
***For Women Scotland* [2025] UKSC 16, [2025] 2 WLR 879: ‘Paper Certificates’, Gender Recognition Certificates and Other Legal Documents**

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This blog considers the language used by the Supreme Court in [*For Women Scotland v the Scottish Ministers*](#) to describe Gender Recognition Certificates (‘GRCs’) – focusing on the specific phrase ‘paper certificate’. My argument is that this judicial language has potentially troubling implications for other legal statuses that are changed through certification or court order. The Gender Recognition Act 2004 (‘[GRA 2004](#)’) allows for a GRC to be issued if the statutory requirements are fulfilled – changing the legal statuses of sex and gender for the holder of the GRC.¹ However, that change of status is subject to the exceptions contained within the GRA 2004 itself² and other statutory provisions;³ as was illustrated by the judgment in *For Women Scotland* in relation to the Equality Act 2010 (‘[EA 2010](#)’). Family law contains several orders and mechanisms that change other legal statuses. In Scotland, the Adoption and Children (Scotland) Act 2007 (‘[AC\(S\)A 2007](#)’),⁴ and in England, the Adoption and Children Act 2002 (‘[ACA 2002](#)’),⁵ allow the court to grant an adoption order changing the legal status of parenthood.⁶ Section 54 and 54A of the Human Fertilisation and Embryology Act 2008 (‘[HFEA 2008](#)’) allows the court to grant ‘parental orders’ – only available to children born through surrogacy arrangements – which similarly change the legal status of parenthood. Moreover, marriage certificates, civil partnership certificates and divorce and dissolution orders all change legal status concerning adult relationships. Therefore, GRCs, adoption orders, parental orders, marriage certificates and divorce orders all change legal status. Each of these orders is governed by statute, and all have specific conditions and requirements that must be met in order to be granted.

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¹ [s.9\(1\) GRA 2004](#).

² [s.9\(2\)](#) and [s.12-s.21 GRA 2004](#).

³ [s.9\(3\) GRA 2004](#).

⁴ The Scottish legislation is briefly mentioned in [*For Women Scotland*](#) [2025] UKSC 16, [2025] 2 WLR 879, [95].

⁵ [s.67\(1\) ACA 2002](#).

⁶ [s.40\(1\) AC\(S\)A 2007](#).

The decision in *For Women Scotland* is not about legal parenthood, adoption, or surrogacy arrangements, nor is it about adult personal relationships formation and dissolution. It is a decision about equality law, rather than family law, but that does not mean that the judgment, its reasoning and its language will not have wider implications. Indeed, in its examination of the effects and scope of a GRC, the judgment considers and implicates legal certification. Thus, in this blog, I am going to consider how the judgment's language concerning GRCs is noteworthy for what I argue that language implies concerning other legal certificates and orders which give effect to a change of legal status. It is important to acknowledge that there are similarities and differences between the legal statuses mentioned above – both the nature of the legal statuses themselves, but also the statutory language and wider statutory context.⁷ Finally, the nature of this format necessitates that my thoughts, comments and arguments are initial and provisional, but nonetheless, hopefully interesting.

With that said, as well as entirely unexceptional references to 'GRC(s)' throughout,⁸ the judgment in *For Women Scotland* uses the phrase 'paper certificate' to refer to a GRC on three occasions,⁹ the phrase '(confidential) certificate' – including the brackets – on two other occasions,¹⁰ and separately states: '[p]eople are not sexually oriented towards those in possession of a certificate.'¹¹ I think that this language – particularly 'paper certificate' – is worth dwelling upon for three (related) reasons. First, and without wishing to seem flippant, I am unconvinced that the material that the certificate is made out of is relevant to its legal significance. Despite this, the Supreme Court judgment chooses to use this specific language on three occasions. I do not think that it is controversial to suggest that the words used by Supreme Court judgments matter. Second, relatedly, to me there is something quite surprising, and quite jarring, about the way in which this judicial language seeks to diminish the significance of a legal document. I do not deny that many people view and understand certain concepts differently from how they are defined as legal statuses

⁷ More details and forensic consideration of these differences and their impact is not possible given the length constraints of this format.

⁸ The abbreviation GRC is used two hundred times in the judgment.

⁹ [For Women Scotland](#), above n 4, [200], [202] and [235].

¹⁰ *ibid*, [173] and [203].

¹¹ *ibid*, [204].

– as well as sex and gender, both parenthood and marriage can fall into this category. However, it is unusual and striking for a Supreme Court judgment to use language which appears to evoke these ideas. Third, building upon these points, as a legal certificate a GRC is not distinct from other legal documents – birth certificates, marriage certificates, civil partnership certificates, death certificates, divorces, dissolutions, parental orders and adoption orders are all printed on paper, as for that matter are all court orders, but it would be surprising to find a court judgment feel it necessary to draw attention to that fact in any of those other contexts. As such, and assuming that the words of a Supreme Court judgment have been chosen with care, the reference to ‘paper certificate’ is noteworthy, as it appears an attempt to contrast this ‘paper’ form with the ‘reality’ of ‘biological sex’ that underpins the judgment’s reasoning and conclusions concerning the definition of ‘sex’ within the EA 2010.

However, across different contexts, legal statuses are not necessarily determined by ‘biological’ or ‘factual’ reality, and it is striking to see the Supreme Court deploy language that could be understood as diminishing the significance of ‘paper certificates’ (or indeed ‘paper orders’) when they diverge from an underlying ‘reality’ more generally. To illustrate this, I will briefly consider adoption, the status of legal parenthood, and marriage. The nature of adoption – where the status of legal parenthood is transferred from the ‘natural’/‘birth’ parents to the adoptive parents by the court through the adoption order – is clearly a context where the legal status explicitly and deliberately diverges from the ‘biological’ and the ‘natural’. More widely, legal parenthood is determined based upon a variety of factors – including, gestation, genetics, consent and the potential parents’ relationship status – depending upon the factual and reproductive context, with biological and genetic parenthood treated differently across those contexts.¹² The status of legal parenthood illustrates the complexity of the relationship between legal status and ‘factual reality’. Separately, there are circumstances in which couples will consider themselves to be (religiously) married without possessing the legal status of marriage, either because the statutory requirements

¹² See further Elizabeth Chloe Romanis and Alan Brown, ‘[Legal Parenthood, Novel Reproductive Practices, and the Disruption of Reproductive Biosex](#)’ (2025) 88(1) *Modern Law Review* 155, 160-166, and Alan Brown, ‘[Trans \(Legal\) Parenthood and the Gender of Legal Parenthood](#)’ 44(1) *Legal Studies* 168, 170-173.

for marriage have not been met by their ceremony,¹³ or because a valid divorce has been obtained by one party, without that divorce being recognised religiously. Thus, such religiously celebrated marriages provide an example of legal status diverging from an alternative social understanding of the underlying concept. My point is that in relation to these other legal statuses, it is the legal understanding – what Eekelaar described as the ‘legal truth’¹⁴ – and not the ‘natural’, ‘social’, ‘genetic’ or ‘biological’ understanding of the underlying concept that is the focus of the law. Put simply, my argument is that the language of the judgment in *For Women Scotland* is surprising for the manner in which it suggests something different about the legal statuses of sex and gender, where the underlying ‘biological reality’ is given more substantive significance, and how that language does not necessarily appear restricted to a particular type of ‘paper certificate’.

To conclude, I have always been of the view that judicial language is important, regardless of whether that language forms part of the *ratio decidendi* of a judicial decision. In this blog, I have suggested that the references to ‘paper certificates’ in *For Women Scotland* provide an example of the significance of judicial language. This is because of the way that the language of ‘paper certificates’ seeks to diminish the importance of a legal document which gives effect to a change of legal status, when that document diverges from an understanding of a separate ‘biological reality’. Finally, the implications of that language for the judicial understanding of other such certificates, and court orders, which similarly give effect to a change of legal status is both unclear and troubling.

¹³ This could occur in English law because the requirement that the marriage must take place in a ‘registered building’, [s.41\(1\) Marriage Act 1949](#), has not been complied with, or in Scots law and English law because the nature of the wedding ceremony does not comply with the requirements of ‘two or more witnesses’ in addition to the celebrant, [s.44\(2\) Marriage Act 1949](#) and s.15(1) [Marriage \(Scotland\) Act 1977](#).

¹⁴ John Eekelaar ‘[The Law, Gender and Truth](#)’ (2020) 20(4) *Human Rights Law Review* 797, 798.
