

Citizen Participation and Public Petitions Committee

6th Meeting, 2023 (Session 6), Wednesday
19 April 2023

PE1998: End legal loopholes for the Monarchy

Lodged on	2 February 2023
Petitioner	Tristan Gray on behalf of Our Republic
Petition summary	<p>Calling on the Scottish Parliament to urge the Scottish Government to:</p> <ul style="list-style-type: none">• legislate to abolish adaptations and exemptions to legislation requested by the Monarchy;• ensure all future communications between the Monarchy, Scottish Government and Scottish Parliament with representatives of the Monarchy are fully transparent and public;• publish the detail of all cases where laws have been adapted at the request of the Monarchy; and• prevent any such alterations to our laws from being implemented in the future.

Webpage <https://petitions.parliament.scot/petitions/PE1998>

Introduction

1. This is a new petition that was lodged on 2 February 2023.
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. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected to collect this information. 7,310 signatures have been received.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

Action

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

Clerk to the Committee

Annexe A

PE1998: End legal loopholes for the Monarchy

Petitioner

Tristan Gray on behalf of Our Republic

Date Lodged:

05/01/22

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to:

- legislate to abolish adaptations and exemptions to legislation requested by the Monarchy;
- ensure all future communications between the Monarchy, Scottish Government and Scottish Parliament with representatives of the Monarchy are fully transparent and public;
- publish the detail of all cases where laws have been adapted at the request of the Monarchy; and
- prevent any such alterations to our laws from being implemented in the future.

Previous action

Email to Foysol Choudhury MSP 17 October - No response

Email to Sarah Boyack MSP 12 November - No response

Email to Sue Webber MSP 12 November - No response

Email to Jeremy Balfour MSP 12 November - No response

Email to Miles Briggs MSP 12 November - Not supportive

Background information

A Scottish Government memo has revealed that draft laws have been secretly changed to secure the approval of the Monarchy. Most recently the Scottish Parliament and people were denied the right to know whether Charles III had been exempted from emergency law to protect tenants from rent rises and evictions during the cost of living crisis. This consent procedure was used by the Monarch in Scotland in at least 67 instances in which Scottish bills were vetted by Elizabeth Windsor.

Under the King's consent, the monarch is given advance notice of proposed laws that could affect his personal property and public powers. King's consent must be sought before the relevant legislation can be approved by Parliament.

Last year, the Monarchy's lawyers secretly lobbied Scottish ministers to change a draft law to exempt their private land from a major initiative to cut carbon emissions.

The Scottish Government has refused to publish details about the Monarchy's lobbying of ministers.

Annexe B

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1998](#): End legal loopholes for the Monarchy, lodged by Tristan Gray on behalf of Our Republic

Brief overview of issues raised by the petition

The petition calls on the Scottish Parliament to urge the Scottish Government to:

- “legislate to abolish adaptations and exemptions to legislation requested by the Monarchy;
 - ensure all future communications between the Monarchy, Scottish Government and Scottish Parliament with representatives of the Monarchy are fully transparent and public;
 - publish the detail of all cases where laws have been adapted at the request of the Monarchy; and
 - prevent any such alterations to our laws from being implemented in the future.”
- The UK is a constitutional monarchy¹. The [Constitution Unit at UCL](#) has explained that *“The King reigns, but he does not rule. Ruling is done by his government, and as head of state in the UK the King is constitutionally obliged to follow the government’s advice.”*
 - Some Bills require Crown consent before they are passed by the Scottish Parliament (the requirement also exists at other UK legislatures).
 - The concept of the Crown is explained in [a House of Commons Library Paper](#): *“The terms “the sovereign” or “monarch” and “the Crown” are related but have separate meanings. The Crown*

¹ [The Cabinet Manual \(publishing.service.gov.uk\)](#)

encompasses both the monarch and the government. It is vested in the King, but in general its functions are exercised by Ministers of the Crown accountable to the UK Parliament or the three devolved legislatures.”

- Crown Consent is required in circumstances where a Bill would affect:
 - Prerogative – which is certain powers and rights that the Crown has, for example, to appoint Ministers or to give Royal Assent to Bills
 - Hereditary revenues - revenue from land owned by the Crown
 - Private interests - anything that affects the monarch personally
- The Scotland Act 1998 (Schedule 3 paragraph 7) concerns the issue of Crown consent. It states:

"The standing orders shall include provision for ensuring that a Bill containing provisions which would, if the Bill were a Bill for an Act of Parliament, require the consent of Her Majesty, the Prince and Steward of Scotland or the Duke of Cornwall shall not pass unless such consent has been signified to the Parliament."

- The Scottish Parliament's Standing Orders reflect this requirement in the Scotland Act. [Rule 9.11](#) is relevant for public bills. Rule 9.11 states that the Parliament cannot debate whether a Bill which requires Crown consent should be passed unless Crown consent is signified by a member of the Scottish Government.
- A Scottish Government Minister signifies Crown consent, usually at the start of stage 3 proceedings.
- A formal request for Crown consent takes the form of a letter. The First Minister's Principal Private Secretary writes to His Majesty's Private Secretary (enclosing 3 copies of the Bill) asking them to ascertain whether the provisions in the Bill which affect the Crown are acceptable to His Majesty.²

² [Scottish Government FOI release](#), background note to PQ [S6W-02027](#)

- A [note on King's and Prince's consent prepared by the Office of the Parliamentary Counsel is available online](#).
- There have been recent changes to accompanying documents to create more transparency around Crown consent³.
 - Policy Memorandums for a Government Bill being introduced should include a paragraph on Crown consent.
 - Explanatory Notes for Government Bills should include a note on Crown application.
- More detail on Crown consent can be found on the [Scottish Parliament website](#).

Sarah McKay
Senior Researcher
16/01/2023

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. 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.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP

³ [Written question and answer: S6W-11314 | Scottish Parliament Website](#)

Annexe C

Scottish Government submission of 23 March 2023

PE1998/A: End legal loopholes for the Monarchy

Please accept my sincere apologies for the delay in responding to the Committee on this.

As noted above, Petition PE1998 seeks to have the Scottish Government legislate to abolish adaptations and exemptions to legislation requested by the Monarchy. However, seeking Crown consent is a requirement under the Scotland Act 1998, which is the UK Act passed by Westminster in 1998 that provides for the current devolution settlement. The effect of that Act, since 1999, is to require the Scottish Government to follow the same rules that apply to UK Bills when it comes to seeking consent from the Royal Household. The Scottish Parliament cannot pass legislation to remove this legal requirement.

Petition PE1998 seeks to have the Scottish Government ensure that all future communications between the Monarchy, Scottish Government and Scottish Parliament with representatives of the Monarchy are fully transparent and public. On this point, correspondence between the Scottish Parliament with representatives of the Monarchy is clearly a matter for the Parliament rather than the Government. In relation to correspondence between the Scottish Government and Monarchy, including representatives of the Monarchy, it is important to note that correspondence with the Royal household is confidential. In order to maintain the ability to hold free and frank discussions it is important that this confidentiality is recognised and respected. Given the legal requirements placed on the Scottish Government by the Scotland Act in relation to Bills, a positive working relationship with the Royal Household is vital.

However, Scottish Government policy is that the Crown should be subject to regulatory requirements on the same basis as everyone else unless there is a legitimate reason for an exemption or modification to this. This policy was reflected in section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 which provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory

instrument unless the provision expressly exempts it. Scottish Government guidance on [drafting legislation](#) sets out a range of matters where legislation may need to be modified to reflect the position of the Crown.

The Scottish Government welcomes full debate on Bills brought forward to Parliament and requires to explain and justify the policy content of all of its legislation at introduction. All Bills passed by the Scottish Parliament have been scrutinised and debated by Parliament before being agreed. It is open to MSPs and parliamentary Committees to raise questions as to whether and how provisions apply to the Crown during any Bill's parliamentary passage. From September 2022, the Parliament publishes information about whether a Bill requires Crown consent on introduction. The Scottish Government includes information in a Bill's accompanying documents setting out how legislation applies to the Crown and the reasons why Crown consent is needed for any Bill. If a Bill does not apply to the Crown in the same way as everyone else, this will be explained in the accompanying documentation. This ensures full information is publicly available on the introduction of a Bill to enable MSPs to scrutinise and debate this throughout the passage of the Bill.

Indeed, the background information to PE1998 states that “Most recently the Scottish Parliament and people were denied the right to know whether Charles III had been exempted from emergency law to protect tenants from rent rises and evictions during the cost of living crisis.” However, I would like to take this opportunity to make clear that the Cost of Living (Tenant Protection) (Scotland) Act 2022 applies to the Royal Household and their property and to the Crown Estate and the Scottish Crown Estate and its property in the same way as to any other private landlord. There was no preferential treatment in that legislation for either the Royal Household or the Crown Estate or the Scottish Crown Estate. This was made clear during the passage of the Bill and in the Bill's accompanying documents. Information relating to Crown consent is set out in paragraph 93 of the [Policy Memorandum](#) while information on Crown application is set out in paragraph 8 of the [Explanatory Notes](#).

Petition PE1998 also seeks to have the Scottish Government publish the detail of all cases where laws have been adapted at the request of the Monarchy and to prevent any such alterations to our laws from being implemented in the future. The Scottish Government prepares legislation based on numerous factors, including consultation with relevant stakeholders, of whom the Sovereign might be one. The Scottish Government does not record how Bills have changed as they have been

developed or where stakeholders have queried aspects of that legislation.

I hope the Committee finds this letter helpful.