

Statement in response to the Supreme Court judgment in *For Women Scotland vs The Scottish Ministers*

Human rights apply to everyone and cut across all areas of our lives. They are about more than any individual piece of legislation. The Scottish Human Rights Commission has taken time to consider the implications of the recent Supreme Court ruling in the case '*For Women Scotland Ltd vs The Scottish Ministers*' in the context of the human rights framework. While we do not believe that the judgment itself directly violates human rights, inaccurate interpretation and implementation of the ruling could put rights at risk. The Scottish Government should immediately conduct a human rights-based audit of law and policy where this ruling could have an impact, to mitigate the risk of rights violations.

On 16th April 2025, the UK Supreme Court handed down its judgment in the case '*For Women Scotland Ltd vs The Scottish Ministers*'. The public discourse around the judgment has raised questions for many transgender and non-transgender rights-holders alike as to how their rights will be impacted. Public bodies and other organisations need guidance on how to respond.

We know that many people are concerned about how their rights are going to be protected and upheld. We are concerned that basic rights to dignity and respect for all may be undermined. It is our view that the judgment itself does not directly violate any human rights. However, the interpretation of this judgment and the resulting changes in policy, public discourse and the behaviour of duty-bearers are highly likely to have an impact on the rights of people in Scotland.

Our role as Scotland's national independent human rights institution (NHRI) is to promote awareness, understanding of, and respect for human rights. This includes the fundamental rights and freedoms for us all as contained within the European Convention on Human Rights and treaties which are binding on the UK. Our general duty also requires us to encourage best practice in relation to human rights. This means providing independent advice on the status of rights in law, including to the Scottish Parliament and public authorities.

We recognise that what the definition of 'sex' in the Equality Act 2010 means for the rights of different groups has been contentious. What is not debatable is that the rights of all must be respected, protected, and fulfilled. As Lord Hodge said when handing down the judgment, this ruling is not to be regarded as a 'triumph' of one set of rights over another.

Any developments in law, policy and practice that result from this judgment must be human rights compliant. This is a legal requirement. However, human rights are not something which exist only in law. They manifest in different ways in people's everyday lives, and there has been a failure to recognise this in some of the response to the judgment.

The Equality Act 2010 does not exist in isolation, and it must be applied in line with the requirements of the Human Rights Act 1998 and the international human rights framework. Taking a narrow lens to compliance with only one piece of legislation may risk non-compliance with human rights standards. A holistic approach to human rights compliance often requires striking an appropriate balance between different rights, needs and protections and is a normal part of a human-rights based approach. For example, the right to freedom of expression must be balanced with the need to protect people from harassment.

The Supreme Court judgment will impact on a range of law and policy outwith the Equality Act 2010. This will include, but is not limited to, considerations around police searches, workplace health and safety requirements, single-sex accommodations in prisons and healthcare, and access to domestic violence refuges. To mitigate the risk of retrogression – rolling back on rights protections - the Scottish Government should immediately conduct an audit of these areas of law and policy and must take a human rights-based approach to reviewing them.

In our conversations with legal and academic experts, we heard a clear and universal concern about the risks to rights following the judgment. To mitigate risks, duty-bearers must put in place practical policies which consider a range of possible scenarios and reflect human rights requirements and other legal obligations with respect to all groups of rights-holders. Policymaking should take a comprehensive and context-based approach which aims to foresee and mitigate risks and to proactively protect rights. Without clear policies, decisions about, for example, how and when to accommodate individuals in services cannot be made consistently or with sufficient consideration of the issues and legal obligations at play. Nor can rights-holders expect to have a clear understanding of how their rights should be protected, or how complaints arising from practice should be addressed. This is a risk both to rights and to the ability of individuals to seek appropriate redress.

While it is for individual organisations to make policies specific to their operational contexts, government has a responsibility to provide leadership and clarity. We call on the Scottish Government to act with urgency in taking a human rights-based approach to the development of cohesive and holistic guidance, which considers all the relevant legal frameworks and aims to ensure dignity and respect for all. There must also be consideration of how to fund and resource any practical change necessary to avoid breaches of human rights.

Monitoring the human rights impact of these changes requires data and evidence. There is a range of rights which may be at risk. This includes under Article 3 (which prohibits torture, inhuman or degrading treatment or punishment) and Article 8 (which protects the right to respect for a private and family life) of the European Convention on Human Rights (ECHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of Persons with Disabilities (CRPD) and the rights of all women under the Istanbul Convention. Public authorities should publish data disaggregated as required by international human rights law, as the Commission has highlighted in its monitoring of Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and the Istanbul Convention to the UN and the Council of Europe. The Scottish Human Rights Commission is committed to continued monitoring of whether these risks to rights are being realised.

The urgency of this matter has been highlighted by a range of international human rights experts: including the UN Special Rapporteur on Violence Against Women and Girls, who has cautioned against a further "pause" by the Scottish Government. Similarly, in a statement on May 22 2025, a group of independent human rights experts to the UN [issued a statement](#) which urged "UK lawmakers to act decisively to reform and align the legal framework in a way that ensures dignity, equality, and non-discrimination for all."

Human rights of different groups should not be seen as mutually exclusive or a zero-sum game. Human rights are about more than the letter of the law; they should uphold dignity and humanity. The international human rights framework recognises that not all rights are absolute, and that there is often a need to strike a careful balance between the needs of different groups. The Scottish Human Rights Commission echoes these calls of the Commissioner for Human Rights of the Council of Europe and others for a balanced, reasonable and nuanced approach.

The implications of this judgment extend across the UK. It is therefore important that the UK's National Human Rights Institutions (NHRIs) provide clear and consistent advice. To this end, we will continue to seek to work collaboratively with our sister

NHRIs, the Northern Ireland Human Rights Commission and Equality and Human Rights Commission.

The Scottish Human Rights Commission will continue to provide advice on the human rights aspects of this matter, to monitor ongoing and emerging risks to human rights, and support rights-holders to secure their rights and protections.