Briefing for the Public Petitions Committee

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<th>Petition Number: PE1415</th>
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<td>Main Petitioner: John Steele</td>
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<td>Subject: to update the Burial Grounds (Scotland) Act 1855</td>
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Calls on the Parliament to urge the Scottish Government to update the Burial Grounds (Scotland) Act 1855 so that excavations can take place in burial grounds with greater ease.

Background

There is little regulation of burial in Scotland, although the common law (traditional and judge-made law) governs aspects of interment. The Burial Grounds (Scotland) Act 1855 is the primary statute, and it regulates the setting up and management of burial grounds.

The 1855 Act does not regulate excavations or disinterment as suggested by the petitioner. This matter is instead dealt with by the common law. However, because many of the major cases are from the 19th century, it is unclear how the principles would be applied by a modern court.

According to the Stair Memorial Encyclopaedia (paragraph 534) ¹, buried remains are sacred, and the grave that they are buried in is protected from disturbance at least until the process of disintegration is complete (although no specific time period is given for this process). Disinterment (other than in situations governed by planning law or criminal investigations) is allowed only in three situations:

- where those responsible for the management of the burial ground find it necessary
- where the burial has taken place somewhere where there is no right of burial
- where the court gives its authority to do so having been persuaded that such a course is required

¹ The Stair Memorial Encyclopaedia is an (but not the only) authoritative statement on Scots law.
An article published by Historic Scotland\(^2\) suggests that a court order is more likely to be obtained if there are no objections from living relatives. It notes that, at the time it was published in 1997, there was no reported case of a warrant being granted to disinter remains for archaeological, educational or scientific purposes.

It is therefore likely that the practical situation would be broadly similar to that outlined in the petition – i.e. that a court order would be required, that procedures would have to show reverence and respect and that the excavation may have to stop if human remains were discovered.

**Scottish Government Action**


The review and consultation put forward new proposals in relation to the disinterment of remains. However, these focus on a simplified process for relatives to request disinterment and do not deal with the issue of excavation for other purposes. At least one of the responses to the consultation (from the Institute or Archaeologists) raised the issue of excavations in passing, although it was not highlighted in the analysis of responses.

The Scottish Government has taken forward aspects of the work of the review group in the Certification of Death (Scotland) Act 2011. However, this did not deal with burial or disinterment. A Scottish Government official has confirmed that there is no timescale for further action on these aspects.

**Scottish Parliament Action**

The Scottish Parliament passed the Certification of Death (Scotland) Act 2011 mentioned above. However, this did not take forward the aspects of the review which dealt with burial and disinterment.

There have been a number of questions asked in the Scottish Parliament on the issue of burial grounds. None of these deal with the specific matter raised by the petitioner.

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