

Citizen Participation and Public Petitions Committee

13th Meeting, 2022 (Session 6), Wednesday
28 September 2022

PE1941: Stop the destruction of headstones
within community cemeteries

Note by the Clerk

Petitioner Cllr Andrew Stuart Wood

**Petition
summary** Calling on the Scottish Parliament to urge the Scottish Government to monitor and regulate actions taken by Local Authorities when undertaking their statutory duty of ensuring Health & Safety within our cemeteries.

Webpage <https://petitions.parliament.scot/petitions/PE1941>

Introduction

1. This is a new petition that was lodged on 30 May 2022.
2. The petition seeks to both urge the Scottish Government to monitor and regulate actions taken by Local Authorities and ensure a “properly funded” maintenance and repair policy for headstones. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee’s consideration of the petition and can be found at **Annexe B**.
4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected not to collect signatures.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

Action

6. The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe A

PE1941: Stop the destruction of headstones within community cemeteries

Petitioner

Cllr Andrew Stuart Wood

Date lodged

30 May 2022

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to monitor and regulate actions taken by Local Authorities when undertaking their statutory duty of ensuring Health & Safety within our cemeteries.

Previous action

Oliver Mundell MSP has been contacted. We have also highlighted the overzealous actions taken by sub contractors acting on behalf of our Local Authority. We have brought this destruction to the attention of the Ombudsman and lodged small claims seeking the cost of repair and reinstatement of damaged headstones.

Background information

As an elected member to the local authority, I have been approached by many family members regarding headstones that have now been dismantled and either left lying on the ground or dug into the lair, leaving many names unreadable and exposed to erosion from the grounds' moisture. I have challenged the council officers, who claim that this is Scottish Government policy that they are carrying out. I am now told the council intends to continue with the unlawful destruction of headstones within a B-listed cemetery without planning consent, community consent, and family members' consent, all of which is emotionally distressing for the 14 families affected.

The Scottish Government should ensure a properly funded maintenance and repair policy is in place and is carried out instead of the present destruction of headstones left lying on the ground or dug into the lair.

Annexe B

The logo for SPICe, featuring the letters 'SPICe' in a white, sans-serif font on a dark purple background.The logo for The Information Centre, featuring the text 'The Information Centre' and 'An t-Ionad Fiosrachaidh' in a white, sans-serif font on a dark blue background.

Briefing for the Citizen Participation and Public Petitions Committee on petition PE1941: stop the destruction of headstones within community cemeteries, lodged by Councillor Andrew Stuart Wood

Brief overview of issues raised by the petition

The petitioner is a councillor who is concerned about the treatment of headstones in local burial grounds. He is calling on the Scottish Government to ensure a “properly funded maintenance and repair programme” is in place. The issue of the treatment of memorials in burial grounds is contentious. Local authorities have general duties to address hazards at sites they manage, but bereaved relatives can find steps taken in relation to unstable headstones distressing.

- Burial grounds can host a whole range of headstones and memorials, of different sizes, ages, construction and state of repair.
- The maintenance of headstones and other memorials is the responsibility of the owner of the “lair” (the area of ground in which they are entitled to have burials).
- It can be difficult to identify lair owners – records for older lairs may have been lost and, even for more recently purchased lairs, contact details may not be up to date.

- Local authorities are responsible for most burial grounds in Scotland (although some are in private ownership). They have responsibilities under health and safety legislation and the Occupiers' Liability (Scotland) Act 1960 to address hazards to those visiting burial grounds.
- In 2015, an eight year old boy was killed when an unstable memorial fell on him. The Fatal Accident Inquiry which followed recommended that the Scottish Government produced national guidance on memorial inspection and safety.
- The guidance – [Burial ground memorial safety – local authority guidance](#) (2019) – is not binding on local authorities. Instead, it brings together good practice.
- The petitioner criticises the use of two particular options for making unstable memorials safe: digging in/trenching (where a memorial is replaced in a deeper hole) and laying flat (where the memorial is laid across the area of the grave). These are highlighted in the Scottish Government guidance, along with other options.
- The guidance discusses repair as often the most appropriate, long-term option. However, it notes that costs, and difficulties in establishing lair ownership, may mean this is not possible.
- Some burial grounds or individual memorials may be listed or scheduled (protected by Historic Environment Scotland). In these cases, local authorities may need to go through additional processes before making any alterations to memorials.
- The guidance (paragraph 9) estimates that there are at least 2,240 burial grounds in local authority control. The number of actual memorials is put in the hundreds of thousands. Thus, the costs associated with ongoing maintenance and repair would be significant.

Abigail Bremner
Senior Researcher
11 July 2022

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C

Scottish Government submission of 1 July 2022

PE1841/A - Stop the destruction of headstones within community cemeteries

Thank you for your correspondence of 30 May 2022 to Marie Ferguson, the Committee liaison officer, seeking views on Petition PE1941. I am responding as Deputy Director for the Health Protection Division, with responsibility for the legislation and overarching policy governing the [Burial and Cremation \(Scotland\) Act 2016](#) ('the 2016 Act').

Ensuring that people who have died are treated with the utmost dignity and respect at all times is of importance to the Scottish Government.

In Scotland, responsibility for the management, safety and maintenance of each burial ground lies with relevant burial authority. Therefore, the Scottish Government is unable to intervene in operational matters affecting burial grounds, such as the making safe of memorials.

It is likewise the duty of an employer to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all its employees and visitors. This includes keeping the burial ground safe for staff and the public attending the burial ground. These statutory obligations are primarily completed under both the Health and Safety at Work etc. Act 1974 (as amended) (HSWA1974) and the Occupier's Liability (Scotland) Act 1960. The methods by which burial authorities choose to make safe memorials is a matter for each to determine as they deem appropriate.

To assist local authorities in meeting their statutory obligations, the Scottish Government published the [Burial ground memorial safety: local authority guidance](#) in June 2019.

The Scottish Government is also currently in the process of implementing various parts of the 2016 Act, which includes provisions granting Scottish Ministers the power to prepare regulations for burial grounds and burial authorities in Scotland, including relating to the maintenance and management of burial grounds.

To support this work, the Burial Regulations Working Group resumed meeting in December 2021 to discuss the regulation of burial in Scotland, following a halt to its work due to the COVID-19 pandemic. You can observe the progress of the Working Group on the [Burial Regulations Working Group](#) webpage.

Alongside these regulations, the Scottish Government will also prepare a statutory Code of Practice for burial authorities and associated Guidance for the burial regulations, which will be informed by the Working Group and with engagement with the wider funeral sector.

Another part of the 2016 Act which is being implemented concerns regulations for inspection of the funeral sector. The Scottish Government has already appointed Inspectors of Burial, Cremation and Funeral Directors, who are intended to inspect the funeral sector against the relevant regulations, codes of practice and guidance once prepared and in law. It is planned that more inspectors will be recruited in the future who can support the regular inspection of the burial sector to improve performance, encourage best practice and ensure compliance with any requirements placed on burial authorities.

In summary, in Scotland it is currently the responsibility of the relevant burial authority to ensure the health and safety of all staff and visitors and to make determination of any steps deemed appropriate to ensure the safety of their burial grounds. The Scottish Government is in the process of implementing the 2016 Act, including as it relates to regulating burial, and is working closely with the sector to ensure that these are appropriate, proportionate and have at their heart the dignity and respect of the deceased, the bereaved and of burial grounds themselves.