

Briefing for the Citizen Participation and Public Petitions Committee on PE2100: Ministerial guidance to clarify the criteria for assessing licence applications under section 16 of the Wildlife and Countryside Act 1981

The petitioner is calling on the Scottish Parliament to urge the Scottish Government to:

- Produce guidance under Section 54 of the Nature Conservation (Scotland) Act 2004 to clarify the criteria for consideration of “no other satisfactory solution” in relation to licensing, and to
- Include the sustainable cultural use of natural resources under Section 16 of the Wildlife and Countryside Act 1981.

Background – NatureScot’s licensing functions

The petition relates to how NatureScot, Scotland’s statutory nature conservation agency, carries out its species licensing functions. NatureScot can license, for certain purposes, actions that would otherwise constitute an offence against a protected species. NatureScot is responsible for almost all species licensing in Scotland except for some aspects in the marine environment.

Scottish wildlife is protected under three main pieces of legislation. This legislation also provides for the circumstances in which certain activities may be licensed:

- [The Wildlife and Countryside Act 1981](#) (as amended)
- [The Conservation \(Natural Habitats &c.\) Regulations 1994](#) (as amended), and;
- [The Protection of Badgers Act 1992](#) (as amended)

The purposes for which licences may be granted, and the statutory licensing ‘tests’ vary according to the legislation in question but generally include an assessment:

- Of whether the applicant’s proposal is covered by the purposes for which a licence can be granted (the ‘licensable purposes’),
- That there is no other satisfactory solution or alternative for achieving that licensable purpose which doesn’t require a licence, and

- Of what the impacts of the proposal will be on the conservation status of the species involved.

Scottish Ministers' power to issue guidance to NatureScot

Scottish Ministers have delegated powers under [section 54 \(1\)\(a\) of the Nature Conservation \(Scotland\) Act 2004](#) to issue guidance containing recommendations, advice and information for the assistance of public bodies in complying with their duty (under section 1(1) of the same Act) to further the conservation of biodiversity.

Licensable purposes under the Wildlife and Countryside Act 1981

The petitioner argues that “the sustainable cultural use of natural resources” should be added to section 16 of the Wildlife and Countryside Act 1981 (‘the 1981 Act’), which sets out the list of purposes for which NatureScot can issue certain licences under that Act.

The petitioner is a falconer and [has previously argued that taking peregrine falcons from the wild in Scotland](#) could provide “British falconers with a native source of birds that would reconnect with their cultural heritage, hopefully giving many of the new generations coming into falconry a better understanding of how important healthy populations of wild raptors are to falconry”.

All wild birds in Scotland are given protection under the [Wildlife and Countryside Act 1981 \(as amended\)](#). A key requirement of this Act is set out in section 1, which makes it an offence to kill, injure or take any wild bird, subject to other provisions in that Act. Other requirements relate to prohibited methods of taking or killing birds, registration, ringing and other requirements for captive birds.

Section 16 sets out the conditions under which actions which would otherwise be an offence, including under section 1, may be licensed, including setting out what are “licensable purposes”.

Those purposes are:

- (a) for scientific, research or educational purposes;
- (b) for the purpose of ringing or marking, or examining any ring or mark on, wild birds;
- (c) for the purpose of conserving wild birds;
- (ca) for the purposes of the re-population of an area with, or the re-introduction into an area of, wild birds, including any breeding necessary for those purposes;

- (cb) for the purpose of conserving flora or fauna;
- (d) for the purpose of protecting any collection of wild birds;
- (e) for the purposes of falconry or aviculture;
- (f) for the purposes of any public exhibition or competition;
- (g) for the purposes of taxidermy;
- (h) for the purpose of photography;
- (i) for the purposes of preserving public health or public or air safety;
- (j) for the purpose of preventing the spread of disease; or
- (k) for the purposes of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters,

NatureScot (the 'appropriate authority') cannot grant a licence for any of the above purposes unless it is satisfied that, as regards that purpose, there is **"no other satisfactory solution"**. It also cannot grant a licence for any purpose mentioned in paragraphs (e) to (h) above "otherwise than on a selective basis and in respect of a small number of birds".

Species licensing review

The Scottish Government has commissioned a review of NatureScot's species licensing functions. This review will set out to:

- Ensure that the law is being applied correctly and lethal control is only licensed where the conditions are demonstrably being met (this section of the review will be undertaken by Law Firm Harper Macleod).
- Assess the potential to apply the principle of full cost recovery to licensing
- Assess the potential to introduce a public register of licenses to improve transparency.

The review will be carried out in the context of the Better Regulation principles and the Scottish Regulators Code of Practice. More information [can be found on the NatureScot website](#). The aim is for a report to be provided "for external review" by October 2024.

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15 August 2024

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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