

## Briefing for the Citizen Participation and Public Petitions Committee

**Petition Number:** PE01859

**Main Petitioner:** Barry Blyther

**Subject:** Retain falconers rights to practice upland falconry in Scotland

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.

### Background

The petition calls on the 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. Following the passage of the Act, mountain hares are now a protected species under the Wildlife and Countryside Act 1981 (as amended). This means that it is illegal to intentionally or recklessly kill, injure or otherwise take a mountain hare at any time of year, apart from under specific circumstances where a license can be obtained.<sup>1</sup>

This means that mountain hares can no longer be hunted in the course of falconry practices such as 'game-hawking', where birds of prey are flown to hunt small mammals or other birds, unless they are done so for a licensable purpose, such as for forestry.

More information can be found in the [background information](#) to the petition.

### The practice of falconry

Falconry practiced today in Scotland involves either breeding and training birds of prey, such as falcons, hawks or eagles, or using a trained bird of prey to hunt.<sup>2</sup> Trained birds hunt prey, or 'quarry' that is natural to them, e.g. other birds such as grouse, partridge or snipe, or small animals such as rabbits or hares. Birds of prey are also trained for the purpose of pest control; they are flown to prevent other birds from nesting in undesirable locations.

<sup>1</sup> <https://www.nature.scot/professional-advice/protected-areas-and-species/protected-species/protected-species-z-guide/protected-species-hares>

<sup>2</sup> <https://www.thescottishcountryman.co.uk/blog-posts/what-is-falconry>

Falconry can also be practiced with dogs; this is typically carried out on grouse moors. [As one blog describes, a falconer will train both the dog and falcon](#), with the dog searching and ‘flushing’ out prey, and the falcon used for hunting.

‘Game-hawking’ as the hunting practice is known, is generally practiced as a country sport, done both for recreation and as a business, which members of the public can pay to participate in. It is permitted during the same open seasons as shooting.<sup>3</sup>

The practice of falconry is listed as an Intangible Cultural Heritage of Humanity by eighteen countries, including Germany, Republic of Korea, and Pakistan under the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage.<sup>4</sup> However, whilst falconry has historically been practiced in Scotland, the UK is not a signatory to this convention, and as such falconry is not recognised by the convention for the UK.<sup>5</sup>

### **The Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020**

The [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020](#) (‘the Act’) was passed in June 2020. The Act amends the Animal Health and Welfare (Scotland) Act 2006, a number of pieces of wildlife legislation and the Animal Health Act 1981 to protect the health and welfare of animals and wildlife in Scotland<sup>6</sup>.

The Act raises the maximum penalties for serious animal welfare offences, gives Scottish Ministers the power to make regulations to issue fixed penalty notices for less serious animal welfare offences, and, among a number of other things, reclassifies mountain hares as protected wild animals which may not be intentionally or recklessly killed, injured or taken at any time of the year under the Wildlife and Countryside Act 1981.

The explanatory notes to the Act explain:

*“117. Section 10A of the Wildlife Act makes it an offence to intentionally or recklessly kill, injure or take animals specified under schedule 5A of the Wildlife Act at certain times of the year (close season). Mountain hares were previously listed in schedule 5A.*

*“118. It was therefore an offence to intentionally or recklessly kill, injure or take a mountain hare between 1st March and 31st July, subject to the exceptions listed in section 10B of the Wildlife Act.*

*“119. Section 18 of the Act removes reference to the close season for mountain hares in section 10A(2)(a) of the Wildlife Act and moves mountain hares from schedule 5A to schedule 5 (animals which are*

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<sup>3</sup> <https://countrysportscotland.com/other-field-sports/falconry/>

<sup>4</sup> <https://ich.unesco.org/en/decisions/11.COM/10.B.15>

<sup>5</sup> <https://ich.unesco.org/en/lists?text=falconry&multinational=3&display1=inscriptionID#tabs>

<sup>6</sup> [https://www.legislation.gov.uk/asp/2020/14/pdfs/aspn\\_20200014\\_en.pdf](https://www.legislation.gov.uk/asp/2020/14/pdfs/aspn_20200014_en.pdf)

protected). Under section 9 of the Wildlife Act, it is an offence to intentionally or recklessly kill, injure or take any wild animal included in schedule 5.

*“120. The effect of this is to remove the open season, making it an offence to intentionally or recklessly kill, injure or take mountain hares throughout the year, subject to the exceptions listed in section 10 and the licensing provisions in section 16 of the Wildlife Act.”*

Section 18 of the Act, which reclassifies mountain hares as a protected species, came into force on 1 March 2021, by [regulation laid in the Scottish Parliament on 27 January 2021](#).

## Licensing

A licensing scheme is being developed to allow persons to legally take mountain hares for specific purposes from 1 March 2021. [NatureScot has advised that a new licensing scheme will be available](#) from July 2021. [In the meantime, a closed season license can be applied for, for the purpose of:](#)

- preventing the spread of disease
- preventing serious damage – e.g. to forestry interests
- social, economic or environmental purposes

However, the Scottish Government has confirmed that birds can still be used to take mountain hares for licensed purposes, but mountain hares can no longer be hunted for recreation or sport (see answers to Parliamentary Questions below).

## Scottish Parliament Action

Three Parliamentary Questions have been submitted and answered on this subject.<sup>7</sup> Details of two of these are provided below. In answer to the second question, submitted on 19 February, the Scottish Government referred to the answer to the question submitted on 4 February 2021.

On Question ref. S5W-34988

Asked by: Murdo Fraser, Mid Scotland and Fife, Scottish Conservative and Unionist Party

Date lodged: 4 February 2021

### Question

*To ask the Scottish Government what impact the prohibition of culling of mountain hares could have on the operation of licensed falconry on land with*

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<sup>7</sup> <https://www.parliament.scot/chamber-and-committees/written-questions-and-answers?msp=All&qry=falconry&qryref=&dateSelect=78db02c79507407a8df319e9d7ac424e%7CThursday%2C+May+12%2C+2016%7C&chkAnswered=true&chkAnswered=false&chkUnAnswered=false&chkHolding=true&chkHolding=false#results>

*a significant hare population, and what consultation it had with operators before it introduced the prohibition.*

#### Answer

*From 1 March 2021, in order for NatureScot to consider granting a licence that includes falconry as a method of taking mountain hares an applicant will need to demonstrate that it is for a licensable purpose under Section 16 of the Wildlife and Countryside Act. An example would be to prevent serious damage to timber or agriculture or for the conservation of natural habitats.*

*NatureScot has engaged with land management, conservation and welfare bodies, including representatives of the Scottish Hawk Board and other operators, to help develop their approach to the licensing regime for the culling of mountain hares.*

Question ref. S5W-35769

Asked by: Oliver Mundell, Dumfriesshire, Scottish Conservative and Unionist Party

Date lodged: 5 March 2021

#### Question

*To ask the Scottish Government, further to the answers to questions S5W-34988 and S5W-35371 by Roseanna Cunningham on 4 and 26 February 2021 respectively, what its position is on the social and cultural heritage associated with falconry, and what steps it is taking to preserve this, particularly in areas where blue hare are present.*

#### Answer

*The Scottish Government recognises the social and cultural heritage associated with falconry. Blue (or mountain) hares are now a protected species following the passage of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act in June 2020. The protection came into force on 1 March 2021. This means that the species can no longer be taken for sporting or recreational purposes.*

*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 of the Wildlife and Countryside Act 1981. Any changes to the specified purposes for allowing licensed taking of mountain hares under the Wildlife and Countryside Act 1981 would require primary legislation.*

#### **Potential future action**

The outgoing Scottish Government [committed to new legislation regarding licensing grouse moors and muirburn in the next session of Parliament](#). There may be opportunities for this issue to be explored as part of that legislation, although the scope of that legislation remains unclear.

## Key Organisations and relevant links

The Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020

<https://www.legislation.gov.uk/asp/2020/14/contents/enacted>

NatureScot - Licensing for mountain hares

<https://www.nature.scot/professional-advice/protected-areas-and-species/licensing/species-licensing-z-guide/hares-and-licensing>

NatureScot – guidance on licenses for social, economic or environmental purposes

<https://www.nature.scot/guidance-licensing-licence-social-economic-or-environmental-purposes-respect-protected-species>

The Scottish Countryman – Blog describing game-hawking

<https://www.thescottishcountryman.co.uk/blog-posts/what-is-falconry>

A future with falconry – background information to the petition on falconry community webpages

<https://afuturewithfalconry.org/protectuplandfalconry.html>

Recommendations of the Grouse Moor Management Review Group, which also considered the status of mountain hares

<https://www.gov.scot/news/grouse-moor-management/>

**Anna Brand, Senior Researcher**

**SPICe Research**

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