

Citizen Participation and Public Petitions Committee

17th Meeting, 2022 (Session 6), Wednesday
7 December 2022

PE1859: Retain falconers' rights to practice upland falconry in Scotland

Lodged on	24 March 2021
Petitioner	Barry Blyther
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to amend the Animals and Wildlife Act 2020 to allow mountain hares to be hunted for the purposes of falconry.
Webpage	https://petitions.parliament.scot/petitions/PE1859

Introduction

1. The Committee last considered this petition at its meeting on 20 April 2022. At that meeting, the Committee agreed to write to the Game and Wildlife Conservation Trust and the RSPB. It also agreed to invite the Petitioner, Dr Nick Fox, the Scottish Government and NatureScot to give evidence at a future meeting.
2. At its meeting, the Committee will take evidence from the Petitioner and Dr Nick Fox.
3. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
4. The Committee has received a new responses from RSPB and Dr Nick Fox which are set out in **Annexe C**.
5. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).

6. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
7. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).

Action

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

Clerk to the Committee

Annexe A

PE1859: Retain falconers' rights to practise upland falconry in Scotland

Petitioner

Barry Blyther

Date lodged

24 March 2021

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to amend the Animals and Wildlife Act 2020 to allow mountain hares to be hunted for the purposes of falconry.

Previous action

I have written to MSPs Murdo Fraser, Andy Wightman and Alison Johnstone.

Background information

The heritage art of falconry has been practised around the world for at least 4000 years and is recognised by UNESCO as an intangible cultural heritage of humanity. The wider concept of falconry has many disciplines within its scope, and these are in many ways controlled by both the species of bird of prey being flown, and the land that you have permission to fly it over.

For example, the spectacular Golden Eagle, one of only two species of eagle native to Scotland, needs extraordinarily vast, wide open spaces to be allowed to express itself and its flying style in a natural way.

To be conducive to the very high soaring flight in strong winds and among its natural home of the mountains, vast mountainous regions are where this bird can be flown at its very best. Bouncing backwards and forwards in field is really not what this species has evolved for millions of years to do.

Eagles are apex predators, and the result of flying them in these areas is that they will hunt their natural quarry. In the Scottish mountains, that quarry base is the mountain hare (*Lepus Timidus*), that has evolved side by side with eagles for millions of years. The predator will be successful in its attempt at hunting hares just frequently enough to survive, and the hare almost always evades the predator, assuring its survival and the proliferation of the species.

People and falconers travel to Scotland from around the country and the world to witness this age-old wild dynamic play out in front of them.

A captive bred Golden Eagle, enjoying the safety net of Veterinary care when illness or injury arises (that would likely lead to the death of its wild counterpart) can live to 50 years old. Many, if not most, in this country are bred, kept and trained with the ultimate aim to be flown over those high mountains each winter, and perhaps catch a mountain hare. In doing so, it fully expresses its nature and purpose and helps to keep the eagle stimulated, balanced, and ensures that it is a better contributor to captive breeding projects – It fully understands that it is an eagle and not an ornament.

New legislation comes in to force on March the 1st (with no mechanism for licensing), that makes it illegal for these birds with their falconers to continue to exhibit their natural instincts and behaviour within the reasonable framework of the law and principles of sustainable hunting as they have through time immemorial. The sustainable use of wild species is a key and proven strategy upheld by the International Union for the Conservation of Nature (IUCN) in order to promote the preservation and restoration of endangered species.

The purpose of the legislation was to prevent mass culls of tens of thousands of hares in Scotland each year on organised shoots. This petition is NOT aimed at this, rather its aim is to allow the continued practice of falconry in Scotland and her mountainous places, without risk of prosecution.

It seems unfair and unjustifiable that a piece of legislation brought into law to address a totally different issue, has the side effect of making the sustainable and legitimate branch of falconry illegal.

Unaddressed, this legislation will condemn hundreds upon hundreds of trained birds of prey to enclosed aviaries for the rest of their long lives, and therefore, I believe, presents an intolerable animal welfare issue of itself which the government does not appear to have anticipated.

It will end the dreams of hundreds of falconers and rob us of our heritage and right to properly fly our birds.

Business too will suffer. Substantial fees are paid by falconers to rent ranges to fly over, cottages to stay in, restaurants to eat in etc.

Film and production companies come to Scotland to film this wild behaviour (using trained birds of prey so wild eagles are not disturbed) for movies, documentaries and science.

The filming and broadcast of natural history documentaries showcasing the natural hunting behaviour of eagles and other birds of prey in Scotland is key to helping both a whole generation of youths and the public as a whole to value, cherish and understand nature. Additionally, such filming of eagles and other birds of prey hunting in their native habitat portrays some of Scotland's most unique and beautiful facets and thus contributes to the promotion of the truly unique ecological heritage of Scotland to a domestic and international audience. These film makers will now have to go elsewhere and thus promote other destinations.

Falconry based companies eke out an income during their lean winters by taking guests out to see this amazing spectacle. Those companies' futures are jeopardised by the sudden and unjustified loss of income and trade.

Finally, licences are to be made available to land owners to shoot the hares in a bid to protect habitat, crops and forestry. Currently, many estates do not shoot hares to ensure there is a realistic population to attract falconers trade to their doors. If falconry is to be lost as a legitimate pastime in the mountains, I believe, the hares will almost certainly be shot on many estates in far greater numbers than would be accounted for in falconry.

This petition requests an amendment to the legislation, exempting the taking of mountain hares in the practice of Falconry.

Annexe B

Extract from Official Report of last consideration of PE1859 on 20th April 2022

The Convener: PE1859, which was lodged by Barry Blyther, is on retaining falconers' rights to practise upland falconry in Scotland. We last considered the petition on 1 December 2021.

The petition calls on the Scottish Parliament to urge the Scottish Government to amend the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 to allow mountain hares to be hunted for the purposes of falconry.

In our meeting in December, we agreed to write to the Scottish Government to seek its views on how it expects captive falcons to differentiate between legal and illegal species. We thought that the whole thing sounded a bit difficult to follow through. For example, how is a bird of prey supposed to tell the difference between a rabbit and a mountain hare when it is exhibiting natural behaviours?

The committee also asked the Scottish Government to clarify when falconers would face prosecution should their bird take a mountain hare, including what the penalties might be for a breach, and how the current legislation is enforced.

The Scottish Government's response states: "It is the responsibility of the falconer to eliminate, or at least significantly reduce ... risk ... by only undertaking falconry where mountain hare are unlikely to be present."

I felt that we had verged on the slightly ridiculous there. I will not say that the landscape is riddled with mountain hares, but it transpired that the Government's definition of where they are unlikely to be present amounts to some 2.5 per cent of Scotland. Allegedly, they are present in 97.5 per cent of the landscape. It reached a point at which I almost felt as though the Scottish Government was advocating that falcons should be trained in the use of satnav, because they were apparently to understand that the M8, the Harthill service stations, Aberdeen and points towards the coast were where they could go about their business. That all struck me as being slightly removed from reality and playing to the questions that we were considering.

The final submission from the petitioner focuses on the role of falconry in pest control, and points out that there is an exemption for falconry so that gulls can be deterred, even though they carry the same level of protections as the mountain hare.

The Scottish Government's submission notes that Police Scotland is responsible for enforcing legislation and that penalties for wildlife crime vary depending on what offence has been committed.

I know that Fergus Ewing is quite keen to contribute on that particular item in the first instance.

Fergus Ewing: Yes. Thank you very much, convener. I entirely endorse your comments.

Falconry, albeit that it is not a huge area of life in Scotland, is nonetheless an important part of rural life and the rural economy. Lots of things that falconers do are valuable and of real worth to society. I have seen falconers teach children about birds of prey at agricultural shows and game fairs such as the ones at Moy and Scone. They also take birds into schools. Children therefore learn about birds of prey directly—and probably primarily or even solely—from falconers.

From speaking to a leading falconer—not the petitioner, but another falconer—over the weekend, I know that falconers also rehabilitate birds; they make them better. That is surely something that should be recognised.

Falconry also plays a part in the control of pests, including in relation to the overpopulation of gulls, as has been mentioned, and it is part of the rural tapestry. I say that because I was very disappointed when I noticed that, in its first response last year, the Scottish Government did not say that it valued falconry; it just said that it recognised the history and culture of falconry.

On where we go from here, I am bound to reflect that, when the ban on mountain hare culling was introduced in 2020, the Werritty report, which preceded that, did not consider falconry at all. As far as I know, no one mentioned falconry in the stage 3 debate for the 2020 act, which was the first time that the proposed ban was introduced.

I have been in the Parliament for 22 years, and I think that falconers are in a unique situation, in that they have not only not had a fair hearing about their activity being banned; they have had no hearing whatsoever. They have been completely ignored. That seems to me to be redolent of the grim world that was created by the author Franz Kafka, in which people are banned from doing their preferred occupation without any opportunity to have that fair hearing, which is the first principle of natural justice—audi alteram partem.

Where do we go from here? I suggest that we take oral evidence and that the petitioner should have an opportunity to be heard and to put forward what I think is the very strong argument that the activities of falconers account for only a small proportion of mountain hares that are taken. I think that Dr Nick Fox said in the supplementary submission that we have just received that the figure is 1,000, but it is certainly a fraction of the number that are taken by shooting.

The petitioner should be heard, and I recommend that Dr Nick Fox should accompany him, if he so wishes, so that the petitioner is not alone. We should also hear from NatureScot, as it has licensing powers, which could be part of the solution, and from the Scottish Government.

I know that the committee is time constrained, but we should do that, given that we are talking about a group in society that has not had any hearing whatsoever from the Scottish Parliament. The purpose of the committee is to allow David to take on Goliath, if you like, and our particular role is to equip David with a sling.

The Convener: I very much concur with that recommended route. When I read the Scottish Government's response, I, too, was slightly disappointed. I had hoped that, given the circumstances and the fact that the legislation emerged out of a stage 3 amendment, discussion with the Government might have led to some sort of resolution. I felt that the Government gave a rather disdainful brush-off to the issue that we are trying to explore. Therefore, taking evidence seems to be a reasonable course of action.

Are colleagues content that we proceed on the basis that Mr Ewing has suggested? It might also be useful to write to the Game & Wildlife Conservation Trust and the Royal Society for the Protection of Birds, just to find out their wider concerns about the conservation impact of the proposal. Are members content with that, too?

Members *indicated agreement.*

Annexe C

RSPB Scotland submission of 16 May 2022 PE1859/CC - Retain falconer's rights to practice upland falconry in Scotland

We are not opposed to falconry provided this activity is carried out legally and sustainably.

In response to the Petitions Committee question, we note that based upon the most up to date and available evidence, the mountain hare *Lepus timidus* population is considered in unfavourable conservation status in the JNCC official report to the European Union Commission on the Directives on the Conservation of Natural Habitats and of Wild Fauna and Flora 92/43/EEC <https://jncc.gov.uk/jncc-assets/Art17/S1334-SC-Habitats-Directive-Art17-2019.pdf>. In addition, a study by J. Wilson and A. Watson published in the authoritative Journal of Applied Ecology <https://besjournals.onlinelibrary.wiley.com/doi/full/10.1111/1365-2664.13235> also recorded significant mountain hare population declines in large areas of upland Scotland. This study using long term data sets found that on land managed for grouse shooting and contiguous alpine land there was a long- term mountain hare population decline of 4.6% per annum between 1954-1999, and from that date a 30.7% population decline from until 2017 (and with the particular advent of large-scale population reduction culls of mountain hares on grouse moors ostensibly for the purpose of disease control in red grouse). The study also found that the population density index for mountain hares had fallen to <1% of initial levels after 2008. The mountain hare is a keystone species of the uplands, important in its own right, but also as a grazer of upland habitats, and as an important prey species for wildcats, golden eagles and some other raptors. The recorded mountain hare population declines may therefore also have consequences for sensitive upland habitats and other dependent species. It is also known that in the fringes between the uplands and lowlands mountain hare populations are declining in the context of climate change and competition with brown hares *Lepus europaeus* <https://ptes.org/climate-change-places-the-future-of-peak-district-mountain-hares-at-risk/> .

In these circumstances we consider that hunting for sport by falconry and other means, and therefore additional mortality, is undesirable in the present circumstances. On this basis, we also support Scottish Government's recent decision to give the mountain hare additional protection from 1 March 2021 in the Animals and Wildlife (Penalties, Protections and Powers) Act 2021.

Under the above legislation, NatureScot now has the powers to issue licences for protection of public health, crops and timber which we believe to be appropriate exceptions. If the law were to be changed, then falconers wishing to hunt mountain hares for sport would also need to apply for a licence. In our view, and whilst we think that a change in the law is inappropriate at the present time (given the poor conservation status of mountain hares), we consider that such licences should only be issued for falconry hunting where there is robust evidence - to the satisfaction of NatureScot - that the mountain hares population in the relevant geographical area is in healthy conservation status. This approach would necessarily involve thorough population counts to an agreed monitoring standard as well as bag quotas and returns to help inform future population monitoring.

We hope this information is helpful to the work of the Petitions Committee. Please do not hesitate to contact us if we can be of further assistance in this matter.

Dr Nick Fox submission of 20 November 2022

PE1859/DD – Retain falconers' rights to practise upland falconry in Scotland

Please refer to my [submission of 19 April 2022](#) for information on my background, views on the aims of the petition and response to points raised by the Scottish Government.

Having been asked to attend a further consultation, and being uncertain whether or not technology will allow me to attend virtually from a plane, I would like to offer the following in order to move the discussion forward:

Wildlife management policy in UK, including Scotland, is not coherent or science-led. It is based on piecemeal legislation since 1830, heavily

influenced by pressure groups, political expediency and class discrimination. The huge strides made by science in recent years in understanding how ecosystems work, and how they can be managed to optimise species diversity and sustainability, have been largely ignored by politicians. Also, while other forms of discrimination, such as gender, race and religion, have been addressed, our own indigenous culture has often been suppressed by class prejudice, one of the last bastions of discrimination. Political expediency, posing as democracy, has created huge hypocrisies in policies.

Mountain Hare populations.

I will leave this to experts in the Game and Wildlife Conservation Trust to enumerate. I ask them only one question: Does the taking of about 1000 Mountain Hares per year by falconers have any significant, or even measurable impact, on hare populations?

Falconry

- Originated over 5,000 years ago, before any of the proscribed religions.
- Has been practised in UK since before 600 AD, before Christianity, and before Scotland became a country.
- Qualifies as a 'Protected Belief'.
- Details of its international Intangible Cultural Heritage in over 80 countries are listed by UNESCO and it is registered by UNESCO for 24 countries on the Representative List of the Intangible Cultural Heritage of Mankind.
- Scotland/UK has not signed the UNESCO ICH convention which would have protected its indigenous cultural heritage.
- Falconry requires tremendous dedication and commitment (eagles can live 40 years). It is self-limiting and can never become mainstream.
- Falconry is a natural activity, a supreme form of bird watching.
- It is extremely low impact, sustainable activity. Its inefficiency is its efficiency; it entails a huge number of man days per head of game taken.
- It is welfare friendly, being selective and leaving no injured or maimed at all, the only method that can make such a claim
- It is very species and season specific, unlike domestic cat predation. Few non-target animals are taken.

Cultural aspects

- Falconry is classless, being practised by all levels of society, genders and ages.
- It is part of Scotland's heritage, providing cultural colour in an increasingly homogenised and urbanised society.
- It is not a large-scale commercial activity entailing major landscape alterations, such as golf.
- It is non-polluting and not dangerous. It is compatible with other activities and does not require closing off large areas of land. Ramblers are fascinated and stop to watch.
- It provides only modest economic benefits, but these are in winter when income is most needed.
- It helps our children connect with nature and gets them away from their screens. Falconers promote raptors in schools and rural events to discourage persecution.
- Falconry is entirely self-sustaining and has not caused even the local extinction of a single raptor or prey species. In contrast domestic cats have caused 26 extinctions yet face no controls here. In Scotland only about 200 pure Wild Cats are left because of genetic introgression. Scotland has failed to apply WCA Section 14 to cats resulting in huge detriment to wildlife, and massive discrimination against other activities. This is a shameful hypocrisy, incompatible with Green credentials.

A legal solution

A General Licence authorising Falconry for 'social purposes' is the obvious and easiest solution to resolve this situation. The Werrity report, and the subsequent blanket protection of the Mountain Hare, paid no heed to these social and cultural implications. Individual licensing, annual bag reports etc are a waste of time and resources, especially in the current economic climate. This is a relatively straightforward issue to resolve.