

King Charles' exemption from wildlife legislation, the stifling of politics in Scotland & the implications for climate and nature

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The freed for us to v on the ro Balmoral

LETTERS

THE cost of living crisis seems to affect some more than others.

While many families are suffering severe hardship, the “impoverished” Windsor family announced this week their latest wheeze to fleece hoi polloi by charging £150 per skull for afternoon tea and a tour of a wee bit of Balmoral Castle.

For those who are unable or unwilling to stump up such extortionate charges for access to the royal but and ben, I would remind them that access to the wee bit hill and glen of Balmoral Estate is completely free, thanks to my amendment to the Land Reform (Scotland) Act 2003.

The original draft of that legislation contained a provision to exclude from public access land belonging to the monarch but I eventually managed to persuade the establishment to abandon such a preposterous provision.

In Scotland, we are blessed with some of the finest countryside in the world and possibly the best access legislation in the world. Scotland’s mountains, rivers, lochs and glens are not simply the property of royalty or any other landed gentry. They are part of our natural and national heritage.

I would, therefore, encourage all lovers of Scotland’s countryside to exercise their right of access by enjoying a walk up dark Lochnagar and other parts of Balmoral Estate.

No permission or admission fee is required – but as afternoon tea is not provided, you will have to bring your own piece.

**Dennis Canavan (former MP and MSP),
Bannockburn.**

On election day, 4th July, after the anaemic campaigns of the major parties, it was good to see some real politics being given prominence in the Herald and to be reminded of the time when the Scottish Parliament was prepared to introduce radical new laws.

The royal family, the Scottish establishment and access rights

Dennis Canavan’s letter does not quite tell the whole story about access rights to the private royal estates in Scotland. In the original proposals, as negotiated between the landowning and outdoor recreational organisations at the Access Forum, there was no question as to Balmoral being included in access rights. A number of us were, however, invited to Balmoral for tea – free! – with the Duke of Edinburgh to provide re-assurance about the proposals. I remember the occasion mainly because I wore a rather battered sports jacket and Prince Philip gave me rather more time than the suits.

The draft legislation that eventually emerged from the civil service was very different to what the

Access Forum had proposed to Scottish Ministers and included provisions to exempt the private royal estates in Scotland from access rights. While it is possible the royal family lobbied behind the scenes to have Balmoral exempted, they had in fact long been supportive of access for certain purposes, such as hillwalking and mountaineering, and had provided Gelder Shiel bothy to those ends.

That history suggests they didn't see the creation of public access rights in Scotland as being contrary to their own private interests and the proposals to exempt Balmoral from access rights appear more likely to have originated from the Scottish Establishment and what they thought the royal family wanted/needed, rather than from the royal family itself. However, without MSPs like Dennis Canavan prepared to challenge that establishment, I don't believe that exemption in the Land Reform (Scotland) Act 2003 would have been removed.

The Scottish Parliament, the royal family and the protection of wildlife

Since 2003 it appears to have been all downhill when it comes to MSPs in the Scottish Parliament successfully requiring the Royal Family should be subject to the law like everyone else. A couple of months ago ([see here](#)), I highlighted that the royal estates in Scotland were exempted from the provisions in the Wildlife Management and Muirburn (Scotland) Act 2024 that allow law enforcement agencies – in certain very limited circumstances – to enter, search and seize materials from premises unannounced if that would help the detection of certain crimes:

31 Crown application: powers of entry

- (1) A warrant granted under [section 24](#) is exercisable in relation to Crown land specified in column 1 of the following table only with the consent of the person specified in the corresponding entry in column 2 of the table (the "appropriate authority").

Crown land	Appropriate authority
Land an interest in which belongs to His Majesty in right of the Crown and which forms part of the Crown Estate (that is, the property, rights and interests under the management of the Crown Estate Commissioners)	The Crown Estate Commissioners
Land an interest in which belongs to His Majesty in right of the Crown and which forms part of the Scottish Crown Estate	The person managing the land
Land an interest in which belongs to His Majesty in right of the Crown other than land forming part of the Crown Estate or the Scottish Crown Estate	The office-holder in the Scottish Administration or, as the case may be, the Government department managing the land
<u>Land an interest in which belongs to His Majesty in right of His private estates</u>	The person appointed by His Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers

The requirement to have a warrant from a JP or Sheriff before the powers under Section 24 can be exercised provides safeguards to all landowners against the law enforcement agencies abusing their power but this was not enough for the Royal Family. In the case of the private royal estates authority also needs to be granted by someone nominated by His Majesty or failing that Scottish Ministers. Effectively what this means is those managing the royal estates in Scotland get advance notification of

any investigation of wildlife crimes that are suspected to have taken place on their land. This blows a major hole in legislation which was intended to reduce wildlife crimes associated with intensive grouse moor management



Muirburn in Glen Muick, Balmoral, May 2024. Almost all of the royal estate at Delnadamph and much of Balmoral is managed as grouse moor.

At the Stage 3 Reading of the Wildlife Management and Muirburn Bill not a single MSP proposed an amendment to these exemptions. That was despite the revelations in the Guardian three years ago ([see here](#)) about how the Queen was using her position to protect the Royal Family's private interests. As Andy Wightman subsequently explained ([see here](#)) this is deeply undemocratic and contrary to the founding principles of the Scottish Parliament.

All of this prompted me to take a look at other laws passed by the Scottish Parliament designed to protect nature and wildlife. What I have found is the Wildlife and Natural Environment (Scotland) Act 2011 amended the enforcement provisions in the Part 1 of Wildlife and Countryside Act 1981, which were designed to protect wildlife, by introducing exemptions for the private royal estates:

(3) After section 66A of the 1981 Act, insert—

*66B Application of Part 1 to Crown: Scotland

- (1) Subject to subsections (2) to (5), Part 1 (including regulations and orders made under it) bind the Crown.
- (2) No contravention by the Crown of any provision made by or under Part 1 makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (2), any provision made by or under Part 1 applies to persons in the public service of the Crown as it applies to other persons.
- (4) A species control order may be made under section 14D in relation to Crown land only with the consent of the appropriate authority.
- (5) The powers conferred by sections 14M and 19ZC are exercisable in relation to Crown land only with the consent of the appropriate authority.
- (6) In this section, “Crown land” means an interest in land which—
 - (a) belongs to Her Majesty in right of the Crown;
 - (b) belongs to Her Majesty in right of Her private estates;
 - (c) belongs to an office-holder in the Scottish Administration or is held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration; or
 - (d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.

This is telling. I don't think many people realise the Scottish Parliament has introduced exemptions to UK legislation which originally treated the privately owned royal estates like any other landowner. Since the early years of the Scottish Parliament and the presence of MSPs like Denis Canavan, the situation has become worse, not better. Clearly, too, the royal family are not nearly as relaxed about wildlife protection as they are about public access.

Why the silence about the royal family's use their powers to protect their private interests?

This failure of the Scottish Parliament is not entirely the fault individual politicians. The main political parties have made it very difficult for their members to speak out. It is notable that Denis Canavan was expelled from the Labour Party and Angus McNeil, who spoke out against the exemption of the Queen from the Heat Networks bill ([see here](#)), was subsequently expelled from the SNP (and has just lost his parliamentary seat for the Western Isles).

Meantime, many of the voluntary organisations which are supposed to protect our wildlife and which most MSPs rely on for advice about amendments to legislation, have royal patrons and presidents. In May, the RSPB, one of the main organisations which had pushed for the Wildlife Management and Muirburn Act, announced that King Charles had succeeded the Queen as their patron ([see here](#)). If King Charles is such a “consistent, active and inspiring champion for action on nature and climate” as RSPB claim in their news release, why weren't they prepared to say in public that the royal estates

should be subject to legislation designed to protect wildlife like everywhere else?

The environmental implications of land owned by the royal family being treated differently

The exemption of land owned by the royal family from certain legislative provisions designed to protect wildlife illustrate the failure to tackle an even bigger environmental issue, the degraded condition of nature in upland Scotland.

More specifically the way the state in Scotland, from the Scottish Government down to public authorities, kow tows to the royal family has prevented any meaningful reform of the sporting estates. These bear primary responsibility for damage to nature across upland Scotland through intensive grouse moor management and their maintenance of large numbers of red deer for shooting purposes. Since Queen Victoria the royal family have been the lynch pin of the sporting estate system.

This helps explain the failure of the Wildlife Management and Muirburn Act to ban burning on peat or land that would otherwise develop into woodland.

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Muirburn in Glen Muick, May 2024, beside an enclosure erected with support from NatureScot and others to enable native woodland to recover from overgrazing by red deer.

It also explains why NatureScot has failed to deal with the damaging numbers of deer at Caenlochan for over 20 years, why the new Section 7 Agreement there only aims to reduce deer density to 10 per square km by 2026 ([see here](#)) and why the Scottish Parliament has never investigated the issue as recommended by the report of the Deer Working Group. Basically the Scottish Government, NatureScot and the Cairngorms National Park Authority put the private “needs” of the royal family before their public duty to protect the natural environment and further its conservation.

I will provide further evidence of these issues in a forthcoming post on deer density at Balmoral, based on what I saw on a visit in May and a response to a Freedom of Information request about the new Caenlochan Section 7 Agreement. The point here is that we will need many more radical politicians, like Dennis Canavan, and many more radical environmentalists, like Adam Watson (who was spat on for criticising the way the royal family managed their land), if we are to have a chance of reforming the

way sporting estates in Scotland are managed.

Category

1. Cairngorms

Tags

1. access rights
2. Scottish Government
3. sporting estates
4. wildlife persecution

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