
How can critical and feminist scholars respond to the decision in *For Women Scotland*?

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Introduction

The decision in *For Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent) (FWS)*¹ in the spring of 2025 fundamentally changed the landscape of equality law in the UK. The *FWS* decision attracted immediate media and political attention, in part because the case set out to define what it means legally to be a woman in the context of the provisions of the *Equality Act 2010* (EA). The case involved the intersection of three pieces of legislation, namely the *Gender Representation on Public Boards (Scotland) Act 2018* (GRPB), the EA and the *Gender Recognition Act 2004* (GRA). *FWS* was intended to challenge the framing of the GRPB, which was introduced to ensure that at least 50% of the members of a public board in Scotland were women. The GRPB did so by allowing for a very limited type of positive discrimination. Importantly, that Act had been designed to include trans women within its definition of ‘women’ by drawing on the protected characteristic of gender reassignment as set out in the EA.

Legal background

The group, For Women Scotland Ltd, sought to challenge this trans-inclusive approach through an initial judicial review. The Inner House of the Court of Session agreed with their argument and held that the Scottish Government needed to modify the definition of ‘woman’ in the GRPB as the current approach fell within the scope of the retained powers of the Westminster Parliament under the *Scotland Act 1998*.² This led to the Scottish Government creating new guidance that clarified

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¹ *For Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent)* [2025] UKSC 16.

² *For Women Scotland Ltd v Lord Advocate* [2022] CSIH 4; 2022 SC 150

that the definition of ‘woman’ in the GRPB was only inclusive of trans women who had gone through the GRA to amend their legal sex as registered on their birth certificate. Holding a Gender Recognition Certificate under the GRA would amend their legal gender status for most purposes, including the protected characteristic of ‘sex’ in the EA. Nevertheless, *FWS* brought another judicial review in which they argued that the EA definition of ‘sex’ was not affected by someone going through the GRA process. They further argued that the GRA had a very narrow purpose, including allowing trans people to marry, and had been largely superseded by subsequent legislation, including the EA. This petition was dismissed by Lady Haldane in the Outer House in December 2022.³ Lady Haldane held that the GRA was clear in changing a person’s legal sex for all purposes with a few exceptions listed specifically, e.g. peerages and trusts, and that this, therefore, was in line with the amended GRPB’s definition of who counts as a woman. This was confirmed on appeal by the Inner House. *FWS* further appealed to the UK Supreme Court where a panel of five judges unanimously ruled in their favour.

The decision by Lord Hodge, Lady Rose and Lady Simler, with Lords Reed and Lloyd-Jones concurring, sets out that, for the purposes of the EA, the terms ‘man’ and ‘woman’ are intended to refer solely to ‘biological sex’ as determined at birth.⁴ It states that these terms are not affected by the GRA and that it therefore is irrelevant if a person has changed their legal gender status. Consequently, the definition of ‘woman’ in the GRPB should also only apply to those who were assigned female at birth. The judgment, however, goes further than just determining the specific issue of Scottish legislation under review, and additionally notes that while this interpretation of ‘sex’ does not require single-sex spaces to exclude trans people whose sex assigned at birth does not match that of the group the spaces are intended for, failing to do so may amount to indirect discrimination on the grounds of sex as it may lead to people self-excluding from these spaces.

The wider impact and context of *FWS*

Beyond the immediate impact of the *FWS* decision on the GRPB, this Supreme Court ruling had far reaching consequences, with a number of media outlets and political commentators arguing that this meant that trans people should always be excluded from spaces and services that do not

³ 13 December 2022 ([2022] CSOH 90; 2023 SC 61).

⁴ *For Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent)* [2025] UKSC/2024/0042 para 265

align with their sex as assigned at birth. This has been further compounded by the Equality and Human Rights Commission issuing and then withdrawing an initial ‘interim update’ that made a similar point. The EHRC has now laid formal guidance before the Government for consideration, with early media reports suggesting that the EHRC continues to advise a significant narrowing of the rights of trans people to use single-sex services in accordance with their gender identity.

Given both the decision in *FWS* and its impact in the UK, but also wider global developments in which anti-gender activism is becoming increasingly prevalent and vocal, it now seems more vital than ever for critical feminist academics to renew their attention to this area of law. The majority of the pieces in this Special Section come out of a workshop on the *FWS* decision held at the Institute of Advanced Legal Studies in London in June 2025. As academics working in this field, we envisage this Special Section as contributing to important discussions about the scope and potential effects of the decisions, as well as to future legal and policy developments. Given the wide-ranging impact of the *FWS* decision and the media attention it has received, we believe that producing academic responses in a more widely accessible format is particularly important. Traditionally, academic publishing has struggled to offer accessibility because access to published works in academic journals often requires institutional connection to a university that can afford to pay journal subscription fees. Access has also been marred by temporality, in the sense that the nature of publishing frequently creates long delays between crucial events and the availability of relevant materials, meaning that early responses to judgments and legal developments, responses which could in themselves help shape future directions, only appear long after issues have arisen and been settled through other means. This Special Section aims to offer timely engagement with the regulation of sex and gender and the decision of *FWS* from a range of different perspectives, in order to air and communicate expert insights from a range of legal perspectives, and it will be supplemented with expert feminist insights on an ongoing basis for as long as necessary. We are grateful to all the contributors for their insights and for their cheerful and thoughtful responses to our editorial feedback.

This launch edition comprises the first set of responses we have received. It includes a reflection on legal status more broadly by Alan Brown, a discussion of the concept of ‘sex’ in the jurisprudence of England and Wales by Joanne Conaghan and Katie Cruz, an analysis of the role

and significance of history by Caroline Derry, a focus on the feminist legal history in which *FWS* sits by Rosemary Hunter, a spotlight on the role of EU law by Jule Mulder, an engagement with the possible ramifications for sports law by Seema Patel, a call for better understanding of the biological complexity of sex by Mitch Travis and Fae Garland, looking for hope in para 267 of the *FWS* judgment by Mihika Poddar, and finally a challenge to the overreliance on ‘predictability’ as a positive legal value by Aleardo Zanghellini. We will update the information in this editorial as further contributions are submitted.