

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2087](#): Pass a law making exercising a dog in a cemetery an offence, lodged by Paul Irvine

Brief overview of issues raised by the petition

The petition calls on the Scottish Parliament to urge the Scottish Government to pass a law making exercising a dog in a cemetery an offence punishable by an on-the-spot fine for infringement.

The petitioner advises they have witnessed dogs within an Edinburgh cemetery off-lead, urinating and defecating on graves and damaging teddies that have been left in the cemetery.

Background information

Current legislation – cemeteries

Management Rules

Section 17 of the Burial Grounds (Scotland) Act 1855 previously allowed burial authorities (i.e. the person with authority to manage the burial ground) to create management rules for cemeteries. This provision was repealed by the Burial and Cremation (Scotland) Act 2016. [Section 6 of this Act](#) instead allows Scottish Ministers to make regulations which:

“... make provision for or in connection with the management, regulation and control by a burial authority of burial grounds.”

Local authorities also have the power to make management rules relating to their land under [section 112 of the Civic Government \(Scotland\) Act 1982](#). This allows local authorities to regulate:

“... the use of, and the conduct of persons while on or in, any land or premises which is owned, occupied or managed by the authority or is otherwise under their control and to which the public have access.”

These powers could be used to exclude dogs from cemeteries altogether or to require them to be kept on a leash. Different local authorities have different management rules in relation to dogs in cemeteries. Some specify that dogs

must remain on a (short) leash and be under control (e.g. [Moray Council](#)). Others have stated that no dogs are permitted with the exception of guide dogs (e.g. [Scottish Borders Council](#)).

These rules are enforced by council officers. Where the rules are breached, local authorities have the power to expel or exclude individuals from the cemetery. Where someone persistently contravenes the rules, the local authority can make them subject to an exclusion order for up to a year. Should an individual refuse to leave a cemetery when requested to do so by a council officer, or enter when subject to an exclusion order, they will be guilty of an offence and liable on conviction to a fine not exceeding £200.

Byelaws

Local authorities have the power to make byelaws under [section 201 of the Local Government \(Scotland\) Act 1973](#). Under this Act, they are able to make byelaws for:

“... the good rule and government of the whole or any part of their area, and for the prevention and suppression of nuisances within.”

Byelaws are not able to be made under this legislation where they are made:

“... for any purpose as respects any area if provision for that purpose as respects that area is made by, or is or may be made under, any other enactment.”

This means if the local authority already has statutory powers to prevent a nuisance or restrict management of the public then they would not be able to proceed with a byelaw in this area. Byelaws require to be consulted on with the Scottish Government and then confirmation by Scottish Ministers.

Failing to comply with byelaws is a criminal offence which on conviction can result in a fine of up to a maximum of £500.

Current legislation – dogs

Control of Dogs (Scotland) Act 2010

The [Control of Dogs \(Scotland\) Act 2010](#) is intended to address dogs who are “out of control” and allows the police to issue a Dog Control Notice. A dog is defined as being out of control if:

“It is not being kept under control effectively and consistently (by whatever means) by the proper person, its behaviour gives rise to alarm or apprehensiveness on the part of any individual, and the individual's alarm or apprehensiveness is, in all the circumstances, reasonable.”

Dog Fouling (Scotland) Act 2003

The [Dog Fouling \(Scotland\) Act 2003](#) provides that where a dog defecates in a public space and the person who is in charge of the dog fails to remove the faeces then they will be guilty of an offence. This offence can result in a fine of up to £500 if convicted.

The Act also provides that local authorities are able to issue fixed penalty notices for this behaviour. This fixed penalty can begin at £80 and can be increased where it remains unpaid.

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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.

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