

24 February 2026

By email: paula.bradshaw@mla.niassembly.gov.uk

Paula Bradshaw MLA
Chairperson
Committee for the Executive Office
Room 419, Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Paula

I am writing following the Committee's postponement of our briefing on 28 January 2026 on the Supreme Court judgment in 'For Women Scotland Ltd v the Scottish Ministers' (FWS), and in response to the Committee's recent enquiry about when the Commission will next be able to provide an update.

As the members of the Committee may have seen from our [website](#), the Commission is being as transparent as possible regarding our High Court application for clarification of the applicability of the Supreme Court judgment in Northern Ireland, including publishing documents submitted to the Court. While the ongoing judicial proceedings may limit commentary on this matter, we appreciate the importance of ensuring transparency as this work progresses. You will appreciate that as much of this work is dependent on a range of factors outside the control of the Commission, it is difficult to give definitive timeframes. In the interim, we will endeavour to respond to any enquiries that Committee members may have. An overview of the Commission's rationale for taking this course of action and of a recent High Court review hearing are provided below.

The Commission has been clear from the outset that we are not seeking to challenge the Supreme Court judgment regarding the interpretation of the Equality Act 2010 in Great Britain. Rather, the aim of our work is to obtain clarity as to the applicability of the judgment in Northern Ireland so that we may produce workable guidance for stakeholders that is based on the law in Northern Ireland. Regardless of the specific outcome of these legal proceedings, it seems clear and is as applicable today as it will be in the future, i.e. that the preservation of the dignity of all employees and service-users is a key factor that employers and service-providers must respect. To focus only on the perspective of one person or one group is unlikely to be sufficient to achieve that goal. This key principle was illustrated in two recent employment tribunal decisions in Great Britain: the cases of [Peggie -v- Fife Health Board](#) and [Hutchinson and others -v- County Durham and Darlington NHS Foundation Trust](#)). It is emphasised that these are not cases dealing with Northern Ireland law.

By way of an update and as identified in our Legal Paper (June 2025), the Commission has asked that this case be heard after the judgment in the *Dillon & Ors v Secretary of State for NI* (2024) NICA 59 (Dillon) case is handed down, as we believe it may clarify uncertainties concerning the scope and application of Article 2 of the Windsor Framework, as applied to the issues raised in Northern Ireland by the FWS decision.

The Committee may be aware that, in conjunction with the Commission's application to the court, that the Commission is subject to two other judicial review proceedings, taken by the Good Law Project and the Women's Rights Network Ltd. Both cases involve the application of the FWS judgment in NI, although the applicants take very different views of how that case applies here, with the Good Law Project arguing that the Supreme Court decision has no relevance in the Northern Ireland context, and the Women's Rights Network Ltd arguing that, on the contrary, Article 2 of the Windsor Framework has no relevance to these issues. Should the Commission issue guidance now, without first clarifying the central legal issue, it seems to us that it will be the subject of judicial review challenging that guidance whatever view it took of the application of FWS.

It is advised that a review hearing was held by Mr Justice McAlinden in the High Court on 27 January 2026, which was concerned only with procedural issues relating to the subsequent handling of the litigation. The Judge said at the hearing that all the judicial review applications will proceed together at this stage and that the leave stage of the judicial review will not proceed until the Dillon case is decided by the Supreme Court. Following the handing down of the decision in Dillon, there will be a review by the High Court in early June to allow time for the parties and interveners to consider the implications of the Dillon judgment. At this hearing, Judge McAlinden also said that he didn't know if meaningful guidance could be given in absence of Dillon and the clarification of Windsor Framework Article 2 points, and that all voices on this important matter should be heard. In addition to the proceedings issued by the Good Law Project and the Women's Rights Network Ltd, several other organisations were present at the review hearing and expressed a current interest in one or more of these cases, including: the Rainbow Project, the Cabinet Office/Secretary of State for NI, the Department of Education, and Sex Matters. Additionally, the NI Human Rights Commission and the NI Commission for Children and Young People have been identified as interested parties. We understand that both are considering what, if any, position to adopt. Others, including those with an interest in relevant allied legislation, have noted that they are monitoring the situation and wish to be kept informed.

On a separate but related issue, we note that the Committee has previously provided some commentary on the Northern Ireland Assembly Commission's Transgender Policy and Guidance. We are therefore providing some information, which we trust is of assistance.

The Equality Commission's Legal Paper (June 2025) included some interim information for employers, service providers and public bodies and while this interim information is explicitly not guidance it includes information on the practical application of the Sex Discrimination (NI) Order 1976, including on the provision of separate sex facilities. In that

context, we consider how third spaces can be one way to accommodate different perspectives, provided these are suitable. The Legal Paper also states that it is for employers and service providers to ensure that their own policies and their implementation are operating in a way that affords everyone dignity while at work or accessing services.

We understand from the Assembly Commission's consultation report (September 2023) that its review of this policy was influenced by the *Guide to the Sex Discrimination (Gender Reassignment) Regulations (NI) 1999*, issued by the Department of Economic Development prior to December 1999, when that Department ceased to exist. With the passage of time this guidance is no longer satisfactory as it does not take account of more recent interpretations of the law provided by the employment tribunals and courts which began to be handed down from mid-2021.

We also understand that this policy remains under review and that as part of this review some interim recommendations were proposed, but not agreed to, in September 2025. If the Assembly Commission has concerns with its policy in this area or how it is operating, we recommend that it seek independent legal advice to take account of its own specific policies.

I trust this update is helpful.

Yours sincerely



Geraldine McGahey OBE
Chief Commissioner

📞 Direct line: 028 90 500 622 (PA)

💻 Email: pboyd@equalityni.org