Cabinet Secretary for Social Justice
Shirley-Anne Somerville MSP

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Scottish Government
Riaghaltas na h-Alba

John Kirkpatrick
Chief Executive
Equality and Human Rights Commission

By email: ChairandCEO@equalityhumanrights.com

28 April 2025

Dear John

I am writing to you following the publication of the Equality and Human Rights Commission's interim update on the explanation of the situation following the UK Supreme Court judgment, which was published on the EHRC's website on 25th April. We note that the update confirms that you are working to revise your statutory and non-statutory guidance. Your update highlights the UK Supreme Court's judgement, but it does not formally revise any existing guidance or Code.

Many are incorrectly referring to this EHRC update as 'interim guidance', including in media reports. To avoid ongoing confusion, could you please clarify the intention behind issuing the update at this stage, as organisations are aware that the EHRC have also announced your plan to issue a revised Code of Practice and guidance?

The Scottish Government is now undertaking a review of existing policies, guidance and legislation impacted by the judgment but will require to fully consider the revised Guidance and Code from the EHRC when it is issued, along with the Supreme Court judgment itself, before any changes could be made. This work will position us towards a state of readiness to take all necessary steps when the EHRC's Code of Practice and updated guidance are published, which you have confirmed will be by early Summer 2025.

The EHRC has stated that those with duties under the Equality Act 2010 must comply with the law and should be reviewing what changes need to be made to their existing policies and practices. Please confirm that you agree that no public body, service provider or other association should issue specific guidance at this point in time before the EHRC Code of Practice and guidance is finalised? The Scottish Government recognises the role of the EHRC as the enforcer and regulator of the Equality Act, and therefore it will be essential for all organisations to be able to consider and comply with your revised Guidance and Code of Practice to ensure there is a consistent and clear understanding of the correct application of the law for all involved in this complex area.

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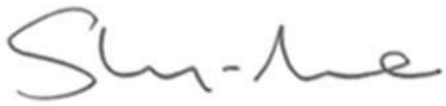
I note that you will undertake a two-week consultation on your proposals in May which seems a short time to seek and receive views from all affected people on such an important matter. Could you please assure me that the consultation will be transparent with all interested parties able to take part? Will an analysis of the consultation responses be published along with confirmation that the interests of all persons with relevant protected characteristics have been fully considered as you reach your conclusions?

I reiterate our early commitment made to the EHRC that the Scottish Government stands ready to work with you. My officials have sought a discussion with the EHRC this week and I will prioritise time to meet with you to discuss the impact of the judgement further.



SHIRLEY-ANNE SOMERVILLE

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Equality and Human Rights Commission

John Swinney MSP
First Minister
Scottish Government
By email only

CC: Neil Gray MSP
Cabinet Secretary for Health and Social Care

From: Baroness Kishwer Falkner, Chairwoman

Our ref: 20250514Swinney

Wednesday 14 May 2025

Dear First Minister,

Consultation on the Code of Practice for services, public functions and associations

As you will be aware, we are revising the Code of Practice for services, public functions and associations (the Code) following the Supreme Court judgment in the *For Women Scotland* case.

Since the judgment, we have had many questions from a large number of individuals and organisations seeking help and guidance. There is a clear and pressing need for clarity, and we recognise the need to work at pace to provide guidance.

Our aim is to balance that pressing need for guidance via our Code with the need to consult and listen to those impacted about the practical implications of the judgment. We take both of these responsibilities very seriously.

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On 25 April we announced that we will undertake a public consultation on updates made to the Code following the Supreme Court judgment. Following representations from a number of stakeholders, and reassessing parliamentary timetables for approval, the consultation period has been extended.

The consultation will aim to launch 19 May and close on 30 June 2025. As a draft of the full Code was consulted on between October 2024 and January 2025, this consultation will focus only on those sections of the Code updated following the Supreme Court's judgment.

We are very keen to hear from stakeholders and members of the public through the consultation. We are planning several question and answer sessions during the consultation period to engage with different groups.

We would welcome a meeting with representatives of the Scottish Government to discuss the draft Code and any matters raised in this letter.

Yours sincerely,

Baroness Kishwer Falkner

Chairwoman

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Neil Gray MC
Cabinet Secretary for Health and Social Care
By email only

From: John Kirkpatrick, Chief Executive

Our ref: 20250422Gray

Tuesday 22 April 2025

Dear Cabinet Secretary,

We look forward to meeting you on 24 April. The recent Supreme Court judgment in the case of For Women Scotland (Ltd) v The Scottish Ministers makes a meeting all the more timely.

As indicated when we wrote to you on 21 February requesting this meeting, we are keen to discuss with you the apparent misunderstanding or misapplication of the law in relation to gender self-identification among public bodies, including in the health sector in Scotland, of which we have recently been made aware.

We would like to understand your intended response to instances of the law appearing to be being incorrectly applied in the Scottish healthcare context and what more you can do to encourage bodies to comply with the law.

As you may be aware, we recently wrote to NHS Fife following media coverage about their policies and practices relating to access to single-sex changing

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facilities for staff highlighted by the case of Peggie v NHS Fife and Upton. We requested a copy of any equality impact assessment for any policies or practices relevant to the provision of changing facilities for staff, any information relevant to how they have kept those under review, and details of any steps they are taking to ensure that the rights of different groups are balanced in the application of these policies or practices.

In their response to us NHS Fife advised that, in this regard, they are governed by a series of local and national policies and guidance and that a national gender transitioning guide is currently under development as part of the 'Once for Scotland' NHS Scotland Workforce Policy Programme. They further indicated that there is a formal mechanism to direct the adoption of policies or guides via a Scottish Government 'Directors Letter'.

All of these concerns predate, and are unaffected by, the Supreme Court judgment. We would nevertheless welcome the discussion proposed by your office around the implications of the judgment, including what steps you intend to take to ensure that existing and new national policies reflect the current law, following this judgment, and to support local health boards and other bodies to do the same.

Yours sincerely,

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John Kirkpatrick

Chief Executive

Equality and Human Rights Commission |

[Cc: John Swinney, Scotland First Minister]

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Neil Gray MC
Cabinet Secretary for Health and Social Care
By email only

From: John Kirkpatrick, Chief Executive

Our ref: 20250424Gray

Thursday 24 April 2025

Dear Cabinet Secretary,

Thank you for providing proposed agenda items and final attendees for the meeting today.

As indicated in our letter on 22 April we would be keen to keep the discussion to the apparent misunderstanding or misapplication of the law in relation to gender self-identification among public bodies, including the health sector in Scotland, as originally requested on 21 February. These issues predate and are unaffected by the recent Supreme Court judgment in *For Women Scotland (Ltd) v The Scottish Ministers.*

Specifically, we would like to understand your intended response to instances of the law appearing to be being incorrectly applied in the Scottish healthcare context and what more you can do to encourage bodies to comply with the law.

We note that yesterday you submitted proposed agenda items, which included an item on the recent Supreme Court judgment, its implications and guidance.

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Whilst we have undertaken considerable internal work at speed on the judgment, given that we have not yet met or discussed the judgment with the UK Government to understand their views, its implications and what further UK guidance may be required, in these circumstances we do not consider it appropriate to enter into a discussion with Scottish Government Ministers at this stage.

As such, the Chairwoman, Scotland Commissioner, and Commissioners will not be in a position to meet you or the Cabinet Secretary for Social Justice to discuss this matter today.

I would be happy to meet your officials today to discuss the originally proposed agenda item as set out in my letter to you of 21 February of the apparent misunderstanding or misapplication of the law in relation to gender self-identification among public bodies, including the health sector in Scotland.

Our Commissioners would be pleased to meet you and your colleagues in Cabinet in the near future to discuss the implications of the *For Women Scotland* judgment.

Yours sincerely,

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Equality and Human Rights Commission

John Kirkpatrick

Chief Executive

Equality and Human Rights Commission |

[Cc: John Swinney, Scotland First Minister]

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Scottish Government
Riaghaltas na h-Alba

Baroness Falkner
Chair
Equality and Human Rights Commission

Sent via email to:
ChairandCEO@equalityhumanrights.com

29 May 2025

Dear Baroness Falkner,

Thank you for your letter of 14 May highlighting the work the Equality and Human Rights Commission (EHRC) are undertaking as part of your consultation on the revised Code of Practice for services, public functions and associations following the Supreme Court judgment in the case of *For Women Scotland Ltd v The Scottish Ministers*.

The judgment raises important considerations, particularly for how public bodies, employers, and service providers interpret and apply the Equality Act 2010 in practice. I note that the consultation has now published and would welcome the opportunity for the Scottish Government to meet with you to discuss this in more detail.

I have asked the Cabinet Secretary for Social Justice and the Cabinet Secretary for Health and Social Care to meet with you on this matter. It would be helpful for an official level meeting to also take place during the consultation period following the ministerial discussion.

The Scottish Government recognises the role of the EHRC as regulator of the Equality Act 2010 and the public scrutiny around the work you are undertaking to update the Code of Practice. The view of all stakeholders and members of the public will be key in shaping your thinking further and should you require assistance in reaching stakeholder groups in Scotland, the Scottish Government can help facilitate this.

The Scottish Government will liaise with your office to arrange a suitable time for a meeting.

Yours

JOHN SWINNEY

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Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot