

# **PE2100/A: Ministerial guidance to clarify the criteria for assessing licence applications under section 16 of the Wildlife and Countryside Act 1981**

## **Scottish Government written submission, 16 August 2024**

Thank you for your email requesting the Scottish Government's views on the action called for in the petition PE2100.

The petition asks "the Scottish Parliament to urge the Scottish Government to produce guidance under Section 54 of the Nature Conservation (Scotland) Act 2004 to clarify the criteria for consideration of "no other satisfactory solution" in relation to licensing and to include the sustainable cultural use of natural resources under Section 16 of the Wildlife and Countryside Act 1981."

We want to ensure that legislation is as accessible and understandable as possible for applicants, or anyone else with an interest. That is why NatureScot provides detailed licensing guidance which includes specific guidance on the interpretation of no satisfactory alternative/no other satisfactory solution test. This is available on the NatureScot web page: <https://www.nature.scot/doc/guidance-licensing-test-2-no-satisfactory-alternative-licence-relation-european-protected-species>

This guidance takes into consideration European Court of Justice case law on protected species.

The suggested approach is to ask:

- What is the problem or specific situation that needs to be addressed?
- Are there any other solutions?
- If so, will these resolve the problem or specific situation for which the derogation is sought?

This methodology is also referred to in other European Commission guidance on sustainable hunting under the Birds Directive, which concludes that 'where another solution exists, any argument that is it not "satisfactory" will need to be strong and robust'.

NatureScot believes using peregrine falcons and merlins that are not a pure-bred 'native' subspecies (i.e. commercially available captive bred birds) is a suitable alternative to taking birds from the wild to keep, breed and fly. So far, NatureScot have not been provided with a strong and robust argument that this is not the case.

The Scottish Government has no intention to bring forward legislation to include the sustainable cultural use of natural resources under Section 16 of the Wildlife and Countryside Act 1981.

**Environment and Forestry Directorate**