

Legal Clarity or Regression? Analysing the Supreme Court’s Judgment on the Definition of Sex under the Equality Act 2010 (Summary)

The Supreme Court appeal concerns the interpretation of the terms “man,” “woman,” and “sex” under the Equality Act 2010, in response to how “woman” is defined in the Gender Representation on Public Boards (Scotland) Act 2018 and its related guidance. The judgment gives rise to considerable legal and practical uncertainty, offering limited guidance on the interpretation and application of provisions relating to access, recognition, and protection. Although it purports to clarify the definition of “sex” under the Equality Act 2010, it introduces significant ambiguity, particularly in relation to transgender individuals holding Gender Recognition Certificates. This development raises concerns regarding inconsistent legal interpretation, potential erosion of statutory protections, and increased marginalisation, thereby highlighting the inherent tension between legislative clarity and the principle of substantive equality.

The Supreme Court’s effort to clarify the definition of “sex” as biological introduces both clarity and ambiguity. While reinforcing sex-based protections, the ruling raises serious concerns about the exclusion of transgender individuals with Gender Recognition Certificates (GRCs), despite the strict requirements for obtaining one and limited access to gender services. As a result, it may further marginalise an already vulnerable group.

The Court’s view that a Gender Recognition Certificate (GRC) does not ensure recognition in all legal contexts undermines the purpose of the GRC regime and creates legal inconsistencies. Trans women with GRCs may be excluded from women-only spaces, and trans men who become pregnant may lose maternity protections under a strict biological definition. The judgment also allows blanket exclusions in sport, limiting trans participation. These contradictions highlight the need to reassess the legal framework and consider separating gender recognition from automatic access to sex-based rights.

Although the Court asserts that the Equality Act 2010 protects against gender reassignment discrimination, the ruling may still lead to trans individuals being excluded from both male and female spaces, eroding their recognition and ability to participate in society. These

exclusions lack evidence-based justification and risk enabling intrusive scrutiny and indirect discrimination, especially against those who do not conform to typical gender norms.

The judgment highlights the tension between collective rights and individual dignity in equality law. Instead of resolving access issues for single-sex spaces, it adds complexity and exposes organisations to legal uncertainty. In settings like toilets and hospitals, strict biological definitions may harm privacy and care. The ruling could also justify blanket exclusions, undermine inclusion efforts, and reinforce scrutiny of those defying gender norms, including cisgender women, limiting autonomy and reinforcing regressive norms.

The judgment may conflict with Article 8 of the European Convention on Human Rights by equating legal sex with biological sex, overlooking trans individuals' lived identities. Though the Court claims protections remain, its reasoning narrows their scope. As Dr. Nick McKerrell notes, trans women with GRCs may be unable to claim sex discrimination, undermining legal recognition and leaving service access uncertain and provider dependent.

The Equality and Human Rights Commission stressed that the impact of redefining “sex” in the Equality Act, especially on trans individuals, should be assessed before, not after, legal reform. Legal certainty must be balanced with social impact, requiring proactive, evidence-based policymaking to protect marginalised groups.

In seeking clarity, the Supreme Court has created an exclusionary and fragile legal framework that leaves unresolved how trans people, including those with GRCs, fit within legal and institutional settings. The absence of clear guidance risks inconsistent and discriminatory outcomes. Proposals like third or gender-neutral spaces may help but can also stigmatise and are often impractical. Ultimately, the law should evolve to reflect human diversity and protect dignity, not enforce rigid binaries or shift burdens onto service providers.