage to memorials: Police, Crime, Sentencing and Courts Act 2022 factsheet | GOV.UK](#)

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or other things planted or grown on land... [which] have a commemorative purpose such as to commemorate individual(s), animal(s) or event(s)".<sup>22</sup> This definition includes, but is not limited to, war memorials. The Member considers that this Bill should mirror this legislation in Scotland in respect of the maximum prison sentence of 10 years that it introduces, but her preference is that the new offence being created in Scotland should relate only to war memorials and not other types of memorial. Her view on this matter is set out in more detail at paragraphs 52 and 53.

## Existing offences in Scots law

27. The vandalism or desecration of a war memorial is categorised as a heritage crime, which is defined by Historic Environment Scotland as:

“Any criminal activity which causes damage to a heritage asset. This includes metal theft, vandalism, and intentional damage to both historic buildings and monuments.”<sup>23</sup>

28. Despite the concept of heritage crime and work that is being done to tackle it, it is not currently recorded separately from other types of criminal activity by Police Scotland. When dealing with vandalism or other public order/public indecency offences that could be captured under a specific offence of desecrating a war memorial, law enforcement officials may consider avenues such as: the issuing of a fixed penalty notice; a common law charge of breach of the peace; or a charge of an offence under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (threatening or abusive behaviour). However, under Scots law, the act of desecrating a war memorial is currently most likely to be charged and prosecuted under the statutory offence of vandalism or the common law crime of malicious mischief, which are set out in turn below.

## Vandalism

29. The offence of vandalism is defined by section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995 (hereafter “the 1995 Act”) as being committed by “any person who, without reasonable excuse, wilfully or recklessly destroys or damages any property belonging to another”.<sup>24</sup> This explicitly excludes “acts which constitute the offence of wilful fire-raising”.<sup>25</sup>

30. Under the 1995 Act, vandalism is a summary offence, which means that it may only be tried before a sheriff or a justice of the peace, without a jury. The maximum sentence for committing vandalism varies depending on the court and the nature of the offence, as follows:

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<sup>22</sup> Police, Crime, Sentencing and Courts Act 2022: Explanatory Notes, para 538.

<sup>23</sup> [Joint drive to tackle heritage crime in Scotland | Historic Environment Scotland](#)

<sup>24</sup> Criminal Law (Consolidation) (Scotland) Act 1995, s. 52(1)

<sup>25</sup> Above, s. 52(2)



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- In a justice of the peace (JP) court, the maximum sentence for vandalism is a fine of up to £1,000 and/or up to 60 days' imprisonment;<sup>26</sup>
- In a sheriff court, the maximum sentence for a first-time offender is a fine of up to £10,000 and/or up to 3 months' imprisonment. For subsequent offences, the maximum sentence is a fine of the same value and/or up to 6 months imprisonment.<sup>27</sup>

31. The Member believes that, while the maximum sentences for vandalism are appropriate for most instances of vandalism, these statutory limits on sentencing options do not allow for courts to consider the higher penalties that she considers would be required to sufficiently deter acts of desecration against war memorials, and to provide adequate redress for the distress caused to individuals and communities as a result of such acts.

## Malicious mischief

32. Acts of vandalism could also constitute the crime of malicious mischief under common law, which is defined as the crime of “damaging or destroying the property of another or interfering with it to the detriment of the owner or lawful possessor”.<sup>28</sup>

33. Unlike statutory vandalism, which can only be tried summarily, malicious mischief can be tried under summary or solemn procedure, which means that it can be tried with or without a jury. Under solemn procedure (before a jury), malicious mischief could attract the maximum sentence of an unlimited fine or life imprisonment. Depending on the severity of the offence and other relevant factors, the procurator fiscal would decide whether to proceed by summary or solemn procedure.

34. The Member's view is that, at present, the procurator fiscal would not necessarily take into account the significance to a community or the symbolic and cultural value of a war memorial when determining the severity of the crime for the purposes of deciding which court to refer a case to, and under which procedure. Therefore, it is most likely that malicious mischief involving damage to a war memorial would be tried in a JP court or summarily in a sheriff court, meaning that the higher penalties available for more serious crimes tried on solemn procedure would be unavailable.

## Provisions of the Bill

### Creation of a new offence

35. Section 1 of the Bill amends the 1995 Act by inserting a new section to create a new criminal offence.<sup>29</sup> Section 52A(1) of the 1995 Act, as inserted by this Bill, will establish the new offence in the following terms:

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<sup>26</sup> Above, s. 52(3)(a)

<sup>27</sup> Above, s. 52(3)(b)

<sup>28</sup> Stair Memorial Encyclopaedia

<sup>29</sup> [Criminal Law \(Consolidation\) \(Scotland\) Act 1995 | legislation.gov.uk](#)

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“Any person who, without reasonable excuse, wilfully or recklessly destroys, damages or desecrates a war memorial commits an offence”.

## Desecrating a war memorial

36. In addition to acts of destruction of and damage to war memorials, the new offence also captures acts of desecration. The Bill sets out that, in the context of the new offence, desecrating a war memorial “includes but is not limited to spitting, urinating or defecating upon, or otherwise defacing (whether temporarily or permanently) a war memorial”.

37. This definition is non-exhaustive and is intended to capture what might be seen as acts of disrespect that do not necessarily amount to damage or destruction of a war memorial. The Member considers that these acts should be a criminal offence due to the distress that such acts can invoke in affected communities and the efforts required to clean or otherwise restore the desecrated war memorial to its original condition.

38. The Member envisages that “otherwise defacing (whether temporarily or permanently) a war memorial” could include, for example, throwing liquids, foodstuffs, or other substances (such as paint, powder, glue, human or animal excrement, urine or other body fluids) over the war memorial. An act of desecration, therefore, is not required to permanently deface or cause permanent damage to the war memorial in order to amount to a criminal offence under the Bill.

## Penalties

39. The Bill sets out that a person who commits the new offence will be liable to the following penalties:

- On summary conviction (i.e. following proceedings before a sheriff or a justice of the peace, without a jury): a maximum period of 12 months in prison and/or a fine of up to £10,000.<sup>30</sup>
- On conviction on indictment (i.e. following solemn proceedings before a judge and a jury in the sheriff court or the High Court): a maximum period of 10 years in prison and/or an unlimited fine.

40. In her consultation document, the Member proposed that “those found guilty of the offence of desecrating a war memorial should be subject to a scale of sentencing options depending on the severity of the crime committed.”<sup>31</sup> Her position is as follows:

“I believe that, for example, a young first offender who desecrates a war memorial but does not cause serious or substantial damage should not be

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<sup>30</sup> “Where a statutory offence can be tried on indictment or on summary complaint, and the accused is convicted of it on summary complaint, the maximum fine tends to be the “prescribed sum” (currently £10,000).” - [Fines | Crime.Scot](#)

<sup>31</sup> [Proposed Desecration of War Memorials \(Prevention\) \(Scotland\) Bill - consultation | Scottish Parliament](#), p. 16

subject to the same degree of punishment as someone who causes expensive or irreparable damage and/or is a repeat offender.

“At the bottom end of the scale of available punishments, I consider that the offence of desecrating a war memorial which leads to less severe damage and/or is committed by a young person could lead to the issuing of a community [payback] order or compulsory attendance on an education programme to teach [them] about the significance of war memorials.

“The more severe the act of desecration and the greater damage caused, the larger the potential fine and/or prison sentence could be.”<sup>32</sup>

41. As mentioned earlier in this Memorandum, at paragraph 10, while this is how the Member envisages the new offence and increased range of sentencing options being used in practice, it is recognised that sentencing decisions are for the courts to make based on the circumstances of each case. Therefore, it would not be appropriate for legislation to prescribe specific sentences in certain circumstances.

42. The Member considers that prosecutorial guidance could be issued to ensure that the specific offence of desecrating a war memorial is used in all appropriate circumstances, in order that courts may have an increased range of sentencing options at their disposal to hand down a sentence that adequately reflects the seriousness of the offence and its impact on individuals and communities.

## Definition of a war memorial

43. Taking into account the varying definitions of a war memorial used by stakeholders (as set out above at paragraph 12), the Member’s desire is for her Bill to include a definition that is clear, comprehensive and well understood. She wants to ensure that all things that could reasonably be considered a war memorial, including the list of examples set out at paragraph 13 above, are protected by the new offence that this Bill establishes.

44. The Bill defines “war memorial” for the purposes of the new offence as a building or other structure, or any other thing, erected or installed on land (or in or on any building or other structure on land), or a garden or any other thing planted or grown on land, which has a commemorative purpose in respect of armed conflict. This definition is based on the definition of “memorial” used in section 50 of the Police, Crime, Sentencing and Courts Act 2022,<sup>33</sup> but adapted to capture war memorials only.

45. The Bill clarifies that the reference to “land” does not include land over which access rights are not exercisable under section 6 of the Land Reform (Scotland) Act 2003.<sup>34</sup> It also clarifies that reference to a building or structure includes part of a building or structure.

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<sup>32</sup> [Proposed Desecration of War Memorials \(Prevention\) \(Scotland\) Bill - consultation | Scottish Parliament](#), pp. 16-17

<sup>33</sup> [Police, Crime, Sentencing and Courts Act 2022 | legislation.gov.uk](#)

<sup>34</sup> [Land Reform \(Scotland\) Act 2003 | legislation.gov.uk](#)

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46. In determining whether something is a war memorial for the purposes of this Bill, it must have a “commemorative purpose in respect of armed conflict”. This means that at least one of its purposes must relate to commemorating one or more individuals or animals, or a particular description or category of individuals or animals, who died in armed conflict. It is intended that this will capture a wide range of war memorials. For example, it would include memorials that specifically name those whom it is commemorating, as well as those that commemorate more broadly servicepeople or civilians who died in a specific war or battle, or a specific military regiment.

47. Finally, the Bill specifies that “any flowers, wreaths or other commemorative items or tributes placed on, at, or in the immediate vicinity of, a war memorial form part of the war memorial”. This means that the wilful or reckless damage, destruction or desecration of such items – even if it does not extend to or affect the permanent structure itself – could constitute an offence under the Bill in and of itself. For example, this might include wreaths of poppies, photographs or personal effects placed next to the memorial by family members or friends of those whom the memorial commemorates. The Member believes that the damage, destruction or desecration of such items, which are intended to show respect to those commemorated by the memorial, also causes significant distress to affected individuals and communities and must also be deterred through the creation of the new offence.

## Alternative approaches

### Non-legislative approaches

48. As desecrating a war memorial is already a crime chargeable and prosecutable under statutory and common law offences, the Member has considered the possibility that enhanced protection of war memorials could be achieved through non-legislative means.

49. For example, through her engagement with the veteran community, the Member has recognised the view that improved education on the importance of war memorials and the meaning behind them could, in some cases, be more effective in preventing acts of desecration than the prospect of receiving an unlimited fine or a long-term custodial sentence. To this end, the Member has previously explored the possibility of establishing an educational programme relating to war memorials, and the perceived need for better education on war memorials has informed the Member’s preferred approach to sentencing.

50. Nevertheless, the Member maintains the position that the law as it stands does not adequately protect war memorials from destruction, damage or desecration, nor does it have due regard to the special status of these memorials and their emotional, cultural and historical significance to individuals and communities. While improved education may deter some people from desecrating war memorials where it is a result of a lack of awareness of their significance, the Member believes that an enhanced level of protection for war memorials in law, through the creation of the specific offence, is

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also necessary to deter acts of more deliberate, targeted desecration, which may be politically motivated.

51. Creating a new offence may only be achieved through primary legislation, whereas improving education can be achieved through non-legislative means. The Bill, therefore, is deliberately narrow and focused on creating the specific offence of desecrating a war memorial. The Member hopes that the Bill will contribute to raising awareness of the special significance of war memorials in Scotland's communities, and she has committed to continue engaging with schools, young people and the veteran community to highlight her work in this area.<sup>35</sup>

## Extend application to include all memorials

52. As highlighted above at paragraphs 24 to 26, equivalent legislation in force in England and Wales allows for the same maximum penalties proposed in the present Bill, but applies in relation to criminal damage of any type of commemorative memorial. To mirror the law in England and Wales more closely, this Bill could have similarly framed the specific offence in terms of desecration of memorials more broadly.

53. As mentioned earlier in this Memorandum, the Member understands that, in recent years, there has been an increase in the desecration of memorials specifically dedicated to commemorating those who have died in war. This has caused increasing distress among those for whom war memorials hold a special significance, such as Armed Forces personnel and veterans, as well as their families and communities. Throughout the development of her policy, the Member has engaged extensively with representatives of these groups and communities, and it remains her preference to keep the scope of the new offence limited to war memorials.

## Consultation

### Draft proposal

54. On 26 September 2023, the Member lodged a draft proposal for a Member's Bill to:

“protect war memorials by creating a specific offence of desecrating a war memorial”.<sup>36</sup>

55. A consultation document accompanied the draft proposal.<sup>37</sup> The consultation ran from 27 September 2023 to 19 December 2023.

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<sup>35</sup> [Proposed Desecration of War Memorials \(Prevention\) \(Scotland\) Bill - consultation | Scottish Parliament](#), page 9

<sup>36</sup> [Proposed Desecration of War Memorials Prevention Scotland Bill | Scottish Parliament](#)

<sup>37</sup> [Proposed Desecration of War Memorials \(Prevention\) \(Scotland\) Bill - consultation | Scottish Parliament](#)

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56. The consultation received 121 responses in total. The responses can be categorised as follows:

- 106 (88%) were from members of the public;
- 6 (5%) were from professionals with relevant experience;
- 4 (3%) were from politicians;
- 2 (2%) were from academics with relevant experience;
- 1 was from a public sector body;
- 1 was from a charity; and
- 1 was from an organisation listed as 'other'.

57. 84% of the respondents were supportive of the draft proposal. Of those, all but one were fully supportive.

58. Key themes that emerged through the responses that were supportive of the proposal included:

- The view that desecration of war memorials is unacceptable due to their significance as sites marking the sacrifice of those who lost their lives at war;
- Support for bringing the maximum sentence for the desecration of a war memorial in line with England and Wales;
- That the significance of war memorials should be recognised through the creation of a specific offence; and
- Many respondents thought that there should be better education about the importance of war memorials, both in general and specifically for people who have desecrated a war memorial.

59. Key themes among responses that were not supportive of the proposal included that:

- Existing legislation is sufficient to address the issue of desecration of war memorials; and
- In light of the above, time and resources would be better spent on other policy areas.

60. A summary of responses to the consultation was published by the Member on 30 September 2024, and is available at: [Proposed Desecration of War Memorials \(Prevention\) \(Scotland\) Bill - Summary of consultation responses | Scottish Parliament](#).<sup>38</sup>

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<sup>38</sup> [Proposed Desecration of War Memorials Prevention Scotland Bill Consultation Summary](#)

## Effects on equal opportunities, human rights, children's rights, island communities, local government, sustainable development etc.

### Equal opportunities

61. An Equality Impact Assessment (EQIA) has been carried out for this Bill, with its findings and conclusions set out below. Following the introduction of the Bill, the Member in charge will send a copy of the EQIA to the Committee that leads on its scrutiny in order to aid its consideration at Stage 1 of the legislative process.

62. The purpose of an EQIA is to examine the extent to which a policy or Bill may impact on any specific group of people and/or promote equality of opportunity, or create any new inequality. The Member considers that her Bill does not create any new inequalities.

63. The Member believes that her Bill may have a positive equalities impact in relation to the protected characteristic of religion or belief. When war memorials are graffitied or defaced, the slogans and language used are sometimes of a derogatory nature towards specific religious groups (including sectarian and/or antisemitic language) or uses offensive symbols, including Nazi symbols. As set out in the consultation document for her Member's Bill proposal, the Member believes that her Bill will have the effect of deterring such acts, including those which target or seek to denigrate specific religious groups. She is, therefore, of the view that the Bill could have a positive impact on those groups which are most frequently targeted by offensive and derogatory graffiti.

### Human rights

64. Under the Scotland Act 1998, legislation must be compatible with Convention rights, as defined in the Human Rights Act 1998 in order to be within the Scottish Parliament's legislative competence.<sup>39</sup> The Member does not consider that the Bill will have any specific impact on Convention rights. It is her view that all of the Bill's provisions are compatible with the Convention rights.

### Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

65. Under section 23 of the United Nations Convention on the Rights of the Child (Incorporation) Scotland Act 2024, any member introducing a Bill in the Scottish Parliament is required to make a written statement about the extent to which "the provisions of the Bill would be compatible with the UNCRC requirements".

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<sup>39</sup> [Scotland Act 1998 | legislation.gov.uk](https://legislation.gov.uk), section 29(2)(d)

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66. Meghan Gallacher MSP has made a statement that, in her view, the provisions of the Bill have a neutral impact on compatibility with the UNCRC requirements because the Bill is not relevant to children's rights.

## Island communities

67. The Member does not consider that there will be any specific impact on island communities. In the research that informed the Member's proposal, several reports of vandalism of war memorials in island communities were identified through online media, including in Stornoway, Lerwick and Scapa.<sup>40</sup> The new offence of desecrating a war memorial and its associated penalties will apply equally to island communities as to other communities throughout Scotland.

## Local government

68. Section 1 of the War Memorials (Local Authorities' Powers) Act 1923 (as amended) empowers local authorities to use funds to maintain, repair and protect war memorials, but does not impose any obligation on the local authority to do so.<sup>41</sup> According to Historic Environment Scotland, many local authorities have a war memorials officer, who is the first point of contact for all issues related to war memorials.<sup>42</sup> However, War Memorials Trust highlights that:

"It is often assumed that a local authority is responsible for war memorials in its areas but this is not the case. Some local authorities are custodians of war memorials but others are not directly responsible for any."<sup>43</sup>

69. In some cases, for example, the custodian of a war memorial will be a private individual or a community group. It is challenging to ascertain exactly how many war memorials each local authority is directly responsible for maintaining on average. In any event, the Member does not consider that the Bill will have any significant impact on local government. The Member envisages that the deterrent effect of the specific offence and the possibility of higher penalties will ultimately reduce the need for any cleaning, repair or restoration work resulting from vandalism or desecration. For local authorities that do take responsibility for maintaining any war memorials in their areas, the Bill may therefore result in cost savings from the reduced cost associated with cleaning, repair, and restoration of war memorials.

70. Local authorities may have a role in giving effect to the terms of any CPOs imposed on offenders convicted of the new offence, for example, assigning a criminal justice social worker to supervise the different requirements of the CPO.<sup>44</sup> Given the likely lower frequency of cases where a person is convicted of the new offence created by this Bill, compared with many other crimes, it is envisaged that any impact of the new offence on local authorities in this respect will be minimal.

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<sup>40</sup> [Consultation | Meghan Gallacher](#)

<sup>41</sup> [Short Guide: The Repair and Maintenance of War Memorials | Historic Environment Scotland](#), p. 35

<sup>42</sup> Above, p. 35

<sup>43</sup> [War Memorials Trust](#)

<sup>44</sup> [Community sentences | Scottish Sentencing Council](#)



## Sustainable development

71. The Member carried out a sustainable development impact assessment during the development of her consultation document accompanying her draft proposal. As highlighted in her consultation document, the creation of a new offence of desecrating a war memorial could have a positive impact on people and contribute towards a strong, healthy and just society by deterring this type of crime. This could mean that war memorials in prominent public places are more likely to remain in good condition, thereby benefitting the built environment in town centres across Scotland.

72. The Member also believes that the Bill could positively impact community wellbeing, particularly of those for whom war memorials are special community monuments that provide a public place for remembrance. Giving recognition in law to the special significance of war memorials to many people and groups across Scotland could further strengthen communities that take on responsibility for the maintenance, upkeep and repair of war memorials.

73. The Member considers that the Bill would bring benefits to future generations. By enhancing the protection of war memorials in law and deterring future acts of vandalism and desecration, war memorials will be more likely to remain well maintained and continue to provide historical memory of the wars that they commemorate and the impact that they had on communities. Therefore, she believes that the Bill will have a positive impact on educating future generations and ensuring that the emotional, historical and cultural significance of war memorials is recognised for generations to come.

74. Finally, the Member believes that the Bill will lead to sustainable outcomes for the heritage sector. By deterring deliberate criminal damage to war memorials, less money will be required to clean, repair and restore them, which means that funds could be redirected to support other heritage assets, leading to a more sustainable spend on Scotland's heritage assets. In addition, at present, there is no official data available on the occurrence of war memorial desecration or vandalism, as it is not recorded separately from other forms of vandalism or malicious mischief by Police Scotland. The Member considers that creating a specific offence of desecrating a war memorial would require official data to be collected in relation to such offences, thereby improving the availability of data in this area to the benefit of the heritage sector.

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# Desecration of War Memorials (Scotland) Bill

## Policy Memorandum

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