

Request:

1. Are you able to release any external or internal legal advice to Ministers following Lady Haldane's opinion on the petition of For Women Scotland Ltd for judicial review of the revised statutory guidance produced by the Scottish Ministers under section 7 of the Gender Representation on Public Boards (Scotland) Act 2018.?
 2. Are you able to release any minutes, memos, notes, emails, agendas, attachments and correspondence about Lady Haldane's opinion on the petition of For Women Scotland Ltd for judicial review of the revised statutory guidance produced by the Scottish Ministers under section 7 of the Gender Representation on Public Boards (Scotland) Act 2018?
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1. Update to Ministers on Lady Haldane's Opinion – 13 December 2022

From: [redacted] <[redacted]@gov.scot>

Sent: 13 December 2022 10:16

To: Cabinet Secretary for Social Justice, Housing & Local Government <CabSecSJHLG@gov.scot>; Minister for Equalities and Older People <MinisterEOP@gov.scot>

Cc: First Minister <firstminister@gov.scot>; Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Campbell J (Jeanette) (Special Adviser) <Jeanette.Campbell@gov.scot>; Director for Equality, Inclusion and Human Rights <DirectorforEIHR@gov.scot>; [redacted]

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<[redacted]@gov.scot>; Communications Social Justice, Housing & Local Government <CommunicationsSocialJusticeHousingandLocalGovt@gov.scot>;

[redacted] <[redacted]@gov.scot>

Subject: Decision - For Women Scotland v the Scottish Ministers and the Lord Advocate (Petition for judicial review)

Cabinet Secretary for Social Justice, Housing and Local Government
Minister for Equalities and Older People

cc. First Minister and Deputy First Minister and Cabinet Secretary for Covid Recovery

To make you aware that we have just received Lady Haldane's Opinion and we have been successful. Lady Haldane has held that the Statutory Guidance on the 2018 Act is lawful and has dismissed the Petition.

We will provide a fuller briefing in due course. The deadline for an appeal to be lodged by For Women Scotland is 4 January 2023.

[redacted]

[redacted] | The Equality Unit | Scottish Government | Victoria Quay | Edinburgh | EH6 6QQ | T: [redacted]

From: [redacted]

Sent: 09 December 2022 16:58

To: Cabinet Secretary for Social Justice, Housing & Local Government <CabSecSJHLG@gov.scot>; Minister for Equalities and Older People <MinisterEOP@gov.scot>

Cc: First Minister <firstminister@gov.scot>; Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Campbell J (Jeanette)

(Special Adviser) <Jeanette.Campbell@gov.scot>; Director for Equality, Inclusion and Human Rights <DirectorforEIHR@gov.scot>; [redacted]

<[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted]

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<[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted]

<[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted]

<[redacted]@gov.scot>; Communications Social Justice, Housing & Local Government <CommunicationsSocialJusticeHousing&LocalGovt@gov.scot>;

[redacted] <[redacted]@gov.scot>

Subject: Decision expected - For Women Scotland v the Scottish Ministers and the Lord Advocate (Petition for judicial review)

Cabinet Secretary for Social Justice, Housing and Local Government
Minister for Equalities and Older People

cc. First Minister and Deputy First Minister and Cabinet Secretary for Covid Recovery

To make you aware that we have just received intimation from the Court that Lady Haldane's opinion in relation to the Petition for judicial review of the Statutory Guidance on the Gender Representation on Public Boards (Scotland) Act 2018, will be issued at 10am, or shortly thereafter, on **Tuesday 13 December 2022**.

A reclaiming motion (appeal) would require to be lodged within 21 days of Tuesday. As the Court will be closed for the New Year holiday, this will mean by Wednesday 4 January 2023.

[redacted]

[redacted] | The Equality Unit | Scottish Government | Victoria Quay | Edinburgh | EH6 6QQ | T: [redacted]

<[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted]
<[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted]
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<[redacted]@gov.scot>; Communications Social Justice, Housing & Local
Government <CommunicationsSocialJusticeHousing&LocalGovt@gov.scot>;
[redacted] <[redacted]@gov.scot>

Subject: RE: Decision - For Women Scotland v the Scottish Ministers and the Lord
Advocate (Petition for judicial review)

Apologies, to add that the decision will be published on the Court of Session website
at noon today.

[redacted]

3. Email Drafting Urgent PQ Response – 14 December 2022

From: [redacted] <[redacted]@gov.scot> **On Behalf Of** Cabinet Secretary for Social Justice, Housing & Local Government

Sent: 14 December 2022 12:34

To: [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>

Cc: Cabinet Secretary for Social Justice, Housing & Local Government <CabSecSJHLG@gov.scot>; Campbell J (Jeanette) (Special Adviser) <Jeanette.Campbell@gov.scot>; Minister for Equalities and Older People <MinisterEOP@gov.scot>; Director for Equality, Inclusion and Human Rights <DirectorforEIHR@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>

Subject: FW: IMMEDIATE: Urgent Question selected for today

Importance: High

Hi [redacted], [redacted],

The Cabinet Secretary will be answering an urgent question today at 17:00 in the Chamber, highlighted below.

I would be grateful if you could draft an answer and background briefing following the usual oral PQ guidance. Cab Sec has asked that this covers what was talked about in her GRR call with [redacted] earlier (no change, the EHRC comments in the case, and the comments Cab Sec made at stage 2 setting this out).

It would be helpful to have this as soon as possible to allow the Cabinet Secretary to review, and she may wish to discuss later this afternoon. Could we aim for a deadline of 3:30 please?

Apologies!

Many thanks,

[redacted]

[redacted]

[redacted] | Office of Cabinet Secretary for Social Justice, Housing and Local Government

St Andrews House, Regent Road, Edinburgh, EH1 3DG
Email: CabSecSJHLG@gov.scot

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a

Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

From: [redacted] <[redacted]@gov.scot> **On Behalf Of** Minister for Parliamentary Business

Sent: 14 December 2022 12:26

To: Cabinet Secretary for Social Justice, Housing & Local Government <CabSecSJHLG@gov.scot>

Cc: Campbell J (Jeanette) (Special Adviser) <Jeanette.Campbell@gov.scot>; Spads Admin <Spads_Admin@gov.scot>; Minister for Equalities and Older People <MinisterEOP@gov.scot>; Minister for Parliamentary Business <MinisterPB@gov.scot>

Subject: IMMEDIATE: Urgent Question selected for today

Importance: High

Hi [redacted], [redacted],

You have an urgent question today:

Rachael Hamilton: To ask the Scottish Government what its response is to Lady Haldane's opinion on the petition of For Women Scotland Limited for Judicial Review.

Options for answering are at 14:00, 14:50, or 17:00.

Can you please confirm that it will be Ms Robison answering, and what your preferred timing is?

Thanks!

[redacted]

[redacted]

[redacted]

T: [redacted] M: [redacted] E: MinisterPB@gov.scot

The Scottish Government | St Andrew's House, Regent Road, EDINBURGH EH1 3DG

Scottish Ministers, Special Advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot.

All e-mails and attachments sent by a Ministerial Private Office to another official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the primary recipient. Ministerial Private Offices do not keep official records of such e-mails or attachments.

4. Excerpts of Attachment of Email Discussing Urgent PQ Response – 14 December 2022

Rachael Hamilton: To ask the Scottish Government what its response is to Lady Haldane’s opinion on the petition of For Women Scotland Limited for Judicial Review

Answer

We are pleased to note the outcome of this challenge, which is that the Scottish Government’s statutory guidance on the Gender Representation on Public Boards (Scotland) Act 2018 has been held to be lawful, and the Petition has been dismissed, but, as I’m sure Rachael Hamilton will appreciate, these are live proceedings with the possibility of an appeal.

Supplementaries

Will the SG delay the Gender Recognition Reform (Scotland) Bill?

No. The Judicial Review was not considering the Gender Recognition Reform Bill.

The Gender Recognition Reform (Scotland) Bill changes the process and requirements for obtaining a Gender Recognition Certificate.

It does not amend the legal effects of obtaining a Gender Recognition Certificate which are set out principally in section 9 of the 2004 Act. It also very clearly does not modify the Equality Act 2020, which is now stated on the face of the Bill.

Lady Haldane’s ruling applies to GRCs as they are issued today under the current UK-wide process, and it will apply equally to those issued in Scotland under the process set out in the Bill.

The ruling means that it is more difficult to exclude someone with a GRC from a single sex service or space?

As I have said, we welcome the judgement, which is that the Scottish Government’s statutory guidance on the Gender Representation on Public Boards (Scotland) Act 2018 has been held to be lawful.

Exceptions in the Equality Act enable single sex services to exclude trans people or treat them less favourably where it is a proportionate means of achieving a legitimate aim.

Those exceptions still apply and can do whether the person has a GRC or not.

We support those exceptions and think they provide important protections. The Bill does not change them.