

Women's Rights - Position Statement

7th March 2025

The current members of the Scottish Human Rights Commission and its Chair are engaged in ways to understand the legal, policy, and practice matters in respect of women's rights, and we would like to clarify the mandate of the Commission in relation to them.

As a Commission, we have a general duty to promote human rights, and in particular, to encourage best practice in relation to human rights¹. This includes the fundamental rights and freedoms for us all, contained within the European Convention on Human Rights and treaties which are binding on the UK.

Our role as Scotland's independent human rights institution is to promote awareness and understanding of, and respect for, those rights. When it comes to providing advice to Parliament and public authorities, our role is to independently advise on the status of human rights in law. We must do this in relation to the law as enacted, and not the law as Governments, public authorities, people, or civil society would like it to be, or believe it to be.

The human rights at stake in these matters include those protected in domestic law via the Human Rights Act 1998, and in international human rights treaties which the UK has ratified. This includes the UN Convention on the Elimination of Discrimination Against Women (CEDAW), the UN Convention on the Rights of Disabled People (CRPD), the UN Convention on the Elimination of Racial Discrimination (CERD), the UN Convention on the Rights of the Child (UNCRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (commonly known as the Istanbul Convention), and the Council of Europe Optional Protocol on the Prevention of Torture (OpCAT) .

There are no equivalent international human rights treaties which specifically protect the human rights of transgender people. Transgender people in Scotland, as in the rest of the UK, have their human rights protected in law via the Human Rights Act

1998 and all other human rights treaties which are binding on the UK and Scottish Governments, as outlined above.

Human rights bodies such as the Council of Europe have produced guidance documents on the promotion of the human rights of transgender people². These are not legally binding in the UK, and so whilst they can be helpful and instructive when Government and Parliament are forming or considering legislation, they are not ratified in law.

There are ongoing discussions in the Parliament, courts, and media about the definition of 'woman' in law and what that means for the protection of human rights. The Commission is concerned about the impact that this lack of clarity is having on the human rights of all women, as protected in those treaties outlined above, and on transgender people as protected in the Human Rights Act. Lack of clarity is not promoting the human rights of anyone.

The Scottish Government's Gender Recognition Reform Bill as passed in 2022, did not receive Royal Assent and is therefore not law. The Gender Recognition Act 2004 therefore stands as the legal mechanism through which individuals in Scotland may legally change their gender. There is no other legal route to do so in Scotland.

The current litigation at the Supreme Court³ is expected to clarify whether 'woman' in the Equality Act includes those who are in possession of a Gender Recognition Certificate via the terms of the GRAct2004, or not, as a matter of domestic law.

All human rights treaties contain non-discrimination clauses. CEDAW obliges states to end discrimination against women. In the UK, the Equality Act 2010 gives protections in law on the basis of nine 'protected characteristics': age, disability, sex, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment.

The Equality Act 2010 makes provision in relation to same sex facilities. It permits employers to exclude transgender people from such spaces if that is a proportionate means to achieve a legitimate aim⁴. The EHRC provides guidance for Scottish public authorities on the issues they must consider when developing their policies and practice to promote equality and non-discrimination for all parties⁵. The EHRC also provides a Code of Practice in relation to the provision of services, public functions and associations, which is currently under review⁶. It is crucial that in all circumstances, women's internationally-protected human rights are adequately reflected and protected under applicable legal and policy frameworks, guidance and in practice.

The Scottish Human Rights Commission is not empowered under legislation to regulate the practice or application of the Equality Act 2010. This is solely the role of the Equality and Human Rights Commission (EHRC) in Scotland, as it is across England and Wales⁷.

The Scottish Human Rights Commission's mandate does extend to monitoring how the decisions and policies of Scottish public authorities impact on the human rights of all people in Scotland, as protected in law. The Commission will continue to do so, aligned to the UN and Council of Europe Treaty Monitoring cycle, our new annual State of the Nation reporting, and against the priorities identified in our Strategic Plan 2024-28.

In order to do this, we need access to data and evidence. Public authorities should publish data disaggregated as required by international human rights law, and the Commission has highlighted in its monitoring of CEDAW and the Istanbul Convention to the UN and the Council of Europe.

We are aware of the work of various public authorities in education, health and criminal justice to develop and update their guidance on single sex provision, and hope that this note will be useful to them.

Should any further proposals for legislation or national policy development in this area be progressed, the Commission will provide advice on the human rights implications within the terms of our mandate and in line with the Paris Principles. In the meantime, we hope that this statement is instructive, and updates any earlier published materials on this matter.

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¹ Scottish Commission for Human Rights Act 2006

² 1680af7216

³ For Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent) - UK Supreme Court

⁴ Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended)

⁵ Separate and single-sex service providers: a guide on the Equality Act sex and gender reassignment provisions | EHRC 9

⁶ Equality regulator opens consultation on updated Code of Practice | EHRC

⁷ Equality Act 2006