

21 February 2025

By email from: info@forwomen.scot
to: firstminister@gov.scot

Dear Mr Swinney,

We are writing regarding the extraordinary statements made during yesterday's First Minister's Question Time in response to questions asked by Russell Findlay MSP about separate sex changing rooms in the workplace.

As we pointed out in the [letter](#) sent to the Cabinet Secretary for Health and Social Care on 18 February, of which you were also sent a copy, the relevant law for provision of staff toilets, washing facilities and changing rooms is the Workplace (Health, Safety and Welfare) Regulations 1992, and not the Equality Act 2010.

The 1992 regulations are clear and contain no test of proportionality or any scope for case by case assessment. Separate sex facilities are stipulated by law and it should have been straightforward for you to give an unequivocal statement in support of such facilities for public sector employees who require changing rooms at work.

It was entirely inappropriate to cite the NHS guidance as an authority when in actual fact it fails to mention the applicable legislation for workplaces. The guidance is also only in draft form, has yet to undergo consultation, has been removed from the NHS website and, as explained in our letter to Mr Gray, is quite simply wrong.

We were also appalled at your complete lack of understanding regarding the operation of the Equality Act. The Court of Session Inner House has ruled conclusively that there is no provision for case by case exclusion of a trans person where the Equality Act exceptions apply, not for positive action measures such as the Gender Representation on Public Boards (Scotland) Act 2018, and not for Schedule 3 single or separate sex services.

This is plainly spelled out in two recent judgments by the appellate court:

- *“Those without a GRC remain of the sex assigned to them at birth and therefore would have no prima facie right to access services provided for members of the opposite sex.”*
[For Women Scotland v Scottish Ministers \[2023\] CSIH 37](#) (§56)
- *“... a man is a male of any age; and a woman is a female of any age. Section 11(b) indicates that when one speaks of individuals sharing the protected characteristic of sex, one is taken to be referring to one or other sex, either male or female. Thus an*

exception which allows the Scottish Parliament to take steps relating to the inclusion of women, as having a protected characteristic of sex, is limited to allowing provision to be made in respect of a “female of any age”. Provisions in favour of women, in this context, by definition exclude those who are biologically male.”

[For Women Scotland v Scottish Ministers \[2022\] CSIH 4 \(§36\)](#)

Neither of these rulings were appealed by the Scottish Ministers and duly became final and settled law in Scotland. As far as we are aware, up to date guidance which incorporates this case law has yet to be published by any Government or organisation.

The UK Supreme Court is currently considering the separate matter of whether GRC holders have any right of access to single sex services on the basis of their acquired gender.

As First Minister, you have repeatedly said “I believe in the rule of law”. However, it is a mark of great disrespect to the Court of Session to place an incorrect and contrary statement of law on the Parliamentary record. Such an act shows either a failure to comprehend the law or a failure to respect the law, either of which, we suggest, should be a resignation matter.

It is imperative that an urgent clarification is made and we call on you to issue an unequivocal statement correcting the misinformation about the Equality Act and supporting the right of men and women to expect suitable separate sex facilities in the workplace.

Yours sincerely,

Trina Budge, Marion Calder and Susan Smith
Directors, For Women Scotland