

Citizen Participation and Public Petitions Committee

16th Meeting, 2023 (Session 6), Wednesday
8 November 2023

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 [18 January 2023](#). At that meeting, the Committee agreed to write to the Minister for Environment and Land Reform, NatureScot, Police Scotland, the Crown Office and Procurator Fiscal Service.
2. 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**.
3. The Committee has received written submissions from Police Scotland, Minister for Environment and Land Reform, NatureScot, the Crown Office and Procurator Fiscal Service, the petitioner, and Dr Nick Fox and Helen Nakielny which can be found at **Annexe C**.
4. A summary of the written submissions provided to the Committee since its last consideration of this petition has been provided by SPICe as a paper for this meeting.
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](#).
8. Every petition collects signatures while it remains under consideration. At the time of writing, 8,566 signatures have been received on this petition.

Action

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

Clerk to the Committee

Annexe A

PE1859: Retain falconers' rights to practice 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 18th January 2023

The Convener: Our next petition, PE1859, was lodged by Barry Blyther, who is in the public gallery this morning. 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.

Members will recall the evidence sessions that we had in December last year with the petitioner, the Minister for Environment and Land Reform and NatureScot. I should also include Stanley, the eagle, in that, because we put questions to Stanley directly. [Laughter.] We heard about a number of issues in relation to the petition, and there are some outstanding issues and questions for us to consider, all of which have been summarised in our papers.

Fergus Ewing: With the convener's permission, I would like to place on record a couple of matters arising from the evidence session with the minister, of which I have given notice to the clerk.

First, at the outset of her evidence, the minister said that I had been the cabinet secretary at the time, but I pointed out that I was not the cabinet secretary responsible for the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill. However, the minister then added that the junior minister who took the legislation forward was acting under both Roseanna Cunningham and me. That is true, but it gives a slightly false impression of the situation, and I wanted to correct that. For the avoidance of doubt, I was not cabinet secretary with direct responsibility for that bill; that was Ms Cunningham, and Ms Gougeon took forward the bill on a practical day-to-day basis, acting on instruction from Ms Cunningham. Therefore, I had no direct ministerial focus or policy role for that bill, although, of course, I was a member of Cabinet.

Secondly, later on, the minister said:

“If the solution that Mr Ewing is referring to is that I instruct law officers to make a statement that a criminal offence will not be prosecuted, he is doing a disservice to the legal profession that he was once part of.”—[Official Report, Citizen Participation and Public Petitions Committee, 21 December 2022; c 17.]

In response, I point out that I am still part of that profession, because I am on the roll of solicitors, although I am no longer in practice. Of more substance is the fact that I did not call for a blanket ban on prosecution; rather, I sought guidance, and I hope that guidance is an option that can be explored.

I will make further, substantive remarks later, but I wanted to clarify those points for the record. Thank you for the opportunity.

The Convener: I know that all the members were impressed by the petition and I think that we were troubled by some of the evidence that we received. We have had an opportunity to reflect on that. A number of issues arise from it, and I think that the committee's likely direction of travel is clear but, in pursuing that journey, are there suggestions as to what we might reasonably do now? It would be good to hear from colleagues in relation to that.

Alexander Stewart (Mid Scotland and Fife) (Con): There is no doubt that the petition has created real anxiety across all areas. When the minister was here the last time, the committee was quite intent on progressing it. Mr Ewing has, in his way, highlighted the things that were said in the previous session that needed to be corrected.

It is important that we go back to the minister, so I suggest that we write to the Minister for Environment and Land Reform and NatureScot on the outstanding issues that were raised, on a number of which clarification is still needed. Those issues include the existing licensing purposes and options; the circumstances in which falconry could constitute an offence and in which a person could be charged and prosecuted—that issue is vitally important; how the welfare of birds of prey, particularly large birds such as eagles, can be ensured through the content of the new arrangements for the protection of mountain hares; and the potential unintended consequences of any legislative change. Those are fundamental matters that we should raise at this stage, and I propose that we do that at the next level.

The Convener: Are there any other suggestions or comments from colleagues?

Fergus Ewing: I agree with Mr Stewart's recommended course of action and, in doing so, I express my gratitude for the information and help that we have received from the Scottish Parliament information centre. We had a briefing earlier, for which we are grateful.

In the light of that, I hope that we can put in the letter to the minister the information that we received about the possible distinction between the use of falconry for hunting purposes and for exercise purposes. As well as the issues that Mr Stewart has enumerated, we should ask that regard be paid to whether that information might form the basis of her seeking guidance and advice from NatureScot, which, I gather, deals with operational and strategic arrangements for licences in general, to see whether it can recommend a way that would enable the sport of falconry to continue to be practised in the light of the distinction that we have had the benefit of hearing about this morning from SPICe.

In addition to that, I hope that we can write to Police Scotland and the Crown Office and Procurator Fiscal Service to clarify the circumstances that would constitute an offence, and whether a person could be charged and prosecuted. Again, that might benefit the legal authorities, which are the only ones that have the right to decide whether there should be a prosecution. To be fair to her, the minister has no such locus and that line cannot be crossed. We should ask the prosecution authorities in what circumstances they might be minded to consider criminal proceedings. Perhaps we should also set out in the letter the distinction that we have had explained to us

this morning, so that they can see a potential solution but also the quandary that falconers face, and appreciate that the committee is taking the issue seriously.

What I am asking for, convener, is that the letters to the legal authorities and to the minister should go to some lengths to set out our concerns about what we have heard, and our desire for a solution to be found that involves everybody working together to that end.

The Convener: I am content with that. I also suggest that, in the light of the responses that we might receive, we go back and ask SPICe to draw all that information together in the form of a further briefing, which would then inform the committee about the steps that we could take on the back of that. We want to arrive at a solution having underpinned our recommendation by exploring every possible piece of advice to clarify all the outstanding points.

Fergus Ewing: Perhaps I could add a little addendum.

The Convener: Please do.

Fergus Ewing: I forgot to say that, at the very end of the letter to the minister, we could perhaps politely indicate that all members of the committee feel particularly exercised and concerned about this matter, and it is therefore our intention to pursue it. We should indicate that we are treating it very seriously indeed, and perhaps thereby inject a little bit of lead into the ministerial pencil.

The Convener: On which analogy, I will ask whether members are content with the action that has been suggested?

Members *indicated agreement.*

Annexe C

Police Scotland submission of 15 March 2023

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

A petition was made to Scottish Parliament to urge the Scottish Government to amend the Animals and Wildlife Act 2020 ('the Act') to allow mountain hares to be hunted for the purposes of falconry.

[The petitioner stated that](#) upland falconry can include circumstances where the trainer and bird of prey are 'actively hunting' with humans flushing quarry to the bird, as well as situations where they are 'exercising the eagle' on a mountain ridge 'where there may not be game'.

The Committee sought advice from the Scottish Government and NatureScot on whether a distinction can be made between activities which would constitute active hunting of mountain hare, and upland flight for the purposes of exercise and wellbeing.

Subsequently a request has been made by Citizen Participation and Public Petitions Committee, to Police Scotland looking for clarification on several matters. Considering the possible distinction between the purposes of activities, the Committee is keen to clarify:

- What circumstances would constitute an offence under the Act and in what circumstances a person could be charged and prosecuted.
 - ***Under Sec 9(1) of the Wildlife and Countryside Act '81 it's an offence to intentionally (or recklessly) kill, injure or take a mountain hare.***

The use of birds of prey to hunt mountain hares for sporting or recreational purposes was prohibited on 1st March 2021 and as such any 'active hunt' of Mountain Hare would obviously be a criminal act and could result

in prosecution. This would include the hunting of Mountain Hare as a spectator sport in organised group outings.

- Would flying an eagle for exercise at altitude in the uplands where mountain hare may be present constitute an offence if the bird took a mountain hare but where no deliberate hunting/flushing took place?
 - ***Falconers can legally exercise their birds, with the authorisation of the land owner on which they choose to do so. If this is an area where Mountain Hare are densely populated then there is the obvious risk of the bird of prey taking a mountain hare or non-target species, and could be considered reckless.***

If the falconers had carried out due diligence with the land owner and NatureScot regarding the presence of Mountain hare in the area and it was thought that there was not a high density of Mountain Hare, and therefore the probability of a hare being taken was low, and thereafter a Mountain Hare was taken by a bird of prey, then this could be considered accidental.

Police should be notified of the circumstances and this area should not be used for exercise purposes again. If thereafter this area were to be used again and a further Mountain Hare was taken, then this could be considered reckless.

If the falconer takes all reasonable precautions and avoids flying their eagle in areas with a high abundance of mountain hares, they can mount a defence that they could not reasonably have foreseen that the eagle would catch a mountain hare.

- The Committee would like to know how Police Scotland currently handles incidents where protected species are taken illegally and what evidence is required to demonstrate that action has been

intentional and reckless. Is there Policing guidance for offences relating to protected species?

- ***All incidents would be treated on their own merit depending on the circumstances. By choosing to exercise a bird of prey an area with a known high population of Mountain Hare, then the act could be described as reckless.***

There are areas throughout Scotland where the Mountain Hare population is low, thus minimising the risk of such instances, and guidance as to the most appropriate areas to carry out the exercise of the birds could be provided by NatureScot, and should be utilised for falconry exercise purposes.

A working example of this logic used by Police Scotland would be

Under Sec 11 (2) (b) of the Wildlife and Countryside Act, it is an offence to set a snare or trap likely to catch a Schedule 6 or 6ZA animal.

If a snare set up with the intention of catching a fox, however a Badger, being a protected species, is snared, unless the snare is set on, or very near to the an active sett evidencing intent or recklessness is difficult.

However, a procedure wildlife officers have utilised is that if a badger is caught once, that evidences the likelihood of it happening again therefore the operator is advised to desist from snaring in that locality as further snares are likely to catch badgers.

This same analogy can be used for evidencing “recklessly”; if an incident has occurred once and police concluded that incident wasn’t a deliberate or reckless act - it is advisable that this may be likely to happen again. With this in mind, to repeat the act would be reckless.

The petition specifically asks “to amend the Animals and Wildlife Act 2020 to allow mountain hares to be hunted for the purposes of falconry”. It is the view of Police Scotland that the Mountain Hare is a protected species and therefore should not be targeted for sporting or recreational purposes.

Minister for Environment and Land Reform submission of 15 March 2023

PE1859/GG: Retain falconers’ rights to practise upland falconry in Scotland

Thank you for your letter of 15 February 2023 regarding the Citizen Participation and Public Petitions Committee’s consideration of the above petition at its meeting on 23 January 2023.

The Committee have a number of observations about the impact of the Animals and Wildlife Act 2020 on falconry and have written to NatureScot, Police Scotland and the Crown Office and Procurator Fiscal Service separately to seek their views on licensing and prosecution issues. With that being the case, I do not intend to respond to these points and will allow the relevant bodies to do so.

However, the Committee have asked the Scottish Government for clarification on whether a distinction is made between activities which would constitute active hunting of mountain hare, and upland flight for the purposes of exercise and wellbeing of the bird, flight displays, or other business purposes.

As I said while giving evidence on this Petition on 21 December 2022, I appreciate that there could be a risk that falconers’ birds take non-target species, such as mountain hares, when being exercised and when hunting legitimate species such as brown hares or rabbits.

Section 9 of the Wildlife and Countryside Act 1981 makes it an offence for a person to intentionally or recklessly kill, injure or take any wild animal included in schedule 5 which includes mountain hares. The

offence therefore requires a person to intentionally or recklessly kill a mountain hare. Generally, to act recklessly a person requires to display gross negligence mere carelessness or accidental conduct is insufficient. The legislation does not distinguish between recklessly taking a mountain hare whether by active hunting or during exercise.

Ultimately, as with any criminal offence, it will depend on the individual facts and circumstances at play as to whether or not an offence has been committed. It is up to the individual falconer to seek their own legal advice regarding interpreting and complying with the Wildlife and Countryside Act 1981 in any particular situation or circumstance.

The petitioner has also requested that the Animals and Wildlife Act 2020 be amended to allow mountain hares to be hunted for the purposes of falconry. I would like to clarify that any change in the legislation to allow falconers to take mountain hares would require an amendment to the Wildlife and Countryside Act 1981, and not the Animals and Wildlife (Penalties, Protections and Powers) Act 2020.

Birds of prey can still be used take mountain hares for other purposes where carried out under a licence granted by NatureScot, as specified in section 16(3) of the Wildlife and Countryside Act 1981, and they can still be used to legally hunt other species, such as grouse (in season) and rabbits.

However, as the mountain hare is a priority species for conservation action under the UK biodiversity action plan, and it is also on the Scottish biodiversity list, it is considered to be of principal importance for biodiversity conservation.

Due to the unfavourable-inadequate conservation status of mountain hare we do not intend to remove the current protections in place. It is worthwhile mentioning that there are no other species listed on Schedule 5 that can be taken for recreational purposes.

Finally, you highlight in your letter the petitioner's statement that one of their golden eagles has not flown since the legislation was passed in 2020. I would respectfully point out that is likely to constitute an animal welfare concern and that the keeper of the bird is responsible for ensuring that the needs, including welfare needs, of the bird are met.

NatureScot submission 16 March 2023

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

NatureScot's responses to the questions raised by the Committee are as follows.

Purpose / defence in law

The Committee has asked whether a distinction can be made in law between actively hunting mountain hares and flying an eagle for exercise, flight displays or other business purposes. If an eagle inadvertently catches a mountain hare during the course of these other activities, a defence in law is provided by section 10(3)(c) of the Wildlife and Countryside Act 1981 (as amended), referred to below as 'the 1981 Act'. The eagle's handler may establish a defence if **all** of the following conditions are met:

1. That eagle taking the hare was the incidental result of a lawful operation or other activity
Provided the handler has permission to fly the eagle over the land and is not actively hunting illegal quarry there is a lawful purpose for flying the eagle.
2. The handler **took reasonable precautions** to avoid the eagle catching a mountain hare
Reasonable precautions would include avoiding areas known to support a high population density of mountain hares. Evidence of reasonable precautions might include correspondence with estate staff confirming that that they rarely or never see mountain hares on the land. Nighttime surveys with either a lamp or thermal imaging equipment can provide a good indication of mountain hare abundance.
3. The handler **did not foresee, and could not reasonably have foreseen**, that the eagle would catch a mountain hare.

The likelihood of an eagle catching a mountain hare in area with a low population density of mountain hares is very small. If the handler takes reasonable precautions and avoids flying their eagle in areas likely to support a high abundance of mountain hares, they can mount a defence that they could not reasonably have foreseen that the eagle would catch a mountain hare.

4. The handler took such steps as were reasonably practicable to minimise the damage.

Once the eagle spots a mountain hare there is no practicable action that the handler can take to recall their bird. However, the handler should attempt to recapture the eagle as soon as is reasonably practicable.

The likelihood of an eagle catching a mountain hare depends on the abundance of mountain hares on the land. The likelihood of an eagle catching a mountain hare is very low or non-existent in the following areas of Scotland.

- Mountain hares are absent from the island of Arran and the Uists. They have not been recorded on the Cheviots, Ochils, Lomond Hills, Sidlaws or Hill of Fare.
- Mountain hares are absent or occasional visitors to lowland habitats in Scotland
- Mountain hares are present at low population densities in the Highlands and Islands to the west and north of the Great Glen and in Argyll. This area includes more than half of the upland habitats in Scotland.

The likelihood of a golden eagle catching a mountain hare is higher on moorland in eastern Scotland. Upland areas known to support a higher abundance of mountain hares include the Eastern Grampians, Moray, Cairngorms, Monadhliath, Angus Glens, Perthshire and Lammermuir Hills. However, mountain hare abundance is patchy and some

mountains and moorlands in eastern Scotland do have lower population densities.

These broad distinctions are supported by Jeff Watson's authoritative book on the golden eagle. The chapter on food notes that hares and grouse are the preferred prey of golden eagles in much of northwest Europe and they only seek alternative food sources when such prey are scarce. In the North and West Highlands, golden eagles feed on a wide range of prey items and mountain hares make up a small proportion of their diet. In the East Highlands, golden eagles have a much narrower diet with hares and grouse making up most of the prey items.

Licensing

NatureScot can issue licences to take or kill mountain hares for specific purposes listed under section 16(3) of the 1981 Act.

Preventing serious damage and conserving natural habitats

At the time of writing, there were 21 licences to control mountain hares in place to prevent serious damage to trees or to conserve natural habitats: 13 in Highland, 6 in Aberdeenshire; 1 in Moray; and in 1 Perthshire. Some of these licences cover large areas of open moorland where the aim is to encourage natural regeneration of native trees. These licences may include falconry as a method of killing. For example, one mountain hare licence for preventing serious damage to young trees covers several thousand hectares of open moorland surrounding distinct blocks of woodland. This licence already permits falconry as a method of killing hares.

Educational purposes and photography

An educational falconry display, filmmaking or photography would be covered by licensable purposes under section 16(3) of the 1981 Act. However, before NatureScot can issue such a licence it must be satisfied that there is no other satisfactory solution. For example, the applicant would have to demonstrate that there was no other way of making a wildlife documentary, such as using existing footage of a golden eagle hunting a mountain hare or using in a location where there is already a control licence. Carrying out a falconry display or

photography in a location where there is a low likelihood of the eagle catching a mountain hare would be a satisfactory solution.

Any other social, economic or environmental purpose

For this purpose, the proposals must 'give rise to, or contribute towards the achievement of, a significant social, economic or environmental benefit.' The principle is the same as the 'imperative reasons of overriding public interest' (IROPI) test used to assess European Protected Species licences. The magnitude of benefits required to meet this licensing purpose may be less than for the IROPI test but the benefits would still have to be *significant*. This is taken to mean that the activity proposed will achieve, or contribute towards, a social, economic or environmental benefit of some note. In other words, the benefits must not be minor, and should concern projects of recognised importance.

During the development of the new licensing system for mountain hares, NatureScot had several discussions with representatives from falconry bodies and individual stakeholders to understand their concerns. One area discussed was whether falconry is of sufficient cultural significance to fit the any other social, economic or environmental purpose. NatureScot's view is that hunting mountain hares with birds of prey is not widely practised enough in Scotland to satisfy this purpose.

Legislative change

The Petitioner has asked for a legislative change to enable licences to be granted for killing or taking mountain hares for the purpose of falconry. This could be achieved by amending section 16 (3) of the 1981 Act to include falconry as a purpose.

The protection afforded by adding mountain hares to Schedule 5 of the 1981 Act means that they can no longer be killed for sporting or recreational purposes. Creating a licensable purpose for falconry would set a precedent for adding other sporting purposes, such as shooting. This is likely to increase the pressure to permit shooting of mountain hares under licence, which would negate the effect of adding them to Schedule 5.

The licensable purposes under section 16 (3) of the 1981 Act apply to all species of animals listed on Schedules 5, 5A, 6 and 6A of that Act,

including brown hare (during the closed season), pine marten and red squirrel. Adding falconry to the list of licensable purposes, would allow individuals to apply for a licence to hunt brown hares during the closed season and, perhaps other species of mammal, when they have previously been refused a licence for other purposes. This loophole could undermine the effectiveness of protection for these animals in certain situations.

There are currently no recreational or sporting purposes listed under section 16 (3) of the 1981 Act which allow taking or killing. This means that there is no route to apply for a licences for certain hobbies that took place in the past, such as collecting specimens of rare butterflies and moths or taking seed from rare plants to grow in gardens. Therefore, creating a licensable purpose of falconry could open the way for requests to allow animals and plants to be taken for a wide range of recreational purposes, not just sporting.

Contact for further information

Should you require any further information or advice from NatureScot regarding this case or other licensing questions please contact our Licensing Team (Tel: 01463 725364 or email Licensing@nature.scot).

Crown Office and Procurator Fiscal Service submission of 24 March 2023

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

What circumstances would constitute an offence under the Act and in what circumstances an individual could be charged and prosecuted e.g. would flying an eagle for exercise at altitude in the uplands where mountain hare may be present constitute an offence if the bird took a mountain hare but where no deliberate hunting/flushing took place?

Section 9 of the Wildlife and Countryside Act 1981 (as amended) states it is an offence to intentionally or recklessly kill, injure or take any wild

animal included in Schedule 5 of the Act. Mountain hares are listed in Schedule 5 as a protected animal.

A defence in law is provided in Section 10(3). The conditions to assess as to whether a defence is established are found in Section 10 (3A)(b) where the person who carried out the lawful operation or other activity

- i. took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
- ii. did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity

All reports of wildlife crime and animal welfare offences are carefully considered by specialist prosecutors in the Wildlife and Environmental Crime Unit (WECU).

Each case is carefully considered on its own merits taking into account the full facts and circumstances and available evidence, including the outcome of any further investigations that may have been instructed.

Where there is sufficient admissible evidence, prosecutors will also consider what action is in the public interest, including whether or not to bring a prosecution or use a direct measure. There are a number of factors taken into account in assessing the public interest which are explained in the COPFS Prosecution Code.

A prosecution will be brought where there is sufficient admissible evidence and it is in the public interest to do so.

A full range of direct measures is available to prosecutors for use in appropriate cases.

In the event that such a distinction is possible, the Committee would welcome a view on whether guidance could be developed to inform falconers about which specific circumstances would constitute an offence?

Each case reported to COPFS will be considered on its individual facts and circumstances. It would not be possible to be prescriptive about what situations would or would not constitute an offence.

The Committee would like to know how COPFS currently handles incidents where protected species are taken illegally and what evidence is required to demonstrate that action has been intentional and reckless.

Each case reported to COPFS will be considered on its individual facts and circumstances. There is no definition of recklessness in the Act. In the absence of a legislative definition the normal use of the word will apply.

The petition specifically asks “to amend the Animals and Wildlife Act 2020 to allow mountain hares to be hunted for the purposes of falconry”. The Committee would like to understand whether there are any potential wider, or unintended, consequences of making legislative change in the way proposed by the petitioner.

Mountain hares are one of a number of protected species included in schedule 5 of the Wildlife and Countryside Act 1981. Any proposed legislative changes relating to mountain hares would have to give due consideration to the potential impact on the status of a number of other protected species.

Petitioner submission of 22 March 2023

PE1859/JJ: Retain falconers’ rights to practise upland falconry in Scotland

I have been analysing the data and claims made by protectionist groups (I use the term protectionist because this has nothing to do with conservation) and have exposed some false claims that throw even the suggestion that mountain hares be re-classified and placed into Schedule 5 of the Wildlife & Countryside act, into extreme doubt.

It has been widely claimed that the mountain hare is at or below 1% of its pre-1950’s population. This claim is the foundation upon which the ban on hunting hares that has been a catastrophe for upland falconry and captive eagles and large hawks was built. This claim is false and it is insulting that we have been asked to believe it, and its exposure sees the entire foundation crumbling.

Currently, even the most conservative of estimates put the stable breeding population of mountain hares in Scotland at 135,000 - 200,000.

At 1% of pre-1950's numbers, this suggests that before 1950 Scotland held a minimum of 13.5 million hares and a maximum of 20 million. This is not true.

Scotland's land mass totals around 79,000 square km. Of this, and being very generous, approximately 40,000 square km is at altitude and of an environment suitable for hares to survive in. This suggests a population density in suitable habitats of 337.5 - 500 hares per square km pre-1950. This is a claim that is utterly ludicrous. Unless I missed the old stories of pre-1950's Scottish folk wading through hares on their way to the shops, work or school and how they destroyed millions of acres of crops and trees, this claim is utter fiction. A lie in fact.

As a comparison, it is worth being aware that in their continental European habitats they occur at a population density of between 2 and 3 hares per square km. This has a remarkable similarity to the numbers reported for the west of Scotland 0.5 - 3 hares per square km. (The area that, despite being super inaccessible and a massive drive away from us, that Ministers suggest we should go to fly our birds of prey).

By contrast, the managed moorlands of the east of Scotland host hares at densities of up to 200 per square km. This burgeoning and utterly unrealistic population that damages habitat and makes disease a huge risk is the reason the historic hare culls were executed. This is the area that most falconers fly eagles due to the safe accessibility on the managed mountain ranges, suitability and safety for our eagles, and the huge hare population that we will not impact.

The highest culling numbers quoted (between 3 and 12.4 hares per square km) have showed no relationship to contractions in hare ranges. Other factors such as habitat loss and changes (contraction of populations in areas not managed) plus climate change show a far greater impact. In the east of Scotland (managed areas) numbers are still believed to be increasing and the range expanding.

The request of Petition PE1859 is and remains that the legislation be amended with the line 'Except for the purpose of Falconry' which occurs elsewhere in the W&CA.

This petition has no bias either way over shooting, but it is clear that the high populations of hares in part of the country were created and are sustained by management for other shooting activities.

The clear fact is that shooting, and more to the point falconry, is an irrelevance to wider hare numbers in Scotland and has absolutely no impact on the stable biomass in this country which is much greater by square km than any other part of its European range.

With the clear, false and emotive rather than scientific presentation of information that coerced ministers into passing the legislation being further exposed, we are moving to a point where the entire bill should be questioned or the amendment to the Wildlife & Countryside Act be suspended while the truth is explored, and stakeholders given the opportunity to present the impact and truth.

I repeat the request of PE1859, that the amendment to the Wildlife & Countryside Act 1981 moving mountain hares to Schedule 5 be amended with the line 'Except for the purpose of Falconry'.

Dr Nick Fox and Helen Nakielny submission of 29 March 2023

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

This submission follows on from two previous submissions to earlier hearings. It is a summary of the full submission with peer-reviewed documentation which can be found at

<https://www.falcons.co.uk/conservation-research-and-welfare/conservation-and-research/mountain-hares/>

'Recklessly kill'

The key point is whether flying a bird of prey in an area with Mountain Hares constitute the possibility that the Falconer might 'recklessly kill' a Schedule 5 protected species within the meaning of Section 9 of the Wildlife and Countryside Act 1981.

NatureScot says 1. The Falconer must have permission of the land-owner, 2. The Falconer must take reasonable precautions to ensure that

there are only few if any mountain hares on the land, 3. The Falconer did not foresee, or could not reasonably foresee that the eagle might take a mountain hare, and 4. The Falconer took all practical steps to minimise the damage eg by recalling the eagle as soon as reasonably practicable. NatureScot then mapped where in Scotland Mountain Hares are at a 'high' density, and where they are at a 'low' density.

Police Scotland agree and add 'If the Falconers had carried out due diligence ... and thereafter a Mountain Hare was taken by a bird of prey, then this could be considered accidental. Police should be notified of the incident and thereafter the area should not be used for exercise again. If thereafter this area was used for exercise purposes again, and a further Mountain Hare was taken, then this could be considered reckless.'

But most birds and mammals are protected and together they cover the entire area of Scotland. Based on the above, clearly it would be 'reckless' to fly a raptor anywhere in Scotland. Dogs and cats are also exercised in Scotland and not only kill Mountain Hares but also a wide range of protected species.

Falconry is being discriminated against in favour of dogs and cats. What NaturScot and Police Scotland are saying is a legal minefield.

A Failure of Due Process.

The Bill went through Stage 3 without consulting the falconry community.

1. Thus placing the Mountain Hare on Schedule 5 was unlawful.
2. The discrimination against Falconers in favour of cat-keepers is unlawful.

I respectfully remind you of the Scottish Parliament responsibilities:

The Scotland Act 1998: "the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions."

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 requires 'due regard' to :

- eliminate unlawful discrimination
- advance equality of opportunity
- foster good relations

And the United Nations Human Rights

https://www.ohchr.org/sites/default/files/Documents/Publications/Minority_Rights_en.pdf gives clear guidance on the rights of cultural minorities such as Falconers.

The new law allows licences for 'social purposes'. Falconry is a qualifying social reason.

However, the proposed benefits would still have to be significant. This is taken to mean that the activity proposed will achieve, or contribute towards, a social, economic or environmental benefit of some note. In other words the benefits must not be minor, and should concern projects of recognised importance.

Cultural significance

NatureScot's view (March 2023) is: that hunting mountain hares with birds of prey is not widely practised enough in Scotland to satisfy this purpose.

NatureScot is not a qualified authority on cultural activities. When challenged on this by Mr Fergus Ewing MSP, Dr Mike Cantlay replied: We have to consider licence applications on their own merits and on a case-by-case basis. Our view is that a falconer applying for a licence to hunt mountain hares for recreational purposes would be unlikely to meet the threshold for significant social benefit. Any licence would benefit a small number of individuals it is difficult to argue that the social benefit would be significant.

We disagree, and we are asking for a General Licence, not individual ones. There was no consideration of Scotland's cultural heritage.

Falconry is practised in over 80 countries, it is a legitimate activity, a Protected Belief, and is inscribed by UNESCO on the Representative List of the Intangible Cultural Heritage of Mankind.

<https://ich.unesco.org/en/RL/Falconry-a-living-human-heritage-01708>.

The cultural heritage of Falconry equipment making is on the Red List of Endangered Crafts <https://heritagecrafts.org.uk/Falconry-furniture->

[making/](#) Falconry is part of Scotland's cultural heritage, having been practised here for 1300 years. Full details of Falconry's ICH in Scotland are at the Falconry Heritage Trust

https://www.falconryheritage.org/Intangible_Cultural_Heritage .

It is a significant social benefit and banning it, as proposed by NatureScot, is obviously not a solution. A General Licence for Falconry does not create a precedent. Individual licensing is an administrative burden, a waste of time and unenforceable. Estimates vary, but about 100,000-400,000 hares are bred each year. Therefore we do not consider that SG has made a case that Falconry could impact Mountain Hare populations and thus a General Licence is appropriate.

In summary

1. This Act is unlawful in that due process has not been followed.
2. SG has not established a case that Hunting Mountain Hares by Falconers has any significant population impact.
3. The claim that to fly raptors in Scotland is 'reckless' and unlawful is discriminatory in favour of dog and cat owners.
4. The ICH of Scottish falconry has not been considered and has been dismissed out of hand as 'insignificant'.
5. Licences are issued to prevent damage to trees, but not to prevent damage to ICH.

Petitioner submission of 3 April 2023

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

In response to multi agency submissions.

How would a falconer decide what is the 'area' a hare was killed by a bird of prey following its instinct and showing behaviour natural to the species? Grid reference, 1 yard circumference, 100 yard circumference, 1 mile circumference? This is unenforceable. An eagle at 2000' of altitude will take game at anything up to perhaps 2 miles away. For this reason, upland falconers 'rent' tracts of land of enormous size, perhaps a minimum of 6000 acres. If hawk takes a hare on this estate, would this

be it? No more hawking on that entire estate? There seems to be a continued total lack of understanding of the nature of upland falconry and comparing it with the by comparison infinitesimally small areas affected by snaring just proves that unfortunately, the Police standpoint is unworkable within the discipline of upland falconry.

The Police, NatureScot AND ministers' description of an idea that falconers should fly where hares are absent is unbelievably naive and in fact contradicts the government's own earlier advice and any suggestion that the legislation is based on conservation.

The government has already submitted to the committee a map showing the areas that mountain hares inhabit and that we are advised to avoid. We now see NatureScot contradicting the mapped information listing areas where they do not in fact occur. It's clear that NatureScot and government are at odds about where hares live and by default therefore, how many there are.

Leaving aside that falconers now don't know what advice to follow - nor indeed could Police considering a prosecution, but we also have to ask what range of figures ministers actually believe. Likely it is that they will use whatever figures suit their argument on the day!

I have enjoyed a relationship with an estate within 2 hours of me in Fife and I rent this land for around 6 weeks of the winter in two week blocks. It is vast, remote and safe. Now, if I catch a hare there, is this land lost to me? I could rent the land next door, but does this count as the 'same area'? How do I explain to my eagle that I now need to spend an inordinate amount of time looking for safe mountain land, with no hares, where the landowner is willing to host me, and is within range of what is practical to travel to fly over, has safe accommodation for my birds that the land owner is happy for me to utilise AND a cottage to rent for us. Believe me, having those stars align is a rare occurrence and all the while I have to accept that if I catch a hare there, I can't go back anyway.

I would also like to make very clear that in my 27 winters of flying over my regular estate, the hare population has continued a trend of significantly increasing population.

The mountains of the west and north of the Great Glen as have been suggested as suitable for us, are inaccessible, dangerous (this is climbing territory with no suitable access for a falconer). They are too far away (I dread to think of the impact on our carbon footprint) Even

suggesting the Uists for a Fife resident - really? Would you legislate that a member of the public should drive 7 1/2 hours and take a ferry or two to let their cat out so it can show natural behaviour but not kill a protected species? Seriously, I must respectfully ask the agencies advising and legislating to really think long and hard about what they suggest because currently they look foolish and are opening a massive can of worms for cat owners!

While we talk about the difference between exercise and hunting, can we please be clear that the word Falconry means, 'The hunting of wild prey, in its natural state, using a trained bird of prey'. Birds of prey are predators and obligate carnivores. Hunting is their instinct and their natural behaviour. All agencies contributing to the idea that we just have to go where there are no hares are losing sight of the imperative that we follow the 5 freedoms for captive animals including 'Opportunity to show behaviour natural to the species'. Have we become such a ridiculous society that we can no longer cope with the behaviour of predators? Not artificial and man-made domestic species, but naturally occurring predators.

Jeff Watson's book on Golden Eagles has been referred to by NatureScot, quoting the fact that in the east where there is a burgeoning hare population, mountain hares are a huge part of the eagles' diet. Correct, and now we try to deny this quarry to captive examples flying over them - even though these areas can be granted licences to kill hares en-mass. NatureScot mentions that other food is taken by eagles living in the west. What is avoided is mention of what that food is. Dead sheep, dead deer, deer gralloch etc. We are being asked to go and fly where our eagles will be very likely to drop in to eat rotting, decaying and bacteria ridden carcasses. The lack of transparency and consideration is staggering. For reference, I must be clear that this is a real risk. In 2006 I had a beautiful, rare and valuable eagle die after eating from a deer gralloch. Flying over land further north and west increases this risk, as does flying over land not known to us.

I further repeat an earlier point. We are often reminded that we can fly for example under licence for pest control (the hare valued so highly that is offered blanket protection, but reduced to the status of pest!) around woodland. Fences around woodlands kill eagles. Within these areas, schedule 5 protected species such as pine marten and red squirrels live. We could fly there legally to control 'pest' hares, but the bird takes a red squirrel. Following the Police advice, do I now have to report this to them and avoid flying there again? After all, Red squirrels are also on

Schedule 5, but we are told to go and fly where they live so that we avoid huge populations of hares on the open hill. It's ludicrous, contradictory and counter to any conservation initiative. We already avoid these areas for safety and because those very species live there! Additionally, following Police advice, if a trained raptor (not an eagle, we can't fly in woodland) killed perhaps a red squirrel in these woods while operating pest control on hares, we would have to report it to the Police - the squirrel isn't on the licence for pest control. This action would by default mean that we can no longer fly in this area because a schedule 5 species has been taken!

If we fly in an area where hares are at very low density, we are unlikely to be prosecuted if we catch a hare. This legislation is supposed to be based on conservation, but this single statement proves that this is a cynical piece of political manoeuvring, reputation building and has no foundation in conservation. If we take a hare in an area of low density, we would be actively limiting the expansion of the species both in terms of range and number. We avoid these areas because we, like everyone, want to see the species spread, so we fly in areas where their density is super high. Our eagles and hawks can show natural behaviour and our impact on the numbers is immeasurably small. This is not just flawed legislation, it is counter productive. If it is the government's intention to protect hares as it claims, and it is NOT government's intention to make falconry illegal (the minister has assured us on record that they do not want to ban any form of falconry), then we should be being told to ONLY fly where hare numbers and density are high!

Continuing on the ministers submission, I would like the committee to be sure they are not influenced by the comment 'there are no other species listed in schedule 5 that can be taken for recreational purposes'. There are 89 species on Schedule 5. Most are insects, a few are fish or molluscs, and a few reptiles. There are 4 mammals. The Pine Marten, the Red Squirrel the Water Vole, and the Mountain Hare. Of these, only the Mountain Hare has been given a listing as a pest allowing licences to be issued to kill them. This quote by ministers amounts to little more than a smokescreen, or even obfuscation. Only the mountain hare lives on the mountains we fly over and is a quarry for falconers.

We must additionally not be bluffed or pacified by the repeats that falconry can be used where licences are issued to landowners to cull hares to protect crops or habitat. While falconry may be permitted, there are three problems. First, falconers don't know who the licences are issued to and privacy laws prevent this information from being shared.

Second, a short visit or stay on an estate to catch some hares will not satisfy the exercise and enrichment requirements for an eagle across a full winter season. Thirdly, an estate will not realistically requisition the services of a falconer to deal with a problem hare population. In the time a falconer can catch one hare, a keeper with a gun could realistically shoot 30. It is ineffective, impractical, uneconomic and unworkable. It is exasperating that this is even suggested.

Film work for documentaries etc is a big part of our winter income. Nature Scot suggests that this would be a licensable activity but continues to fail to understand the wider issue. If an eagle or hawk is to be expected to fly 'as wild', flying in incredibly harsh conditions, evaluating the lift, assessing the quarry and staying aloft for many hours in the gale and then successfully take quarry, it must, like its wild counterpart, be absolutely at the top of its fitness and ability potential. This requires constant exercise and exposure to quarry. If this can't happen, they will NEVER be in condition to make a quality film. To suggest otherwise is akin to asking an athlete to take two years out of training and do no more than have a gentle walk around the park, but then expect them to compete and win at world class level in the marathon with a sprint finish!

Finally, I am aghast at the ministers final comment reminding me that because one of our eagles has not flown free for two years I could be guilty of a welfare concern. I am disgusted by her cynical comment on one hand, but saddened on the other that she cannot see that this eagle, like dozens of other trained raptors has been grounded since February 28th 2021, singularly because of her illegally passed and utterly failed legislation that I have had to adhere to in a bid to avoid a W&CA offence that could see my right to keep and fly birds of prey taken away from me. If there is a welfare charge to be made, it should be aimed at the minister by every upland falconer in the nation.

I would also respectfully point out that she should check her legislation, it was passed in 2021, not 2020 as stated.

Petitioner submission of 16 September 2023

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

In her evidence given in person to the committee, the then Minister for Environment, Biodiversity and Land Reform quoted that she had no intent or desire to ban falconry. However, by sleight of hand and political manoeuvring, she has effectively made the heritage pastime of upland falconry illegal in Scotland.

Between the then Minister, Police, Crown Office and Procurator Fiscal Service (COPFS), and NatureScot such an insurmountable level of precaution is now expected of a falconer that it is impossible for them to properly fly, let alone enjoy the practice of falconry in the mountains.

First, a falconer has to find a landowner who has suitable mountain terrain and is willing to host a falconer.

Next, they have to obtain permission to explore the land for its suitability for falconry (fenced areas, woodland, power lines and pylons, wind turbines, and inaccessible steep terrain all make it too dangerous for the birds and the terrestrial falconer) and carry out a survey to understand the hare population.

What duration and intensity of survey is expected to satisfy the Police and COPFS?

What submission of data system is in place for the falconer to provide the survey results to?

What hare counting method is acceptable - that which has been relied upon by government to establish hare populations to justify their illegal legislation has already been proven to be inaccurate by as much as 400%.

If the population is high as is the case on most safe and suitable land, the falconer has to desist with any plan to fly there or be at risk of prosecution. The time, effort and money invested to that point would be

lost, and this process may need to be repeated many times over - enough to bankrupt most falconers without their birds ever opening their wings.

If hare numbers are low or appear absent, the falconer may now plan to rent the land for a few weeks - the minimum time necessary to give perhaps an eagle, suitable time to begin to gain some fitness and demonstrate some tremendous flying in the mountains. Having invested perhaps £2,000 in land rent, taken holidays from work, another £1,500 in cottage rental, and then move a Land Rover and all the myriad ancillary equipment and birds to the location, the falconer can now enjoy an evening dram, dreaming of high flying the next day.

The scenario up to this point already means that falconers are being crushed out of their life's work and passion. What normal working person could possibly put all this together?

However, assuming we have reached this impossible point, the falconer, on the first morning of their trip, takes his or her eagle as far on the access tracks as the Land Rover will take them. From there, a steep hike, eagle on the fist, ready and waiting, the snow and wind on feathers exciting her as she feels the energy of the environment acting on her wings, tail and feathers, letting her feel the purpose of evolving for this place surge through her again, as it has for the past 20 winters or more.

The falconers' legs burn as they carry falconer and eagle to ever higher and wilder places. Perhaps two hours later, the falconer and eagle reach the ridge, 3,500 feet up, facing a gale, frozen snow stinging their face, but bouncing off the eagles perfectly formed plumage. The eagle is held aloft and on vast wings, immediately climbs into the impossible gale, mastering the wind, the terrain and this place that she is built for. She makes a pitch of perhaps 2,500 feet above the ridge and starts to survey the land below, quartering the ridge and loyally keeping the falconer at the centre of her range. An hour since she last alighted, suddenly the eagle pulls in her sails, rolls over on one wing and describing the scimitar shape that makes her most aerodynamic, she lets gravity pull her hurtling at terrifying speed back to ground.

She vanishes behind a hump in the landscape. Now feeling unbearably slow, reassured by the beep of the receiver receiving information from

directional tracking transmitter that the eagle carries, the falconer heads for the spot that the eagle is estimated to be in.

When their eyes finally fall on the eagle, she has her head held high, her crest up, wings spread mantling over the quarry she has taken.

Now, for the first time in 40 years of falconry, the falconer hopes the eagle has not taken her natural quarry, a mountain hare.

If she has taken some other quarry item, this scene may repeat itself tomorrow.

If she has taken a hare, the falconer's day is done, the eagle has fulfilled her evolutionary purpose, the falconer has the satisfaction that he or she has the eagle flying as well as her wild counterpart. Without any farming or carbon creating global shipping of food, in the most natural of ways, the eagle will eat warm food while the falconer patiently waits, and after a long walk off the mountain and back to the cottage, the falconer will eat healthy and sustainable food tonight. BUT the rest of the money spent, work done, time invested and sacrifices made, the falconer has to stop. To continue to fly on this hill and have the eagle bristle with purpose, fitness and instinct once more and take another hare, the falconer would be making themselves a criminal.

This eagle is not a 'breed' created by man for a purpose, it is a species shaped by evolution. It is not a wanton killer or pest control device, it is a highly developed and balanced predator, trained by someone of unbelievable determination and patience, not to kill - that is instinct, but to be loyal so the falconer can learn and understand the species and further their work in conserving the species.

This eagle is not a shotgun or rifle, invented to make killing easy and repeatable on a massive scale. It is a predator that will kill only one quarry item and then only every few days or so. It is a species of balance, power and grace.

Killing a hare on day one now sees the falconer lost to the sport, unable to continue on this land, unable to afford to look for an alternative that ticks all that the government and Police expectations.

The falconer is disappointed and saddened.

The big loser is the eagle, once again at the will of the government, destined to fly no more until the falconer's funds and time allow the search for land to resume in a cycle that will likely end up bankrupting them and destined to see the eagle never fly again.

This ladies and gentleman is the admittedly prosaic, but very very real place that the government leaves us.