

MINISTRY OF JUSTICE

MEMORIAL SAFETY GUIDANCE¹: FREQUENTLY ASKED QUESTIONS AND ANSWERS

Do I have to follow this guidance?

The guidance has no specific legal status, but sets out minimum standards of good practice that will help burial ground operators meet their legal obligations and duty of care. It was drafted with the assistance of burial professionals and has been widely endorsed by Ministers, the HSE and the LGA. Burial ground operators would be expected to give the guidance very careful consideration.

Can I undertake a more detailed assessment of memorials and implement additional safety measures, if I wish?

If, as a result of a risk assessment, you believe further precautions to be necessary in any particular case, they should be carried out. However, health and safety law does not require burial authorities to do more than is reasonably practicable to manage the low risk of memorials causing serious injury. In deciding to do more than the guidance recommends, a burial authority would need to consider whether this could be justified, especially if additional costs were to be imposed on families or local taxpayers as a result.

Doesn't any memorial that is loose present an imminent risk of causing serious injury?

No. It may be possible to cause a memorial to move, but that does not mean that it is liable to fall, or, if it does, to cause serious injury. Some memorials will be held upright by ground anchors. Other memorials may be loose, but by virtue of their size, location or lack of nearby traffic they may be unlikely to cause serious injury if they were to fall or to give way under pressure.

Burial authorities may find it helpful to maintain a system for recording the installation of ground anchors. These are not readily identifiable by visual inspection, but knowledge of their presence in relation to specific memorials could be helpful during any periodic inspection process.

How do I assess the likelihood that a loose memorial will cause serious injury?

Local health and safety advisers should be able to assist with such assessments. It is, however, important to distinguish between the hazard and the risk. A hazard is anything that may cause harm; the risk is the chance, high or low, that somebody could be harmed by a hazard, together with an indication of how serious the harm could be.

Whereas an unstable memorial could present a hazard with potential to cause injury, the risk assessment would consider all relevant local factors and balance the probability of imminent failure or collapse of the memorial against the likelihood of someone being in close vicinity at the time, and the likely severity of any injury that may be caused. This should not be over-complicated and in a public place such as a burial ground a subjective but balanced judgement will need to be made about the people likely to be at risk of injury. The mere fact that a passer-by may be present in a burial ground does not mean necessarily that they are at risk of harm from an unstable memorial in that burial ground.

¹ *Managing the Safety of Burial Ground Memorials*, Ministry of Justice, January 2009

How can I ensure that hand tests are applied consistently?

The purpose of the hand test is to ascertain whether there is any movement in a memorial which otherwise seems to be secure, not whether the memorial, or its fixings, can withstand any particular level of pressure.

Where movement is detected, sufficient pressure may, with care, be applied to ascertain whether the memorial locks on any ground anchor.

The hand test should only be used as part of the overall assessment of risk.

Why should I not use a pressure testing device to measure the pressure applied to a memorial?

The guidance recommends that pressure measuring devices should not be used routinely. This is because such devices will not usually add anything to an assessment made by a hand test that a memorial is not fixed securely. There are also doubts about the reliability of the results when used with the wide range of memorials that exist, with a consequent tendency to overestimate the risk. Use of such equipment can also divert attention away from the risk assessment which considers not only the whether a memorial is at risk of falling but other factors that contribute to the significant risk of serious injury including size, location, visitor traffic etc.

What does “not routinely” mean in this context?

This means that there is no need to use pressure testing devices on every memorial and that they should not be seen as the starting point in the risk assessment process. There may, however, be specific circumstances on a case by case basis where a test with such equipment may be appropriate in order to obtain information essential to the assessment of the memorial in that case.

How frequently should memorials be assessed?

It is for burial ground operators to decide how often they should assess their memorials. In doing so, they will need to take account of the findings of their risk assessments and local factors which may suggest that an assessment should be made more or less frequently. The frequency might vary between burial grounds or areas of burial grounds and might even be specific to some complex individual memorials of high public interest.

Has the 35kg pressure test in BS 8415 been rejected?

BS 8415 is understood to provide an installation standard with associated checks for construction and stability, which is considered unnecessary for general monitoring purposes across the wide range of memorials. Whether 35kg is the appropriate level of pressure has also been questioned by some practitioners and specialists.

Specific queries about BS8415, which is understood to be subject to review, should be directed to the British Standards Institute (<http://www.bsigroup.com/en/Contact-Us/>).

Compliance with the risk assessment process advocated in the guidance is likely to identify far fewer dangerous memorials. Surely that can't be right.

The guidance recommends a risk assessment process that is proportionate to the risk of serious injury occurring. Records show that the number of incidents involving a loose memorial is very low. Burial ground operators should therefore expect to identify only very few memorials which need to be made safe at a particular time.

Irrespective of any imminent risk of causing serious injury, many of our memorials have been found to be poorly installed. Surely we should be taking action to ensure that memorials are installed properly and will last a life time.

If memorials do not present a significant risk of causing serious injury, there is no need, for health and safety purposes, for immediate action to be taken to make them safe. If they have not been installed in accordance with relevant industry standards that may be an entirely separate contractual matter for the owner, the memorial mason, and/or the burial ground operator. It should not be confused with safety responsibilities.

What am I supposed to do to protect the public? Warning signs and cordons have been criticised just as much as staking memorials and laying them down.

The guidance provides some suggestions for temporary precautionary measures, but they are not exhaustive. Operators may wish to consider alternative measures, or ways to implement precautions which are more publicly acceptable. Signs and cordons do not necessarily need to be in high visibility colours, although they can be if deemed appropriate, and cordons do not need to constitute a physical barrier to prevent access, as long as the reason and purpose for their use is clear and the level of risk does not warrant more. Where signs or tapes need to be affixed to a memorial, they are more likely to be tolerated if they do not obscure any inscriptions. Any such measures should of course only be temporary pending permanent repairs.

Why should I not use a stake to support a loose memorial?

The guidance recommends that stakes should not be used routinely. This is because they can be unsightly, and the process of staking can present a risk of harm and can damage the memorial if installed without proper care. Routine use of stakes can also divert attention away from the need to consider the risk presented by a memorial. In some cases, stakes have come to be seen as a cheap, permanent or semi-permanent, solution rather than a temporary measure pending repair or restoration, and stakes themselves can be a hazard with their own risks.

Many of our memorials have already been supported with stakes. Should I now remove them?

Burial ground operators are encouraged to review the measures they may have already taken in the light of the MoJ guidance. Stakes, or any other temporary precautionary measures, can be removed where a review of the assessment shows the risks are not significant, also taking into account any residual adverse effects that might have arisen from the staking process. If the risk remains, prioritisation should be given to the repair of the memorial.

Who is responsible for repairing a dangerous memorial?

Much will depend on the facts and of course this applies only to memorials that are truly dangerous. Many memorials may have been installed before the introduction of modern standards, which should not normally be applied retrospectively. Burial ground operators will need to take this into account and ensure their assessment is suitable and appropriate to the age, design and construction of these memorials and does not overestimate the danger present.

In the rare circumstances where a memorial is considered truly dangerous there might be a number of causes. The memorial may have been poorly installed, it may have been neglected by the owner and deteriorated over time, or it may have been damaged by the cemetery staff or contractors.

Whoever may be responsible, burial ground operators are encouraged to ensure that dangerous memorials are repaired promptly and this will need to be weighed against the time it may take to contact or establish the identity of memorial owners.

Won't my authority or I be liable if an accident happens?

If an accident occurs (and accidents that cause serious injury involving memorials are very rare), depending on the apparent circumstances and severity of injury the HSE or local authority regulator may carry out an investigation. They will consider whether a significant risk was foreseeable and whether reasonable and practicable measures were taken to control such risks. These considerations are part of the risk assessment process. There is no requirement to remove all risk. A criminal law prosecution will not automatically follow just because an injury or death has occurred.

A person might pursue under the civil law a claim against you or your organisation for harm caused to them or their property. This would be settled between the parties or by the civil courts.

Advice on what may be "reasonable and practicable" can be found on the HSE website at www.hse.gov.uk/risk/theory/alarpglance.htm.

What about memorials in churchyards or consecrated parts of a cemetery?

Any work to be undertaken on consecrated land which is subject to the faculty jurisdiction needs to be authorised by a faculty in the normal way. The MoJ guidance does not supersede the terms or conditions under which a faculty may have been granted to allow memorials to be assessed and repaired. However, it may be appropriate to consider whether an application should be made to vary such terms and conditions if they appear to conflict with the principles set out in the guidance.