

Upland Falconry (PE1859)

The Convener: Our next petition, PE1859, was lodged by Barry Blyther, who is in the public gallery this morning. The petition calls on the Scottish Parliament to urge the Scottish Government to amend the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 to allow mountain hares to be hunted for the purposes of falconry.

Members will recall the evidence sessions that we had in December last year with the petitioner, the Minister for Environment and Land Reform and NatureScot. I should also include Stanley, the eagle, in that, because we put questions to Stanley directly. *[Laughter.]* We heard about a number of issues in relation to the petition, and there are some outstanding issues and questions for us to consider, all of which have been summarised in our papers.

Fergus Ewing: With the convener's permission, I would like to place on record a couple of matters

arising from the evidence session with the minister, of which I have given notice to the clerk.

First, at the outset of her evidence, the minister said that I had been the cabinet secretary at the time, but I pointed out that I was not the cabinet secretary responsible for the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill. However, the minister then added that the junior minister who took the legislation forward was acting under both Roseanna Cunningham and me. That is true, but it gives a slightly false impression of the situation, and I wanted to correct that. For the avoidance of doubt, I was not cabinet secretary with direct responsibility for that bill; that was Ms Cunningham, and Ms Gurgeon took forward the bill on a practical day-to-day basis, acting on instruction from Ms Cunningham. Therefore, I had no direct ministerial focus or policy role for that bill, although, of course, I was a member of Cabinet.

Secondly, later on, the minister said:

"If the solution that Mr Ewing is referring to is that I instruct law officers to make a statement that a criminal offence will not be prosecuted, he is doing a disservice to the legal profession that he was once part of."—[*Official Report, Citizen Participation and Public Petitions Committee*, 21 December 2022; c 17.]

In response, I point out that I am still part of that profession, because I am on the roll of solicitors, although I am no longer in practice. Of more substance is the fact that I did not call for a blanket ban on prosecution; rather, I sought guidance, and I hope that guidance is an option that can be explored.

I will make further, substantive remarks later, but I wanted to clarify those points for the record. Thank you for the opportunity.

The Convener: I know that all the members were impressed by the petition and I think that we were troubled by some of the evidence that we received. We have had an opportunity to reflect on that. A number of issues arise from it, and I think that the committee's likely direction of travel is clear but, in pursuing that journey, are there suggestions as to what we might reasonably do now? It would be good to hear from colleagues in relation to that.

Alexander Stewart (Mid Scotland and Fife) (Con): There is no doubt that the petition has created real anxiety across all areas. When the minister was here the last time, the committee was quite intent on progressing it. Mr Ewing has, in his way, highlighted the things that were said in the previous session that needed to be corrected.

It is important that we go back to the minister, so I suggest that we write to the Minister for Environment and Land Reform and NatureScot on the outstanding issues that were raised, on a

number of which clarification is still needed. Those issues include the existing licensing purposes and options; the circumstances in which falconry could constitute an offence and in which a person could be charged and prosecuted—that issue is vitally important; how the welfare of birds of prey, particularly large birds such as eagles, can be ensured through the content of the new arrangements for the protection of mountain hares; and the potential unintended consequences of any legislative change. Those are fundamental matters that we should raise at this stage, and I propose that we do that at the next level.

The Convener: Are there any other suggestions or comments from colleagues?

Fergus Ewing: I agree with Mr Stewart's recommended course of action and, in doing so, I express my gratitude for the information and help that we have received from the Scottish Parliament information centre. We had a briefing earlier, for which we are grateful.

In the light of that, I hope that we can put in the letter to the minister the information that we received about the possible distinction between the use of falconry for hunting purposes and for exercise purposes. As well as the issues that Mr Stewart has enumerated, we should ask that regard be paid to whether that information might form the basis of her seeking guidance and advice from NatureScot, which, I gather, deals with operational and strategic arrangements for licences in general, to see whether it can recommend a way that would enable the sport of falconry to continue to be practised in the light of the distinction that we have had the benefit of hearing about this morning from SPICe.

In addition to that, I hope that we can write to Police Scotland and the Crown Office and Procurator Fiscal Service to clarify the circumstances that would constitute an offence, and whether a person could be charged and prosecuted. Again, that might benefit the legal authorities, which are the only ones that have the right to decide whether there should be a prosecution. To be fair to her, the minister has no such locus and that line cannot be crossed. We should ask the prosecution authorities in what circumstances they might be minded to consider criminal proceedings. Perhaps we should also set out in the letter the distinction that we have had explained to us this morning, so that they can see a potential solution but also the quandary that falconers face, and appreciate that the committee is taking the issue seriously.

What I am asking for, convener, is that the letters to the legal authorities and to the minister should go to some lengths to set out our concerns about what we have heard, and our desire for a

solution to be found that involves everybody working together to that end.

The Convener: I am content with that. I also suggest that, in the light of the responses that we might receive, we go back and ask SPICe to draw all that information together in the form of a further briefing, which would then inform the committee about the steps that we could take on the back of that. We want to arrive at a solution having underpinned our recommendation by exploring every possible piece of advice to clarify all the outstanding points.

Fergus Ewing: Perhaps I could add a little addendum.

The Convener: Please do.

Fergus Ewing: I forgot to say that, at the very end of the letter to the minister, we could perhaps politely indicate that all members of the committee feel particularly exercised and concerned about this matter, and it is therefore our intention to pursue it. We should indicate that we are treating it very seriously indeed, and perhaps thereby inject a little bit of lead into the ministerial pencil.

The Convener: On which analogy, I will ask whether members are content with the action that has been suggested?

Members *indicated agreement.*