

IN THE COURT OF SESSION

**ANSWERS FOR THE FIRST RESPONDENTS & THE SECOND RESPONDENT
(as adjusted 12 December 2025)**

to the petition of

FOR WOMEN SCOTLAND, a company incorporated under the Companies Acts, and having
its registered office at 5 South Charlotte Street, Edinburgh, Scotland, EH2 4AN

PETITIONER

for

Judicial Review of (i) Supporting Transgender Pupils In Schools Guidance for Scottish Schools
and (ii) SPS Policy for the Management of Transgender People in Custody Operational
Guidance

THE SCOTTISH MINISTERS, Victoria Quay, Edinburgh, EH6 6QQ

FIRST RESPONDENTS

THE RIGHT HONOURABLE DOROTHY BAIN KC, His Majesty's Lord Advocate, Lord
Advocate's Chambers, 25 Chambers Street, Edinburgh, EH1 1LA

SECOND RESPONDENT

BARONESS SMITH OF CLUNY KC, Advocate General for Scotland, Office of the Solicitor
to the Advocate General for Scotland, Victoria Quay, Edinburgh, EH6 6QQ

THIRD RESPONDENT

Parties, procedure, jurisdiction and warrant to intimate

1. Admitted.
2. Admitted, under explanation that the Schools Guidance was a guidance document

published by the Scottish Ministers in August 2021; and the Prisons Guidance is an operational guidance document published by the Scottish Prison Service (SPS) in February 2024.

3. Admitted, under explanation that the interests of the second respondent are represented by way of these Answers.
4. Admitted subject to Answer 5.
5. Admitted that the petitioner seeks certain remedies under explanation that there is no justification for granting any of them. The case of FWS1, the decision of the Supreme Court in FWS2, the Equality Act 2010 (“**2010 Act**”) and section 9 of the Gender Recognition Act 2004 (“**2004 Act**”) are referred to for their whole terms. *Quoad ultra* denied except in so far as coinciding herewith. Explained and averred that the court has ordered that the action proceed as a judicial review. In terms of RCS 58.15, the court is taken to have been satisfied that it should proceed in that way i.e. as an application to the supervisory jurisdiction. The first and second respondents proceed on the basis that no issue is considered by the court to arise in terms of section 27A of the Court of Session Act 1988. No such point is taken by the first and second respondents in respect of the proceedings as they were first raised.
6. Admitted that the Schools Guidance makes reference to the passages referred to. Believed to be true that the petitioner sent a copy of the summons to the Children and Young People’s Commissioner in Scotland. *Quoad ultra* denied. Explained and averred that these respondents no longer raise any question about the potential involvement of the Children and Young People’s Commissioner in Scotland in these proceedings given the informal intimation to her.

Standing

7. The objects of the pursuer are admitted. *Quoad ultra* not known and not admitted.
8. The cases of *For Women Scotland Ltd v Lord Advocate* [2021] CSOH 31, 2021 SLT 639; [2022] CSIH 4, 2022 SC 150 (“**FWS1**”); *For Women Scotland Ltd v Scottish Ministers* [2022] CSOH 90, 2023 SC 61; [2023] CSIH 37, 2024 SC 117; [2025] UKSC 16, 2025 SLT 443, [2025] ICR 899, [2025] 2 WLR 879 (“**FWS2**”); and *Keatings v Advocate General for Scotland* [2021] CSIH 25, 2021 SC 329 are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied.

9. Admitted that the present action concerns the Schools Guidance and the Prisons Guidance. Admitted that the present action seeks orders of declarator and related orders in relation to both the Schools Guidance and the Prisons Guidance, under explanation that the challenge in so far as brought against the Schools Guidance is academic. *Quoad ultra* not known and not admitted. Reference is made to Answer 15.
10. Admitted that the petitioner has sufficient interest to give it standing. The cases of *AXA General Insurance Co v Lord Advocate* [2011] UKSC 46, 2012 SC (UKSC) 122 and *Wightman v Secretary of State for Exiting the European Union* [2018] CSIH 62, 2019 SC 111 are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied.

Devolution context

11. Admitted.
12. Admitted that paragraph L2 of Schedule 5 to the Scotland Act 1998 (“**SA 1998**”) specifies as among the matters which are reserved “Equal opportunities”. Admitted that this is defined as “the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions”. *Quoad ultra* denied except in so far as coinciding herewith. Paragraph L2 of Schedule 5 to the SA 1998 is referred to for the full terms of the exceptions. It contains 4 exceptions. Apart from the exception relating to public sector boards, the exceptions are relevant. The Prisons Guidance does not make any modification to the Equality Act. It promotes “equal opportunities” as defined for this purpose. Reference is made to Answer 13. It is within devolved competence.
13. The 2010 Act is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied except in so far as coinciding herewith. Explained and averred that the requirements of the law for the time being relating to equal opportunities include, in so far as relevant, the provisions of the 2010 Act, the Human Rights Act 1998 (“**HRA**”) and section 57(2) of the SA 1998. With reference to the petitioner’s averments in answer, the 2010 Act; the HRA; the SA 1998; and the decision of the Inner House in FWS1 are referred to for their whole terms. *Quoad ultra* denied. Reference is made to Answer 12.

14. The cases of *Docherty v Scottish Ministers* [2011] CSIH 58, 2012 SC 150 and *R (Miller) v Prime Minister (sub nom Cherry v Advocate General for Scotland)* [2019] UKSC 41, 2020 SC (UKSC) 1, [2020] AC 373 are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied except in so far as coinciding herewith and with Answers 12 and 13.

15. Admitted that the Schools Guidance and the Prisons Guidance were not amended following the decision of the Inner House in FWS1, under reference to the following explanation. The cases of *R (Majera) v Secretary of State for the Home Department* [2021] UKSC 46, 2022 AC 461, FWS1, and the decision of the Supreme Court in FWS2 are referred to for their terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that FWS1 was a legislative competence challenge brought against the Gender Representation on Public Boards (Scotland) Act 2018. The guidance at issue in that case was amended. Prior to the decision of the Supreme Court in FWS2 there was no court order directly bearing on the issues in the present case. The FWS2 judgment is accepted. It is authoritative on the interpretation of the 2010 Act as to the meaning of the terms “man”, “woman” and “sex” as used in that Act. It was not, however, intended to disadvantage or remove protections for transgender persons (§248). The first respondents publicly announced that a working group was undertaking work to review every area of government that is or may be affected by the Supreme Court judgment. That work was ongoing at the commencement of these proceedings. It included the Schools Guidance that is the subject of these proceedings dated August 2021, a copy of which is 6/1 of Process. The Schools Guidance dated August 2021 has been withdrawn. It has been superseded by guidance published by the first respondents on 29 September 2025. The text dated 29 September 2025 contains guidance updated in light of the decision of the Supreme Court. It was made available on that date by way of a letter emailed to all education authorities (via their Directors of Education) and managers of independent and grant-aided schools, which was copied to all local authority Chief Executives. Reference is made to the letter from the Cabinet Secretary for Education and Skills dated 29 September 2025 which is produced. The petitioner’s solicitors were informed of the issuing of the revised guidance that same day. The challenge in so far as brought against the Schools Guidance dated August 2021 is academic. In circumstances where the challenged guidance has been replaced with new guidance, a decision by the court on the lawfulness of the 2021 Schools Guidance would serve no practical purpose. These Answers continue to use the term “the Schools Guidance” but only as a reference to the guidance dated August 2021 (6/1 of Process). The first respondents (and SPS) continue to exercise the discretion provided in section 10 of the Prisons (Scotland) Act 1989 (“**1989 Act**”) in accordance with the Prisons

Guidance. Reference is made to Answer 17.

The Prisons Guidance

16. Admitted that the Prisons Guidance is produced. Admitted it was published by the SPS in February 2024. Admitted that the Prisons Guidance and the Equality and Human Rights Impact Assessment (“**EHRIA**”) published alongside it contain the statements that are quoted under reference to their whole terms. *Quoad ultra* denied. Explained and averred that the statements quoted set out the aim pursued by the Prisons Guidance and the range of obligations in law that support that aim.

17. The Prisons Guidance; the 2010 Act the EHRIA; and section 54 of the 1998 are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that the Prisons Guidance is not limited to guidance on placement in a prison for the opposite sex. It contains wider guidance, irrespective of the prison in which the individual is held, to support transgender prisoners by reference to matters such as name and pronouns, provision of gender related personal property, access to activities and programmes and showering arrangements. The first respondents are directly responsible for the confinement of prisoners. In terms of the 1989 Act, section 10(1), a prisoner may be lawfully confined in any prison. In accordance with section 10(2) of that Act a prisoner shall be committed to such prisons as the first respondents may from time to time direct and may be moved from any prison to another prison. A number of prisoners will be and are transgender. The management of transgender prisoners is closely regulated to take into account the risks to them and the risks to other prisoners and staff in accordance with the Prisons Guidance. The management of transgender prisoners mirrors developments in the law including the judgment in *Goodwin v United Kingdom* (2002) 35 EHRR 18 and the Equality Act. Transgender prisoners have been held in prisons for those of the opposite biological sex since, at latest, 2006. Only a minority of transgender prisoners have been held in prisons of the opposite sex. The numbers of prisoners so allocated have been low. The placement of those prisoners has not given rise to any significant operational issue in the prisons in which they have been detained. Given the obvious sensitivity of the matter, names and even detail that could lead to the identification of the persons concerned are being withheld, but the types of prisoner so accommodated over time have included (1) a prisoner with a gender recognition certificate, (2) a prisoner who has lived in the acquired gender for decades and (3) a transman of masculine appearance. Prisoners are not allocated to prisons for those of the opposite sex by reason only of those personal attributes. The Prisons Guidance requires individual assessments on a multidisciplinary basis. Allocations are

kept under review. The Prison Guidance is informed by evidence, referred to in the EHRIA at page 32, that there is an increased risk of suicide during the first three months in custody and a known increased risk of suicide for transgender individuals. The first respondents have a well-founded concern that being required to adopt a policy that a transgender prisoner can never be held in a prison for the opposite biological sex could give rise to an unacceptable risk of harm. ECHR Articles 8 and 14 are generally engaged. The increased risk of suicide also engages Article 2. The risk that a transgender prisoner will be abused also engages Article 3. There is also a well-founded concern about how a prisoner who is a transman of masculine appearance can be managed if that prisoner has to be excluded from both a male and a female prison. Transgender prisoners will have a variety of personal circumstances. They may or may not have had gender reassignment surgery; or have been issued with a gender recognition certificate. They may have lived for extended periods in their acquired gender and be accepted in that gender. In terms of the Prisons Guidance, they are all subject to an individualised assessment, including an individual assessment of risk. The risks considered are risks to the prisoner and risks to others, prisoners and staff. The risks which might be identified may include risks to the life or health of the prisoner arising from their transgender status. Those risks might arise from the prisoner's placement in the estate corresponding with their biological sex. They might be consequential on failing to place the prisoner in the estate corresponding with their gender identity. Decisions on placement may engage the prisoner's rights under Articles 2, 3, 8 and 14 ECHR. Such decisions may engage the first respondents' obligation under section 6(1) HRA and section 57(2) SA 1998 to act compatibly with Convention rights. The first respondents have no power to act incompatibly with Convention rights: SA 1998, s 57(2). The Prisons Guidance informs the first respondents in taking decisions on placement in terms of section 10 of the 1989 Act; and in fulfilling their obligations under the 2010 Act; and fulfilling their obligations in relation to Convention rights under the HRA and SA 1998. The Prisons Guidance is a lawful statement of policy for that purpose. The first and second respondents rely on the following points in defence of the Prisons Guidance and the petitioner's claim that it is unlawful in terms of the 2010 Act and outside devolved competence in terms of section 54(3) SA 1998:

- (1) Different treatment of male and female prisoners does not by itself constitute sex discrimination: *R (Dowsett) v Secretary of State for Justice* [2013] EWHC 687 (Admin). In order to establish unlawful sex discrimination for the purposes of *inter alia* section 29 of the 2010 Act, it is necessary for any particular complainant to show that they are personally experiencing less favourable treatment causing detriment. That cannot be assumed to be occurring from the mere fact that a trans

prisoner is being held in a prison for those of the opposite biological sex: *R (FDJ) v Justice Secretary* [2021] 1 WLR 5265. Individuals should be treated as individuals and not assumed to be like other members of a group: *R (E) v Governing Body of JFS* [2010] 2 AC 728 at §90 (Lord Mance). A trans prisoner can have a Convention right to be held in a prison for those of the opposite biological sex: *R (B) v Secretary of State for Justice* [2009] HRLR 35. The fact that that practice was being followed was noted in *Goodwin v United Kingdom* (2002) 35 EHRR 18 (§§47-48); and *I v United Kingdom* (2003) 36 EHRR 53 (§§30-31, 33, 44 and 48). The balancing of competing rights is a complex process. The Prison Guidance is directed to achieving a lawful balance. It pursues in a proportionate manner the legitimate aim of ensuring that the rights and needs of transgender people are protected while also ensuring a safe and inclusive environment for everyone in the care of SPS and those who work in prisons. It is not appropriate to review the lawfulness of the Guidance on a hypothetical basis. Reference is made, by analogy, to *Buray* [2025] 1 WLR 2599 from §27; and *JR 123* [2025] AC 1256 at §88. An argument that a policy might give rise to a harassing environment is not one which can sensibly be made in a claim for judicial review because it requires specific evidence directed to the claim: *R (C) v Secretary of State for Work and Pensions* [2017] 1 WLR 4127, at §45, Baroness Hale of Richmond. The same applies to sex discrimination.

- (2) Transgender persons have the right under Article 8 to respect for their choice of gender as an aspect of private life in the sense of personal autonomy and identity: e.g., *Goodwin; I v United Kingdom*; and *Grant v United Kingdom* (2007) 44 EHRR 1. Such a right exists and is subject to the requirements of Article 8 for a transgender person even before they meet any domestic requirements for recognition in law of the change in their gender: *S.V. v Italy* (55216/08) (11 October 2018). The adoption by the first respondents of a blanket approach denying any transgender person the right to be treated as a person of their lived gender for prison purposes would be unlawful in terms of section 6(1) HRA and 57(2) SA 1998.
- (3) In addition, for the purposes of Article 14, discrimination includes not only (a) the failure to treat similar people equally but also (b) the failure to treat different people differently: *Thlimmenos v Greece* (2000) 31 EHRR 15; and *Taddeucci & McCall v Italy* (Application no. 51362/09, 30 June 2016). A transwoman is different from a non-transgender man. A transman is different from a non-transgender woman. It would be a breach of Article 14 automatically to treat a transwoman in exactly the same way as a non-transgender man (and vice versa) only because they share the same biological sex. To automatically hold such persons in segregation in the prison

- of their biological sex only because they are transgender would be to place them in an intermediate zone of neither one sex nor the other, contrary to Article 8: *Goodwin* (§90). For the first respondents to do so would be unlawful in terms of section 6(1) HRA and 57(2) SA 1998.
- (4) Acting in manner that is necessary for compatibility with the Convention rights of a transgender person in a prison cannot give rise to a complaint of sex discrimination contrary to the 2010 Act. The allocation of prisoners by the first respondents in exercise of their discretion under section 10 of the 1989 Act is the exercise of a public function not involving the provision of a service. Section 29(6) of the 2010 Act applies. Under Schedule 22, paragraph 1 of the 2010 Act, there is an exception for what would otherwise be unlawful sex discrimination if the first respondents do anything that they must do pursuant to a statutory requirement. That would include any act required by section 6(1) HRA and section 57(2) SA 1998. Taking that action, consequently, cannot be unlawful under section 54(3) SA 1998.
 - (5) Harassment on the ground of sex is also part of the duty under section 29(6) and, therefore, the same defence applies relative to any complaint of harassment on the ground of sex.
 - (6) In addition, in considering whether harassment has occurred contrary to the 2010 Act, consideration must be given to all the circumstances and the question whether it is reasonable for the conduct in question to have the effect of violating the complainer's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment: 26(4). It would not be reasonable to so conclude relative to conduct that was itself required in order to comply with the law, in this case the law relating to Convention rights; *a fortiori* absent any facts. Reference is made to *Pemberton v Inwood* [2018] ICR 1291.
 - (7) For the foregoing reasons, the Prisons Guidance is not contrary to the 2010 Act as interpreted by the Supreme Court in FWS2. Reference is also made to the alternative argument in Answer 18.
18. The provisions of Schedule 3 to the 2010 Act are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that Schedule 3 is not the sole justification for segregated prisons. The first and second respondents rely on the following points in defence of the Prisons Guidance in so far as it is said to be inconsistent with the requirements of Schedule 3 read in light of the Supreme Court's judgment in FWS2:

- (1) Section 29(6) of and paragraph 1 of Schedule 22 to the 2010 Act apply to the decisions that underpin the Prisons Guidance. They are decisions by the first respondents relating to (a) the general composition of the prison estate and (b) the criteria to be applied in allocating prisoners to particular prisons. Reference is made to Answer 17(4). Rule 126 of the Prisons & Young Offenders Institutions (Scotland) Rules 2011/331 (“**2011 Rules**”) is similarly an “enactment” for the purposes of Schedule 22, paragraph 1. That Rule authorises the operation of prisons which are segregated on the basis of sex. That Rule also permits prisoners of different sexes to be accommodated in the same part of a prison where it is not reasonably practicable to separate them. That would apply if the separation of a particular transgender prisoner was incompatible with their Convention rights.
- (2) If that Rule falls to be read as absolutely requiring differentiation between and the separation of individuals on the basis of biological sex, it would be in breach of Convention rights and, hence, contrary to section 6(1) of HRA and section 57(2) SA 1998. It can, however, be construed in terms of section 3 HRA as a statement of what is ‘normally’ the case. That is consistent with Rule 126(2). That would allow latitude for an exception in the case of a prisoner with a qualifying Article 2, 3 or 8 or 8/14 claim to be held in the prison of their lived gender (always assuming that the prisoner otherwise meets the requirements for that allocation in terms of the Prisons Guidance) without affecting the general operation of the Rule in accordance with its ‘ordinary’ meaning in other circumstances: *R (Z) v Hackney London Borough Council* [2020] 1 WLR 4327 at §114. That construction does not go against the grain because it reflects the corresponding rule in England: Rule 12(1) of the Prison Rules 1999/728. It is also consistent with the wide discretion conferred on the first respondents by section 10 of the 1989 Act.
- (3) If Rule 126 cannot be construed in a Convention compatible manner, it can be disapplied relative to any prisoner whose Convention right is infringed without affecting the validity of the Rule relative to other prisoners: *RR v Work & Pensions Secretary* [2019] 1 WLR 6430; applied in *A v Principal Reporter* 2025 SC 262; and see *In re JR 123* [2025] AC 1256 at §88.
- (4) Alternatively, if Schedule 3 to the 2010 Act is engaged, any prospect that the 2010 Act may require the first respondents to place a transgender prisoner in a prison which violates the prisoner’s Convention rights gives rise to a devolution issue in terms of the SA 1998, Schedule 6 paragraph 1(d). It raises a question whether a purported or proposed exercise of a function by the first respondents is or would be

incompatible with any of the Convention rights.

- (5) To the extent that paragraphs 26 to 28 of Schedule 3 to the 2010 Act have the effect of requiring that transgender prisoners can only be placed in prisons according to their biological sex, those provisions would be incompatible with Convention rights. They can be read down in terms of section 3 HRA so that they regulate the provision of services “primarily” for persons of the same sex and do not preclude the admission, where necessary to avoid a breach of Convention rights, of transgender persons of the opposite biological sex. That does not go against the grain of the 2010 Act because that Act (section 31(4) defines a ‘public function’ for the purposes of section 29 by reference to the HRA. That does not conflict with the rights of any other prisoner or member of staff because the decision whether to place a transgender prisoner in a prison for the opposite sex involves the conduct of the balancing exercise instructed by the Prisons Guidance. Whether this case falls to be determined by reference to the specific duty in section 29(6) or the more general (service related) duties in section 29(1)-(5), when enacting the 2010 Act Parliament did not intend to act incompatibly with Convention rights. Reading paragraphs 26 to 28 as referring to primary use (and not as imposing a requirement for exclusive use) would also be consistent with Article 4(5) of EU Gender Directive 2004/113 on equal treatment between men and women relating to goods and services.
- (6) If those paragraphs cannot be construed compatibly with Convention rights the Court should issue a declaration of incompatibility relative to them in terms of section 4 HRA.

The Prisons and Young Offenders Institutions (Scotland) Rules 2011

19. Rule 126 and 128 of the 2011 Rules and FWS2 are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied under reference to Answers 17 and 18. Rule 126(1) is itself qualified by rule 126(2). Reference is made to Answer 18(1).

Prisons Guidance: Initial accommodation decisions

20. The Prisons Guidance is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
21. The Prisons Guidance is referred to for its whole terms beyond which no admission is

made. *Quoad ultra* denied.

22. The 2011 Rules are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied under reference to Answers 17 and 18.
23. The Prisons Guidance; section 29 of the 2010 Act; and FWS2 are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that no assumption can be made that there is underlying discrimination contrary to section 29. Reference is made to Answer 17.
24. Paragraph 26 of Schedule 3 to the 2010 Act and paragraph L2 of Schedule 5 and paragraph 1(c) to the 1998 Act are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied except in so far as coinciding herewith. Reference is made to Answers 17 and 18. Reference is also made to Answer 12 relative to L2 in schedule 5 to the Scotland act 1998.

Prisons Guidance: Accommodation after initial admission period

25. The Prisons Guidance is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
26. The Prisons Guidance is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
27. The 2011 Rules, the 2010 Act and para 1(c) of Schedule 6 to the 1998 Act are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied except in so far as coinciding herewith. Reference is made to Answers 17 and 18.

Prisons Guidance: Access to activities

28. The Prisons Guidance is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied.
29. Section 29 of and paragraph 26 of Schedule 3 to the 2010 Act; and FWS2 are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied. Reference is made to Answers 17 and 18.
30. Paragraph 26 of Schedule 3 to the 2010 Act and paragraph L2 of Schedule 5 and

paragraph 1(c) of Schedule 6 to the 1998 Act are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied under reference to Answers 17 and 18. Reference is also made to Answer 12 relative to L2 in schedule 5 to the Scotland act 1998.

Prohibition against Harassment under the 2010 Act

31. Sections 26 and 29 of the 2010 Act are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied. The first and second respondents rely on the following points in response to the petitioner's argument in relation to harassment:
- (1) Individuals should be treated as individuals and not assumed to be like other members of a group: *R (E) v Governing Body of JFS* [2010] 2 AC 728 at §90 (Lord Mance). This ground of challenge is hypothetical. It is not appropriate to consider the lawfulness of the Prisons Guidance on that basis. Reference is made to Answer 17(1) and, in particular to *R (C) v Secretary of State for Work and Pensions* [2017] 1 WLR 4127, at §45, Baroness Hale of Richmond.
 - (2) Harassment on the ground of sex is also part of the duty under section 29(6) of the 2010 Act and, therefore, the defence set out in Answer 17 also applies relative to any complaint of harassment on the ground of sex.
 - (3) In addition, in considering whether harassment has occurred contrary to the 2010 Act, consideration must be given to the question whether it is reasonable for the conduct in question to have the effect of violating the complainer's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment: 2010 Act, s 26(4). It would not be reasonable to so conclude relative to conduct that was itself required in order to comply with the law, in this case the law relating to Convention rights; *a fortiori* in the absence of any facts. Reference is made to *Pemberton v Inwood* [2018] ICR 1291.
 - (4) For the foregoing reasons the Prisons Guidance is not contrary to the harassment provisions of the 2010 Act as that Act was interpreted by the Supreme Court in FWS2.
32. The Prisons Guidance and paragraph 1(c) of Schedule 6 to the SA 1998 are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied under reference to Answer 31.

Remedies

33. The cases of FWS1 and FWS2 are referred to for their whole terms beyond which no admission is made. *Quoad ultra* denied under reference to the preceding Answers.
34. The case of *R (A) v Secretary of State for the Home Department* [2021] UKSC 37, [2021] 1 WLR 3931 is referred to for its whole terms beyond which no admission is made. *Quoad ultra* denied. Explained and averred that the Prisons Guidance does not induce illegality. Reference is made to the preceding Answers.
35. Denied under reference to the preceding Answers. Explained and averred that women in prison are often vulnerable. They may have suffered violence at the hands of biological males. Individuals should be treated as individuals and not assumed to be like other members of a group: *R (E) v Governing Body of JFS* [2010] 2 AC 728 at §90 (Lord Mance). Reference is also made to *R (C) v Secretary of State for Work and Pensions* [2017] 1 WLR 4127, at §45, Baroness Hale of Richmond. The same applies to sex discrimination.

PERMISSION TO PROCEED

36. Denied except in so far as coinciding herewith. Explained and averred that permission to proceed has been granted.

TRANSFERS TO THE UPPER TRIBUNAL

37. Admitted that the petition is not subject to a mandatory transfer to the Upper Tribunal. *Quoad ultra* denied.

PLEAS-IN-LAW

1. The petitioner's averments being irrelevant *et separatim* lacking in specification, the petition should be dismissed.
2. The Prisons Guidance not being unlawful, decree of declarator should be refused.
3. The Prisons Guidance not being unlawful, decree of reduction should be refused.

4. The petitioner not having a strong *prima facie* case, and the balance of convenience not favouring the petitioner, interim suspension of the Schools Guidance *et separatim* the Prisons Guidance should not be granted.

IN RESPECT WHEREOF