


The concept of sex is binary: For Women Scotland v The Scottish Ministers Supreme Court case explained

16 April 2025  Polly O'Malley and Ben Greene

The Supreme Court has today ruled that for the purposes of interpretation of gender terms under the Equality Act 2010, the sex of a person is either biologically a man or a woman, but stressed that this was not a “victory” of one viewpoint over another on gender identity and also the fact that trans rights remain protected under the gender reassignment and, in certain instances, the sex discrimination provisions of the Equality Act.

The decision [2025] UKSC 16

For Women Scotland (the appellant) challenged the Scottish Government's definition of 'woman' for the purposes of the Gender Representation on Public Boards (Scotland) Act 2018 as including trans individuals with a Gender Recognition Certificate (GRC). The appellant argued that defining a 'woman' in this way exceeded the legislative competence of the Scottish Parliament, as the law concerning equal opportunities is a matter reserved for the UK Parliament.

Allowing the appeal, the Supreme Court has held that 'sex' refers solely to biological sex and does not extend to certificated sex.

In arriving at this conclusion, the Supreme Court considered in detail the principles of statutory interpretation, as well as the definitions of 'man' and 'woman' in previous equal opportunities legislation, including the Sex Discrimination Act 1975 (which also defined these terms based on biological sex).

The Supreme Court examined the practical implications of interpreting the words 'man' and 'woman' to include gender reassignment, finding that such an interpretation would lead to inconsistencies and practical difficulties in the application of the law, particularly in areas requiring biological distinctions such as pregnancy and single-sex spaces (such as changing rooms, hospital wards and prisons).

The Supreme Court also found that interpreting 'sex' as 'certified sex' would create a difference in rights between trans individuals who hold a GRC, and those who do not. This, said the Supreme Court, would create inherent practical difficulties, as those seeking to abide by the Equality Act 2010 would have no obvious means of distinguishing between the two groups (as they could not ask whether someone had obtained a GRC as that information is private).

The Supreme Court has, however, affirmed that trans individuals are still protected under the Equality Act 2010 from discrimination on the basis of gender reassignment, and in some circumstances, sex (on the basis that a trans individual would be perceived to be a woman). This protection extends to both direct and indirect discrimination, as well as protection from harassment. Importantly, a trans individual does not need a GRC to qualify for this protection.

[The Supreme Court press release](#) →

[The judgment](#) →

What next?

While many senior leaders may feel under pressure to act quickly following this ruling – whether from board members, members of the public or other key stakeholders – it's important to pause and understand their position.

Whenever a Supreme Court judgment signals a new interpretation of the law, it doesn't necessarily follow that policies and processes used by organisations are automatically now incorrectly applied – indeed, many will remain just as important and any knee-jerk reaction could cause more harm than good.

Given the Supreme Court has upheld the protection of transgender individuals from discrimination on the basis of gender reassignment, employers should tread carefully and ensure they continue to promote a culture of openness and respect between employees, underpinned by internal training that helps to eliminate hidden bias.

For any business or publicly-facing organisation guidance should be reviewed and potentially updated to reaffirm the importance of when and how it is appropriate for personal opinions to be expressed within the workplace or environment in which activities take place.

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