

# Proposed Desecration of War Memorials (Prevention) (Scotland) Bill



A proposal for a bill to protect war memorials by creating a specific offence of desecrating a war memorial.

Consultation by Meghan Gallacher MSP  
Member for Central Scotland

26 September 2023

## Contents

Page 3	Foreword by Meghan Gallacher MSP
Page 5	How the consultation process works
Page 6	Aim of the proposed Bill
Page 7	Background
Page 16	Details of the proposed Bill
Page 21	Questions
Page 27	How to respond to this consultation

# Foreword



War memorials have been commissioned throughout towns and villages in Scotland to commemorate the brave men and women who made the ultimate sacrifice so that we could live in a world free of tyranny and oppression. For many of the bereaved families and relatives, these memorials provide the only public focal point for Remembrance. They are emotive and are at the very heart of our communities.

Sadly, since 1996, there have been 66 attacks on war memorials here in Scotland. Data gathered by my team shows that most attacks have taken place across the Central Belt, particularly in the area that I represent.<sup>1</sup>

When war memorials are desecrated, it has an extremely negative effect on serving personnel, veterans, and particularly on our communities. 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 and call on the Parliament to provide better protections.<sup>2</sup>

Attacks on war memorials are widely condemned – including by charities, political leaders and by local communities – with concerns raised about the impact that such acts of desecration can have on the mental health of the veteran community.<sup>3</sup>

---

<sup>1</sup> <https://www.meghangallacher.uk/consultation>

<sup>2</sup> <https://www.glasgowtimes.co.uk/news/18797568.friends-dennistoun-war-memorial-bid-make-desecration-memorials-specific-crime/>

<sup>3</sup> <https://www.edinburghlive.co.uk/news/edinburgh-news/hero-edinburgh-veterans-clean-up-25513379/> / <https://www.dailymail.co.uk/news/article-6351895/Vandals-wreck-poppy-wreaths-wooden-crosses-disgusting-attack-gardens-Remembrance.html> / <https://www.scotsman.com/news/crime/edinburgh-war-memorial-fire-investigation-launched-after-edinburghs-war-memorial-set-on-fire-by-vandals-3917889>

I believe that current legislation does not go far enough in providing adequate protection for these vitally important sites of Remembrance. I believe it is unacceptable that vandalism of a war memorial is treated in the same way as vandalism of a park bench or a bin. We must do more to improve the protections and mirror changes in legislation seen elsewhere in the United Kingdom in recent years.<sup>4</sup>

In bringing forward this draft proposal for a Bill to Parliament, I want to ensure that war memorials in Scotland receive the protection that they deserve by creating the specific offence of desecration of a war memorial. Doing so would send the strongest possible message to those who wish to desecrate them that their actions will not be tolerated.

That is why my proposed Member's Bill is important and this formal consultation is a key part of the process. I look forward to receiving your responses.

Meghan Gallacher MSP  
September 2023

---

<sup>4</sup><https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-criminal-damage-to-memorials-factsheet>

# How the Consultation Process works

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at: [Scottish Parliament Standing Orders](#).

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at Meghan Gallacher MSP, The Scottish Parliament, Edinburgh, EH99 1SP; Telephone: 0131 348 5633; [Meghan.Gallacher.msp@parliament.scot](mailto:Meghan.Gallacher.msp@parliament.scot)

Enquiries about obtaining the consultation document in any language other than English or in further alternative formats should also be sent to me.

An online copy is available on the Scottish Parliament's website ([www.parliament.scot](http://www.parliament.scot)) at [Proposals for Bills – Scottish Parliament | Scottish Parliament Website](#)

## Aim of the Proposed Bill

The aim of this proposal is to ensure better protection of war memorials by legislating for a range of penalties for the desecration of war memorials and the introduction of a specific criminal offence of desecrating a war memorial.

While causing damage to a war memorial does currently constitute an offence, at present the penalty is no different to the available sanctions for other forms of vandalism or causing public damage, despite the special status of war memorials and their value to local communities across Scotland. This, in effect, means that war memorials are afforded the same level of protection as less sentimental structures, such as telephone boxes or lampposts.

Increasing the available sanctions for causing criminal damage to a war memorial could both deter potential future acts of desecration whilst also recognising the special significance of war memorials in Scotland's communities by giving them a special protection status.

Strengthening legislative protection could also send a strong signal that attacks on war memorials are unacceptable, while bringing Scotland in line with England and Wales, where sanctions are stronger.

# Background

## What is a war memorial?

There is no universally agreed legal definition of a war memorial. The War Memorials Trust defines a war memorial as:

“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.”<sup>5</sup>

Under the War Memorial Trust’s definition, war memorials can take many forms including:

- Freestanding Monuments such as sculpted figures, crosses, obelisks, cenotaphs, columns, etc.
- Boards, plaques and tablets (which can be inside or outside buildings)
- Rolls of honour or books of remembrance
- Dedicated buildings that serve as community halls, hospitals, bus shelters, clock towers, streets, museums, galleries etc.
- Church fittings like bells, pews, lecterns, lighting, windows, altars, screens, candlesticks, etc.
- Trophies and relics such as a preserved gun or the wreckage that remains at an aircraft crash site
- Land, including parks, gardens, playing fields and woodland
- Additions to gravestones (but not graves)
- Musical Instruments <sup>6</sup>

Memorials which would not fall under the category of war memorials, according to the War Memorials Trust, includes graves, military memorabilia, objects which are not primarily war memorials such as benches, published or mass-produced rolls of honour, Regimental colours/standards/flags/ensigns, or standard-issued items such as medals.<sup>7</sup>

In 2020 Jonathan Gullis MP introduced a Private Members’ Bill in the House of Commons which sought to create the specific offence of desecration of a war memorial. His Bill included the following definition of a war memorial:

---

<sup>5</sup> <https://www.warmemorialsonline.org.uk/about-us/what-is-a-war-memorial/>

<sup>6</sup> <https://www.ukwarmemorials.org/war-memorials/index.html>

<sup>7</sup> <https://www.warmemorialsonline.org.uk/about-us/what-is-a-war-memorial/>

“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”.<sup>8</sup>

Elsewhere, the Imperial War Museum employs the following definition:

“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.”<sup>9</sup>

The breadth of these definitions compared with the specificity of the War Memorial Trust’s definition demonstrates that while agreement as to what constitutes a war memorial may vary, the key identifier is the commemorative nature of the site or object in recognising the sacrifices of service personnel.

War memorials are considered part of Scotland’s national heritage, with the War Memorial Trust in receipt of financial support for the repair and conservation of war memorials through Historic Environment Scotland.<sup>10</sup>

War memorials serve as key community focal point for acts of Remembrance, as set out by the War Memorial Trust:

“Each memorial is unique. It represents that community’s chosen method of remembrance... The names of those recorded on a memorial may only be remembered on that monument making it important to preserve it to commemorate that individual’s sacrifice. These memorials are important because they act as historical touchstones. They link the past to the present and enable people to remember and respect the sacrifice of those who died, fought, participated or were affected by conflict(s).”<sup>11</sup>

In addition, through my engagement with the veteran community, I also recognise that the significance of war memorials extends beyond their physical structure and collective meaning, and that some memorials represent the only site for remembering those individuals who were lost to conflicts and who have no official gravesite. In this sense, war memorials can be just as revered as graves themselves. I believe their multifaceted significance should be recognised through the introduction of protections such as those presented in my proposed bill.

The War Memorials Trust has also highlighted the educational opportunities presented by war memorials, which I endorse:

---

<sup>8</sup> <https://publications.parliament.uk/pa/bills/cbill/58-01/0144/20144.pdf>

<sup>9</sup> <https://www.iwm.org.uk/memorials/guide#:~:text=A%20war%20memorial%20is%20any,whilst%20engaged%20in%20military%20service.>

<sup>10</sup> <https://www.warmemorials.org/grants-scotland/>

<sup>11</sup> [warmemorials.org/uploads/publications/64.pdf](http://warmemorials.org/uploads/publications/64.pdf)



“Memorials can be an important source of information for young people in understanding the sacrifices made by past generations. This will in turn ensure memorials are cared for in the future.”<sup>12</sup>

While this proposed bill will not include provisions relating to education, I hope that it will serve to raise the profile and importance of war memorials in tandem with affording them better protection, and I will continue engaging with schools, young people, and the veteran community to highlight the importance of protecting war memorials and the detail of my proposed bill as it progresses.

## Vandalism and desecration of war memorials

The vandalism or desecration of monuments such as war memorials is categorised as a heritage crime, 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>13</sup>

Tackling heritage crime falls under the domain of the Scottish Heritage Crime Group (a subgroup of the Scottish Partnership Against Rural Crime), comprised of Police Scotland, Historic Environment Scotland, Treasure Trove, local authorities and the Association of Planning Enforcement Officers.<sup>14</sup> Despite this specific focus, heritage crime is not currently recorded separately to other types of criminal activity by Police Scotland. This means that official police statistics on the number of attacks on war memorials in Scotland are not available.

However, it is possible to illustrate the scale of the issue by examining media reporting, as attacks on war memorials attract significant media coverage due to the distress such incidents can cause to local communities. Research carried out by my team has found that since 1996, there have been 66 attacks on war memorials in Scotland recorded in the online media. Almost 70% (46 attacks) have occurred since 2014.<sup>15</sup>

Although these acts of desecration have occurred across a wide geographical expanse in Scotland, most of those (40) reported in the online press took place across the Central Belt.

A wide variety of Scottish war memorials commemorating a range of conflicts have been targeted in recent years – including memorials which commemorate the First and

---

<sup>12</sup> <https://www.warmemorials.org/uploads/publications/64.pdf>

<sup>13</sup> <https://www.historicenvironment.scot/about-us/news/joint-drive-to-tackle-heritage-crime-in-scotland/>

<sup>14</sup> Ibid

<sup>15</sup> <https://www.meghangallacher.uk/consultation>

Second World Wars,<sup>16</sup> the Second Boer War<sup>17</sup> and the Spanish Civil War.<sup>18</sup> Desecration of such memorials has included the scattering of memorial items, graffiti, petrol bombing, and memorials being set alight. Where memorials have been graffitied, this vandalism has sometimes featured offensive language, including racist and sectarian phrases and symbols. Individuals targeting and attacking war memorials have included both first-time and repeat offenders, with some offences committed by young people under the age of 18.<sup>19</sup>

Attacks on war memorials can be high profile and distressing for local communities. Recent examples of memorial desecration in my own region include the vandalism of the memorial commemorating Motherwell's war dead in Duchess of Hamilton Park. The memorial was defaced with offensive graffiti days after the community commemorated those killed at the D-Day landings at the memorial days before.<sup>20</sup>

In November 2022, Edinburgh's Stone of Remembrance was left blackened with soot after being set on fire less than 24 hours after Remembrance Sunday services were held.<sup>21</sup>

In 2018 in Dennistoun, Glasgow, a new war memorial commemorating the city's war dead was attacked in a reported "petrol bombing" weeks before it was due to be unveiled.<sup>22</sup> In response, the Friends of Dennistoun War Memorial Group started a campaign for the desecration of war memorials to become a specific criminal offence,<sup>23</sup> including petitioning the Scottish Parliament.<sup>24</sup>

## Campaigning in the Scottish Parliament

In addition to the petitions lodged by Friends of Dennistoun War Memorial Group, I have also raised this issue in the Scottish Parliament, scrutinising the Scottish Government in relation to its policies regarding the protection of war memorials.

In November 2021, I raised the desecration of war memorials in a Portfolio Question to the Cabinet Secretary for the Constitution, External Affairs and Culture, Angus

---

<sup>16</sup> <https://www.dailyrecord.co.uk/news/local-news/vandals-smear-scum-earth-over-16506487>

<sup>17</sup> <https://www.thescottishsun.co.uk/news/3880461/boer-war-glasgow-kelvingrove-park-hammer-destroyed/>

<sup>18</sup> <https://www.thescottishsun.co.uk/news/scottish-news/7313416/motherwell-memorial-fascist-graffiti-vandals/>

<sup>19</sup> <https://www.meghangallacher.uk/consultation>

<sup>20</sup> <https://www.dailyrecord.co.uk/news/local-news/widespread-condemnation-after-memorial-towns-16512597>

<sup>21</sup> <https://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-63624149>

<sup>22</sup> <https://www.dailyrecord.co.uk/news/scottish-news/outrage-glasgow-war-memorial-torched-13169502>

<sup>23</sup> <https://www.glasgowtimes.co.uk/news/18797568.friends-dennistoun-war-memorial-bid-make-desecration-memorials-specific-crime/>

<sup>24</sup> PE1893 Introduce legislation to protect Scotland's war memorials, <https://www.parliament.scot/get-involved/petitions/view-petitions/pe1893-introduce-legislation-to-protect-scotlands-war-memorials?qry=PE1893>

Robertson MSP, asking whether he agreed that acts of vandalism committed against such important memorials are unacceptable and that better protection for war memorials is needed. In his response, the Cabinet Secretary confirmed the Scottish Government has “no current plans to introduce new legislation for that specific purpose”, but that it was supportive of the police and prosecutors “using the powers that are available to them to deal with any incidents of vandalism that arise”.<sup>25</sup>

I also led a Members’ Business debate on the issue in June 2022, having received cross-party support for my motion calling for ‘Better Protection for Scotland’s War Memorials’. The text of the motion was as follows—

That the Parliament notes the recent petition submitted on behalf of Dennistoun War Memorial, urging the Scottish Government to introduce stronger legislation, which would recognise the desecration or vandalism of war memorials as a specific criminal offence; understands that war memorials hold a very special place within the hearts of Scotland’s communities; further understands that there has been an unprecedented increase in the desecration and vandalism of Scotland’s war memorials since 2015, with some of those most recently targeted being the war memorial in the Duchess of Hamilton Park in Motherwell, the Carronshore War Memorial, the Boer War Memorial in Glasgow, the Spanish Civil War Memorial in Motherwell, the Kirkcaldy War Memorial, the Cowdenbeath War Memorial, and the Prestonpans War Memorial; notes calls to bring forward stricter legislation to ensure that war memorials are given special protection status; further notes the view that this would assist the authorities when prosecuting perpetrators of what it sees as these heinous crimes, and believes that war memorials are not representative of political or religious iconography, but are rather invaluable memorials to the young men and women who have paid the ultimate sacrifice for their countries, so that everyone today, irrespective of their background, can equally enjoy freedom from tyranny and oppression.<sup>26</sup>

In her response to the debate, the then Community Safety Minister, Ash Regan MSP, said:

“The Scottish Government supports police and prosecutors in using the existing powers that are available to them in dealing with incidents of vandalism that affect war memorials. However, we are open to considering the matter further, including whether it would be appropriate to introduce additional legislation to protect war memorials... I will reflect on the points that have been made tonight,

---

<sup>25</sup> The Scottish Parliament, Official Report of Meeting 4 November 2021, <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-04-11-2021?meeting=13382&iob=121467#121467>

<sup>26</sup> S6M-01794: Meghan Gallacher: Better Protection for Scotland’s War Memorials, <https://www.parliament.scot/chamber-and-committees/votes-and-motions/S6M-01794>

and on those made in the petition from the friends of Dennistoun war memorial.”<sup>27</sup>

This proposed bill will therefore provide an opportunity for this legislative approach to be properly explored with a view to legislating for a solution which helps deter future attacks on war memorials in Scotland.

## Legislative context

Under Scots Law, acts of desecration towards a war memorial could, at present, fall under the common law crime of malicious mischief or the statutory offence of vandalism. Section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995 defines the offence of vandalism as being committed by:

“any person who, without reasonable excuse, wilfully or recklessly destroys or damages any property belonging to another.”

Under the Act, the offence of vandalism excludes “wilful fire-raising”. Charges under the offence of vandalism can be heard in either a Justice of the Peace (JP) Court <sup>28</sup> or a sheriff court, with the choice of court at the discretion of the procurator fiscal and dependent on the seriousness of the offence. Maximum sentences for convictions for the crime of vandalism also vary between each court as follows:

- In the JP Court: a fine up to the value of £1,000, or imprisonment up to 60 days, or to both;
- In a sheriff court: for a first offence, a fine up to the value of £10,000, or imprisonment for up to 3 months (or to both), or a fine to the same value or 6 months imprisonment (or to both) for any subsequent such offence.<sup>29</sup>

Also relevant is the common law offence of “malicious mischief”. Malicious mischief is the crime of intentionally or recklessly damaging or destroying another person’s property, without permission, resulting in physical damage or economic loss.<sup>30</sup> The type of property included is wide ranging.<sup>31</sup>

---

<sup>27</sup>The Scottish Parliament, Official Report of Meeting 15 June 2022, <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-15-06-2022?meeting=13822&iob=125336#16194>

<sup>28</sup> Referred in the Criminal Law (Consolidation) (Scotland) Act 1995 as District Courts

<sup>29</sup>[https://www.legislation.gov.uk/ukpga/1995/39/section/52/2018-01-25#:~:text=52%20Vandalism.&text=\(1\)Subject%20to%20subsection%20\(.of%20the%20offence%20of%20vandalism.](https://www.legislation.gov.uk/ukpga/1995/39/section/52/2018-01-25#:~:text=52%20Vandalism.&text=(1)Subject%20to%20subsection%20(.of%20the%20offence%20of%20vandalism.)

<sup>30</sup> Sheriff A M Cubie et al, *Scots Criminal Law*, 5<sup>th</sup> Edition (London: Bloomsbury Professionals Ltd, 2022), p307

<sup>31</sup> McDiarmid, Claire. “CRIMES AGAINST PROPERTY.” *Scottish Criminal Law Essentials*, Edinburgh University Press, 2018, pp. 15–20. JSTOR, <http://www.jstor.org/stable/10.3366/j.ctv1kz4fz5.7>. Accessed 10 May 2023.

Criminal cases are dealt with in different courts depending on the seriousness of the offence. It is usually up to the procurator fiscal to decide what court a case will be heard in, and maximum penalties are set by law for each court.<sup>32</sup> In relation to the desecration of a war memorial, establishing the seriousness of an offence would not, under existing legal avenues, take into account the significance to a community or sentimental value of a war memorial when considering the preferred approach to prosecution.

Other potential legal avenues open to law enforcement officials when dealing with vandalism offences may include:

- The issue of on-the-spot fixed penalty notices by Police Scotland, under the Antisocial Behaviour etc (Scotland) Act 2004, to people suspected of lower-level offences such as vandalism and malicious mischief.<sup>33</sup>
- Common law charges of breach of the peace.<sup>34</sup> The maximum penalty for breach of the peace charges in the Sheriff Court prosecuted in summary procedure is a 12-month prison sentence or fine of up to £10,000. Prosecution on an indictment for Breach of the Peace in the Sherrif Court, though likely to be less common, carries a maximum prison sentence of five years or an unlimited fine.
- A charge of an offence under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.<sup>35</sup> This is where a person behaves in a threatening or abusive manner likely to cause a reasonable person fear and alarm where there is intent to do so, or recklessness as to whether fear or alarm would be caused. On conviction on indictment, a prison term not exceeding five years may be imposed, or a fine, or both. On summary conviction, a term of imprisonment may be imposed not exceeding twelve months, a fine not exceeding the statutory maximum (currently £10,000) or both.

However, none of these approaches or measures recognise at the outset the specific impact that desecrating a war memorial can have on a community or affected veteran, veterans' groups, and their relatives, and there is no single, clear charge under which an act of desecration might fall.

It is not unprecedented for the Scottish Parliament to pass laws which recognise that attacks on specific locations or sites can be taken to represent an attack on a group of people for whom that site is significant. Indeed, Scots law as it stands recognises the special significance of places of worship to local communities in terms of their level of legislative protection from acts of vandalism. Section 1(1)(b) of the Hate Crime and Public Order (Scotland) Act 2021 provides that an offence aggravated (wholly or partly) by malice and ill-will towards a group of persons based on the group being defined by

---

<sup>32</sup> The maximum fine for an offence of malicious mischief is unlimited (if convicted on indictment). The maximum sentence of imprisonment that may be imposed by a JP court is sixty days, 12 months for a common law offence in respect of a sheriff sitting summarily (summary proceedings) and five years on indictment in the sheriff court (solemn proceedings).

<sup>33</sup> Antisocial Behaviour etc. (Scotland) Act 2004, <https://www.legislation.gov.uk/asp/2004/8/contents>

<sup>34</sup> [Breach of the Peace – Crime.Scot](#)

<sup>35</sup> [Criminal Justice and Licensing \(Scotland\) Act 2010 \(legislation.gov.uk\)](#)

reference to a special characteristics (i.e. religion) does not require that there be a specific victim, meaning the aggravation can be applied where the malice or ill-will has been expressed to a group as a whole. The explanatory notes accompanying the Act set out that:

“where a church, synagogue or mosque is daubed with graffiti the offender might, in committing the offence of vandalism, be found to have been motivated by malice and ill-will towards people (comprising a group defined by reference to religion) who worship at those places.”<sup>36</sup>

It should be noted that this provision has not yet come into force as of September 2023, however it serves to represent the will of the Parliament in recognising the special designation of places of worship and the impact that desecration of these sites can have on those for whom they hold meaning. While an offence such as the one described above would relate to a hate crime on the basis of religion, the effect is that, once the relevant provision has been enforced, desecration of a place of worship would be treated differently by the law when compared to, for example, vandalism of a telephone box

I believe that war memorials also deserve their special status to be recognised legally and that this proposed bill represents an appropriate way to achieve that aim.

## England and Wales

There is legislative precedent in England and Wales for a change in the law to recognise the special status of war memorials by increasing the available penalties for their desecration or vandalism. As set out earlier in this document, in 2020 Jonathan Gullis MP introduced a Private Member’s Bill in the House of Commons to “create the offence of desecrating a war memorial; and for connected purposes”. The Bill sought to amend the Criminal Damage Act 1971 so that any person “who without lawful excuse destroys, damages or otherwise desecrates a war memorial shall be guilty of an offence”, with the following punishments applicable:

“(a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding ten years, or to a fine, or to both.”<sup>37</sup>

The Bill was subsequently withdrawn ahead of the UK Government legislating in this area via the Police, Crime, Sentencing and Courts Act 2022.<sup>38</sup>

---

<sup>36</sup> <https://www.legislation.gov.uk/asp/2021/14/notes/division/2/1/1>

<sup>37</sup> <https://publications.parliament.uk/pa/bills/cbill/58-01/0144/20144.pdf>

<sup>38</sup> <https://bills.parliament.uk/bills/2752>

Section 50 of the Police, Crime, Sentencing and Courts Act 2022 amended the Magistrates' Courts Act 1980 (applicable to provisions which extend to England and Wales only) to amend the provisions governing the mode of trial for the offence of criminal damage where that damage is to a "memorial". Section 50 exempts criminal damage to memorials from an existing rule that where criminal damage (other than that caused by fire) is valued at less than £5000, the court must proceed as though the offence were only triable summarily (which confers a lower maximum penalty). This has the effect that, where an offence of criminal damage is caused to a memorial, the monetary value of that damage is not a consideration, and the case can therefore be heard in a court with a wider range of sentencing powers available to it.

The UK Government policy factsheet accompanying the Police, Crime, Sentencing and Courts Act 2022 in relation to memorials states:

"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>39</sup>

The amendments made by the 2022 Act to the 1980 Act includes all memorials where a memorial is defined as:

"(a) 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

(b) a garden or any other thing planted or grown on land,

which has a commemorative purpose."

---

<sup>39</sup> <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-criminal-damage-to-memorials-factsheet>

# Detail of the Proposed Bill

My proposed bill would seek to protect war memorials by recognising their special significance to Scotland's communities through the creation of the specific offence of desecration of a war memorial. The creation of a new offence would serve as a deterrent against future acts of desecration.

This proposal has been developed specifically with the purpose of protecting war memorials in mind, however I would be interested to hear through the consultation exercise views as to whether this should be extended to include all relevant memorials as is the case with the UK Act.

## Definition of desecration

My intention is for the proposed bill to focus solely on the offence of desecration as a deliberate, targeted act.

The Bill pursued in the UK Parliament by Jonathan Gullis MP defined the term "desecrate" as:

"an act of disrespect including graffitiing, burning, spitting, urinating or defecating."<sup>40</sup>

The term "desecrate" is preferred to "vandalism" as "desecration" by definition involves targeting a site with special significance in a disrespectful manner.<sup>41</sup> In my view, the definition applied in my proposed bill should include any action which attempts to destroy, spoil or ruin a war memorial.

## Sentencing

I propose 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.

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 subject to the same degree of punishment as someone who causes expensive or irreparable damage and/or is a repeat offender. I also recognise that a young first offender may benefit more from a community sentence or an education programme than incarceration. Through my engagement with the veteran community, I recognise the preference of many that educating young people who target war memorials about the significance of these structures could be more effective than imprisonment.

---

<sup>40</sup> <https://publications.parliament.uk/pa/bills/cbill/58-01/0144/20144.pdf>

<sup>41</sup> <https://www.collinsdictionary.com/dictionary/english/desecrate>



That said, it is important that this proposed law affirms the view that a war memorial is of greater significance than other sites of potential vandalism. As such, I believe the maximum available sentence for causing significant or irreparable damage to a war memorial should reflect the severity of the offence and the distress such attacks cause local communities. 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 service order or compulsory attendance on an education programme to teach that young person about the significance of war memorials.

The more severe the act of desecration and the greater the damage caused, the larger the potential fine and/or prison sentence could be.

Considering the existing offence of vandalism, the Criminal Procedure (Scotland) Act 1995 includes a standard scale for offences triable only summarily, which is as follows:

<b>Level on the scale</b>	<b>Amount of Fine</b>
1	£ 200
2	£ 500
3	£1,000
4	£2,500
5	£5,000

Beyond the maximum available fine on the scale, the maximum “prescribed sum” that an offender can be liable to pay for a vandalism offence is £10,000 (if charged under S52 of the Criminal Law (Consolidation) (Scotland) Act 1995 (in sheriff court) or for a common law offence i.e., malicious mischief, in sheriff court subject to summary proceedings).<sup>42</sup>

I would envisage a similar scale applying for incidences of desecration of a war memorial, with no upper limit. This would allow levels of fines issued to cover the level of damage caused to a memorial up to its complete replacement in instances where the damage renders the memorial irreparable.

As set out previously, the maximum jail terms that offenders can be sentenced to for an act of vandalism is dependent on the seriousness of the offence. My view is that the severity of the offence, the age of the offender and their previous criminal record data

---

<sup>42</sup> If charged for malicious mischief, the maximum fine in respect of being convicted of a common law offence charged on indictment is unlimited, however this is an unlikely outcome, <https://www.legislation.gov.uk/ukpga/1995/46/section/225>

should be taken into account to determine the sentence conferred on a guilty party who has desecrated a war memorial.

In England and Wales, the maximum sentence available to the courts for the crime of desecration of a memorial under the Police, Crime, Sentencing and Courts Act 2022 is ten years imprisonment. I believe that, for consistency, this would also be an appropriate maximum sentence for equivalent Scottish legislation, with a sliding scale similar to the scale of fines available to judges when conferring sentences for vandalism.

I would welcome views on these proposed sentencing options and what the maximum available fine or sentence for the offence of desecration of a war memorial should be.

## Sustainable Development

When developing any new policy or proposed legislation, it is important to consider the extent to which it can be introduced sustainably. In this context, sustainable development goes beyond the natural environment, with the built environment also of consideration.

War memorials are heritage assets, built with the purpose of being a focal point in communities – in town centres, parks and green spaces – for acts of Remembrance and to commemorate the sacrifices of those who have fought in defence of their country. The desecration of these memorials can be upsetting and unsightly, particularly in instances where memorials are subject to graffiti with offensive slogans, or otherwise defaced. It is hoped that this proposed legislation, if passed, would have the consequence of deterring such attacks due to the introduction of stricter penalties. This, in turn, could mean that memorials are more likely to remain well-kept, maintained and in good condition – given their prominence and significance, this would be of clear benefit to the built environment and Scotland's town centres.

Whether a proposed law could help contribute towards building a strong, healthy and just society is also a key consideration of sustainable policy making. With regards to this proposal, although the policy will impact on veteran communities specifically (in terms of demonstrating respect for and recognising the importance and significance of war memorials), it also recognises the special role of memorials in local communities and, through that lens, would be of universal community benefit. It could also, it is hoped, lead to a decline in antisocial behaviour associated with attacks on war memorials by deterring potential future desecration.

This proposed bill could also positively impact community wellbeing. Greater protection for war memorials could support and improve the wellbeing of those for whom such memorials are special community monuments, including veterans, the families of those

honoured, and all those for whom a war memorial provides a public place for Remembrance. Future generations would also benefit – war memorials exist to ensure that the sacrifice of service personnel is not forgotten, and their continued protection would ensure their importance and significance is recognised for generations to come. Stricter penalties for the desecration of war memorials would send a strong, lasting message that such crimes are subject to strong punishment and therefore not acceptable.

The proposal could further strengthen communities by reaffirming the commitment to the special significance of war memorials, particularly in areas where community groups take on responsibility for their maintenance, upkeep, and repair. It would also help ensure sustainable spend in relation to Scotland's heritage assets – if fewer crimes targeting war memorials were committed, the money required to repair them could be redirected elsewhere and used to support other heritage assets instead.

Sustainable policymaking can also aid participation and accountability, including in relation to the collation of data. An indirect outcome of the proposal being made law would be that, were desecration of a war memorial a specific offence, official data would be collected in relation to such offences. This, in turn, would improve the availability of data in this area, which would be of direct benefit to the heritage sector.

## Equalities

In considering the proposed law's potential impact on equalities, I believe the proposal would not create any disadvantage or inequality towards any group based on a protected characteristic.

As war memorials are community assets, it is arguable that greater protection for these assets benefits whole communities. However, it could also be suggested that their impact may be greater for some groups more than others – for example, the bereaved families of service personnel killed in conflicts, or veterans for whom war memorials may hold a more special significance.

With regards the protected characteristic of religion or belief, it is the case that when war memorials are graffitied or defaced, the slogans and language used is sometimes of a derogatory nature towards specific religious groups (including sectarian and/or antisemitic language) or uses offensive fascist symbolism including Nazi symbols. Deterring desecration of war memorials could serve to reduce such attacks, including those which target or seek to denigrate specific religious groups. Therefore, I believe that this proposed law could have a positive impact on those groups most frequently targeted by offensive and derogatory graffiti.

## Financial Implications

Beyond the standard costs associated with a Bill's passage through the Scottish Parliament, I consider that the introduction of the specific offence of desecrating a war memorial would provide savings to Scotland's public finances.

Should this proposed bill be enacted, it could serve to deter future attacks on war memorials. Historic Environment Scotland supports the repair and conservation of war memorials through the War Memorials Trust Grants Scheme.<sup>43</sup> Were fewer offences committed which generate an associated cost to repair or restore a war memorial, this would produce a saving in the heritage budget which could be allocated elsewhere or redirected to support the general upkeep of war memorials.

Often it is local communities who absorb the cost of repairs to war memorials following acts of desecration. Fewer attacks would require less fund raising for this purpose, which again could allow for such funds to be reinvested elsewhere.

---

<sup>43</sup> <https://www.warmemorials.org/grants-scotland>

# Questions

## About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
- an individual – in which case go to Q2A
  - on behalf of an organisation? – in which case go to Q2B

- 2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)

- Politician (MSP/MP/peer/MEP/Councillor)
- Professional with experience in a relevant subject
- Academic with expertise in a relevant subject
- Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

- 2B. Please select the category which best describes your organisation:
- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
  - Commercial organisation (company, business)
  - Representative organisation (trade union, professional association)
  - Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
  - Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:
- I am content for this response to be published and attributed to me or my organisation
  - I would like this response to be published anonymously

- I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

5. **Data protection declaration**

- I confirm that I have read and understood the [Privacy Notice](#) to this consultation which explains how my personal data will be used.

If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

- Please ONLY tick this box if you are UNDER 12 years of age.

## Your views on the proposal

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

### Aim and approach

1. Which of the following best expresses your view of the proposed Desecration of War Memorials (Prevention) (Scotland) Bill? **Please note that this question is compulsory.**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response.

2. The proposed Bill aims to improve the protection of war memorials by creating the specific offence of desecration of a war memorial. Do you think legislation is required, or are there are other ways in which the proposed Bill's aims could be achieved more effectively?

- Yes, legislation is required
- No, legislation is not required
- Unsure

Please explain the reasons for your response, including your view on whether the creation of a specific offence of desecration of a war memorial would be an effective deterrent.

3. What do you think the definition of a 'war memorial' should be?

Please explain the reasons for your response, including your view on the proposed definitions set out on pages 7 and 8 of the consultation document.

4. Which of the following best expresses your view of the proposal that the level of punishment for the offence of desecration of a war memorial should be subject to a scale which reflects the severity of the offence?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response, including your view on first offenders, particularly young people, attending education programmes or community service, the scale of potential fines and prison sentencing options.

5. In England and Wales, the maximum sentence for desecrating a memorial is 10 years imprisonment. What, in your view, should the maximum sentence be under the proposed legislation for desecrating a war memorial?

- Under one year
- 1-2 years
- Up to 5 years
- Up to 10 years
- Other [Please specify below]

Please explain the reasons for your response.

6. Which of the following best expresses your view of the proposal that the new offence should be limited to war memorials, as opposed to memorials more generally?



- Proposal should be limited to war memorials only
- Proposal should be expanded to include all memorials
- Unsure

Please explain the reasons for your response.

## Financial implications

7. Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you think this proposal could have if it became law?

- a significant increase in costs
- some increase in costs
- no overall change in costs
- some reduction in costs
- a significant reduction in costs
- Don't know

Please explain the reasons for your answer, including who you would expect to feel the financial impact of the proposal, and if there are any ways you think the proposal could be delivered more cost-effectively.

## Equalities

8. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

What impact could this proposal have on particular people if it became law? If you do not have a view skip to next question.

Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

## Sustainability

9. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations.

Do you think the proposal could impact in any of these areas?  
If you do not have a view then skip to next question.

Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

## General

10. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

# How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

## Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

### *Online survey*

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/WarMemorials>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above or here: [Privacy Notice](#)

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

### *Electronic or hard copy submissions*

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

[Meghan.Gallacher.msp@parliament.scot](mailto:Meghan.Gallacher.msp@parliament.scot)

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Meghan Gallacher MSP  
M3.15, Scottish Parliament  
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the [Privacy Notice](#).

You may also contact my office by telephone on (0131) 348 5633.

## Deadline for responses

All responses should be received no later than **19 December 2023**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

## How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website [insert URL].

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The [Privacy Notice](#) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

## Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The [Privacy Notice](#) explains how such responses will be handled.

## Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

## Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The [Privacy Notice](#) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person’s consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: [www.ico.gov.uk](http://www.ico.gov.uk).

## **Freedom of Information (Scotland) Act 2002**

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

[www.itspublicknowledge.info](http://www.itspublicknowledge.info).