

## Petitioner submission of 1 April 2022

### PE1859/Z – Retain falconers rights to practice upland falconry in Scotland

The government has already shown it does not understand execution of upland falconry in Scotland's mountains, the only places where trained birds of prey such as Golden Eagles can be genuinely allowed to 'demonstrate behaviour natural to the species', a legal obligation under the framework of the 5 Freedoms for captive animals. Legislation passed that has offered blanket protection to mountain hares makes allowing this legally required freedom an action that could make the falconer into a criminal. Government explanations on how to allow these freedoms without risk, within the framework of the current legislation only serve to prove that;

- government is under equipped with knowledge of birds of prey and their needs and behaviours to place legislation that affects them;
- falconers are being left in a place where they are forced to break the law by NOT allowing their birds their rightful freedoms;
- falconers are forced to break the law if they DO allow this freedom;
- risk the lives of their birds by flying beside the M8 or in an Aberdeen ship harbour.

Unfortunately, government appears to have no appetite to learn or understand these specifics, so we can only explain and try to widen our demonstration of how the legislation is fatally flawed.

In Scotland, food producing businesses and airports have a (H&S) legal obligation to offer a pest control service that prevents the risk of disease or bacteria entering the food chain, or mitigate risk of bird strikes by aircraft. Others have the RIGHT to implement a pest control service that eliminates risk of disease, or physical/mental harm caused by aggressive or disease bearing species.

One group of creatures that are aggressive, carry a host of diseases, spread bacteria and are an aviation risk are gulls.

Two problematic species are herring, and lesser black backed gulls. Both enjoy the SAME level of protection as the mountain hare. Other species such as black headed and common gulls receive an even greater level of protection.

Work to take direct action against gulls is only legal under licence by the government via their issuing agency, NatureScot. The direct killing of adult gulls or chicks is not legal with normal licensing. The only direct action that can be taken is the removal of gull nests and eggs. Licences for this will ONLY be issued if the licence holder produces evidence that realistic deterrents have been put in place to stop nesting gulls from amassing in the spring.

These include roof spikes or netting, but in many applications a roof is unsafe or unsuitable for them to be fitted (spires, phone masts, asbestos rooves etc). Only a few other options remain which are recommended and approved by government. Some are audible deterrents, dummy predators, or flying a kite, but these only work for a few weeks in the first year of trying until the intelligent gulls realise they are not a threat and ignore them. The final recommended method is FALCONRY. A bird of prey worries the gulls and may put them off nesting at the site. It is a practical and workable method that usually has the desired effect, and even if it does not, it legalises the required licence for the next stage – egg and nest removal.

Falconer and client can relax because despite the protection of gulls being equal to or greater than that of hares, if the hawk catches one, no prosecution is likely because government legislation carries the line respective to protection of birds 'Except for the purpose of Falconry'. This critical service and important safety focused, disease preventative industry can thrive. Until now.

One piece of legislation makes an action a legal requirement (pest control), the other makes it illegal due to protection of mountain hare. Flying birds of prey in the hare population zone (virtually the whole of Scotland) leaves a falconer liable to prosecution if it catches hare, meaning that in his or her normal and important action of work in pest control, the falconer is liable to prosecution. Despite being exempt from prosecution if a bird accidentally catches a protected gull, if the hawk takes a spring leveret or a hare, the falconer is now liable to prosecution.

Nobody would, nor should they be expected to work under such risk.

To stay legal, this service must be withdrawn, and doing so makes a licence to deal with gull unobtainable, and leaves affected site owners exposed to prosecution for not mitigating risk of disease or accident.

This single situation demonstrates that the government does not understand its own legislation or how its various laws work with or against each other.

For this reason alone, the legislation should be entirely removed from Scotland's statute books.

An alternative that also serves to eliminate this conflict of legislation would be an amendment to the hare legislation that says 'Except for the purpose of falconry'.