

TransActual Briefing - For Women Scotland, A Year of Chaos

Key Lines

Clear As Mud: It has been one year since the [Supreme Court judgment in For Women Scotland v. Scottish Ministers](#) (FWS) was claimed to bring ‘clarity’ to the definition of sex in the Equality Act 2010, and **yet confusion and uncertainty still predominate** - with service providers, employers, and users alike still unsure about access to gendered spaces, rights to privacy under GDPR and the Gender Recognition Act, and how the law can continue to protect trans people from discrimination and harassment.

Gender Policing is the New Norm: [TransActual’s Gendered Spaces report](#) highlights a troubling reality: FWS and the [EHRC’s \(now-withdrawn\) interim update](#) emboldened many individuals to challenge strangers’ access to spaces and services based solely on the way they look and dress.

A ‘Victory for Women’ with No Winners: FWS forced organisations such as Girlguiding and Women’s Institute UK to bar trans members against their wishes resulting in the shuttering of WI branches across the UK and the [mass resignation of hundreds of Girlguiding volunteers](#).

A Growing Crisis for Trans Workers: A recent [High Court Judgment](#) found that businesses and organisations may be able to continue to operate trans-inclusive gendered spaces and services to the public, employers are being hamstrung by workplace regulations that have not been updated since 1992. These regulations force employers to instruct trans employees to use only gender-neutral spaces or - where these do not exist - to **exclude trans people altogether from in-person workplaces** or undertake costly renovations to accommodate them.

Clear As Mud

- For many years, The Equality Act 2010 enabled trans people to use gendered spaces [safely and without experiencing harassment](#), with some exceptions where excluding trans people could be considered ‘a proportionate means of achieving a legitimate aim.’
- In April 2025 the Supreme Court handed down judgment in the case of For Women Scotland v Scottish Ministers. The judgment held that the term “sex” (and associated meaning of “man” and “woman”) in the Equality Act refer to ‘biological sex’ understood to mean someone’s sex assigned at birth.
- Following this judgment, The EHRC’s [now-withdrawn](#) interim update ran roughshod over the proportionality test, seeking to promote an interpretation of the Equality Act that would entrench blanket, mandatory trans exclusion from gendered spaces, services, and associations as the new norm.

- FWS and the subsequent erosion of trans rights in the UK has been roundly condemned by national and international human rights organisations including the [Council of Europe's Commissioner for Human Rights](#), [ILGA-Europe](#), [over a dozen UN independent human rights experts](#), [the Scottish government](#), [the Scottish Human Rights Commission](#), [Human Rights Watch](#), the [Lemkin Institute for Genocide Prevention](#), and many others.
- One year on, the EHRC's draft Code of Practice for services, public functions, and associations still awaits approval before the Minister for Women and Equalities - with [press reports](#) indicating government lawyers are currently working with the EHRC to make revisions to the draft to avoid being [stuck in Judicial Review challenges](#).
- In the absence of any clarity, businesses, charities, and other organisations have adopted a wide range of approaches to 'following the law'. Some organisations have held on to their inclusive principles, others have instituted more exclusionary policies - often in response to well-funded legal threats from anti-trans campaign groups.

A Note on the Northern Irish Context

Due to the [differing legal frameworks](#) in Northern Ireland, including the lack of a single Equality Act and the continued adherence to certain EU directives and case law, the application of the FWS judgment is more complex. Depending on the interpretation of the courts, this differing legal landscape could result in a number of outcomes: either trans people having materially different rights in different parts of the UK or trans people having materially different rights on the island of Ireland. Either way, the FWS judgment could create challenges in the context of the Good Friday Agreement and the Common Travel Area, as well as undermining the commitment to 'non-diminution of rights' made by the UK Government in the Windsor Framework."

Gender Policing the New Norm

"I have been a regular at [a restaurant] for over 10 years and have never had problems with the staff before. This time when I got up to go to the toilet, I went to the ladies room. A member of staff saw and came to my table after. He told me that due to the supreme court decision I would have to use the mens from now on. I said that wasn't what the law said. They insisted it was and told me this was management's decision. I got up and left. I felt demeaned and rather like my trust had been betrayed. This was a place I loved and frequented with staff I considered friends, but suddenly I was just a man in the wrong toilet in their eyes."

- Since FWS, [many people have reported](#) increased intrusion, harassment and questioning when using single sex facilities. This includes both trans and non-trans people, with a negative impact on all those who do not conform to conventional gender presentations.

- This has caught many people in a double-bind, where they face harassment and exclusion from gendered spaces whether they use spaces for their lived gender or their sex assigned at birth. Trans women have been mocked and degraded when trying to use men's facilities in an attempt to 'follow the law', trans men cannot safely use women's facilities. In addition, many gender non-conforming women, like butch lesbians, have reported experiencing abuse when trying to use toilet facilities for women.
- According to [press reports](#), the EHRC's draft Code of Practice would encourage service providers to bar people from gendered services and spaces based on what they look like and what they wear, having acknowledged that there is no reliable way to determine someone's sex assigned at birth.
- [Over 650 businesses signed a letter](#) condemning the EHRC's proposals to enforce blanket, mandatory exclusion of trans people from gendered spaces citing, among other objections, the operational risks associated with forcing their employees to act as 'gender police'.

A 'Victory for Women' with No Winners

- In an attempt to update their policies in line with FWS, member-based organisations like Women's Institute UK and Girlguiding announced in late 2025 their intention to ban trans women and girls from their membership, with the Women's Institute stating this was done with '[the utmost regret and sadness](#)' and Girlguiding saying it was a decision they '[would have preferred not to make](#)'.
- [Over 12 Women's Institute groups](#) have closed to date across the UK as entire committees have stepped down in protest of the trans-exclusionary policy change; new membership forms requiring confirmation of sex at birth have led to further upheaval, with many indicating they will not renew their membership for another year.
- In response to Girlguiding's policy change, a group of volunteers and parents called [Guiders Against Trans Exclusion](#) was formed and is planning protests in six cities across the country on 12 April; they have also coordinated a letter of nearly [500 volunteers](#) who intend to resign from their posts.
- At Hampstead Heath Ponds', the City of London Corporation have committed to retaining trans inclusive men's and women's swimming ponds. More than [38,000 people responded](#) to the consultation with 86% responding to say the ponds should remain trans inclusive spaces. In spite of this overwhelming support, anti-trans organisations continue to pursue legal action to make the ponds exclusionary.

A Growing Trans Workers' Crisis

"I now work at a stationery supply store. I have a masters degree in learning and teaching in the creative industries...I will likely never return to teaching. The last year has traumatised me. I feel betrayed, discarded, and hated. When I close my eyes and think about going back to teaching I can feel myself going into a panic attack. As far as I am concerned, this ruling has burned my future to cinders and I now have no choice but to rebuild from the ground up working multiple jobs past the hours I can realistically even do without physically hurting myself, because that is the only way I will ever be able to pay for my care now."

- Following FWS, the rights and protections of trans people in the workplace have been plunged into legal uncertainty - with an immediate and profound negative impact on workers and employers alike.
- A [recent High Court judgment](#) on the legality of the EHRC's interim update, the judge decided that it may remain possible for service providers to offer trans-inclusive gendered spaces to the public. However, the judge chose to extend the FWS definition of 'sex' to the 1992 Workplace Regulations to require that all employers provide either trans-exclusive 'single-sex' facilities or individual self-contained rooms for employees.
- While dismissed by the High Court in its judgment as mere 'gossip at work', forcing trans people into third spaces, such as disabled toilets, not only limits disabled people's access but also risks forcibly outing trans people in their workplace - a serious violation of their right to privacy under GDPR principles and the Gender Recognition Act.
- A recent survey of over 700 workers, conducted by TransActual, has revealed the far-reaching impact of FWS on trans workers:
 - 1 in 4 had workplace policies around trans inclusion change in the last year
 - Nearly 20% of respondents reported being outed at work since FWS
 - 40% are considering leaving their job as a result of FWS and changes to workplace policies
- The government now has the opportunity now to update the 1992 Workplace Regulations to ensure that trans people can continue to access the facilities at work they have been using for years with dignity and privacy, whilst also ensuring that employers are able to provide gender-neutral facilities that work best for their workers, including through financial support and changes to building regulations.

For more information

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