

24 February 2026

By email from: info@forwomen.scot
to: justice.committee@parliament.scot

Dear Ms Nicoll and Members of the Criminal Justice Committee,

Hate Crime and Public Order (Scotland) Act 2021 (Characteristic of Sex) (Amendment and Transitional Provisions) Regulations 2026 (SSI 2026/Draft)

We have become aware via Freedom of Information responses of a number of letters and meetings between Equality Network and the Scottish Government over the last few months regarding the addition of sex to the Hate Crime Act. This raises three important points we wish to respond to - the definition of sex in the SSI, the definition of sex throughout the Hate Crime Act, and the Government response to Equality Network.

1. Definition of sex in the SSI

Three possible options for the definition of sex were considered by the Scottish Government (see FOIs [p4](#) and [p9](#)):

- biological,
- biological except where a Gender Recognition Certificate (GRC) is held, or
- “gender identity” which the Scottish Government defined as biological except where a person has self-declared as the opposite sex.

The legal advice received by the Cabinet Secretary for Justice and Home Affairs, Angela Constance, concluded that sex must take its ordinary biological meaning in line with the decision by the UK Supreme Court in *For Women Scotland v Scottish Ministers*. This is the only sensible option which is practical and sensitive to how hate crime law operates on the motivation of the perpetrator. Perpetrators would almost certainly not know whether their victim does, or does not, possess a GRC, nor would they be aware of any personal gender identity held by the victim.

As Ms Constance explained, choosing the gender identity option would have the effect of subsuming the sub-category of transgender identity and negating any value of having a distinct transgender category in the Hate Crime Act at all. It would do likewise with the distinct category of sex which would defeat the entire purpose of adding it to the Act. Such confusion and conflation of characteristics has already been ruled unlawful in the Gender Representation in Public Boards Act by the Court of Session and it is not difficult to appreciate similar problems if replicated in other legislation.

Importantly, the majority of people do not understand what a “gender identity” is, and as the right not to believe in its existence is protected under the Equality Act it would be largely impossible to prosecute hate crimes on this basis, at least, not without compelling belief.

2. The definition of sex in the Hate Crime Act

Ms Constance stated that the addition of biological sex to the Hate Crime Act is a standalone characteristic and does not impact on the definition of sex where it is used elsewhere in the Act. Equality Network disagrees and insists the addition of this characteristic would cause the sexual orientation characteristic, in particular, to be changed to a biological understanding of same sex attraction rather than one incorporating GRCs.

Like all legislation, however, the Hate Crime Act is subject to generally applicable principles of interpretation. As such, where no definition is included, a word is given its ordinary commonly agreed meaning and this is consistent throughout the statute. Since no general interpretation of the word sex is specified in the Hate Crime Act it should be read, like the Equality Act, with the default meaning of biological sex. This understanding is further strengthened by the fact that a small section of the Act does actually refer to sex as biological in the “variations in sex characteristics” meaning at section 11(8). For coherent and consistent interpretation this really should be the beginning and end of any manufactured confusion on the matter.

The understanding of sexual orientation in The Equality Act was considered by the UK Supreme Court [[§ 204-209](#)] where they reached the conclusion that: “Read fairly, references to sex in this provision can only mean biological sex. People are not sexually oriented towards those in possession of a certificate.” The legal tests set down by the Supreme Court for interpretation in other enactments leads to the inevitable conclusion that the only understanding of sex in the Hate Crime Act can be that of biology.

3. Scottish Government response to Equality Network

Ever since the consultation opened at the end of August last year, which revealed the Government’s intention to add sex as a biological characteristic to the Hate Crime Act, Equality Network has bombarded Ministers with a series of letters and requests for meetings to lobby for their preferred alternative. Freedom of Information responses show eight letters from Equality Network and seven meetings with Cabinet Secretaries and Ministers in the last six months (see Annex). There may be more. One letter to the First Minister prompted him to convene a meeting with Cabinet Secretaries Ms Constance and Ms Somerville on 15 December 2025 to resolve Equality Network’s concerns.

This level of entitlement to Government attention is quite extraordinary. That it was acquiesced to by the highest levels of Government is even more extraordinary. It brings the open and equal consultation process into disrepute and has clear implications for the ability of Government to be seen as properly detached in the way that it should be from any external organisation. There can be no integrity of process or trust in Government when one single respondee to the consultation is privileged with numerous meetings behind closed doors, unbeknown and inaccessible to other respondents.

Other bodies are clearly not immune from replicating this unhealthy relationship. We note the two Committees considering the SSI received correspondence from three organisations and yet only one of those letters, from Equality Network, was singled out as meriting a request that the Cabinet Secretary immediately respond to its concerns.

Finally, the letter submitted by Engender was difficult to understand and riddled with inconsistencies over the meaning of the word gender and was utterly unpersuasive that sexism somehow is not based on sex. We feel the over-reliance on the views of Government funded organisations such as Engender and Equality Network deserves much more scrutiny, particularly when both are continuing to operate in open defiance of the UK Supreme Court judgment. Engender uses section 193 of the Equality Act to limit its beneficiaries to women and is therefore bound by the biological definition. Its trustees are not fulfilling their duties by permitting membership to males and advocating for the interests of male transsexuals. Equality Network is similarly bound by section 193 to advocate only for the interests of LGBT people on the basis of biology and its persistent lobbying against the SSI and for sexual orientation to be categorised on the basis of certificates is in breach of its remit.

It is rather telling that the example given by Equality Network (in its undated letter) of a woman telling a man to leave the women's toilets is not viewed, as it rightly should be, as a potential hate crime against a woman, but is somehow painted as an "increasingly likely scenario" of a crime aggravated by malice and ill-will based on actual or presumed transgender identity. It seems that Equality Network has quickly abandoned its argument on GRCs and reverted to self-declaration of sex, and clearly demonstrates it does not accept the Supreme Court ruling - this scenario should simply not be happening at all. Once again with the Hate Crime Act we are faced with lobby groups acting in opposition to women's rights and manipulating and weaponising legislation. We would urge the Committee to understand the dynamics at play here and take a firm line on setting boundaries on the excessive influence of indulged lobbyists.

Yours sincerely,

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

Annex

Equality Network letters to the Scottish Government:

- 04 Sep 2025, Letter to Cab Sec for Justice, and Cab Sec for Social Justice:
<https://forwomen.scot/wp-content/uploads/EN-letter-04Sep2025.pdf>
- 04 Sep 2025, Letter to First Minister:
<https://forwomen.scot/wp-content/uploads/EN-letter-to-FM-04Sep2025.pdf>
- Undated letter which states, “following up from our meeting on Monday this week” and referred to “correspondence with the Cabinet Secretaries last week” so letter possibly approx 10 Sep 2025
<https://forwomen.scot/wp-content/uploads/EN-letter-date-unknown.pdf>
- 10 Nov 2025, Letter from EN to Cab Sec for Justice:
<https://forwomen.scot/wp-content/uploads/EN-letter-20Nov2025.pdf>
- 10 Nov 2025, Letter to First Minister:
<https://forwomen.scot/wp-content/uploads/EN-letter-to-FM-20Nov2025.pdf>
- 03 Feb 2026, Letter to Cab Sec for Social Justice:
<https://forwomen.scot/wp-content/uploads/EN-letter-03Feb2026.pdf>
- 06 Feb 2026, Letter to DPLR Committee:
<https://www.parliament.scot/-/media/files/committees/delegated-powers-and-law-reform-committee/correspondence/2026/20260206-ssi-brief-delegated-powers-and-law-reform-committee.pdf>
- between 17&20 Feb 2025, Letter to Criminal Justice Committee:
<https://www.parliament.scot/~-/media/committ/12636/Paper-2--Background-Briefing>

Equality Network meetings with the Scottish Government:

- 08 Sep 2025 (Monday): EN meeting with Cab Secs for Justice, and Cab Sec for Social Justice
Referred to in the undated letter which stated: “following up from our meeting on Monday this week” and referred to “correspondence with the Cabinet Secretaries last week” so letter possibly approx 10 Sep 2025
<https://forwomen.scot/wp-content/uploads/EN-letter-date-unknown.pdf>
- 24 Sep 2025: LGBTQI+ Stakeholder Bi-monthly meeting with Equalities Minister
Unknown whether HCA was discussed.
https://forwomen.scot/wp-content/uploads/LGBTQI-Stakeholder-Bi-Monthly-Meeting-Agenda-24Sep2025_REDACTED.pdf
- 29 Oct 2025: EN and other LGBT orgs meeting with Cab Sec for Social Justice and Equalities Minister

https://forwomen.scot/wp-content/uploads/Cabinet-Secretary-LGBTQI-stakeholder-meeting-Minutes-29Oct2025_REDACTED.pdf

- 30 Oct 2025: EN Meeting with Cab Sec for Justice
EN stated that they had concerns about the broad policy approach which provides that everyone is considered to be of one of two sexes, expressed concern that the Scottish Government may now seek to apply the definition more widely, and raised concern about the use of the term “biological sex” in the draft SSI (EN has an alternative drafting which they believe would achieve the same policy without using this specific term).
https://forwomen.scot/wp-content/uploads/EN-meeting-with-Cab-Sec-Justice-minutes-30Oct2025_REDACTED.pdf
- 26 Nov 2025: LGBTQI+ Stakeholder Bi-monthly meeting with Equalities Minister
Unknown whether HCA was discussed.
https://forwomen.scot/wp-content/uploads/LGBTQI-Stakeholder-Bi-Monthly-Meeting-Agenda-26Nov2025_REDACTED.pdf
- 17 Dec 2025: EN meeting with Director of Equality, Inclusion and Human Rights, Jon Somers
<https://forwomen.scot/wp-content/uploads/EN-meeting-with-Director-of-Equality-notes-17Dec2025.pdf>
- 28 Jan 2026 (approx): LGBTQI+ Stakeholder Bi-monthly meeting with Minister Kaukab Stewart
Referred to in EN’s letter to Cab Sec for Social Justice of 03 Feb 2026 which refers to a recent LGBT stakeholders meeting (Cab Sec didn’t attend so EN requested a meeting with her - unknown if this meeting took place)

First Minister Meeting on 15 Dec 2025

- EN’s letter to the First Minister of 10 Nov 2025 resulted in him sending an email to the Cab Sec for Justice on 12 Nov which says he “has been sighted on the note [from Criminal Justice Division] and the correspondence [from EN] that has been received [Free and frank exchange of views redacted]. As a first instance, FM would like to see a consolidated note of the issues here and how they are being handled in relation to the SSI. Thereafter FM will need a meeting with Ms Constance and Ms Somerville to try to resolve this.”
<https://forwomen.scot/wp-content/uploads/FM-email-p16-12Nov2025.pdf>

An email from the Procedure Team Leader, Criminal Justice Division on 27 Nov 2025 which stated: “I’m aware that the meeting between the Cab Sec, the FM and the Cab Sec for Social Justice to discuss the Equality Network letter has still to take place.” confirms the meeting was about EN’s correspondence.

<https://forwomen.scot/wp-content/uploads/Criminal-Justice-email-27Nov2025.pdf>

Notes of the meeting on 15 Dec 2025

<https://forwomen.scot/wp-content/uploads/FM-meeting-notes-15Dec2025.pdf>