

09 December 2024

by email from: [info@forwomen.scot](mailto:info@forwomen.scot)  
to: [ehrcj.committee@parliament.scot](mailto:ehrcj.committee@parliament.scot)

Dear Convener,

### **Report of the Scottish Parliament's Gender Sensitive Audit**

Following evidence given by representatives of the Scottish Green Party and the SNP on 19th November 2024, we are writing to enquire what action the Committee is taking regarding the admission by both representatives of a breach of s104 of the Equality Act 2010 governing all-women shortlists.

The legislation states that where shortlists are used to address female under-representation, those shortlists are only open to election candidates who share the protected characteristic of “woman”. However, both Cailyn McMahon (SNP) and Ann McGuinness (SGP) confirmed that each party’s all-women shortlists are open to transwomen, ie. males.

As I am sure you are aware, this is contrary to the decisions of the Court of Session Inner House which recently ruled that:

1. In light of the Equality Act definition of woman as meaning a female of any age, an exception in the Act allowing provisions in favour of women, by definition excludes those who are biologically male.  
[For Women Scotland v Scottish Ministers \[2022\] CSIH 4](#) (§36)
2. Individuals without a gender recognition certificate, whether they have the protected characteristic of gender reassignment or not, retain the sex in which they were born and have no right to access services provided for members of the opposite sex.  
[For Women Scotland v Scottish Ministers \[2023\] CSIH 37](#) (§56 and §65)

Neither of these judgments were appealed against and duly became final and settled law. They form no part of the case currently under consideration by the UK Supreme Court in the appeal we brought against the Scottish Ministers.

Accordingly, no males, regardless of how they personally identify, should be included in any all-women shortlists. And no females, regardless of how they personally identify, should be excluded from all-women shortlists.

We realise it must be an unusual situation where witnesses giving evidence to Parliament confess to flagrantly breaching the law in such a manner and we trust the Committee is as

concerned about this as we are, and keen to uphold its equality remit and ensure the rights of women are protected.

We would be grateful if the Committee would outline the action it is taking and also follow up with the Scottish Labour Party who said they would write to the Committee with information on their zipping/twinning system for female candidates. If there has been correspondence it has yet to be published on the Committee's website.

Yours faithfully,

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