

# Citizen Participation and Public Petitions Committee

1st Meeting, 2024 (Session 6), Wednesday 24  
January 2024

## PE1941: Stop the destruction of headstones within community cemeteries

<b>Petitioner</b>	Cllr Andrew Stuart Wood
<b>Petition summary</b>	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.
<b>Webpage</b>	<a href="https://petitions.parliament.scot/petitions/PE1941">https://petitions.parliament.scot/petitions/PE1941</a>

### Introduction

1. The Committee last considered this petition at its meeting on [19 April 2023](#). At that meeting, the Committee agreed to write to the Scottish Government.
2. The petition summary can be found at **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received a new response from the Scottish Government which is set out at **Annexe C**.
4. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
6. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).

7. The Committee has also received a submission from David Brunton which can be found in **Annexe D**.
8. Every petition collects signatures while it remains under consideration. At the time of writing, 6 signatures have been received on this petition.

## Action

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

### Extract from the Official Report of last consideration of PE1941 on 19 April 2023

**The Convener:** PE1941, which was lodged by Councillor Andrew Stewart Wood, calls on the Scottish Parliament to urge the Scottish Government to monitor and regulate actions taken by local authorities when undertaking the statutory duty of ensuring health and safety within cemeteries.

Colleagues will remember that, on 8 February, we heard evidence from Councillor Wood and Desmond Barr from the Friends of Hawkhead Cemetery. During that evidence session, witnesses raised concerns that a policy established as a consequence of a tragic fatality from a large headstone had led to regulations being applied to much smaller and less dangerous headstones in a destructive way and without notice.

We heard that the Scottish Government guidance on health and safety in graveyards is “very good” but that it is not always followed by local authorities due to budgetary pressures. Witnesses highlighted improved communication with lair owners as a key part of any change and suggested the introduction of an independent auditor to check that local authorities are following the Scottish Government’s guidance. The petitioner was in favour of introducing a national standard to ensure that processes are followed and communication with lair owners is maintained.

There is quite a tricky narrative in relation to the petition. Do colleagues have suggestions as to how we might proceed?

**Alexander Stewart:** There is much more to the matter than it first appears, as we found out when we took evidence, and there are options that we can consider. It is important that we write to the Scottish Government burial, cremation, anatomy and death certification team, highlighting the issues that we heard about during the evidence session and seeking information on the planned public consultation on draft regulations under the Burial and Cremation (Scotland) Act 2016. We should also ask about the expected timescales, as that is an important issue for the petitioners. That is my recommendation, convener.

**The Convener:** Are we content to proceed on that basis?

**Fergus Ewing:** I think that I am correct in saying—I have just looked, but I could not find the relevant part of the oral evidence—that there is a lack of clarity about the legal responsibility for ensuring the safety of people who visit cemeteries and for dealing with the risk of headstones falling over. If there is such a lack, I think that we could invite the Scottish Government to indicate whether it believes that it should provide clarity by allocating specific legal responsibility for safety in cemeteries, quite possibly to local authorities, as they would appear to be the only public bodies that could be endowed with or given that responsibility.

If there is some lack of clarity, in the event of any further ghastly incident or accident, the victim or their family could be left in the virtually legally impossible situation of

having no clarity and no redress against anyone. Therefore, I think that it behoves the committee at least to ask the Scottish Government to consider whether that could be done and, if not, why not.

In a modern, civilised society, there needs to be clarity on such matters. Of course, property owners have very clear responsibilities in law, but if you do not know who the property owner is, you face a very difficult task indeed. Fortunately, we are talking about something that probably happens only rarely, but we should at least ask about the issue, as the Scottish Government could provide clarification.

**The Convener:** Are members happy to accommodate that proposal, too?

**Members** *indicated agreement.*

**The Convener:** We will keep the petition open and progress on that basis.

## Annexe C

### Scottish Government submission of 5 June 2023

#### PE1941/AA: Stop the destruction of headstones within community cemeteries

Thank you for your letter of 4 May 2023 to the Chair of the Burial Regulations Working Group, seeking views on Petition PE1941. The Working Group meetings have concluded and the minutes of meetings are [published](#) on the Scottish Government website. I am responding as Deputy Director for the Public Health Capabilities Division, with responsibility for the overarching policy governing the Burial and Cremation (Scotland) Act 2016 ('the 2016 Act'). Officials in the Burial & Cremation, Anatomy and Death Certification Team are taking forward the development of the draft burial regulations.

I note that there have been two previous responses to the Committee on Petition PE1941 (27 June and 19 October 2022) and you are now seeking additional information about:

- The status of the Scottish Government: Burial Ground Memorial Safety Guidance;
- The legal responsibility for safety of visitors to burial grounds; and
- The status of the consultation on draft regulations under the 2016 Act.

The [Burial Ground Memorial Safety Guidance for Scotland's Local Authorities](#) was developed with representatives from burial authorities and other interested parties in response to recommendations by the sheriff following a fatal accident inquiry into the death of a child due to a falling memorial. The Guidance was published in June 2019 and is intended to support local authorities. It is for each local authority to decide how the guidance fits in to their memorial inspection programmes.

The letter from my predecessor, Sinéad Power, of 27 June 2022 explained the legal responsibilities of burial authorities in relation to their burial grounds. Each burial authority is responsible for the maintenance,

safety and management of their burial grounds. There is a statutory duty placed on burial authorities, as employers, for the health, safety and welfare of staff and visitors to their burial grounds. This is primarily under both the Health and Safety at Work etc. Act 1974 (as amended) and the Occupier's Liability (Scotland) Act 1960.

We are developing burial regulations under the 2016 Act and they along with the guidance for the regulations and a burial code of practice will set out minimum standards for all burial authorities on Scotland. At the same time as the burial regulations, we will bring forward regulations to introduce inspection for the funeral sector: burial, cremation and funeral directors. Inspectors will inspect against the legislation, as well as any relevant guidance and codes of practice. As a first step towards publishing the consultation the commencement regulations were made on 11 May.

The public consultation on the draft regulations, which will include sections on maintenance and management of burial grounds, is due to be published in summer 2023 although I am unable to provide an exact date at this time.

## Annexe D

### David Brunton submission of 11 January 2024 PE1941/BB: Stop the destruction of headstones within community cemeteries

Scottish Borders Council (SBC) Cemetery Improvement Programme.

This will not detail failures in project management at SBC, suffice to state that:

- The council considered an Invitation to Quote to be a project plan for a five-year rolling programme of works.
- The council misinformed stakeholders about what was being tested
- The council paid over £100k to a contractor without once inspecting the works, let alone signing them off
- The council had to go back into cemeteries to fix the Health and Safety issues left by the contractor
- The council failed to follow the law, and attempted to cover this up
- The council failed to follow best practice and use Individual Notices.

What I will look at here are two facts, firstly, stones belong to individuals and not the council, and secondly, listed building consent and the failure of councils to follow the criminal law.

Stones belong to individuals and families, not the council.

My stones date back to 1691, some are individually listed, others are listed as part of the cemetery. Although the council agree they are listed, they are not informing Historic Environment Scotland of these planned works, nor are they obtaining listed building consent.



See:

[https://www.whatdotheyknow.com/request/listed\\_stones\\_in\\_traquair\\_kirk\\_ya](https://www.whatdotheyknow.com/request/listed_stones_in_traquair_kirk_ya)

The first I will know that these stones have been laid flat or socketed is when I next go to the cemetery. The council pinning notices on Cemetery gates informing me they intend to do testing does not help.

I am not given the chance to repair these stones in situ.

The use of Individual Notices, which SBC agreed with when they signed up to the 'Burial ground memorial safety: local authority guidance' in 2019 was quickly forgotten, as was the rest of this document. The council decided it was guidance, and was ignored, including the need for Listed Building consent.

Although some councils, Dumfries and Galloway for instance, learnt from their mistakes and now post Individual Notices for a 3 months period, SBC refuse to use them.

It must be stated here that Guidance is NOT the way forward. There needs to be an enforced use of Individual Notices in cemeteries.

You also cannot have councils breaking the law. Listed Building consent needs to be removed from the hands of those Councils who consider it something others should follow, and they can ignore. This situation needs looked at by this committee as it is a national disgrace. It's not only SBC who have ridden rough shod over the planning laws, most other councils in Scotland have done the same.

In the case of Ettrick Cemetery 46 stones were laid flat (a third of all stones) in a Category B listed cemetery, including the stone of James Hogg, the Ettrick Shepherd. This occurred even after SBC gave Ettrick Community Council assurances that stones would not be immediately downed. This destruction of Historic sites should never have been allowed to happen.

When this was raised with SBC, they miscited the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and claimed they did not need to tell Planning that works were being done, even though they had previously stated they required this permission. <https://www.legislation.gov.uk/ukpga/1997/9/section/8> section 8.(3).(d) has been omitted)

This is a blatant breach of a law that only the council enforces. They also stated it wasn't in the public interest to enforce.

SBC went into Peebles St Andrews cemetery and took down over 600 stones and damaged many in the process. St Andrews is Category C listed, (although the Council believe it is Category B), with individually listed stones. Again, no consent was obtained, and the devastation to this cemetery is permanent. These are gravestones belong to Individuals, including that of my 2<sup>nd</sup> great grandfather.

The council were asked for the health and safety reasons for taking some stones down, they refused to answer the question.

The council went into Lennel Cemetery and took down 89 stones in a category B listed cemetery where the ex-Prime Minister Alec Douglas-Home is buried

The Council had no listed building consent. This brought about the immediate cessation of the testing programme.

Even though FOIs have been made to the council, no information as to what happened has ever been disclosed, SBC decide to make changes, which included better notification and not testing stones below 2 feet. So basically, no meaningful change and a continuation of breaking Listed Building consent as one council officer won't enforce the law against another.

The Council informed Citizen Participation and Public Petitions Committee looking at this cemetery process that they intended to re-erect all stones that were laid flat at Lennel, with the possibility of re-erecting all laid flat stones in all cemeteries (PE1941/X: Scottish Borders Council submission of 23 December 2022). Council now state they will only reinstate some stones they had been laid flat in Lennel, and any socketed stones would be left.

Testing of socketed stones at Lennel show movement that make them unsafe. Council tells people not to test them.

Scottish Ombudsman won't look at this as I asked them to prosecute the officers concerned, something they can't do, so they decided not to bother looking at the complaint at all.

At an estimate we have over half a million pounds worth of damage, over 30 criminal offences, a permanently scarred environment, listed

and scheduled sites desecrated and stones belonging to individuals treated as a nuisance.

Councillors at SBC, who should have a grip on this, can't or won't get involved. One councillor wrote to me to state he wouldn't back using Individual Notices as he thought a small child may go to read it, and the stone would fall onto him. This further shows that the whole testing process should be taken out the hands of councils and councillors.

The committee cannot let this destruction of Scheduled Monuments, Listed Buildings and cemeteries continue without oversight. It is obvious from the above that what is happening cannot be allowed to continue.