

28 February 2025

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

Dear Mr Swinney,

It is with some incredulity that we find it necessary to write to you for the second time in a week to ask for corrections to statements you made about women's rights to single-sex spaces.

At the First Minister press conference on Wednesday you supported the Scottish Government guidance for employees which states "trans staff should choose the facilities they feel most comfortable with" and confirmed your position that "transwomen are women".¹

Dr Michael Foran, of the University of Glasgow, has confirmed that the definition of "woman" for the purposes of the Workplace (Health, Safety and Welfare) Regulations 1992 does not include trans people who self-identify as women and, as such, the Government guidance is in breach of the law.² Just as the EHRC has intervened regarding an identical practice by NHS Fife, it could equally do likewise with the Government guidance for staff unless it is swiftly reviewed and corrected.

In our first judicial review the Court of Session Inner House ruled that it was outwith legislative competence for the Scottish Ministers to incorporate those with the protected characteristic of gender reassignment who are living as women into the definition of woman in the Equality Act. As such, transwomen are categorically not women. It also definitively confirmed that provisions in favour of women, by definition, exclude those who are biologically male.³ This judgment was accepted by the Scottish Ministers and is now final and settled law in Scotland.

In ruling on our second judicial review, the Inner House stated individuals without a gender recognition certificate (GRC) retain the sex in which they were born and have no right to access services provided for members of the opposite sex.⁴ Although the ruling as regards to individuals with a GRC is under appeal, this part of the ruling has not been appealed and is also final law in Scotland.

¹ [First Minister press conference, 26 February 2025](#) from 47.40 minutes.

² <https://x.com/michaelpforan/status/1894756201423941885>

³ [For Women Scotland v Scottish Ministers \[2022\] CSIH 4](#) (§36 - §40)

⁴ [For Women Scotland v Scottish Ministers \[2023\] CSIH 37](#) (§56)

These rulings have established that self-identification of sex is not lawful in Scotland and it is highly irresponsible for the First Minister to suggest otherwise. As First Minister your words carry significant weight and you have a duty to state the law accurately. Those listening can be forgiven for taking you at your word and acting accordingly. Indeed, the organisation Scottish Trans were quick to issue a statement, erroneously advising their members and followers that trans people should get changed for work and use toilets in line with their “gender identity” rather than their sex.⁵ As a direct consequence of your words individuals are now emboldened to breach women and girls single-sex services and it has become much harder for women to raise any objection or expect line management support.

This, of course, is in direct contrast to your statement from only a few months ago when Radio Scotland listeners were assured that you would protect women’s rights to single-sex spaces from any and all males, regardless of whether they had obtained a gender recognition certificate.⁶

The law has not changed in the interim period and we hold you to the commitment given in June to women and girls. We call on you to issue an urgent correction to Wednesday’s press conference comments, and direct public bodies — and third sector organisations — to uphold women’s rights to single-sex spaces and services in line with the legislation and the rulings of the Court of Session.

Yours sincerely,

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

⁵ Scottish Trans: [Responding to recent debates on trans people’s rights to use single-sex services](#)

⁶ Radio Scotland, 28 June 2024, [Youtube clip of interview with John Swinney](#)