

# Dr Nick Fox and Helen Nakielny submission of 29 March 2023

## PE1859/KK: Retain falconers' rights to practise upland falconry in Scotland

This submission follows on from two previous submissions to earlier hearings. It is a summary of the full submission with peer-reviewed documentation which can be found at

<https://www.falcons.co.uk/conservation-research-and-welfare/conservation-and-research/mountain-hares/>

### **'Recklessly kill'**

The key point is whether flying a bird of prey in an area with Mountain Hares constitute the possibility that the Falconer might 'recklessly kill' a Schedule 5 protected species within the meaning of Section 9 of the Wildlife and Countryside Act 1981.

NatureScot says 1. The Falconer must have permission of the land-owner, 2. The Falconer must take reasonable precautions to ensure that there are only few if any mountain hares on the land, 3. The Falconer did not foresee, or could not reasonably foresee that the eagle might take a mountain hare, and 4. The Falconer took all practical steps to minimise the damage eg by recalling the eagle as soon as reasonably practicable. NatureScot then mapped where in Scotland Mountain Hares are at a 'high' density, and where they are at a 'low' density.

Police Scotland agree and add 'If the Falconers had carried out due diligence ... and thereafter a Mountain Hare was taken by a bird of prey, then this could be considered accidental. Police should be notified of the incident and thereafter the area should not be used for exercise again. If thereafter this area was used for exercise purposes again, and a further Mountain Hare was taken, then this could be considered reckless.'

But most birds and mammals are protected and together they cover the entire area of Scotland. Based on the above, clearly it would be 'reckless' to fly a raptor anywhere in Scotland. Dogs and cats are also exercised in Scotland and not only kill Mountain Hares but also a wide range of protected species.

Falconry is being discriminated against in favour of dogs and cats. What NaturScot and Police Scotland are saying is a legal minefield.

### **A Failure of Due Process.**

The Bill went through Stage 3 without consulting the falconry community.

1. Thus placing the Mountain Hare on Schedule 5 was unlawful.
2. The discrimination against Falconers in favour of cat-keepers is unlawful.

I respectfully remind you of the Scottish Parliament responsibilities:

The Scotland Act 1998: "the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions."

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 requires 'due regard' to :

- eliminate unlawful discrimination
- advance equality of opportunity
- foster good relations

And the United Nations Human Rights

[https://www.ohchr.org/sites/default/files/Documents/Publications/Minority\\_Rights\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/Minority_Rights_en.pdf) gives clear guidance on the rights of cultural minorities such as Falconers.

The new law allows licences for 'social purposes'. Falconry is a qualifying social reason.

However, the proposed benefits would still have to be significant. This is taken to mean that the activity proposed will achieve, or contribute towards, a social, economic or environmental benefit of some note. In other words the benefits must not be minor, and should concern projects of recognised importance.

### **Cultural significance**

NatureScot's view (March 2023) is: that hunting mountain hares with birds of prey is not widely practised enough in Scotland to satisfy this purpose.

NatureScot is not a qualified authority on cultural activities. When challenged on this by Mr Fergus Ewing MSP, Dr Mike Cantlay replied: We have to consider licence applications on their own merits and on a case-by-case basis. Our view is that a falconer applying for a licence to hunt mountain hares for recreational purposes would be unlikely to meet the threshold for significant social benefit. Any licence would benefit a small number of individuals it is difficult to argue that the social benefit would be significant.

We disagree, and we are asking for a General Licence, not individual ones. There was no consideration of Scotland's cultural heritage. Falconry is practised in over 80 countries, it is a legitimate activity, a Protected Belief, and is inscribed by UNESCO on the Representative List of the Intangible Cultural Heritage of Mankind.

<https://ich.unesco.org/en/RL/Falconry-a-living-human-heritage-01708>.

The cultural heritage of Falconry equipment making is on the Red List of Endangered Crafts <https://heritagecrafts.org.uk/Falconry-furniture-making/> Falconry is part of Scotland's cultural heritage, having been practised here for 1300 years. Full details of Falconry's ICH in Scotland are at the Falconry Heritage Trust

[https://www.falconryheritage.org/Intangible Cultural Heritage](https://www.falconryheritage.org/Intangible_Cultural_Heritage) .

It is a significant social benefit and banning it, as proposed by NatureScot, is obviously not a solution. A General Licence for Falconry does not create a precedent. Individual licensing is an administrative burden, a waste of time and unenforceable. Estimates vary, but about 100,000-400,000 hares are bred each year. Therefore we do not consider that SG has made a case that Falconry could impact Mountain Hare populations and thus a General Licence is appropriate.

In summary

1. This Act is unlawful in that due process has not been followed.
2. SG has not established a case that Hunting Mountain Hares by Falconers has any significant population impact.
3. The claim that to fly raptors in Scotland is 'reckless' and unlawful is discriminatory in favour of dog and cat owners.
4. The ICH of Scottish falconry has not been considered and has been dismissed out of hand as 'insignificant'.
5. Licences are issued to prevent damage to trees, but not to prevent damage to ICH.