



## Press Summary

16 April 2025

### **For Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent)**

**[2025] UKSC 16**

*On appeal from: [2023] CSIH 37*

**Justices:** Lord Reed (President), Lord Hodge (Deputy President), Lord Lloyd-Jones, Lady Rose and Lady Simler

#### **Background to the Appeal**

The issue to be determined by the Supreme Court in this appeal is one of statutory interpretation, namely the meaning of “man”, “woman” and “sex” in the Equality Act 2010 (“EA 2010”).

This appeal arose in response to the definition of the term “woman” in the Gender Representation on Public Boards (Scotland) Act 2018 (“ASP 2018”) and associated statutory guidance. This legislation created gender representation targets to increase the proportion of women on public boards in Scotland. The ASP 2018 and the original statutory guidance defined “woman” as including people: (i) with the protected characteristic of gender reassignment; (ii) living as a woman; and (iii) proposing to undergo / undergoing / who have undergone a gender reassignment process. In 2020, the Appellant, a feminist voluntary organisation that campaigns to strengthen women’s rights in Scotland, challenged this guidance. The Inner House found that this statutory definition was unlawful as it involved an area of law reserved to the UK Parliament (equal opportunities) and therefore fell outside the legislative competence of the Scottish Parliament (“FWS1”).

Following FWS1, the Scottish Ministers issued new statutory guidance which is under challenge in this appeal. The new statutory guidance states that, under the ASP 2018, the definition of a “woman” is the same as that in the EA 2010. Section 212 of the EA 2010 defines “woman” as “a female of any age.” The new statutory guidance also states that a person with

a Gender Recognition Certificate (“GRC”) recognising their gender as female is considered a woman for the purposes of the ASP 2018.

A GRC is a document that allows trans people to change their gender legally. The Gender Recognition Act 2004 (“GRA 2004”) established that an adult can receive a GRC if they provide evidence that they have or have had gender dysphoria, have lived as their acquired gender for two years and intend to continue to do so until death.

In 2022, the Appellant challenged the lawfulness of the new statutory guidance. The Appellant submits that the definition of a “woman” under the EA 2010 refers to biological sex, meaning that a trans woman with a GRC (a biological male with a GRC in the female gender) is not considered a woman under the EA 2010, and consequently the ASP 2018. The Respondent submits that the definition of a “woman” under the EA 2010 refers to “certificated sex”, meaning that it includes trans women with a GRC. On 13 December 2022, the Outer House dismissed the Appellant’s petition. The Appellant appealed to the Inner House. On 1 November 2023, the Inner House dismissed the Appellant’s appeal. The Appellant now appeals to the Supreme Court.

## **Judgment**

The Supreme Court unanimously allows the appeal. It holds that the terms “man”, “woman” and “sex” in the EA 2010 refer to biological sex. Lord Hodge, Lady Rose and Lady Simler give a joint judgment, with which the other Justices agree.

## **Reasons for the Judgment**

### The Legal Background

Protection from sex discrimination was initially recognised in the Sex Discrimination Act 1975 (“SDA 1975”). The SDA 1975 made it unlawful (i) for a woman to be treated less favourably than a man because of her sex (direct discrimination) and (ii) to apply a requirement or condition which applies equally to both sexes but where the proportion of women who can comply is smaller compared to the proportion of men (indirect discrimination) [36]-[40]. The legislation also recognised and accommodated for exceptions to the general rule, for example, where people would be undressing together, living on the same premises or using sanitary facilities together, considerations of decency and privacy required separate facilities to be provided for men and women [41]-[48]. Parliament used the words “man” and “woman” throughout the SDA 1975 to distinguish between different groups on the basis of sex. There is no doubt that Parliament intended the words “man” and “woman” to refer to biological sex [51], [162].

In response to the case of *P v S and Cornwall County Council*, a legal challenge brought to the European Court of Justice on the basis of gender reassignment discrimination, the Sex Discrimination (Gender Reassignment) Regulations 1999 (the “1999 Regulations”) were introduced. The 1999 Regulations amended the SDA 1975 to include a prohibition on discrimination on the ground of gender reassignment. However, the 1999 Regulations did not amend the meaning of “man” or “woman” in the SDA 1975 [54]-[62].

The SDA 1975 and the 1999 Regulations were repealed and replaced by the EA 2010. The EA 2010 was enacted as an amending and consolidating statute. It enacted group-based protections against discrimination based on a range of characteristics, including sex and gender reassignment [113]-[116], [142]-[149]. There is no indication that the EA 2010 modified the meaning of “man” and “woman” or “sex” from the meaning in the SDA 1975 [162]-[164]. Therefore, the context in which the EA 2010 was enacted was that the SDA 1975 definitions of “man” and “woman” referred to biological sex and trans people had the protected characteristic of gender reassignment.

#### Interpretation of the GRA 2004

Section 9(1) of the GRA 2004 establishes that trans people with a GRC are to be considered their “acquired” gender (meaning the gender reflected on their GRC) “for all purposes”. Section 9(3) allows the rule in section 9(1) to be disapplied by a provision in the GRA 2004 or “any other enactment or any subordinate legislation” [75].

Section 9(3) does not require that legislation expressly disapplies the rule in section 9(1) or that this disapplication arises by necessary implication [99]-[104]. Section 9(3) will apply where the terms, context and purpose of the relevant legislation show that it does, because of a clear incompatibility or because its provisions are made incoherent or unworkable by the application of the rule in section 9(1) [156].

#### Interpretation of the EA 2010

There is no provision in the EA 2010 that expressly addresses the effect of section 9(1) of the GRA 2004 [158]. Therefore, a careful analysis of the provisions of the EA 2010 must be undertaken to decide whether they indicate that a biological meaning of sex is intended and/or that a certificated sex definition would render these provisions incoherent or absurd [159]-[161].

As a matter of ordinary language, the provisions relating to sex discrimination can only be interpreted as referring to biological sex [168]-[172]. For example, the provisions relating to pregnancy and maternity (sections 13(6), 17 and 18 of the EA) are based on the fact of pregnancy and giving birth to a child. As a matter of biology, only biological women can become pregnant. Therefore, these provisions are unworkable unless “man” and “woman” have a biological meaning [177]-[188].

Interpreting “sex” as certificated sex would cut across the definitions of “man” and “woman” and thus the protected characteristic of sex in an incoherent way [172].

It is important that the EA 2010 is interpreted in a clear and consistent way in order that groups which share a protected characteristic can be identified by those that the EA 2010 imposes obligations on so that they can perform those obligations in a practical way [151]-[154].

A certificated sex interpretation would also create two sub-groups within those who share the protected characteristic of gender reassignment, giving trans people who possess a GRC greater rights than those who do not. Those seeking to perform their obligations under the EA 2010 would have no obvious means of distinguishing between the two sub-groups, particularly since

they could not ask whether someone had obtained a GRC as that information is private [198]-[203].

A certificated sex interpretation would also weaken the protections given to those with the protected characteristic of sexual orientation for example by interfering with their ability to have lesbian-only spaces and associations [204]-[209].

Additional provisions that require a biological interpretation of “sex” in order to function coherently include separate spaces and single sex services (including changing rooms, hostels and medical services) [211]-[221], communal accommodation [222]-[225], and single sex higher education institutions [226]-[228]. Similar confusion and impracticability arise in the operation of provisions relating to single sex characteristic associations and charities [229]-[231], women’s fair participation in sport [232]-[236], the operation of the public sector equality duty [237]-[244], and the armed forces [245]-[246].

The practical problems that arise under a certificated sex approach are clear indicators that this interpretation is not correct [247]. The Court rejects the suggestion of the Inner House that “woman” and “sex” can refer to biological sex in some sections of the EA 2010, and certificated sex in others. The meaning of “sex” and “woman” must be consistent throughout the EA 2010 [189]-[197].

The Court concludes that the provisions of the EA 2010 discussed above are provisions to which section 9(3) of the GRA 2004 applies. The meaning of the terms “sex”, “man” and “woman” in the EA 2010 refer to biological sex, as any other interpretation would render the EA 2010 incoherent and impracticable to operate [264]. Therefore, a person with a GRC in the female gender does not come within the definition of a “woman” under the EA 2010 and the statutory guidance issued by the Scottish Ministers is incorrect [266].

#### Protection from Discrimination

This interpretation of the EA 2010 does not remove protection from trans people, with or without a GRC. Trans people are protected from discrimination on the ground of gender reassignment. They are also able to invoke the provisions on direct discrimination and harassment, and indirect discrimination on the basis of sex. In the light of case law interpreting the relevant provisions, a trans woman can claim sex discrimination because she is perceived to be a woman. A certificated sex reading is not required to give this protection [248]-[263].

*References in square brackets are to paragraphs in the judgment.*

#### **NOTE:**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**