

16 February 2026

By email from: info@forwomen.scot
to: DPLR.Committee@parliament.scot

Dear Mr McMillan and Members of the DPLR Committee,

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

We write in response to the legally illiterate [letter](#) sent to the Committee by Equality Network on 06 February 2026.

Equality Network states "the Supreme Court judgment in *For Women Scotland Ltd v The Scottish Ministers* does not apply outwith the Equality Act 2010". On this, they are quite wrong. The ruling obviously applies to the Gender Representation on Public Boards (Scotland) Act 2018 and, as previously confirmed by the Inner House, to the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021. The High Court recently [confirmed](#) its application to the Workplace (Health, Safety and Welfare) Regulations 1992 and last September the Scottish Government amended school guidance to confirm the biological understanding of sex applies to the School Premises (General Requirements and Standards) (Scotland) Regulations 1967. On 05 February, the Scottish Ministers confirmed to the Outer House that it also applies to the Prisons and Young Offenders Institutions (Scotland) Rules 2011.

Furthermore, the Supreme Court held that the default of biological sex will supersede the Gender Recognition Act in any enactment where its "terms, context and purpose" show that a biological meaning of sex is intended; where there is a "clear incompatibility" between the enactment and a "certificated sex" reading, or because the provisions of the enactment "are rendered incoherent or unworkable" by a certificated sex reading.

It is not clear why Equality Network holds such a misconception on the definition of sex in the Hate Crime Act. As per the UK Supreme Court judgment, sex is, and always has been, defined as biological. This encompasses not just the Equality Act 2010 but preceding legislation that was consolidated, including the Sex Discrimination Act 1975 and the Equality Act (Sexual Orientation) Regulations 2007. There was never any question that the Hate Crime Act used any other definition and, should that be in any doubt, then application of the above legal test set out by the Supreme Court conclusively removes any uncertainty.

In Equality Network's world view, a same-sex attracted woman can be male (and a lesbian couple may consist of two men, or a man and a woman), a notion which is as legally unsound as it is offensive. It seems this is on the basis of self-identification of sex which has

never been law in Scotland. An alternative reading based on certificated sex makes no more sense as perpetrators of hate crimes would have no knowledge of whether or not their victim holds a Gender Recognition Certificate.

Any suggestion that Equality Network's proposals should be taken seriously should be robustly rejected as not only would women as a sex class not be protected under the SSI to add sex to the HCA, but lesbians and gay men would lose existing protections in the Act. It is hard to understand how they think a "female-to-male" or "male-to-female" transgender person as described in s11(7) of the Act, or the reference to variations in sex characteristics in s11(8) would continue to be understood or workable in law if not based on biological sex.

Police Scotland are subject to a PSED under the Equality Act and therefore must collect data on its activities and crime recording according to the biological sex definition. It would be absurd and incoherent to have any other definition in the Hate Crime Act for sex.

Equality Network is similarly bound by the definition of sex along with [Section 193](#) of the Equality Act which mandates it can only work for the benefit of the groups of people who share the protected characteristics as laid out in its charitable objects. This means Equality Network must abide by the biological understanding of sex when advocating for same-sex orientated people. The open disdain with which its letter opposes the Supreme Court ruling to the detriment of women and lesbians should prompt the Scottish Government to impose funding consequences on the organisation.

We trust that the Scottish Government's commitment to adding sex to the Hate Crime Act which found favour with 90% of respondents to the consultation, including our organisation, will not be derailed by the bizarre intervention of a lone organisation.

Yours sincerely,

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