



Clare Adamson MSP
Convener
Constitution, Europe, External Affairs and
Culture Committee
c/o Clerk to the Committee

Meghan Gallacher MSP
03 November 2025

Dear Clare,

Desecration of War Memorials (Scotland) Bill

I am writing to provide a response to some of the key points raised in the written submissions that the Committee has received from stakeholders, including the Scottish Government, the Crown Office and Procurator Fiscal Service (COPFS), COSLA, Historic Environment Scotland (HES) and Police Scotland. This letter has been requested by your clerks via officials in the Non-Government Bills Unit.

I am grateful to the organisations mentioned above for engaging with the Committee's scrutiny of the Bill at stage 1. The key issues raised in their written responses relate to:

- The need for new legislation;
- Prosecution and sentencing;
- Distinction from the legislative position in England and Wales; and
- Alternative options.

My responses to these points are set out in turn below.

The need for new legislation

In the Scottish Government's written submission, the Cabinet Secretary for Constitution, External Affairs and Culture explains that a person who vandalises a war memorial in Scotland can currently be charged with different offences, including malicious mischief, which is a common law offence with no statutory maximum sentence. In the Cabinet Secretary's view, it is therefore not evident that existing offences are insufficient to address acts of desecration against war memorials. The Scottish Government also sets out that it is unaware of any systemic issues within the criminal justice system that would suggest current approaches to such cases are inadequate, including in relation to sentencing practices, which it considers raises broader questions about the necessity of introducing new legislation.

In addition, the written submission from the COPFS highlighted the existing options for prosecuting the desecration of a war memorial, also mentioning malicious mischief and vandalism, as well as breach of the peace. It expressed its view that, from a prosecutorial perspective, it is not necessary to create a distinct new offence to capture this type of offending.

I remain of the view that there remains a particular risk to war memorials in Scotland of being desecrated, as my research has shown to have been the case over the past several years, and which I have highlighted to the committee in oral and written evidence. Throughout the development of the Bill, I have taken into account existing offences that capture the behaviour I am seeking to address, and I remain of the view that these existing offences are insufficient. I believe that war memorials deserve a specific and heightened protection from desecration, damage and destruction in Scots law, given the significant distress caused to individuals and communities by such acts.

Throughout this process, I have engaged extensively with those who have been most impacted by the desecration of war memorials, including community and veterans' groups. Hearing accounts of their experiences has consolidated my belief that it is not appropriate for these acts to be treated in the same way as the vandalism of less emotionally and culturally significant structures, like lampposts or picnic benches. I believe that MSPs, as representatives of these communities, have a responsibility to legislate to create a more effective deterrent to committing this crime.

Prosecution and sentencing

In its written submission, the COPFS highlighted the provisions in the Bill related to sentencing, and shared insight into how prosecutors approach cases involving vandalism. It highlighted that:

“Public concern and impact on the community will be key factors for the prosecutor to consider in cases involving vandalism, as will the significance of the structure, the location or nature of the item vandalised, and the motivation behind the alleged offending.”

While I do not doubt that this is the case, I believe that enhancing the status of war memorials in the criminal law through the creation of a specific criminal offence would have the effect of encouraging prosecutors to give more weight to these factors, in particular the impact on and distress caused to affected communities. On this point, I wholeheartedly agree with the written submission by Police Scotland, where it says that “existing laws do not explicitly account for the emotional, cultural, or symbolic harm caused when war memorials are targeted”, and that the Bill “provides police and prosecutors with clearer statutory guidance ... [and] the authority to respond proportionately, signalling respect for community values and helping to mitigate potential friction”.

My intention in bringing forward this Bill is to equip the police and prosecutors with additional tools to properly and adequately address the issue of war memorial desecration, which I believe will have the effect of more effectively deterring these

acts in the first place, thereby improving confidence among affected communities that the law is treating their distress and experiences with sufficient seriousness.

The COPFS submission also set out that “The proposed maximum sentence of 10 years in this Bill would be less than the range of sentencing powers currently available to a judge in the High Court should a malicious mischief or breach of the peace charge be heard in that forum”, and that “Prosecutors and the court can and do already take into account all factors including community impact and trauma caused by any desecration of a war memorial, not just the economic impact of the crime.”

While I acknowledge that, in theory, a charge of malicious mischief could lead to sentences matching (or even exceeding) those I am proposing should it be referred to the High Court, the offence created by my Bill would allow referral to the High Court regardless of the scale or value of damage caused.

I refer the Committee to the [Scottish Crime Recording Standard: Crime Recording and Counting Rules](#). In relation to malicious mischief, it notes that:

“Malicious Mischief should only be recorded where widespread damage is caused, where the value of the damage is considerable, or where there is disruption of power supply, flooding or similar. There is no specific monetary amount where Vandalism stops and Malicious Mischief takes over but any value of damage would require to be significant (several £000s) before a crime of Malicious Mischief is recorded.”¹

I acknowledge that the financial or economic impact of the crime (i.e. the cost value of the damage) is not the only factor taken into account by prosecutors. However, in light of the above, I understand it to be unlikely that a case of war memorial desecration would attract these more significant penalties under existing offences, including malicious mischief. For this reason, I believe that existing offences are inadequate to proportionately address the level of distress caused by the desecration of war memorials.

Distinction from legislative position in England and Wales

In the written submission by COPFS, it sets out the distinction between the proposed provisions of my Bill and the existing legislation in England and Wales relating to criminal damage caused to memorials:

“It may be of interest for the Committee to note that England and Wales do not have a separate offence for desecration of war memorials, instead the Police, Crime, Sentencing and Courts Act 2022 (the 2022 Act) enacted a provision which relates to criminal damage caused to all memorials with a commemorative purpose. This is different to the definition in this proposed Bill. [...] It appears one of the purposes of the legislation in the 2022 Act was to close an anomaly related to a link between the value of the criminal damage and the forum for prosecution which in turn, restricted sentencing options available in England and Wales. This is distinctly different from the

¹ 33/011

position in Scotland where forum and thus sentencing options are not tied to the economic loss created by the offence of vandalism or malicious mischief”.

In relation to this Bill’s application to war memorials only, rather than all memorials as is the case under the 2022 Act in England and Wales, I have set out my reasoning for this approach in the Bill’s Policy Memorandum, as well as in evidence to the Committee. However, I welcome the Committee exploring the scope of the definitions in the Bill, and I will give due consideration to any recommendations it makes in respect of this issue.

With regard to the mechanics of the 2022 Act, in terms of the link between the value of damage and the forum of prosecution, I appreciate the distinction between that and the position in Scotland as set out in COPFS’s submission. Indeed, it is something that was considered during the development and drafting of my Bill. In light of this distinction, I consider that the most appropriate way to mirror the provisions of the 2022 Act in relation to maximum sentences (insofar as they would relate to war memorials in Scotland), and to give war memorials the status in law that they deserve, would be to create the new, specific criminal offence proposed in my Bill.

Alternative options

Some written submissions, including those from COPFS and COSLA, suggested that the Committee explore the creation of a statutory aggravation instead of a specific offence. In its submission, COPFS stated that:

“An alternative to legislating for a distinct offence could be achieved by creating a statutory aggravation which can be added to a substantive charge such as vandalism, malicious mischief or breach of the peace.”

Similarly, COSLA stated that:

“...it is questionable whether there is a need for new legislation when the Committee could explore additional statutory aggravators to existing vandalism or public nuisance offences.”

While it is my preference to create a specific offence, my goal is to achieve greater protection for Scotland’s war memorials in law. I understand that the creation of an additional statutory aggravator would require primary legislation. Therefore, I look forward to hearing the committee’s view on this matter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Meghan Gallacher', with a stylized, cursive script.

Meghan Gallacher MSP