



Equality Hub

Rt Hon Kemi Badenoch MP
Minister for Women and Equalities
Secretary of State for Business and Trade
Sanctuary Buildings
Great Smith Street
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Baroness Kishwer Falkner

By email at: kishwer.falkner@equalityhumanrights.com

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Dear Kishwer,

Clarifying the definition of sex for the effective operation of the Equality Act 2010

In our meeting on 12 January, we discussed the increasing contestation of how the term sex is understood in law and in practice. Recent cases in both the English and Scottish Courts, such as *Fair Play for Women Ltd. v UK Statistics Authority [2021] EWHC 940* and *For Women Scotland Ltd [2022] CSOH 90*, have raised legitimate questions about the definition of sex in the Equality Act 2010.

Further, the Scottish Parliament's passing of the Gender Recognition Reform (Scotland) Bill, and subsequent Order made by the Secretary of State for Scotland under section 35 of the Scotland Act 1998, and the related discussions have led to questions being raised about the operation of the Equality Act 2010.

Among these is the consideration about whether the definition of 'sex' is sufficiently clear and strikes the appropriate balance of interests between different protected characteristics. The Women and Equalities Select Committee discussed this in a recent evidence taking session and the matter has been the subject of a petition to Parliament advocating an update to the Equality Act to make clear that the characteristic of 'sex' refers to 'biological sex'.

As the independent regulator, under Section 11 of the Equality Act 2006, the Equality and Human Rights Commission has a duty to monitor the effectiveness of the equality and human rights enactments, and under sub-section 11(2)(a)-(c)) the power to advise government about the effectiveness of the current law and the likely effect of any proposed change of law, as well as to recommend amendments to existing legislation.

On this basis, and mindful of the need to appropriately balance rights to gain clarity in what is a technical and contested area of law, I would like your considered advice of the benefits or otherwise of an amendment to the 2010 Act on the current definition of 'sex', along with any connected or consequential enactments, bearing in mind the advantages and disadvantages that such a change might entail for affected groups.

Yours sincerely,

The Rt Hon Kemi Badenoch MP
Minister for Women and Equalities