

JUDICIAL REVIEW APPEAL

For Women Scotland are appealing the judicial review [decision](#) by Lady Haldane in the Outer House Court of Session which ruled that the protected characteristic of “sex” in the Equality Act 2010 refers to a person’s sex as recognised in law, and not biological sex.

This interpretation means that wherever “sex” is referred to in the Act it can be replaced with “legal sex” and the definition of “woman” means biological females, except those who hold a GRC stating they are legally men, plus biological males who hold a GRC stating they are legally women.

We think this is wrong. Sex, in its ordinary common law meaning, refers to biology and to read it otherwise in the Act leads to significant inconsistencies and incoherence which cause detriment to women.

Single-sex spaces

If sex means biological sex it is straightforward to have single-sex changing rooms, toilets, hospital wards, refuges, sports, etc for reasons of privacy, dignity and safety, with all members of the opposite sex excluded regardless of whether they hold a GRC. However, if sex means legal sex a woman-only space cannot be confined only to biological women because that is no longer a protected characteristic in the Act, but must by definition include biological males who hold a GRC. Taken to its conclusion, this leads to the untenable situation of male rapists housed in female prisons. The exceptions in the Act relating to gender reassignment become contested and unworkable.

Positive action

If sex means biological sex the historic under-representation to be redressed by the Gender Representation on Public Boards

Act is clear and well-evidenced, and 50% female representation is proportionate to the percentage of women within society.

If sex means legal sex, however, then quotas for public boards, all-women shortlists, training programs for women, etc can comprise entirely of biological men with GRCs and still lawfully meet the objective.

➡ **Sexual Orientation**

The concept of legal sex has the potential to undermine the Act's protections against discrimination by effectively depriving the very concept of sexual orientation of any meaning. Acquiring a GRC does not transform a heterosexual relationship into a homosexual one (or vice versa). People are attracted to sexed bodies not certificate status.

➡ **Pregnancy and Maternity**

All the references to pregnancy and maternity throughout the Act are made in relation to, and only to, women. It necessarily involves a reference to female biology and it cannot possibly be the intention to place female GRC holders, who would be deemed legally male, outside these protections.

We think Lady Haldane also failed to properly apply the binding decision from [FWS1](#) which stated provisions in favour of women must, by definition (in the Equality Act), exclude those who are biologically male.

The substantive hearing is expected by late summer/autumn 2023.

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For Women Scotland

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