

30 April 2026

Your request for information under the Freedom of Information (Scotland) Act 2002 (“the Act”)

Thank you for your email which was received by VisitScotland on 16th April at 10.26am requesting the below information:

“In the context provided by both the Supreme Court judgement ([2025] UKSC 16) and the statement issued by the EHRC and in terms of the provisions of the Freedom of Information (Scotland) Act 2002, I write to ask that VS provides me with the following information:

1. Has VS obtained their own legal advice on complying with the judgement and with all relevant legislation and regulations?
2. If the answer to this is yes, can you please provide me with:
 - a. A copy of the legal advice obtained by VS
 - b. The total cost to VS of obtaining that advice
 - c. A copy of any planned actions, including timetables, VS has drawn up based on the advice received and ensuring that the VS will be compliant, as an employer and as a service provider, with the judgement and with all relevant legislation and regulations
 - d. A note of the total costs anticipated to VS of changes needed to policy and practice to ensure compliance with the judgement and with all relevant legislation and regulations
3. If the answer to question 1 is no, can VS provide copies of papers and minutes which cover the decision-making process deciding not to obtain legal advice ?
4. Has VS flagged the reputational, financial and other risks associated with non-compliance with the judgement and with all relevant legislation and regulations, in the VS Corporate Risk Register?
5. If yes, can you please provide me with a copy of the Corporate Risk Register entry ?
6. If no, can you please provide me with a copy of papers, emails and any relevant correspondence associated with a decision not to include the matter in the Corporate Risk Register.”

VisitScotland’s response

VisitScotland holds some of the information which you have requested.

1. *Has VS obtained their own legal advice on complying with the judgement and with all relevant legislation and regulations?*

VS has not obtained external legal advice on complying with the judgement, however the VS legal team provided a regulatory briefing as part of the Regulatory and Legislation Update paper

which went to VS's Audit and Risk Committee in June 2025. A line on a tracker has also been in each subsequent update (September 2025, November 2025 and March 2026).

2. *If the answer to this is yes, can you please provide me with:*
 - a. *A copy of the legal advice obtained by VS*
 - b. *The total cost to VS of obtaining that advice*
 - c. *A copy of any planned actions, including timetables, VS has drawn up based on the advice received and ensuring that the VS will be compliant, as an employer and as a service provider, with the judgement and with all relevant legislation and regulations*
 - d. *A note of the total costs anticipated to VS of changes needed to policy and practice to ensure compliance with the judgement and with all relevant legislation and regulations*

- a. An excerpt from each Regulatory and Legislation Update Paper has been provided. All other information has been removed as it does not relate to this FOI request.
- b. Not held*
- c. Not held*
- d. Not held*

3. N/A

4. *Has VS flagged the reputational, financial and other risks associated with non-compliance with the judgement and with all relevant legislation and regulations, in the VS Corporate Risk Register?*

Not held* - there is no specific reference to legislative changes in the risk register.

5. N/A

6. *If no, can you please provide me with a copy of papers, emails and any relevant correspondence associated with a decision not to include the matter in the Corporate Risk Register.*

Not held*

*Section 17 of the Act states that where public authorities received requests for information that they do not hold, they must issue a notice advising that they do not hold the requested information. This letter provides you with that notice.

Please note that an anonymised version of this response will be made publicly available on VisitScotland's website.

Your right to request a review

If you wish to request a review of your application under either the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, your request should be submitted to us in writing, or another permanent format (for example e-mail or voice recording) to:

Ms Vicki Miller

Chief Executive
VisitScotland
Waverley Court
4 East Market Street
Edinburgh
EH8 8BG
Telephone: 0131 473 3603
E-mail: vicki.miller@visitscotland.com

The request for a review should be received by us within 40 days of the date of this letter. Any request for a review should also set out, in as much detail as possible, the reasons why you are not satisfied with our response or the manner in which we have dealt with your application.

If you are not satisfied with the result of the review, then you have the right to appeal to the Scottish Information Commissioner. You can contact the Scottish Information Commissioner at:

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS
Telephone: 01334 464610
Fax: 01334 464611
Email: enquiries@itspublicknowledge.info

A link to the Commissioner's website which provides further information can be found here: [Homepage | Scottish Information Commissioner](#)

You also have the right to appeal to the Court of Session in Scotland on a point of law concerning our response.

REGULATION & LEGISLATION UPDATE

Purpose

The purpose of this report is to provide information on recent and upcoming changes to regulations, legislation or items of interest that could or will impact on VisitScotland and to report any action that has or will be taking place.

The annex attached to this report notes the progress which has been made against any actions which have been identified under the “*What does this mean for VisitScotland*” section. This tracks actions raised in previous Regulation & Legislation Update papers.

Actions from this paper will be added to the action tracker.

3. Supreme Court Ruling on the Definition of a Woman

In April, The Supreme Court ruled that in the Equality Act 2010, ‘sex’ means biological sex. This means that under the Act a “woman” is a biological woman or girl and a “man” is a biological man or boy. The Court also stated that if somebody identifies as trans, they do not change sex for the purposes of the Act even if they have a Gender Recognition Certificate. The judgment takes immediate effect in law.

The judgment does not remove protection for trans people, with or without a Gender Recognition Certificate. It makes it clear that trans people continue to be protected from discrimination and harassment based on the protected characteristic of gender reassignment. Discrimination and harassment against all people with one or more protected characteristic, is in breach of the Equality Act 2010 and illegal.

The Equality and Human Rights Commission (EHRC), the independent EHR regulator for the UK, is updating and consulting on its statutory code of practice for services, public functions and associations to help bodies to understand and comply with their legal obligations under the Act. The EHRC will provide an updated code of practice to the UK Government for approval after the consultation period. It will then be laid before the UK Parliament. The Secretary of State will be required to make a commencement Order to formally bring the Code of Practice into force.

Consultation on the draft code of practice ends on 30 June 2025. The consultation is gathering feedback on the proposed changes to the code, seeking views on whether the updates clearly explain the practical implications of the judgment and enable those who will use the code to comply with the Act.

Action/Notes

The Scottish Government is encouraging bodies and individuals to engage directly with the EHRC on this issue as part of the consultation process.

In the meantime, the EHRC has published an interim update to highlight the main consequences of the ruling :-

<https://www.equalityhumanrights.com/media-centre/interim-update-practical-implications-uk-supreme-court-judgment>

What this means for VisitScotland

The main outcome from the ruling is that single-sex spaces like toilets and changing rooms should be used according to the person's biological sex. Trans women (biological men) should not be permitted to use the women's facilities and trans men (biological women) should not be permitted to use the men's.

Further to the EHRC's interim update, it is now compulsory for employers to provide sufficient single-sex toilets in workplaces, as well as sufficient single-sex changing and washing facilities where these facilities are needed. Where facilities are available to both men and women, trans people should not be put in a position where there are no facilities for them to use and where possible and proportionate, mixed-sex toilet, washing or changing facilities should also be provided.

There is therefore a requirement to assess VisitScotland's current provision of single-sex facilities and requirement for mixed -sex facilities to determine whether or not we are compliant and take any necessary steps to comply if not. Many of our office spaces are within buildings managed by other bodies who are no doubt undertaking their own premises assessments to ensure the services are compliant. VS facilities should seek confirmation from all landlords that this is being done and that sufficient, legally compliant services are available to our staff.

We will also need to:

- align practices and policies to reflect EHCR's interim update, with a view to a more comprehensive review so that we are fully compliant once the code is in force, whilst continuing in our commitment to equality, diversity and inclusion.
- balance the need to provide single sex spaces with the need to ensure that trans people are not excluded or discriminated against
- ensure staff are aware of the EHRC's interim update and the new Code of Practice once in force, and trained on how to implement it in a complaint and respectful manner.
- consider submitting a response to the EHRC's consultation on the draft code of practice. Action – Legal to liaise with the Inclusion, Wellbeing and Policy Manager on same.

Action Heading	Action Description	ARC meeting action raised at	Action Owner	Due Date	Progress Notes	Status
Supreme Court ruling on legal definition of woman	Interim update/advice from EHRC following Supreme Court ruling – check that VS compliant; consultation period for amended code of practice closes 30 th June – response required	June-25	[REDACTED]	June-25	Update provided to June 2025 ARC R&L paper	In progress

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Actions from this paper will be added to the action tracker.

1. Supreme Court Ruling on the Definition of a Woman

Following on from the Supreme Court ruling in April that in the Equality Act 2010, ‘sex’ means biological sex (as reported in more detail to ARC in June) the Equality and Human Rights Commission (EHRC), the independent EHR regulator for the UK, is updating its statutory code of practice for services, public functions and associations to help bodies to understand and comply with their legal obligations under the Act.

EHRC is reviewing the code to make sure it will be accurate and clear. Public consultation on the code of practice for services, public functions and associations closed on the 30 June and over 50,000 responses have been received and are being analysed by EHRC. The Commission will use responses to inform any further changes to be made to the code and submit a draft to the UK Government when amendments have been made. Once the UK Government approves, it goes before Parliament for review and if approved it will be published on the EHRC website and set a date for it coming into force. The code will have legal status as the guide on how we meet our duties under the Equality Act 2010.

For Women Scotland, the group who took the initial case to the Supreme Court have criticised the Scottish Government for not implementing the ruling by enforcing single sex spaces for biological men and women in public sector services such as schools and prisons. The group announced in August that it would be taking the Scottish Government to court for a second time calling for a ruling on the legality of the Scottish Government’s current policies in prisons and schools.

Action/Notes

What this means for VisitScotland

VisitScotland, like all workplaces and service providers, will have to operate in compliance with the new EHRC code of practice for the Equality Act 2010 once published. We will also have to take account of any interim guidance that may be issued by the Scottish Government.

A watching brief is to be maintained and ARC to be kept up to date.

Regulatory and Legislative Paper Tracker

Action Heading	Action Description	ARC meeting action raised at	Action Owner	Due Date	Progress Notes	Status
Supreme Court ruling on legal definition of woman	Keep ARC up to date with the law and EHRC advice and guidance following Supreme Court ruling.	June-25	[REDACTED]	Ongoing	<p>Update provided to June 2025 ARC R&L paper.</p> <p>Current position - EHRC reviewing their guidance to make sure it's accurate and clear. Public consultation on the code of practice for services, public functions and associations close on the 30 June and over 50,000 responses have been received and are being analysed by EHRC. The Commission will use responses to inform any further changes to be made to the code and submit a draft to the UK Government when amendments have been made. Once UK Gov approves, it goes before Parliament for review and if approved it will be published on the EHRC website and set a date for it coming into force and the code will have legal status as the guide on how we meet our duties under the Equality Act 2010.</p>	Ongoing

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March 2026 Regulatory and Legislative Paper Tracker

Action Heading	Action Description	ARC meeting action raised at	Action Owner	Due Date	Progress Notes	Status
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