



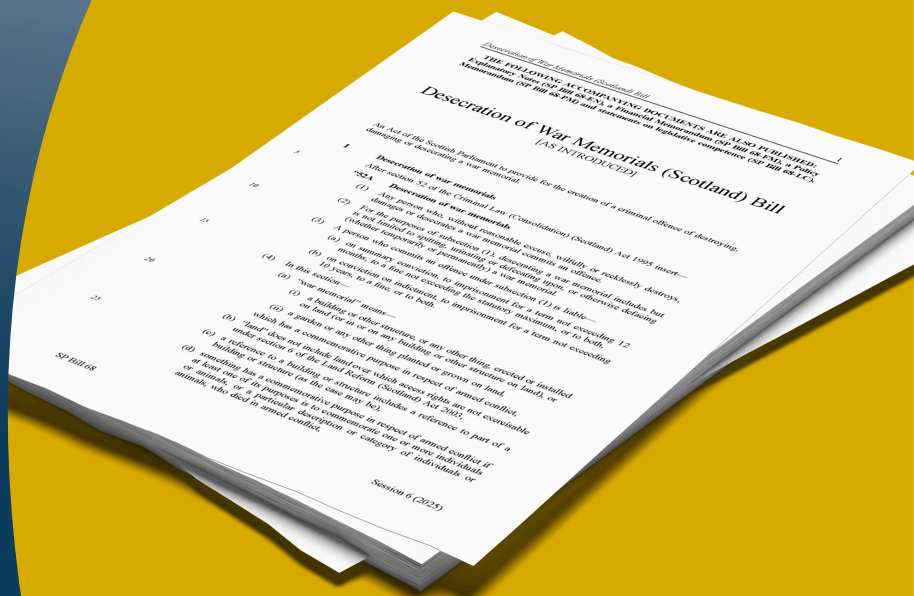
SPICe Briefing

Pàipear-ullachaidh SPICe

Desecration of War Memorials (Scotland) Bill

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The Desecration of War Memorials (Scotland) Bill was introduced in the Scottish Parliament by Meghan Gallacher MSP on 14 May 2025. This Member's Bill seeks to create a criminal offence of destroying, damaging or desecrating a war memorial.



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Summary

The Desecration of War Memorials (Scotland) Bill (the Bill) provides for a specific criminal offence where a person, without reasonable excuse, wilfully or recklessly destroys, damages or desecrates a war memorial.

Existing criminal offences which may be used to prosecute such cases include the statutory offence of vandalism (set out in section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995) and the common law offence of malicious mischief. These offences are not restricted to particular types of property.

The Bill's Policy Memorandum argues that use of existing criminal offences, which are also used where other types of property are vandalised, fails to take into account the heightened impact of a war memorial being damaged or desecrated.

Introduction

The [Desecration of War Memorials \(Scotland\) Bill](#) ¹ (the Bill) was introduced by Meghan Gallacher MSP on 14 May 2025.

Documents published along with it include [Explanatory Notes](#), ² a [Policy Memorandum](#) ³ and a [Financial Memorandum](#). ⁴

The Bill seeks to create a specific criminal offence of destroying, damaging or desecrating a war memorial.

Meghan Gallacher MSP lodged a draft [proposal for this bill](#) ⁵ in September 2023, and ran a [consultation](#) ⁶ between September and December 2023. There were 121 responses to the consultation - 118 from individuals and three from organisations (the Friends of Dennistoun War Memorial, the War Memorials Trust, and an anonymous submission).

A [summary of consultation responses](#) ⁷ was published in September 2024. Most of the [responses are available online](#). ⁸ Where they are not, this was at the request of the respondents.

The possibility of having a specific criminal offence dealing with the vandalism or desecration of a war memorial has also been considered in relation to petitions [PE1830](#) ⁹ and [PE1893](#). ¹⁰ Both petitions were lodged on behalf of the Friends of Dennistoun War Memorial and were considered by the Citizen Participation and Public Petitions Committee. The first petition was closed in December 2020 and the second in March 2022. In both cases, they were closed on the basis that:

“ there is legislation currently in place to deal with the vandalism and desecration of statues and memorials, including war memorials, and the Scottish Government has no current plans to introduce new legislation for the specific purpose requested in the petition.”

The lead committee for scrutiny of the Bill is the Constitution, Europe, External Affairs and Culture Committee.

Provisions of the Bill

The Bill would insert a new section 52A into the [Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#), providing for a criminal offence where a person, without reasonable excuse, wilfully or recklessly destroys, damages or desecrates a war memorial.

Both "war memorial" and "desecrating a war memorial" are defined in the Bill.

The definition of the former excludes memorials on land over which access rights are not exercisable under section 6 of the [Land Reform \(Scotland\) Act 2003](#). However, following introduction of the Bill, Meghan Gallacher MSP wrote to the lead committee noting that it had been brought to her attention that this aspect of the Bill's drafting would define a war memorial more narrowly than intended.¹¹ In her letter, she explained that:

“ The policy intention behind this exclusion was to exclude private war memorials, for example those in private homes or gardens, from the scope of the new offence. However, I recognise that other memorials may also be excluded from the definition as a result of this provision. For example, it may exclude memorials in churches or church grounds from gaining the heightened protection in law that my Bill would afford to other war memorials.”

She went on to say that, if the Bill progresses to Stage 2, she plans to lodge an amendment to:

“ ensure that war memorials situated within places of worship, and any other places that would appropriately fall within the provisions of the Bill, are not unintentionally excluded from the scope of the offence, without broadening the definition so much as to include war memorials within private dwellinghouses or gardens.”

In relation to the meaning of "desecrating a war memorial", the Bill provides that it includes "spitting, urinating or defecating upon, or otherwise defacing (whether temporarily or permanently) a war memorial".

The proposed offence could be prosecuted under both summary and solemn procedures,ⁱ with the Bill providing for the following maximum sentences:

- summary procedure - a custodial sentence of up to 12 months and/or a fine not exceeding the statutory maximum (currently £10,000)
- solemn procedure (also referred to as on indictment) - a custodial sentence of up to 10 years and/or an unlimited fine.

Other sentencing options would include [community payback orders](#),¹² which courts can impose where an offence is punishable by imprisonment.

Summary cases can be prosecuted in justice of the peace and sheriff courts; and solemn cases in sheriff courts and the High Court. For the maximum sentences provided for in the Bill to be available, they would have to be imposed by a sheriff court in a summary case and the High Court in a solemn case. This is due to general limits on the [sentencing powers of the various criminal courts](#).¹³

ⁱ Solemn procedure is used for more serious cases and, unlike summary procedure, involves a jury if there is a trial.

Policy rationale

As to why a new criminal offence is needed, the Bill's Policy Memorandum starts by outlining the significance of war memorials, noting that (para 4):

“ 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.”

And that (para 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.”

The Policy Memorandum argues that use of existing criminal offences, which are also used where other types of property are vandalised, fails to take into account the heightened impact of a war memorial being damaged or desecrated. (Information on the [existing criminal law in Scotland](#) is set out in the next part of this briefing.)

The Policy Memorandum goes on to say (para 11):ⁱⁱ

“ 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.”

The Policy Memorandum also highlights legislative changes made by the Police, Crime, Sentencing and Courts Act 2022 affecting the prosecution of cases involving damage to memorials (not just war memorials) in England and Wales. (A brief outline of the [provisions in England and Wales](#) is provided later in this briefing.)

ii References to 'the Member' are to Meghan Gallacher MSP, as the person who introduced the Bill.

Existing criminal law in Scotland

Section 52 of the [Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#) sets out a criminal offence of vandalism which is not restricted to a particular type of property. Unlike the offence proposed in the Bill, it can only be prosecuted under summary procedure and has significantly lower maximum sentences (e.g. a maximum custodial sentence of three months, rising to six months if previously convicted of the same offence).

The current common law criminal offence of malicious mischief might also be used to prosecute cases covered by the Bill. It also applies to property in general. As with other common law offences, it can be prosecuted under both summary and solemn procedures, and the maximum penalties are only limited by the [sentencing powers of the court dealing with the case](#).¹³ The Stair Memorial Encyclopaedia (an important text on Scots law) states that:¹⁴

“ Malicious mischief is the common law crime of damaging or destroying the property of another, or interfering with it to the detriment of the owner or lawful possessor. It does not matter whether the activity is directed towards a fixed object, a moveable object, or even an animal. Thus, in the absence of exculpating factors, it would be malicious mischief to wreck a telephone kiosk, slash the tyres of a car or shoot a dog. Malicious mischief is frequently selected as the charge against persons who spray graffiti on walls, trample on flower beds in public parks and break down fences. Most acts of damage or destruction which constitute malicious mischief will also be chargeable as the statutory offence of vandalism.”

It might be argued that the sentencing options associated with malicious mischief lessen the case made for the Bill based on currently available criminal offences not attracting adequate sentences. However, the Policy Memorandum argues that, at present, prosecutors (para 34):

“ 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.”

On this basis, it states that malicious mischief involving damage to a war memorial is likely to be tried under summary procedure, meaning that the higher penalties available under solemn procedure would be unavailable.

In relation to the offence set out in the Bill, the Policy Memorandum goes on to say that (para 42):

“ 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.”

The Policy Memorandum notes that other existing criminal offences which might, depending on the circumstances, be used where a war memorial has been vandalised or desecrated include

- common law breach of the peace
- the statutory offence of threatening or abusive behaviour set out in section 38 of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#).

Provisions in England and Wales

Section 1(1) of the [Criminal Damage Act 1971](#) sets out an offence of destroying or damaging any property belonging to another person, whether intentionally or recklessly, without lawful excuse. Section 4(2) provides for a maximum custodial sentence of 10 years where the offence is prosecuted on indictment. (This is the same as the maximum sentence provided for in the Desecration of War Memorials (Scotland) Bill.)

Section 22 of the [Magistrates' Courts Act 1980](#) generally provides that the offence set out in section 1(1) of the Criminal Damage Act 1971 can only be tried summarily if the damage caused to the property does not exceed £5,000 in value. This restricts the maximum sentence on conviction to three months' imprisonment and/or a fine of up to £2,500 in such cases.

The above offence is not limited to particular types of property. However, section 50 of the [Police, Crime, Sentencing and Courts Act 2022](#) made changes to how the offence may be prosecuted where the property involved is a memorial. It did this by disapplying the £5,000 damage threshold for prosecution on indictment where damage is caused to a memorial.

Thus the criminal law in England and Wales does include special provision for damage to memorials, although this applies to memorials generally - not just war memorials. Further information on the provision for memorials is set out in a UK Government [Home Office policy paper](#).¹⁵ In relation to the reasons for the change, it commented that:

“ There is widespread belief that the current law does not provide enough powers to allow the court to deal effectively with the desecration of war memorials and other statues. The issue re-emerged during summer 2020 when many statues and memorials were damaged causing great concern to the wider public. The government has considered these concerns and proposed, these changes which will mean the courts can now deal effectively with damage caused to memorials.”

The Policy Memorandum published along with the Desecration of War Memorials (Scotland) Bill notes that the reforms in England and Wales apply to all memorials, but expresses a preference for focusing on war memorials in the Scottish context (para 53):

“ 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.”

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