

Court of Session ruling upholds UK Government action to block GRR bill

The Court of Session has issued its opinion in the petition brought by the Scottish Ministers for judicial review of the Gender Recognition Reform (Scotland) Bill (Prohibition on Submission for Royal Assent) Order 2023.

On 17 January 2023 the Secretary of State for Scotland made an Order under section 35 of the Scotland Act 1998. The Order blocked the progress of the Gender Recognition Reform (Scotland) Bill towards Royal Assent after being passed by The Scottish Parliament in December 2022. The Scottish Parliament wanted to simplify the procedure for trans people to change their legal sex.

The issue for the court was whether that Order by the Secretary of State for Scotland was lawfully made. The Lord Advocate, appearing on behalf of the Scottish Ministers, invited the court to reduce it and declare it to be of no legal effect. The First Minister claimed that this was an attack on the powers of the parliament. The court has decided that the first use of the powers under Section 35 since The Scottish Parliament was established was lawful.

The [opinion](#) concludes that the Order is lawful and dismisses the petition. The decision makes clear that, first, the

Secretary of State adopted the appropriate procedure in invoking section 35. Second, that because the Bill modifies the meaning of “full gender recognition certificate” it does modify the law as it applies to reserved matters. Third, that the reasons provided by the Secretary of State for making the order are rational and adequate.

The Secretary of State for Scotland, Rt Hon Alister Jack MP said: “I welcome the Court’s judgment, which upholds my decision to prevent the Scottish Government’s gender recognition legislation from becoming law.

“I was clear that this legislation would have had adverse effects on the operation of the law as it applies to reserved matters, including on important Great Britain-wide equality protections.

“Following this latest Court defeat for the Scottish Government, their ministers need to stop wasting taxpayers’ money pursuing needless legal action and focus on the real issues which matter to people in Scotland – such as growing the economy and cutting waiting lists.”

First Minister, Humza Yousaf, said on social media: “Today’s judgment confirms beyond doubt that devolution is fundamentally flawed. The Court has confirmed that legislation passed by a majority in Holyrood can be struck down by Westminster. The only way to guarantee we get true self-government is through independence.

“This is a dark day for devolution. Sovereignty should lie with the people of Scotland, not a Westminster Government we didn’t vote for with the ability to overrule our laws. We, of course, respect the Court’s judgment and will take time to consider its findings.”

Shadow Scottish Secretary Ian Murray MP said: “It is disappointing this legalisation ended in the courts but this ruling should be respected.

“It is shameful that after years of debate, trans people feel no more protected and women no more reassured.

“This is another demonstration of why both governments have to work together rather than spending taxpayers money fighting in courts and pitting communities against each other.”

Maggie Chapman MSP, of the Scottish Greens, said “This is a devastating day for equality. It is a democratic outrage, crushing basic rights and equality for some of Scotland’s most marginalised people. It shows the huge limitations and constraints on devolution and confirms that the UK Government refuses to see our trans siblings for the people they really are.

“It is horrible, it is heartbreaking and it is unjust. It makes a mockery of any vote or decision that we as parliamentarians take at Holyrood from now on, if the result is knowing that Westminster will veto anything they don’t like.

“Self-ID is normal and is used in countries around the world. What our Parliament voted for was a small change that would have made a big difference to a vulnerable community. I hope the Scottish Government will consider all options for appeal.

“We stand in solidarity with our trans siblings and call on every fair and decent minded individual who believes in equality and democracy to do the same.

“This is far from over. It is not about trans rights or democracy alone, it is about our very right to be who we are, who we want to be and what kind of country we want to live in. That must now start and end with independence and a fairer and more equal Scotland.”

Jen Bell, the co-convenor of Rainbow Greens, which represents LGBTQ+ members of the Scottish Greens, said “This is a crushing blow for the people of Scotland and trans people

across Britain.

“At a time when we needed hope, a dangerous precedent has been set: our democracy, our rights, our self-determination, can be vetoed at the whim of any Westminster government.

“But this is not the end for us. The trans community and Scotland will persevere. We will keep fighting for our rights and our dignity in Scotland, in Britain and the world over.”

The legislation would have allowed 16 and 17 year-olds to apply for a certificate recognising their gender and would have reduced the time in which anyone applying for this to live in their acquired gender before being granted such certification.



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