



# Ministry of Justice

## Circular No. 2022/02

**TITLE** POLICE, CRIME, SENTENCING AND COURTS 2022  
SECTION 50 – CRIMINAL DAMAGE TO MEMORIALS  
AND OTHER AMENDMENTS TO CRIMINAL OFFENCES

**From:** Criminal Law Policy Unit

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**Broad Subject** Criminal Justice

**Sub Category** Criminal Damage to Memorials

**This circular is for**

Lord Chief Justice, Justices of the Supreme Court, President of the Queen's Bench Division, Master of the Rolls, Senior Presiding Judge, Lords Justices of Appeal, High Court Judges, President of the Family Division, Chancellor of the High Court, Circuit Judges, Deputy Circuit Judges, Recorders, Crown Court Judges, District Judges (Magistrates' Courts), Bench Chairmen, Clerks to the Justices, Chief Officers of Police, Chief Crown Prosecutors.

Judicial College, Sentencing Council, Council of Circuit Judges, Magistrates' Association, Justices' Clerks' Society, Registrar of Criminal Appeals, HMCTS Delivery Directors, Crown Court Managers, National Police Chiefs' Council, The Law Society, The Bar Council, The Criminal Bar Association.

## **The Purpose of this Circular**

1. The purpose of this circular is to notify recipients of the commencement of a new criminal damage to memorials provision in the Police, Crime, Sentencing and Courts Act 2022 (“the PCSC Act”). The new provision, section 50 of the PCSC Act, amends section 22 and paragraph 1 of Schedule 2 to the Magistrates’ Courts Act 1980 (“the 1980 Act”). The provision will come into force on 28 June 2022 and will apply in relation to offences committed on or after that date.

## **Background**

2. Demonstrations in the summer of 2020 saw protesters targeting statues, including war memorials and other commemorations of cultural significance, causing great public concern. On 7 June 2020, during the anti-racism protests the Cenotaph war memorial on Whitehall was daubed with graffiti and a protestor tried to set fire to the Union Jack flag on the memorial. The statue of Sir Winston Churchill in Westminster was also spray painted with the words ‘was a racist’ under the former Prime Minister’s crossed out name.
3. These attacks sparked significant interest in the topic in the House of Commons. It has long been considered that the law is not sufficiently robust in this area as, while incidences of damage to and desecration of statues and war memorials are typically of low monetary value, they very often carry a high sentimental and emotional impact. Historical data from the War Memorials Trust indicate that from 2007 to 2017 an average of 12 war memorials per year were vandalised.<sup>1</sup>
4. On 23 June 2020, MPs asked the Government to support a new Desecration of War Memorials Bill intended to introduce a new and specific offence where a person destroys, damages or otherwise desecrates a war memorial. The MPs expressed concern that when damage to a war memorial amounts to £5,000 or less, the maximum sentence is three months imprisonment as a result of the provision in the 1980 Act which states that such cases must proceed as if only triable summarily; they say this does not reflect the severity of the crime or the distress caused to the public at large.

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<sup>1</sup> War Memorials Trust, 2017: War Memorials Trust reports on cases of theft and vandalism to war memorials (<http://www.warmemorials.org/uploads/publications/623.pdf>)

5. As a result, the Government decided to introduce, as part of the PCSC Bill, an amendment to the 1980 Act. The new provision does not create a new offence but instead amends the 1980 Act, by making changes to the provisions governing the mode of trial for the offence of criminal damage contrary to section 1 of the Criminal Damage Act 1971 (“the 1971 Act”), where that damage is to a memorial. Currently, the 1980 Act provides that where it is clear to the court that criminal damage (other than criminal damage committed by fire) is valued at less than £5,000, then the court must proceed as though the offence were only triable summarily; that is, it must be tried in a magistrates’ court. The practical result is that the maximum penalty that can be handed down is therefore 3 months’ imprisonment or a fine of £2,500. Section 50 of the PCSC Act amends Schedule 2 to exempt criminal damage to memorials from that rule, therefore removing consideration of monetary value with respect to criminal damage to memorials and ensuring that even ‘low value’ claims can be heard by the Crown Court, with the result that the full range of sentencing powers will be available.
6. When the changes made by section 50 in the PCSC Act comes into force, this will ensure that where memorials are damaged or desecrated the courts are able to sentence appropriately at every level for this type of offending, as the restrictions to mode of trial under the 1980 Act will not apply.

### **Summary of the new criminal damage to memorials provision**

7. Section 50 of the PCSC Act amends section 22 and paragraph 1 of Schedule 2 to the 1980 Act to ensure that where criminal damage is caused to a memorial, the case can be heard in either the magistrates’ court or the Crown Court, such that the courts can sentence appropriately and issue penalties that reflect the true level of harm and culpability, thereby addressing the concern around the current limits on mode of trial and sentencing.
8. Subsection (1) amends paragraph 1 of Schedule 2 to the 1980 Act with the effect that an offence under section 1 of the 1971 Act which is committed by destroying or damaging a memorial (“a memorial offence”) is not a scheduled offence for the purposes of sections 22 and 33 of the 1980 Act.
9. Subsection (2) inserts the new subsections (11A), (11B), (11C) and (11D) into section 22 of the 1980 Act which define a “memorial” to include buildings, other structures, moveable objects, gardens or other things planted, grown, erected or installed on land, where the object in question has a commemorative purpose such as to commemorate individual(s), animal(s) or event(s).
10. Subsection (3) provides that the amendments do not apply in relation to offences committed before it comes into force.

11. Destruction or damage to memorials continues to include acts of desecration as was the position in law prior to the amendments made to section 22 and paragraph 1 of Schedule 2 to the 1980 Act. Whether or not a memorial has in fact been destroyed or damaged will remain a matter for determination by the court.
12. Section 50 will apply only in relation to offences which are committed on or after it comes into force on 28 June 2022, two months from the date that the PCSC Act received Royal Assent on 28 April 2022.
13. Section 50 of the PCSC Act extends to England and Wales only.

### **Changes to other criminal offences in the PCSC Act**

14. The PCSC Act contains several provisions which amend other criminal offences, or create new ones, or make procedural amendments, some of which are as follows:
  1. Mandatory life sentence for manslaughter of emergency workers (known as “Harper’s law”) (section 3)
  2. Positions of trust (section 47)
  3. Breastfeeding voyeurism (section 48)
  4. Penalties for child cruelty offences (sections 122 and 123)
  5. Time limit for prosecution of common assault or battery in domestic abuse cases (section 49)

The information about these provisions can be viewed in the circular for the PCSC Act, published by the Home Office at the following link:

[Circular 005/2022: Police, Crime, Sentencing and Courts Act 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/circulars/2022/05/circular-005-2022-police-crime-sentencing-and-courts-act-2022)

### **Useful links:**

- Police, Crime, Sentencing and Courts Act 2022 - see <https://www.legislation.gov.uk/ukpga/2022/32/section/1/enacted>
- Magistrates’ Courts Act 1980 – see <https://www.legislation.gov.uk/ukpga/1980/43/contents>
- Criminal Damage Act 1971 – see <https://www.legislation.gov.uk/ukpga/1971/48/contents>