

Public Petitions Committee

2nd Meeting, 2021 (Session 6)

Wednesday, 1 September 2021

PE1859: Retain falconers rights to practice upland falconry in Scotland

Note by the Clerk

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	petitions.parliament.scot/petitions/PE1859

Introduction

1. This is a new petition that was lodged on 24 March 2021.
2. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe A**.
3. While not a formal requirement, petitioners have the option to collect signatures and comments on their petition. On this occasion, the petitioner elected to collect this information. 2979 signatures and 317 comments have been received.
4. The Session 5 Public Petitions Committee agreed to seek advanced views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe B** of this paper.
5. The petitioner has also provided two written submissions. The submissions are included at **Annexe C and Annexe D** of this paper.
6. A submission has also been received from Alex Matossian. This is included at **Annexe E** of this paper.

Scottish Government submission

7. In its submission, the Scottish Government explains that during the passage of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 through Parliament, an amendment was made to Schedule Five of the Wildlife and Countryside Act 1981 ('the 1981 Act') to include mountain hares as a protected species. This means that mountain hares can no longer be taken for sporting or recreational purposes.
8. The submission explains that the mountain hare is of principle importance for biodiversity conservation in Scotland and as such is listed on both the UK Biodiversity Action Plan and the Scottish Biodiversity List. The submission highlights that the Scottish Government recognises there may be circumstances where it is necessary to control hares for example to protect new trees, manage grazing impacts and mitigate the spread of disease. The Scottish Government also recognises the concern amongst stakeholders and members of the public regarding the growing numbers of hares being killed each year.
9. The Scottish Government submission confirms that, when considering the amendment to include mountain hares as a protected species, it took into account the recommendations from the Grouse Moor Management Group report which stated:
 - *“the shooting of mountain hares should be subject to increased legal regulation; and*
 - *should the conservation status of mountain hares prove to be 'unfavourable' then a licensing system for the shooting of mountain hares should be introduced.”*
10. The Scottish Government therefore felt that accepting the amendment struck a balance between legitimate land management and protecting an iconic species.
11. The submission does highlight that in certain circumstances, birds of prey can still be used to take mountain hares for purposes such as to protect timber or agriculture, under license by NatureScot and as specified in Section 16 of the 1981 Act. Birds of prey can also be used to take other traditional quarry species such as birds, rabbits and stoats for sporting and recreational purposes.
12. The submission ends by stating that any amendments to Schedule 5 of the 1981 Act would require primary legislation and consideration would also need to be given to the implications for all the other Schedule Five species that would be affected by such a change.

Petitioner submission

13. In his submission, the petitioner explains that mountain hare need to be conserved at a high density to attract falconers, which in turn creates significant commercial value and support isolated rural economies through visiting falconers. He suggests that falconry assists with conservation by encouraging land owners to support hares, rather than tolerating or shooting them.
14. The petitioner addresses the suggestion from the Scottish Government that birds of prey can also be used to take other traditional quarry species by outlining practical barriers to falcons hunting this prey. It is noted that if brought into quarries for alternative species, eagles are likely to instinctively hunt hare as this is their natural tendency.
15. UK Animal Welfare standards and SSPCA/RSPCA guidance is referenced in the submission to state that there is a legal obligation to allow trained, captive bred birds of prey freedoms, including the freedom to express the natural behaviours of the species. The petitioner believes the current legislation is taking that freedom away.
16. In a further submission, the petitioner raises concerns that limited consultation took place with NatureScot during the passage of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020. The petitioner expresses their view that the passage of the legislation during the pandemic impacted on NatureScot's ability to contribute to its scrutiny. It is noted in the submission that NatureScot were not consulted in advance about changes to the legislation.
17. In the submission, it is highlighted that NatureScot have confirmed that they would have 'no hesitation in considering applications from falconers for licences to take hares for the purpose of falconry'

Action

18. The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

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.¹

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.² 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.

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

² <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.³

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.⁴ 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.⁵

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 Scotland⁶.

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

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

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

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

⁶ https://www.legislation.gov.uk/asp/2020/14/pdfs/aspen_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.⁷ 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

⁷ <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

08/04/2021

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Scottish Government submission of 2 June 2021

PE1859/A

The Scottish Government recognises the social and cultural heritage associated with falconry.

During the course of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 ('the 2020 Act') through Parliament, an amendment was submitted to add mountain hare to Schedule Five of the Wildlife and Countryside Act 1981 ('the 1981 Act'). Following the passage of the 2020 Act, mountain hares (or blue hares) are now a protected species. The protection came into force on 1 March 2021 and means that, in line with other species listed under Schedule Five of the 1981 Act, mountain hares can no longer be taken for sporting or recreational purposes.

The mountain hare is a priority species for conservation action under the UK Biodiversity Action Plan, and is also on the Scottish Biodiversity List, which means that it is considered to be of 'principal importance' for biodiversity conservation in Scotland.

As the then Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, explained during the Stage 3 debate of the 2020 Act, the Scottish Government understands and accepts that in a variety of circumstances it is essential to control hares and other species, for example to protect new trees, manage grazing impacts and mitigate the spread of disease.

However, the Scottish Government also recognised the fact that mountain hares are now classified as being in an 'unfavourable-inadequate' conservation status, and there was considerable concern amongst some stakeholders and members of the public over the number of hares killed each year.

When considering the amendment the Scottish Government also took into account the report by the Grouse Moor Management Group (a.k.a. the Werritty report) which recommended that:

- The shooting of mountain hares should be subject to increased legal regulation; and
- Should the conservation status of mountain hares prove to be 'unfavourable' then a licensing system for the shooting of mountain hares should be introduced.

After careful consideration of the evidence, the Scottish Government supported this amendment as it felt that it delivered an appropriate balance between the interests of those involved in legitimate land management and protecting an iconic Scottish species.

While there is no longer an open season for mountain hares and the species can no longer be taken for sporting or recreational purposes, birds of prey can still be used to take mountain hares for other permitted purposes specified in Section 16 of the 1981 Act, for example to protect timber or agriculture, under a licence granted by NatureScot. This is in line with the licensing scheme that was operated during the close season for mountain hares, from 2011 to 2020.

In addition, birds of prey can still be used to take other traditional quarry species including birds, rabbits and stoats for sporting and recreational purposes.

Other species listed under Schedule Five of the 1981 Act include adders, pine martens, and red squirrels. Any changes to the permitted reasons for taking a species listed under Schedule Five of the 1981 Act would require primary legislation. Thorough consideration would also need to be given not only to the consequences of such a change on the conservation status of mountain hares, but to the implications for all the other Schedule Five species that would be affected by such a change.

Petitioner submission of 7 June 2021

PE1859/B

Unfortunately, I do not feel that the Scottish Government response reflects any kind of reality of the art of falconry, the status of mountain hares in the regions where falconers hunt them, nor of the ecology of the uplands, or of the relationships between avian predators and their prey.

It also seems to at first, reference falconry as a heritage pastime, but then refer its response specifically to shooting, so to address these points, I would ask you to consider the following.

The mountain hare needs to be conserved at a level of high density to attract falconers to the mountain locations where they live. This very fact encourages their active support and creates a barrier against shooting them. Falconry ensures that the hares have a significant commercial value which further encourages land owners to support them. These facts coerce to ensure that hares are not just tolerated where they would otherwise be shot but that they are encouraged and maintained at a significant population density. The fiscal sustainability for landowners is very clear, not to mention the income generated to some isolated rural economies through visiting falconers.

Falconry accounts for a vanishingly small number of hares, and thus, the numbers supported to attract falconers go on to breed and the expanding population is the genesis for the species dispersal to wider ranging areas.

Removal of the hares value wipes out its support and subsequent expansion. Removing tolerance for the species through devaluing it is a massive blow to the conservation of the species.

Falconers travel to where hares are in good numbers. If falconers decline through unjustifiable species protection, the support for the species will decline, and thus, hare numbers will decline.

The Scottish Government submission suggests that falconers may hunt other species like 'rabbits, grouse, and stoats'.

Rabbits do not occur in the high places that upland falconry takes place, in the vast mountainous areas where eagles are flown. This aside,

rabbits are very very unsporting quarry for eagles. The term a sledgehammer to crack a nut comes to mind. Additionally, it may have escaped ministers attention, but rabbits are in a state of massive decline through viral hemorrhagic disease (VHD) and other man made diseases and are a largely absent quarry base for falconers.

Grouse occur, but aside from the fact the access to them is too expensive for most falconers, they are quarry only suitable for falcons. They are not a suitable, realistic or attractive quarry for hawks and eagles. Furthermore, if we were to hunt grouse, or indeed tried to find a rabbit on a mountain, with our eagle a thousand feet above our heads, how do we tell it that it must ignore its natural quarry of thousands of years, but should hunt something different? If the eagle does follow its instinct and hunts the hare that lives beside the grouse on the mountain, the falconer becomes a criminal!

Stoats are not an acceptable quarry for birds of prey. They are tiny, virtually invisible by day, and bite savagely risking injury to the falconer's birds!

The Scottish Government submission refers to the Grouse Moor Management Group recommendation regarding the shooting of mountain hares.

My petition has no reference to, nor any bias about shooting. More importantly, the recommendation is that 'a licensing system for shooting should be introduced'. We are falconers. We are not shooting. The recommendation does NOT reference the immeasurably small impact of falconry, nor the positive conservation effects of falconry.

Suggesting that the infinitesimally small numbers of hares that it is possible to take with birds of prey/falconry makes it a useful or attractive method of killing hares as pest control is little more than obfuscation and does nothing at all to address the damage that the legislation does to the 4000-year-old heritage art of falconry.

I also reference the globally recognised and UK adopted 5 Freedoms for any animal in captivity and in the care of humans.

Falconers across the world aspire to reach and go beyond them all.

The relevant inclusion on the list of five freedoms for animals in captivity is;

And finally Freedom To Express The Natural Behaviour For The Species.

Under SSPCA/RSPCA guidance, and UK Animal Welfare standards, it is our legal obligation to allow our trained, captive bred birds of prey all of these freedoms. The Freedom to express the natural behaviour for the species, is being taken away from us by this legislation. There is simply no possible way to allow a Golden Eagle to express natural behaviour for the species unless it is allowed to fly high and wide in the mountains which are its ancestral home. If you fly an eagle in these places, they will hunt hares. This legislation makes us criminals if we do, and criminals under welfare standards if we don't.

As exists in other sections of the Wildlife and Countryside Act, I request an amendment to the legislation to allow hares to be hunted in the pursuit of Falconry.

Petitioner submission of 26 August 2021

PE1859/C - Retain falconers rights to practice upland falconry in Scotland

The addition of the mountain hare (*Lepus timidus*) to schedule 5 of the Wildlife and Countryside Act from March the 1st 2021, was, in my view, expedited in a highly unusual manner and very quickly. The process allowed time for neither stakeholder, nor even the government's own advisory body (NatureScot) to submit specific data, facts nor concerns.

Tabled, briefly debated and passed during the global Covid-19 pandemic was (cynically) probably unfair. It is my belief that the pandemic itself was used as a smokescreen to bury the passing of the legislation leaving it missed or at least overlooked by those who would otherwise contribute while they dealt with the stress, trauma, lost lives and livelihoods in the grip of the pandemic.

I believe that one reason the legislation was accelerated so significantly in comparison to similar submissions, is that without the pandemic restrictions, Nature Scot would probably have been given the time and opportunity to make their thoughts known, and thus have them considered. We now have confirmation that NatureScot, the government's own wildlife advisory and licensing authority, were never consulted in advance about the amendment to the Act. Is it not highly unorthodox for a government to pass an amendment to far reaching legislation with no consultation with their advisors on the topic. One has to question the reason for this.

Indeed, landowners allowing the proliferation of hares on their land to attract the revenue from visiting falconers likely means that in the real world, falconry leads to an increase in hare population. Especially when considered beside the fact that falconers birds, like their wild counterparts, demonstrate natural selection and remove the sick, weak, old and infirm animals, leaving the strong to pass on their stronger genetic map.

NatureScot have confirmed that from a conservation and all other standpoints, that they would have 'No hesitation in considering applications from falconers for licences to take hares for the purpose of falconry' as the numbers taken are utterly insignificant.

Evidence exists on the ground showing highly robust hare populations on managed land, from people on the ground, available advice from the government's own advisory body, and advice in the government's consultative paper (The Werrity Report) suggests that licensing should be considered in perhaps 5 years time and then only for shooting and if hares are proven to be at an unfavourable population.

Sadly, despite this, the government has seen fit to steamroller the amendment through based on, what I believe to be, a protectionist ideology and has made no provision for the allowance for the continuation of falconry in the uplands, nor a licensing avenue for falconers to follow.

The Wildlife & Countryside Act 1981 Section 16 is a list pertaining to wild birds, which allows for licensing by certain agencies for those birds to be taken, and on the list of licenses that can be authorised is 'For the purpose of falconry or aviculture'. Subsection (3) in section 16 of the act shows a similar list but in this case relates to 'wild animals'. In this case, the exemption for the 'purpose of falconry' is missing. Our direct consultation (which has not been completed by the Scottish Government) with NatureScot confirms that they 'Cannot identify why it is absent, nor see any justification for its absence'.

In summary, I must note that government has failed to establish the state of the hare population in Scotland that was required under the Werrity Report, (counts were not possible under Covid-19 restrictions) ignores evidence that it is very strong. Despite the Environment Secretary assurances that careful consideration would be recommendation and other evidence, including meetings with stakeholders and advisory bodies, none were completed.

Despite The Werrity report being entirely focussed on shooting and a 5 year study plan and making no allusion that falconry should be included.

Despite burgeoning evidence that falconry has no negative effects on mountain hare populations, and indeed likely assists in increasing hare numbers.

Despite all these points, I believe that the Scottish Government has failed utterly to complete any due diligence or properly understand the subject they have legislated.

I request that the Committee should support a request for an amendment to the Act allowing mountain hares to be taken 'for the purpose of falconry' or to allow licences to allow hares to be taken for 'the purpose of falconry'.

I also request that any debate on this matter by the Scottish Parliament should include a full submission of evidence and recommendation by the Scottish Government's own wildlife advisory body and licensing authority, NatureScot.

The following submissions are also circulated in connection with consideration of the petition at this meeting –

- [PE1859/D: Alex Matossian submission of 26 August 2021](#)

The Scottish Parliament launched its new website before the start of Session 6.

All written submissions received on the petition before May 2021 can be viewed on petition [archive page](#). Any submissions received since May 2021 can be viewed on the petition webpage on the [new website](#).