

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 in 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.