

Briefing for the Public Petitions Committee

Petition Number: [PE01830](#)

Main Petitioner: James Watson on behalf of Friends of Dennistoun war memorial

Subject: Protect Scotland's war memorials

Calls on the Scottish Parliament to urge the Scottish Government to introduce legislation which recognises desecration or vandalism of war memorials as a specific criminal offence

Background

There is not a full list of war memorials in Scotland, however most towns have some form of memorial to service personnel that have died during wartime.

The petitioner refers to a number of specific incidents of war memorials being vandalised in Scotland and highlights a concern that this has become more common. Published statistics for [recorded crime](#) and [criminal proceedings](#) include figures for vandalism, but these do not include any information specific to the vandalism of war memorials.

Criminal Law

Vandalism is a statutory offence under section 52 of the [Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#). The Act states that any "person who, without reasonable excuse, wilfully or recklessly destroys or damages any property belonging to another shall be guilty of the offence of vandalism". This would include acts against war memorials.

If convicted of an offence of vandalism, a district court can impose a maximum fine of £1,000 or a maximum sentence of 60 days'. In the sheriff court, there is a maximum fine of £5,000 and/or 3 months' imprisonment (6 months for a second or subsequent conviction). The court in which a case would be heard would be at the discretion of the procurator fiscal and would depend on the seriousness of the offence.

In addition to the statutory offence of vandalism, the common law offence of malicious mischief can also apply to acts of vandalism in Scotland. The Stair Memorial Encyclopaedia notes that:

“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.”

If convicted under the common law offence of malicious mischief, the sentencing powers differ depending on which of the Scottish courts hears the case. Sentences can include fines, a community sentence, admonition and a custodial sentence. This could allow for the imposition of more severe penalties in appropriate cases.

The selection of which offence an individual accused of vandalism may be charged with is at the discretion of the procurator fiscal, as is the level of court hearing the case.

Petitioner’s Call for a Specific Offence

A number of acts of vandalism against war memorials have been reported recently in the media in Scotland. In June 2020 there was [graffiti sprayed on a Boer War memorial in Glasgow](#), with similar acts being reported in [Motherwell](#), [Lerwick](#), and [Elgin](#) amongst other examples. Media attention has often focussed on the fact that war memorials hold a cultural significance to their communities, as well as on the amount of work that many community groups put into maintaining them. Parliamentary motions on the issue (see below) often discuss the fact that such acts of vandalism can cause hurt to the communities affected.

The petitioner’s call to introduce legislation to create a specific offence of vandalism against war memorials also appears to consider that these types of crime have a community impact that may differ from other forms of vandalism. The call to create a specific offence may also be rooted in the petitioner’s concerns that such crimes are perceived to be increasing.

Scottish Government Action

The topic of the vandalism of war memorials has been raised at First Minister’s Question Time twice in the past two years. On both occasions it was in relation to an act against a specific memorial. In the [meeting](#) on 13 June 2019, the First Minister stated that:

“I was disappointed and disgusted to hear of the vandalism of the first world war memorial in Motherwell and I join Clare Adamson and others in condemning such a wicked and despicable act. That it happened at a time when we have been commemorating the sacrifices that were

made by our armed forces makes it all the more abhorrent. The police are investigating it. I call on the perpetrators to reflect on their behaviour and come forward.”

A similar [answer](#) was also made by the First Minister in relation to a question on war memorial vandalism on 22 November 2018.

Scottish Parliament Action

There have been five motions submitted by Members this session condemning acts of vandalism on war memorials in Scotland. None of these have yet led to a Member’s debate. The most recent motions were submitted this summer and mention vandalism to the memorial in [Neilston](#) and the [Boer War memorial](#) in Glasgow’s Kelvingrove Park.

A Member’s [debate](#) was held in February 2020 recognising the importance of protecting and conserving Scotland’s war memorials. The debate did not discuss vandalism directly but did highlight the work of individuals and community groups in preserving memorials across Scotland.

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16/10/2020

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Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP