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# For Women Scotland Ltd v Scottish Ministers (2025)

# Background – Gender Recognition Act 2004

- A trans person who is at least 18 years old can apply for legal recognition of their “acquired gender” through the issue of a gender recognition certificate (GRC).
- Once a full GRC has been issued, a person’s gender becomes, “for all purposes”, the acquired gender.
- However, this is subject to provision made by this Act or any other enactment or any subordinate legislation”: section 9(3).



# Equality Act 2010

- Gender reassignment is a protected characteristic under section 7 of the Equality Act 2010.
- Sex is a separate protected characteristic under section 11 of the Equality Act 2010.
- The protected characteristic of sex in the Equality Act 2010 is binary, referring only to a man or a woman.
- Section 212(1) of the Equality Act 2010 defines “woman” as “female of any age”.



# EHRC as an Intervener



In April 2023, the Equality and Human Rights Commission recommended that the then Conservative Government should consider redefining “sex” in the Equality Act 2010 to mean biological sex. The EHRC considered that a biological definition of “sex” in the Equality Act 2010 would create legal clarity in eight areas:

- Pregnancy and maternity
- Freedom of association for lesbians and gay men
- Freedom of association for women and men
- Positive action
- Occupational requirements
- Single-sex and separate sex services
- Sport
- Data collection

The Supreme Court judgment does however refer to the EHRC’s ‘longstanding view and policy position that the terms ‘sex’, ‘man’ and woman’ in the EA 2010 include those whose sex is certified in a GRC.

# Gender Representation on Public Boards (Scotland) Act 2018

- The Gender Representation on Public Boards (Scotland) Act 2018 received Royal Assent on 9 March 2018.
- It requires positive action to be taken to redress gender imbalances on public sector boards in Scotland, including an objective that 50% of the non-executive members should be women. “Woman” was defined in section 2 of the GRPBSA 2018 as including a person who has the protected characteristic of gender reassignment within the meaning of section 7 of the Equality Act 2010.
- On the 19<sup>th</sup> April 2022, the Scottish Government published revised statutory guidance which stated that for the purposes of the GRPBSA 2018 “woman” included trans women with a GRC.

# Judicial review

- As a result of the Government publishing the revised statutory guidance that “woman” included trans women with a Gender Recognition Certificate, *For Women Scotland* brought judicial review proceedings against Scottish ministers, contending that the definition of “woman” in the Equality Act 2010 should be taken as reference to a biological woman.
- They felt that any attempt to combine that concept with that of a person who has an acquired gender of female under a GRC was “impermissible”, as well as defeating the purpose of the Gender Representation on Public Boards (Scotland) Act 2018.

# For Women Scotland



We are a group of women from all over Scotland working to protect and strengthen women and children's rights.

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# What was the outcome?

- Both the Outer House and the Inner House of the Court of Session ruled that the revised statutory guidance was not unlawful.
- The courts reasoned that section 9(1) of the Gender Recognition Act 2004 states that on a full GRC being issued, a person's sex becomes that of their acquired gender "for all purposes".
- Therefore it was not wrong to say that the definition of "woman" in sections 11 and 212(1) of the Equality Act 2010 was not limited to biological or birth sex, but included trans women with a Gender Recognition Certificate.
- For Women Scotland appealed to the Supreme Court.



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# The Supreme Court upheld the appeal

Parliament intended that the words “man”, “woman” and “sex” in the Equality Act to refer to biological sex. Trans women holding a GRC were therefore excluded from the definition of women.

The statutory guidance issued by the Scottish Government was incorrect: trans women holding a GRC could not be included as a women for the purposes of the GRPBSA 2018.

News

# **An interim update on the practical implications of the UK Supreme Court judgment**

Published: 25 April 2025

# What does the interim guidance say?

- *"It is not compulsory for services that are open to the public to be provided on a single-sex basis or to have single-sex facilities such as toilets.*
- *These can be single sex if it is a proportionate means of achieving a legitimate aim and they meet other conditions in the Equality Act.*
- *However, it could be indirect sex discrimination against women if the only provision is mixed sex."*

# Interim update – key points

- In workplaces and services that are open to the public, 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 facilities, as this will mean that they are no longer single-sex facilities and must be open to all users of the opposite sex.
- 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.
- *"Where possible, mixed-sex toilet, washing or changing facilities in addition to sufficient single-sex facilities should be provided."*

# Implications for trans people

- The Supreme Court decision means that trans women, whether or not they have GRC, do not come under the definition of women for the purposes of the Equality Act 2010.
- They continue to be protected under the protected characteristic of gender reassignment.
- The protection begins when an individual is proposing to undergo a gender reassignment process, continues while the individual is undergoing the process and after they have changed gender.
- The Supreme Court noted that trans people continue to be protected from direct and indirect discrimination and harassment, potentially under the protected characteristics of sex and gender reassignment.

# What should service providers do now?

# Trans former judge plans to challenge gender ruling at European court

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**The UK's only ever judge to publicly say they are transgender is planning to take the government to the European Court of Human Rights over the Supreme Court's ground-breaking ruling on biological sex.**

Dr Victoria McCloud, who stepped down from court last year, said the judgement and equality watchdog's new guidance violated her human rights and she felt "contained and segregated".

She said the court had failed to consider human rights arguments that would have been put by trans people and the judgement had left her with the legal "nonsense" of being "two sexes at once".

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# Questions



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# Thank you for your time

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