

DESECRATION OF WAR MEMORIALS (SCOTLAND) BILL

EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.3.2A of the Parliament’s Standing Orders, these Explanatory Notes are 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:
 - a Financial Memorandum (SP Bill 68–FM);
 - a Policy Memorandum (SP Bill 68–PM); and
 - statements on legislative competence made by the Presiding Officer and the Member in charge of the Bill (SP Bill 68–LC).
3. These Explanatory Notes have been prepared by the Non-Government Bills Unit on behalf of Meghan Gallacher MSP, the Member who introduced the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

OVERVIEW OF THE BILL

5. The Bill creates a statutory offence of destroying, damaging or desecrating a war memorial. It explains what is meant by desecrating a war memorial and defines “war memorial” for the purposes of the new offence. The Bill provides that a person who commits the offence may be tried either summarily (before a sheriff or justice of the peace without a jury) or on indictment (before a judge and jury). It sets out the maximum penalties associated with the offence, up to a maximum of 10 years in prison and an unlimited fine.
6. The Bill consists of 3 sections.

COMMENTARY ON SECTIONS OF THE BILL

Section 1 – Desecration of war memorials

7. Section 1 inserts a new section after section 52 of the [Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#) (“the 1995 Act”). Section 52 of the 1995 Act provides for the statutory offence of vandalism. Section 52A of the 1995 Act, as inserted by this Bill, makes provision for a specific statutory offence of destroying, damaging or desecrating a war memorial as set out below.

8. Subsection (1) sets out the terms of the offence. It provides that any person who, without reasonable excuse, wilfully (i.e. deliberately or intentionally) or recklessly (i.e. with disregard for the potential harmful consequences) destroys, damages or desecrates a war memorial commits an offence. The “reasonable excuse” defence exists to avoid criminalising genuine, well-intended mistakes. It allows the court to consider the specific circumstances of each case and decide what constitutes a reasonable excuse.

9. Subsection (2) explains what is meant by desecrating a war memorial for the purposes of the offence. It provides that 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. The list is non-exhaustive, and this definition is intended to include within the scope of the offence acts that might be seen as acts of disrespect. The Bill’s provisions do not require that an act permanently deface or cause permanent damage to a war memorial for it to constitute an offence.

10. Subsection (3) provides for the maximum penalties that may be handed down in respect of the offence. Paragraph (a) sets the maximum penalties available to the Justice of the Peace Court or the Sheriff Court (summary proceedings) at no more than 12 months in prison and/or a fine up to the statutory maximum. A justice of the peace can impose a penalty of up to 60 days’ imprisonment and/or a fine of up to £2,500.¹ A sheriff hearing summary proceedings may impose a maximum sentence of 12 months in prison and/or a fine of up to £10,000.² Paragraph (b) sets the maximum penalties on indictment (imposed by the Sheriff Court following solemn proceedings, or by the High Court) at 10 years in prison and/or an unlimited fine.

11. Subsection (4) defines “war memorial” for the purposes of section 1. Paragraph (a) defines it 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. Paragraph (b) provides that reference to “land” in this definition does not include land over which access rights are not exercisable under [section 6 of the Land Reform \(Scotland\) Act 2003](#). Paragraph (c) clarifies that “a building or structure” may also refer to part of a building or structure. This definition may include, for example, cenotaphs, sculptures, books of remembrance, dedicated buildings, additions to gravestones, public memorial gardens, or trees on publicly accessible land.

12. In respect of the definition set out above, subsection (4)(d) elaborates on what is meant by something having a commemorative purpose in respect of armed conflict. It provides that

¹ [Maximum and minimum sentences | Scottish Sentencing Council](#)

² [Fines | Crime.Scot](#)

something can only be considered a war memorial for the purposes of the Bill if at least one of its purposes is to commemorate one or more individuals or animals, or a particular description or category of individuals or animals, who died in armed conflict. This is intended to 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.

13. Subsection (4)(e) provides that any flowers, wreaths or other commemorative items or tributes placed on, at, or in the immediate vicinity of a war memorial are to be considered part of the war memorial for the purposes of the Bill. 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 – would constitute an offence under the Bill in and of itself.

Section 2 – Commencement

14. Section 2 sets out that the provisions of the Bill come into force after six months beginning with the day of Royal Assent.

Section 3 – Short title

15. Section 3 provides for the short title of the Bill, by which it may be cited. If passed, it will be known as the Desecration of War Memorials (Scotland) Act.

This document relates to the Desecration of War Memorials (Scotland) Bill (SP Bill 68) as introduced in the Scottish Parliament on 14 May 2025

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