

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.