

Citizen Participation and Public Petitions Committee  
Wednesday 29 May 2024  
10th Meeting, 2024 (Session 6)

## PE2087: Pass a law making exercising a dog in a cemetery an offence

### Introduction

**Petitioner** Paul Irvine

**Petition summary** Calling 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.

**Webpage** <https://petitions.parliament.scot/petitions/PE2087>

1. This is a new petition that was lodged on 28 February 2024.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition can collect signatures while it remains under consideration. At the time of writing, 263 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered.
6. The Committee has received written submissions from the Scottish Government, the Petitioner which are included at **Annexe C** of this paper.
7. Members may wish to note that [the Scottish Government has published the analysis of its consultation on burial regulations](#).

### Action

8. The Committee is invited to consider what action it wishes to take on this petition.

**Clerks to the Committee**  
**May 2024**

## **Annexe A: Summary of petition**

**PE2087: Pass a law making exercising a dog in a cemetery an offence**

### **Petitioner**

Paul Irvine

### **Date Lodged**

28 February 2024

### **Petition summary**

Calling 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.

### **Previous action**

We have liaised with staff from Edinburgh Council's Street Enforcement Team and Park & Cemeteries Team, several Cllr's in our ward & other Edinburgh wards, and Ian Murray MP over the past 3 years.

As a result, a vote was taken by the council in Feb 2022. We wanted the pre-Covid rule reinstated. The Council were only prepared to introduce a rule of "Dogs Must Be Kept on Leads" rule for cemeteries.

Recently, we have written to Jeremy Balfour MSP and Gordon MacDonald MSP.

### **Background information**

I am a father who lost his 3-year-old son in 2020. We live opposite where our son is buried and visit his grave at least once a day. Whilst visiting my son's grave, my family have witnessed up to 100 people exercising their dogs daily with dogs being let off-lead or on long leads, resulting in them urinating and defecating on graves, including that of my own son, and damaging teddies left by the public.

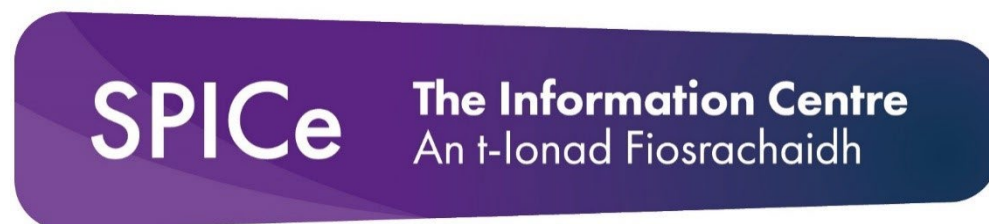
I have approached dog walkers to explain my issue. Most of the time I have been met with hostility and even threats of violence.

We witness some dog walkers driving to the cemetery, obviously from another area, just to exercise their dog.

Pre-Covid the Edinburgh Council rule was no dogs apart from assistance dogs.

We feel this is not enough of a deterrent, and a law is needed with an exception for dogs with mourners and assistance dogs.

## Annexe B: SPICe briefing on petition PE2087



### 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.

**Kirsty Deacon**  
**Senior Researcher**  
25/03/2024

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. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot)

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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## **Annexe C: Written submission**

### **Scottish Government submission of 4 April 2024**

#### **PE2087/A: Pass a law making exercising a dog in a cemetery an offence**

Thank you for your email of 28 February 2024 seeking the Scottish Government's views on the action called for in petition PE2087.

Cemeteries should be places where relatives and friends are able to remember their loved ones in peace. The importance of commemorating those we have cared about should not be underestimated. The Scottish Government fully recognises the distress caused by irresponsible dog owners who allow their dogs to foul on, or otherwise cause damage to, headstones, flowers and commemorative mementos left at gravesides. All those visiting cemeteries, for whatever reason, should behave respectfully.

Responsibility for the management, security, and upkeep of local authority burial grounds lies with the local authority in which the cemetery is located. Existing legislation already ensures that local authorities have the powers to put appropriate measures in place to tackle unacceptable behaviour in cemeteries. The Scottish Government believes that local authorities are ideally placed to make cemetery management rules that best suit their local circumstances and communities, including whether dogs should be prohibited or the conditions which should apply to dogs allowed to enter the cemetery.

The Civic Government (Scotland) Act 1982 gives local authorities the power to make, consult on, publish, and display management rules that regulate the use and conduct of members of the public while on or in any land or premises owned, occupied, or managed by the local authority or otherwise under their control. This includes local authority managed cemeteries. The local authority also has the power to expel a person from a cemetery if they have broken, or are about to break, a management rule. Furthermore, a local authority may decide that a person who has persistently contravened or attempted to contravene management rules and is, in their opinion, likely to contravene them again, shall be made subject to an exclusion order for that land for up to one year.

Anyone subject to the above action who does not follow the local authority order – i.e. refuses to leave the land or premises when asked to do so, enters or re-enters the land or premises they have been expelled from, or breaks an exclusion order – shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale (currently £200).

The Dog Fouling (Scotland) Act 2003 makes provision for the offence of dog fouling in Scotland. The law covers all public open spaces and anyone who does not immediately clean up fouling by a dog is committing an offence under the Act. Police officers and authorised local authority officers can issue fixed penalty notices of £80 rising to £100 to any person they believe has committed an offence under the Act.

There are no immediate plans to bring in further measures on this particular issue. However, the Committee may be interested to know that the Scottish Government is currently in the process of implementing the Burial and Cremation (Scotland) Act 2016. This Act updates legislation for all burial grounds and burial authorities across Scotland. We understand how important burial grounds are to people and that is why part of the work we are taking forward is regulations for the management of burial grounds. A public consultation on burial regulations ran from the 25 August to the 17 November 2023 and we are currently analysing the results to help us inform next steps. The analysis report will be published on the Scottish Government website as soon as it is ready.

**Community Safety Unit**