

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 to 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.