

██████████  
**Senior Investigation Officer**  
**Environmental Standards Scotland**  
Ìrean Àrainneachdail na h-Alba

**ENVIRONMENTAL**  
**Standards Scotland**  
Ìrean Àrainneachdail na h-Alba

██████████  
By e-mail - ██████████

23 December 2022

**Subject: Response to Representation Received- Environmental Standards Scotland – Case Reference IESS.22.023**

Dear ██████████,

Thank you for the representation you submitted to Environmental Standards Scotland (ESS) on 9 November 2022. I can confirm that I have carefully reviewed all the information provided, and would like to offer the following response.

### **Background and role of ESS**

Environmental Standards Scotland (ESS) is a new independent oversight body, established under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021<sup>1</sup> (“the Continuity Act”). Our role is to ensure that there is effective scrutiny of public authorities’ compliance with environmental law, alongside the effectiveness of environmental law and the way it is being implemented and applied in Scotland. It is important to note that the overturning of individual regulatory decisions falls outwith the remit of ESS, sections 27 and 32 of the Continuity Act specifically state that ESS is restricted in respect of these matters. What this means is that ESS is not an appeal body for individual regulatory decisions and so we cannot reconsider decision making on individual decisions or applications.

### **Concerns raised in your representation**

In your representation you raise concerns that Scottish Natural Heritage (SNH) and latterly NatureScot have not been complying with their legal duties to protect and promote the sustainable use of natural resources. The context for your position lies within the way your applications for a number of captive breeding wildlife licences have been handled over the last 14 years.

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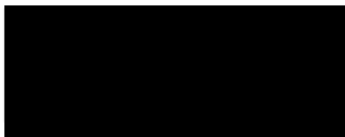
<sup>1</sup> [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukws/2021/1/1/section/1)

With regards to the specific licencing provisions under Section 16 of the Wildlife and Countryside Act 1981, the requirement placed upon NatureScot and other regulators is to consider the licence applications received in accordance with their assessment criteria; whilst recognising and applying their balancing duties and proportionality principle before making their final decision. From my research and evidence provided NatureScot have provided you with written justification of their determination for each individual licence application decision. In view of this, NatureScot appear to be executing their statutory duties as intended. Whilst I acknowledge and accept your genuinely held belief that NatureScot are wrong in their assessment of your applications, in my view the main points outlined in your representation amount to disagreement with the balancing factors used by NatureScot in determining your applications rather than any non-compliance with environmental law on their part. Notwithstanding this, and as I have noted above, it is not our role to reconsider decision making on individual decisions or applications. For this reason, I have decided that no further action will be taken by ESS in respect of your representation.

Notwithstanding my assessment of your representation, I note that in one of your email submissions (dated 28 November 2022) you advise that NatureScot have misinterpreted the main objective of your wildlife licence applications, insofar as they have assessed each licence application solely for falconry purposes and have disregarded the captive breeding (aviculture) element. If my understanding of your e-mail is correct, and if you have not done so already, it is open to you to complain to NatureScot about this. Should you remain dissatisfied with any response you receive, the relevant oversight body to contact is the Scottish Public Services Ombusman.

I appreciate that this may not be the response you were hoping for, however I would like to take this opportunity to thank you for your time in submitting your representation to ESS. Lastly, if you have any queries or require further clarification on any of the above, please do not hesitate to contact me at the above e-mail address.

Yours sincerely



Senior Investigations Officer

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