

## Gender Recognition Bill

*HC Deb 23 February 2004 vol 418 cc48-108*

*Order for Second Reading read*

*5.4 pm*

*The Parliamentary Under-Secretary of State for Constitutional Affairs (Mr. David Lammy)* I beg to move, That the Bill be now read a Second time.

The Department for Constitutional Affairs was created in June last year to spearhead across government a coherent programme of constitutional reform. This programme is designed to improve the credibility and effectiveness of our constitutional arrangements, engage citizens in decision making and enhance trust in our public institutions.

The Bill is part of the Government's commitment to reforming the constitution so that it better meets the needs of all people. It reflects, too, our commitment to social inclusion. Transsexual people are a small and vulnerable minority in our society and the Bill addresses one of the key problems that they face. It is essential that no one is left behind as we create the conditions for a credible and effective modern democracy.

There is a strong tradition of legislation in this country that has sought to respond to the concerns and needs of minority groups—whether they have been ethnic minorities, people who are disabled or, with this Bill, transsexual people. As you know, Madam Deputy Speaker, the Government intend to introduce legislation this Session that will enable same-sex partners to acquire a legal status for their relationships. I believe that the reformist tradition behind such measures is one that the country can be proud of. We, as a Government, are committed to continuing that tradition.

The Bill provides transsexual people with the opportunity to gain the rights and responsibilities appropriate to the gender in which they are now living. At present, transsexual people live in a state of limbo. Their birth gender determines their legal status.

*Kali Mountford (Colne Valley) (Lab)* My hon. Friend has now referred at least twice to transsexual people and once to gender dysphoria. Will he clarify whether the definition, for the purposes of this Bill, includes people who were born with ambiguous genitalia and whose proper gender could not be identified at birth, or does it cover only people who are identified by the medical profession as having gender dysphoria?

*Mr. Lammy* I know that my hon. Friend has taken a keen interest in these issues. The Bill does not specifically deal with people who are born with ambiguous genitalia. They are, of course, already able to re-register their birth certificates with the general registrar after having the appropriate medical assessment. The Bill deals specifically with people with gender dysphoria who present themselves as having acquired a new gender because they are driven to that by the medical condition surrounding gender dysphoria. I shall come to that point, but I am grateful to my hon. Friend for raising it.

The Bill provides transsexual people with the opportunity to gain the rights and responsibilities appropriate to the gender in which they are now living.

*Mr. Frank Field (Birkenhead) (Lab)* We will be discussing the [Pensions Bill](#) next week, and although my hon. Friend may not be able to reply to this point now I hope that he will consider it before this Bill reaches Report. He is stressing the rights and duties of transsexual people, but we must also consider the rights of the people who were their partners.

Will he therefore consider carefully what might happen to the pension rights of women who, under the Bill, may lose not only their rights to the company pensions that they expected as partners or perhaps as widows, but their national insurance pension rights?

*Mr. Lammy* I know that my right hon. Friend has much experience of this issue, and I inform him that we are examining pension arrangements closely. He will understand that many of those arrangements relate to the pension arrangements for same-sex couples, and we will introduce our civil partnership legislation in that regard. We are considering the matter closely, and I suspect that there will be much debate about it in Committee.

*Mr. Field* The question of pensions for same-sex partnerships will be about extending pension rights. However, the concern of some wives in this situation is that they will lose pension rights.

*Mr. Lammy* In a sense, the issue of people in same-sex relationships has arisen in the same context, and I have certainly received correspondence from transsexual people who will find themselves in same-sex relationships. I accept the point that my right hon. Friend makes, and I am sure that we will look closely at this complex issue in our debates in Committee and on Report.

*Mrs. Gwyneth Dunwoody (Crewe and Nantwich) (Lab)* My hon. Friend is being very tolerant in giving way. This issue is very important, because a decision officially to change a gender could wipe out the entitlement of a previous wife and family, who were not involved in the decision in any way, through no fault of their own. That is very unfair and will have a direct impact on many people's lives.

*Mr. Lammy* Of course, there is choice—the Government are not requiring transsexual people to apply for a gender recognition certificate. They will look at the choices available to them, and different pension companies will take a view on these matters. But my hon. Friend is right: some very important pension issues arise. We are looking at them closely, both for same-sex couples and for existing couples who will be in opposite sex relationships.

*Sir Patrick Cormack (South Staffordshire) (Con)* rose—

*Mr. John Bercow (Buckingham) (Con)* Will the hon. Gentleman give way?

*Mr. Lammy* No, I shall make progress, if I may.

At the moment, transsexual people live in a state of limbo. Their birth gender determines their legal status, even though they may have lived fully in the opposite gender for many years.

*Sir Patrick Cormack* rose—

*Mr. Bercow* Will the hon. Gentleman give way?

*Mr. Lammy* If I may, I shall make some progress. [Interruption.]

*Madam Deputy Speaker (Sylvia Heal)* Order. The hon. Gentleman will indicate when he is prepared to give way.

*Mr. Lammy* Without legal recognition of their acquired gender, transsexual people face a wide range of problems. Frankly, there may be few other matters that are quite so personal, yet because of the disjuncture between their birth gender and the gender in which they are now living, transsexual people may have to describe their gender history to complete strangers when they seek insurance or employment, or when they visit their child's school. The Gender Recognition Bill will ensure that this intensely private matter remains private.

More than that, transsexual people currently have no access to the legal rights and responsibilities of their acquired gender. Although a person may have lived as a man for many years, for example, because his legal status remains that of a woman he is entitled to marry only another man—he may not marry a woman. After a proper process of transition under medical supervision, and after the determination of the judicial panels that this Bill provides for, we think it

right that transsexual people should have access to the rights and responsibilities of the acquired gender.

*Mr. Bercow* I am grateful to the Minister for giving way. In fact, I am trying to be helpful to him. I support this Bill. It is fair-minded, it should certainly get a Second Reading and I hope that it progresses successfully through the House, but may I politely point out that it would probably help at this stage if the Minister were able—in response to the right hon. Member for Birkenhead (Mr. Field) and others who are quizzical on the point—to confirm that in advancing the rights of transsexuals, which the Bill correctly does, he will guarantee that the rights of other people who could be affected in the process will not suffer in any way? That is the only assurance that the Minister need give.

*Mr. Lammy* I think that I have said that the Bill is also a matter of choice for people when considering carefully whether they want to go forward with these matters. That is clearly a decision that transsexual people will take with their partners and think about carefully.

*Sir Patrick Cormack* Will the hon. Gentleman give way?

*Mr. Lammy* I shall make some progress, if I may.

The Bill has a long history. It has emerged from about 20 hours of scrutiny in another place and is the product of much prior thought and consultation with stakeholders—we were determined to get it right. The Government have been working on issues affecting transsexual people since 1999. The interdepartmental working group on transsexual people published its report in April 2000 and was reconvened in 2002 to resolve finally the many difficult technical issues involved in changing a person's legal status. That work led to our announcement on 13 December 2002 that legislation would be introduced, and to the publication of a draft Bill on 11 July 2003.

*Sir Patrick Cormack* I am grateful that the hon. Gentleman has at last given way. If the Government have been working on the Bill for all these years, why can he not answer clearly and unequivocally the question put by the right hon. Member for Birkenhead (Mr. Field) and the hon. Member for Crewe and Nantwich (Mrs. Dunwoody), from his side of the House, and by his sympathetic supporter, my hon. Friend the Member for Buckingham (Mr. Bercow), from this side of the House?

*Mr. Lammy* On pension rights, I said that specific issues arise for same-sex couples in civil partnerships. Specific issues arise for a person who was previously a woman and would have been required to retire at 60, but who would be required to retire at 65 after acquiring the new gender of a man. There are, quite properly, matters that a family will have to consider when deciding whether to go forward with gender recognition, which, of course, will pertain to pension rights that exist under specific policies. Those matters will properly be debated in Committee, but, if I may, I shall make more progress.

*Lynne Jones (Birmingham, Selly Oak) (Lab)* May I try to be helpful to my hon. Friend? I understand that it is the intention that if there is a marriage in which both partners wish to continue their relationship and the transsexual person wishes to have full recognition, it should be possible for the marriage to be dissolved and for a new same-sex partnership to be created in the same day. Therefore, should it not also be possible for pension rights to be transferred?

*Lammy* That is something that the Government should quite properly consider in line with the civil partnership legislation that we hope to introduce in this Session. In that sense, I do not want to prejudge the debate that we will have on that matter, but I am grateful to my hon. Friend for raising an important issue.

The draft Bill was considered by the Joint Committee on Human Rights. Although differences of opinion remain between the Committee and the Government, after a period of detailed scrutiny and receiving 47 separate submissions, it was on the whole satisfied that the Bill would bring the UK into compliance with its obligations under the European convention on human rights. I should say something about those obligations because they underline the importance of having UK legislation in this area. The European Court of Human Rights interpreted the convention, which is now a part of UK law, in the case of *Goodwin v. UK*, and its judgment stated that a system for recognising transsexual people in their acquired gender must exist and that transsexual people must be granted their rights under

article 8, the right to respect for private life, and article 12, the right to marry. The Law Lords, in the case of Bellinger, concurred with the view that transsexual people ought to have a means of marrying in their acquired gender. Their lordships stated that transsexual people do not have that right at present and that legislation would be required to ensure that they do.

The Bill proposes to provide legal recognition in the acquired gender to those transsexual people who have taken decisive steps to live fully and permanently in that gender. The effect of legal recognition will be that a transsexual person gains the legal rights and responsibilities appropriate to the acquired gender.

*Tim Loughton (East Worthing and Shoreham) (Con)* As we have not made much progress on the thorny issue of pension rights, may I ask the Minister about another practical implication of the Bill? Will prisoners be liable to apply for a gender change certificate if they started that exercise before they became prisoners? If so and they are granted a certificate, what will be the accommodation arrangements for that prisoner? Will he or she have to be moved, or is this something else that the Government need to think about but have not, as with pension rights?

*Mr. Lammy* Prisoners can apply and that person will be subject to prison arrangements for their new acquired gender. We are talking about a very small group of people and the hon. Gentleman knows that that situation would arise in limited circumstances.

*Miss Ann Widdecombe (Maidstone and The Weald) (Con)* I am grateful to the Minister for giving way; I appreciate that he is taking many interventions.

If a woman who has lived her life as a woman, has been registered at birth as a woman and has borne children decides that she wishes to change gender to become fully a man, and the birth certificate is rewritten to reflect that, who is the legal mother of those children?

*Mr. Lammy* She is the parent of those children and she has acquired a new gender, but the right hon. Lady should let me describe the terms under which the panel will make that decision.

The specific provisions are divided into three sections. The first makes provision for applications for a gender recognition certificate. The second sets out the consequences of the issue of a gender recognition certificate. The third deals with supplementary matters.

The first section sets out the criteria for application and the process by which applications will be determined. That process must be robust, credible and sustainable. That is why the Bill proposes the establishment of gender recognition panels to determine all applications. The panels will consist of legally and medically qualified members. Schedule I sets out some of the detail of the proposed practice and procedure of the panels. We will continue to work with the professional medical bodies to ensure that the panels consider only medical evidence that comes from reputable sources. We will also continue to work with groups representing the transsexual community to ensure that the process does not place undue demands on applicants.

An application for recognition in the acquired gender will be considered according to three criteria set out in clause 2. The person must have or have had gender dysphoria, the recognised medical condition that drives the transsexual person to live in the opposite gender. A person must have lived in the acquired gender throughout the preceding two years and must intend to continue to do so until death.

*Mr. Andrew Robathan (Blaby) (Con)* I have been listening with great care. I do not applaud the Bill. I think it is the most arrant nonsense. However, will the Minister explain what happens if, after someone has acquired a new gender, they decide that they wish to go back to their previous gender?

*Mr. Lammy* I am sorry that the hon. Gentleman does not support legislation that attempts to support a vulnerable group of people. However, he is right that a very small minority of people wish to return to their existing gender. The panel will be able to consider that request.

Mr. Mark Oaten (Winchester) I (LD) Does the Bill provide the opportunity for an individual to appeal against the panel's decision, and, if so, how does that work?

Mr. Lammy Individuals will have the opportunity to return to the panel six months later to request that the decision be reconsidered.

The criteria are designed to establish whether a person has taken decisive steps to live fully and permanently in their acquired gender. That must be the test for legal recognition in the acquired gender, not whether the person's physiology fully conforms to the acquired gender and not whether they "look the part". Such tests are inappropriate and inconsistent with our broader ambition to respond to the needs and concerns of a small minority group.

The Bill must also account for the situation of the relatively small number of transsexual people who are in existing marriages. After recognition in the acquired gender such couples will become same-sex couples, and marriage is of course an institution for opposite-sex couples. It has always been so, and the Government intend it to remain that way. That means that existing marriages will have to end. We acknowledge that that will have emotional and practical repercussions.

The decision to require existing marriages to end was not taken lightly. Ultimately we believe that these same-sex couples should be treated in the same way as other same-sex couples and should therefore have access to the civil partnerships that the Government propose to make available for same-sex couples, but marriage should remain an institution for opposite-sex couples.

Angela Watkinson (Upminster)(Con) I thank the Minister for giving way; he has taken an inordinately large number of interventions. The explanatory notes say that if somebody who is married acquires a new gender and an interim gender recognition certification, the marriage is voidable, but they also state: "Proceedings for dissolution on this basis must be begun within six months of the issue of the interim certificate." Does that mean that after the six months have elapsed the spouse loses the right to have the marriage voided on those grounds?

Mr. Lammy It is our intention to make this process as swift and easy for the applicant as possible. We would like the process to take place in a day, but six months is the period within which we have mandated that that decision should be made.

Mr. David Rendel (Newbury) (LD) Will the Minister give way?

Mr. Lammy If the hon. Gentleman will forgive me, I will make some progress. I have taken a number of interventions, and if I can make progress we can then have a full debate.

In short, although the marriage will have to end, there is no impediment to the continuation of the relationship, and, should civil partnership legislation be enacted, it will be possible for the relationship to regain a legal status and for there to be mutual rights and responsibilities.

On how the marriage is to end, we are concerned to leave the individual in control of the process and to tackle the practical difficulties that ending an existing marriage may create. If a married individual applies and is successful, he or she will receive an interim gender recognition certificate, which will provide the basis, in schedule 2, for a new ground for dissolution of the marriage. On dissolving the marriage, the court will substitute a full gender recognition certificate for the interim one. In that way, the Bill proposes to avoid the situation where a married applicant first has to end his or her marriage and only then learns whether his or her application meets the criteria. The process provided in the Bill eliminates the potential for that vulnerability and allows a person to plan his or her affairs. When dissolving the marriage the court will also be able to deal with practical matters such as the sharing of pensions or making provision for children of the family.

The Government will also introduce during this Session legislation on same-sex civil partnerships. Should that legislation be enacted, a couple who have to end their marriage to allow one party to gain recognition in the acquired

gender will be able to enter into a civil partnership. After the recognition of the acquired gender, they will be a same-sex couple like any other, and will have access to the rights of a same-sex couple. The effect of that is that the couple will be able again to acquire a legal status for their relationship, with legal rights and responsibilities. We plan to make it possible for a couple to end their marriage, for the full gender recognition certificate to be issued, and for a civil partnership to be formed, all on the same day.

The second section of the Bill outlines the consequences of issuing a gender recognition certificate. The consequences are largely straightforward. The two main principles are stated in general terms in clause 9. Once a certificate has been granted, a person's gender becomes in law the acquired gender. The Bill proposes to provide transsexual people with access to the rights and responsibilities that are appropriate to their acquired gender. This change of gender is, however, prospective only—the Bill does not seek to rewrite history.

Clause 10 and schedule 3 are critically important. Following a successful application for recognition, the panel will issue a gender recognition certificate. The appropriate Registrar General, depending on whether the individual's birth was initially registered in England and Wales, Northern Ireland or Scotland, will then create a new record on the individual in the gender recognition register. A birth certificate in the new name and gender recorded on the gender recognition certificate can then be issued from the new record. The link between that new birth certificate and the original birth certificate will be confidential. I want to make one thing very clear. The original birth record will not, and should not, be erased, because it is a record of a historical fact. The original birth record will remain in existence, and any person who has the original birth details will have access to a certified copy of that record. The point of issuing a new birth certificate is to allow the transsexual person privacy by not revealing their gender history in a public document. We feel that this is a reasonable safeguard for that small group of people.

I shall mention one vital aspect of the third section of the Bill. Clause 22 prohibits the disclosure of information about a person's application for gender recognition or about a successful applicant's gender history. That information is to be protected whenever it has been acquired in an official capacity. Changing gender is a difficult process. It is difficult in terms of the person's own identity and in terms of their relationships with others. Recognising the change of gender in law will produce benefits for transsexual people. Those benefits will be undermined if there remains open access to, and open disclosure of, the fact that the person was once of the other gender.

Gender dysphoria is, after all, a medical condition whereby a person feels driven to live in the opposite gender. To be reminded of the original gender, to be regularly confronted by it, and to have others knowing that one suffers from that medical condition and to know that they might be talking about it is not conducive to feeling secure and it makes it very difficult to live in the acquired gender in dignity. We do not believe, as a Government, that we are able to, or should seek to, prevent all rumour and gossip—that would require too great an encroachment into the private sphere—but we do believe that those with access to information about a person's gender history in an official capacity should play no part in any such activity. Clause 22 seeks to achieve that.

There will be instances of the individual's previous identity being relevant. All human rights legislation should try to balance the rights of one set of individuals with the rights and interests of others. To that end, clause 22 sets out the limited circumstances in which disclosure is permissible, for example, for prevention or detection of a crime or in pursuance of a statutory duty.

I should like to add to the theme of respecting the rights and interests of third parties. Schedule 4 contains a conscience clause for ministers of the Church of England and the Church in Wales.

*Lynne Jones* I wish to take my hon. Friend back to clause 21, which covers foreign gender change and marriage. I apologise for not intervening at the appropriate time. Why is it necessary for transsexual people who have full legal recognition abroad to apply to the panel for recognition here? What would be the status of marriages that take place abroad? Would it not simply be possible to recognise countries that grant legal status and accept that status in this country, provided that we have approved the process, just as we accept a passport from another country as a valid document?

Mr. Lammy Let me say to my hon. Friend that we [Interruption.]

Madam Deputy Speaker Order. Perhaps we could hold only one debate in the Chamber.

Mr. Lammy We want to ensure that the standards in other countries are the same as those that we apply here. We also want to make sure that we do not create a position whereby people who cannot get the gender recognition certificate here apply abroad to fulfil the criteria. That is why we believe that it is right for the panel to consider applications. My hon. Friend will understand that the applications are essentially considered on the papers and that, over time, the panel will build up expertise on the criteria and standards in other countries.

Schedule 4 contains a conscience clause for ministers of the Church of England and the Church in Wales.

Donald Anderson (Swansea, East) (Lab) My hon. Friend is about to deal with the conscience clause and the exemption for the Church of England and the Church in Wales. I hope that he agrees that members of other Churches, including the free Churches, also have consciences. Will he guarantee that the proposed legislation does not mean that Churches in other denominations will experience expensive litigation because of deeply held views of conscience? My hon. Friend will know of a case in south Wales in which an individual took a free Church to court unsuccessfully under the Sex Discrimination Act 1975. It could have been liable to expensive litigation. What exemption is he prepared to give those free Churches—probably a small minority—that, because of their religious views, will not wish to accept the Bill?

Mr. Lammy The Church of England and the Church in Wales have a specific exemption because of their obligations to solemnise marriages. That does not pertain to free Churches. The Bill does not extend the law on equal rights and equal opportunities in human rights or other legislation and it therefore places no extra duties on the free Churches. Doubtless the transsexual person who applies will be minded of the understanding of the priest or clergyman of those matters.

However, it is important to make the distinction between the specific status of the Church of England and the Church in Wales, which have obligations when someone asks for a marriage to be solemnised, and that of other Churches

Donald Anderson What about the very real danger of Churches being put to expensive litigation because of activists in this field, and of being bankrupted on grounds of conscience?

Mr. Lammy That does not arise, in that the Bill does not make provisions in relation to equality in any new fields, beyond our existing arrangements. My right hon. Friend might know that when the Joint Committee on Human Rights considered the matter, there was some discussion on extending discrimination, and hon. Members might well seek to take those arguments forward later in this debate, but the Government's view is that this Bill is specifically about gender recognition. It is not about wider issues of discrimination relating to transsexual people, which might well pertain to the issue that my right hon. Friend raises and lead to new powers and legislation.

There was considerable discussion in another place of the interests of family members of applicants. We clarified that the gender recognition panels will be able to take evidence from immediate family members and that, in the case of a spouse or partner, we would expect them to do so. That will be pertinent to the criteria in the Bill.

The Bill seeks to provide transsexual people with the opportunity to enjoy the rights and responsibilities appropriate to their acquired gender, and to leave behind the vulnerable position—the limbo between two genders—that they currently have to endure. However, it also has a wider impact. It affirms the values of tolerance, inclusion and social justice that are we as a country embody, and that we as a Labour Government are committed to fostering.

Mr. Tim Boswell (Daventry) (con) I am grateful to the Minister for his attempts to explain the Bill. Given that he has run into considerable difficulty with questions from both sides of the Chamber for the past 40 minutes, it would be fair and charitable for me to say that I attribute at least some of those difficulties to the Bill's inherent complexity, rather than to any deficiency on his part. Indeed, to give a rare compliment, it is a little

5.42 pm

unusual for the present Government to take such trouble over the details of legislation.

It is possible to read the clauses, if not the schedules, with a degree of understanding, which reflects the history of the Bill's creation, including the preparatory studies of the interdepartmental working group on transsexual people—which the Minister's Department reconvened, with an extended remit, to consider the implications of the Goodwin judgment—and the wise publication of a draft Bill last summer. There were then the observations of the Joint Committee on Human Rights and the Bill's introduction in substance in another place, which led to some thorough and lively debates. I sense that those might continue in this place.

The Joint Committee and others have declared the issues complex and delicate, and I thoroughly endorse that comment and share the Committee's concern. I want to approach the subject not with political triumphalism—we saw some signs of that from the Minister—but with a degree of humility and in a spirit of honest inquiry. It seems that there is scope in this matter for the proper expert input of at least three learned professions, although of course they never agree with each other on such matters. They are theology, the law and medicine. I practise none of those, but I take advice from those who do.

We can certainly agree that Parliament now has an opportunity to tackle this matter definitively, and I believe strongly that, in the interests of everyone, we had better get it as right as is humanly possible, if not absolutely perfectly right. I should make it clear at this stage that the official Opposition will allow their Members a free vote on this issue tonight. This reflects not only the sensitivities to which I have already referred, but the clear reservations of principle that have already surfaced in debate, particularly, although not exclusively, from people of faith. I should also record that the opinions of people of faith are not unanimous. At this point, I should perhaps make it clear for the Minister's comfort that I shall support the Bill.

We often find that we learn from our constituents on these issues. I have a constituent who is a male-to-female transsexual, and who has been discussing the issues with me and briefing me on the matter over the number of years in which I have taken an interest in it. She is a former senior official, and as such is well aware of the processes of legislation. She has taught me a great deal about the problems that transsexuals face, particularly people in a situation such as hers, as she is legally married to a woman.

To borrow from a literary reference from a Roman historian, the unknown is often magnified in circumstances such as these. If people could come to terms with some of the difficulties that some of our citizens encounter, they might take a more sympathetic view—although not, as I hope to show, a completely uncritical one—of the issues.

To move from the particular to the general, I believe that I echo the spirit of the Minister's remarks when I say that Parliament has a long and entirely decent tradition of legislating to meet the deeply felt concerns of even quite small numbers of individuals about their status. That status could well be defensible under some principle of law; equally, however, it could have arisen from some long-past concern or controversy so deeply buried in history that we do not even remember why it was originally introduced. I am thinking, for example, of the intense debates that were held in this place a century ago during the passage of the Deceased Wife's Sister's Marriage Act 1907, or the minor but remarkable and commendable legislation passed half a century ago to correct the position in which foundlings had to have a special birth certificate labelled "foundling", which must have been deeply offensive to them.

Issues such as these are not generally a matter of political weight. With great respect to the 5,000 transsexual people in this country—I think that we would all wish to show that—they are extremely unlikely to turn the result of the next general election. However, that imposes a duty on us collectively to try to be as helpful to individuals as we properly may.

In this case, as the Minister has said, there is also a European dimension, and I am personally exercised that British law is harsher on transsexuals than most of its European counterparts. The Liberty submission suggested that only four other countries were equally harsh, and that only Britain and Ireland refused transsexuals any rights such as these at all. As the Minister has implied, however, the impact of the recent judgment of the European Court of Human

Rights and the Bellinger judgment in the UK must be tackled.

I should stress that we are, by definition, contemplating a change in the operation of the civil law—no more, no less. At least since Hardwicke's Marriage Act 1753, Parliament has taken an interest in matters that have a clear ecclesiastical and theological interface, such as provisions regulating marriage. That Act, as a matter of interest—this bears on some of the concerns of the faith communities—regulated the conduct of the clergy in the matter of marriage, and, I understand, imposed extremely severe penalties, up to and including capital punishment, on transgressors.

As to the theology, over which we can all pass briefly and tentatively, I hope that the Minister will appreciate it if I confine myself to the argument in the Acts of the Apostles of the wise Gamaliel, who told the Jewish council that God would ultimately be the judge of the worth of what was being done, and that, in effect, we could do no more than offer our good faith in the matter. We need to acknowledge that good faith and good will may be necessary conditions for legislating but are not necessarily sufficient. We therefore need to tackle the difficulties, too.

I genuinely accept the sincerity and intensity of views of those on the other side of the argument and of those who may wish to oppose the legislation in the Lobby. In some cases—not always—those counter arguments start with objections of intrinsic principle. For example, in the debates in another place, the Lord Bishop of Winchester referred to the biblical text, “male and female created he them”, and pointed out that that is an intrinsic part of the beliefs of Christians, Jews and Muslims alike. I note that a number of objectors in another place took sex as a given at birth. Even then, however, some genuine doubt existed as to the uniqueness of the criteria to be employed, whether the definition of sex was simply a chromosomal definition the hon. Member for Colne Valley (Kali Mountford) has mentioned the separate issue of intersex people—and in certain cases whether even the chromosomal definition could be ambiguous in determining sex. I was impressed by some of the medical comments made by learned peers on that matter. Whether or not there is or could be a precise, conclusive definition of sex, it is clear to me, modestly, that the defining characteristic of transsexuals is that they are in the real world deeply unhappy with their birth gender. That is the issue that, after due process, the Bill would change.

*Mr. Bercow* My hon. Friend is making a characteristically judicious speech. Notwithstanding his reference to the speech in the other place, may I put it to him that religion is neither the only nor an essential basis of civil obligation of just law? I further put it to him that what saddens some of us who support the principles of this Bill, and who intend to vote for it, is the way in which ghoulish images are conjured up whereby protecting the rights of a minority is somehow interpreted as a great threat to everybody else, which it is not.

*Mr. Boswell* I am grateful for my hon. Friend's comments and for his implied support for the legislation. Everybody who has a faith and a set of principles must form their own judgment. I start from the basis of saying, 'Is there a problem for individuals, our colleagues and fellow citizens? Is that something that we can address without disrupting some other basic principle that we all hold dear?' I agree with my hon. Friend to the extent that the operation of the civil law, which I have emphasised that this legislation will be part of, is binding across the whole population irrespective of their faith. An important distinction therefore exists, which we need to secure through the legislation, between the general operation of the law in relation to marriage, gender or whatever. and the specific ability of faith communities to impose their own conditions on their members.

*Mrs. Dunwoody* With the hon. Gentleman's normal inherent good sense, he is picking his way gingerly through this maze of complex situations. Does he not accept, however, that there may be a good reason to bring this Bill to the House because a genuine problem exists, even if it affects only a small number of people, but that it would be equally wrong were the House to allow flawed legislation to go ahead without considering with extraordinary care the effects on others who may be influenced and damaged by decisions taken in which they have no standing and, frequently, on which they have no influence?

*Mr. Boswell* I agree passionately with the hon. Lady's comment. It is terribly important that we do not consider this issue in a vacuum. We should not seek to solve the problems of one group of people, however intensely felt, at the expense of another group. The Government do not intend to do that, and the detailed work and consideration of

amendments that we must do in Committee, with great respect to the other place, which has looked at many of these issues including the broad sweep, is intended to ensure that the Bill does not have repercussive effects. If the hon. Lady will allow me to proceed, she will see that I am sensitive to her points.

On the general issue, it is interesting, and impressive in relation to my argument, that the chief medical officer and the bulk of medical opinion—although not all, as that is never the case—sanction the diagnosis of gender dysphoria as a real disease or condition and the provision of public funds for its treatment.

That leaves a number of serious matters to be considered, and I am anxious to make progress so that other Members can make their points. First, there is the issue of birth records. Some Members feel that we are in some way conniving at a lie in permitting the issue of a certificate recording the amended gender. It would be practically impossible, however, to permit someone to change gender in law without the conversion of that basic record, provided that the original records are maintained and can be accessed.

*Sir Patrick Cormack* Does not my hon. Friend accept, however, that we are obliging registrars to connive at an untruth, and no clause in the Bill gives them the right to object conscientiously as ministers of religion can do?

*Mr. Boswell* I am interested in my hon. Friend's comments, and what he says is true not only of registrars in relation to birth certificates but in relation to any duties that they might have as marriage registrars, and I have some thoughts about amendments on that matter. In this particularly difficult situation, however, we are entitled to consider the relief of the individual, even at the expense of parading the original and full record. That is a judgment that we must make. If we do not do it, we run the risk of continuing to treat transsexual people as second-class citizens, or as the organisation Press for Change would argue, as non-people.

*Miss Widdecombe* Please may I follow the question that has just been asked? Ministers of religion can say no, either because they have no legal obligations anyway or because they have been exempted under the conscience clauses in the Bill. Registrars, however, may not say no. Is my hon. Friend content with that?

*Mr. Boswell* I am content, provided that it is sanctioned by the law and that we have taken the decision in Parliament that if a gender recognition certificate is to be issued by a registrar—and he will know that he is issuing it—it is a different legal document from the original birth record. It is a difficulty, and my right hon. and hon. Friends are right to raise it.

*Donald Anderson* Cannot that difficulty be met by some form of clause that preserves the right of those registrars to cite conscience, and ensures that there is no termination of employment owing to the failure of a registrar to proceed with this matter?

*Mr. Boswell* This little exchange has been useful in drawing out the concerns about this issue, which is properly an issue that Members may want to raise in Committee, and I hope that the Government will have an answer. I now want to make some progress.

For married people in particular, the procedure in relation to the issue of an interim certificate, followed by its conversion to a full certificate, looks cumbersome. I am satisfied, however, that it strikes the right balance between the integrity of the original records and the new requirements of the Bill.

When we come to the specific issue of people who apply for the certificate when they are married, we come to the most difficult situation of all. We do so in support of marriage itself: I think that that principle is agreed across the Chamber. Those who take what I might call the principled view that no sex change is possible would not wish to break marriages on grounds of gender change. I ask them to reflect, however, on the fact that they would ipso facto allow—or even encourage—two persons who are legally married to continue in that legal state, if they wish to do so, although to the outside world they might for all practical purposes be living as two persons of the same gender. One would have changed gender, and they would still be married to each other.

*Angela Watkinson* I asked earlier about the six-month period during which a marriage can be voided on the basis of one partner's having changed gender. Does my hon. Friend foresee circumstances in which a partner imagined at the time that he or she could tolerate the new situation, but found after the six months that it was intolerable, and had then lost the opportunity for the marriage to be voided on those grounds?

*Mr. Boswell* I did not find the Minister's response on that entirely convincing. My own view is that it would be better to allow a longer period of reflection. Members of the transgender community have told us in briefing that they would rather not feel that a pistol was being held to their heads forcing them to make an immediate decision. I think that there is everything to be said for allowing the interim certificate to remain in force for longer. The Minister may say that it will be possible to apply for another certificate, but that seems to me unnecessarily cumbersome.

Those of us who are sympathetic to the Bill are faced with a dilemma. We could permit what is in fact a marriage between two persons of the same sex, one being transgendered, to continue in the name of marriage, although I think that in the future it would be a kind of legal fiction. Alternatively, we could force it to be annulled on the principle of not allowing same-sex marriage even when both partners genuinely wish to continue the relationship. I think it right in principle to maintain the fundamental rule that marriage is between a man and a woman. That, in my opinion, makes it essential for legislation facilitating civil partnerships to be enacted and dovetailed with this Bill in its future operation.

*Mr. Rendel* rose—

*Hugh Bayley (City of York) (Lab)* rose—

*Mr. Boswell* I will give way to the hon. Gentleman and my hon. Friend, but I must then make progress.

*Mr. Rendel* Is there not a further difficulty involving those who wish to remain married, although one has changed sex, because some entitlements—for instance, pension rights—may depend on the date on which the partnership began? If two partners have been forced apart and then reunite by means of a civil partnership, there may be a considerable effect on pension rights.

*Mr. Boswell* Indeed. The issue is set out exhaustively in the schedule, and I have a feeling that we shall need to deal with a number of such matters in Committee.

I now give way to a former social security Minister.

*Hugh Bayley* I may discuss some of the pension issues if I catch your eye later, Mr. Deputy Speaker.

The Joint Committee on Human Rights examined these matters closely, and recommended that existing marriages should not have to end for a full and final gender recognition certificate to be issued. Does the hon. Gentleman, speaking for the Opposition, agree with the Committee?

*Mr. Boswell* With huge respect, I must point out that I am speaking for the Opposition, and that I have made it clear that this is a free-vote issue for my party; but personally, on this particular matter, I agree with the Government on the logic of pursuing what I consider the overriding principle of marriage being between persons of different genders, and only that. This does, however, give rise to the need to dovetail with the arrangements for civil partnerships.

Beyond these issues of deep principle are many practical concerns. First, will the Bill work as it is intended to, in the interests of transgendered people? Aspects of that question have already been discussed. Secondly, will it have knock-on effects on aspects of our law or practice that could have unintended consequences, or damage the interests of other people? Thirdly, while most people benefiting from the Bill will be content to take its changes in their legal status quietly and without fuss—I do not ask for their generosity, because I think they have been badly treated over the years, but they may well bank the changes and be glad that at last Parliament has acknowledged their existence—is there a danger that someone will seek to make a point by flaunting exaggerated behaviour? That might have consequences in terms of the way in which people behave in public places, for instance.

Perhaps more subtly, is there a danger that test cases may be triggered? That worried the right hon. Member for Swansea, East (Donald Anderson). Cases involving, say, equality of employment law could embarrass members of the population, or a section of it such as a faith community, who have certain views that are deeply and honestly held. The Evangelical Alliance, like any decent group, signals to its members the importance of tolerating and accepting individual transsexual people, but is reluctant to accept the concept of the Bill, fearing that its ministers may be placed in an unacceptable position.

Many of the issues—both practical issues involving such things as sport, and issues of principle—were well rehearsed in another place. I pay tribute to those who tackled them there, notably some of my noble Friends. We should bear in mind, however, that in this instance ours is the revising Chamber. I assure Ministers that, although I support the Bill in principle, I am determined to probe and seek further assurances in Committee.

This is a Bill about the legal status of transgender people; it is in no sense about the general conduct of those or any other individuals, let alone about individual sexual behaviour. Let us dismiss that idea immediately. If the Bill is to help such people, it must not strain its acceptability to those who come into contact with them, or are more closely related to them—their families, or faith or other interest groups. Nor must it have repercussions for cherished general principles, notably the integrity of marriage. Anything that we do in Committee or thereafter must be aimed at balancing those principles, and anything that we say should take account of the sensitivities of all involved, even if the issues are really challenging.

I suspect that, left to themselves, the Government might have been content to let the issue lie, but the European judgment has compelled them to act. In any event, I personally believe that it is right to do so now, and to remedy a long-held and deep sense of injustice among a small number of our blameless citizens. It will not be a painless process, and others may in good conscience reject it; but I believe that today we can make a belated start.

*6.8 pm*

*Lynne Jones (Birmingham, Selly Oak) (Lab)* This is a big day for me: we are about to approve legislation for which I have campaigned for more than 10 years. The Parliamentary Forum on Transsexualism was established 10 years ago almost to the day, in February 1994, with the support of members of both main political parties. I pay tribute to the former Conservative Member of Parliament for Chislehurst, Roger Sims, and the former Member for Montgomery, Alex Carlile, who is now in the other place and who has participated actively in the Bill's progress there. We set up the forum to campaign for civil rights for transsexual people who were being subjected to appalling discrimination and anxiety.

This issue first came to my attention in 1993. Like the hon. Member for Daventry (Mr. Boswell), I became involved largely through learning of the personal experience of constituents and, subsequently, other transsexual people with whom I came into contact over the years.

The transwoman who came to see me was so nervous about seeing a Member of Parliament and admitting that she had transitioned from male to female that she sent her male partner to suss me out first, to see whether her secret, as she saw it, would be safe with me. I had not thought about that issue before, and very much had the idea that people who went through this mutilating process must be disordered or seeking sexual gratification. I had not given it much thought, but as I came to meet people and talk to them, I learned more about the syndrome and realised that it was not a matter over which people had control. It was not a choice: they were living in the wrong body, and their brain identity was different from their chromosomal and genitalia identity—although sometimes there are further complexities.

*Andrew Selous (South-West Bedfordshire) (Con)* I am listening to the hon. Lady with great interest. I accept that there are some physiological factors, but what does she say, in relation to the question of choice, about those people—I gather it may be up to 25 per cent. —who subsequently change back to their original gender, or wish to do so?

*Lynne Jones* Not 25 per cent.

*Andrew Selous* Let us not argue about the percentage; unequivocally, there are some people who change back, which seems to belie the hon. Lady's argument that there is no choice involved

*Lynne Jones* Such cases are extremely rare, and 95 per cent. of transitions are very successful. It is a recognised, successful medical procedure for a recognised medical condition. There is evidence that the aetiology of the condition is that, in the uterus, the foetus is subjected to abnormal hormonal influence, so that the brain develops in the opposite sex to the gonads and the chromosomes. Lord Winston talked about chromosomes varying, as in Turner's syndrome and other syndromes. People can also be mosaic, with some female cells and some cells with Y chromosomes. It is a complex matter, but in the majority of cases gender reassignment is a very successful medical procedure, and the majority of people who go through it subsequently live a much happier and more successful life.

The Bill is about recognising that, after transition, people are in what they see as their correct gender. It gives them full civil rights so that, although they can still be discriminated against in terms of the supply of goods and services, and other matter that I hope the Government will legislate on later, their correct gender is recognised under the law, allowing them to have a new birth certificate and to marry and enjoy all the rights of other members of their sex.

*Sir Patrick Cormack* I do not for a moment question the hon. Lady's sincerity, but will she accept, as it is on the record, that a very large percentage of these people undergo no physical changes or surgery, and remain physically exactly what they are, male or female?

*Lynne Jones* Again, I would dispute that. The majority of transsexual people want to undergo a medical process that will leave them physically as congruent as possible with their gender identity. This has nothing to do with sexuality. Exactly like other people, transmen and women can be straight, lesbian or gay. The condition is not associated with a particular form of sexuality: indeed, many such people have a lower libido, often as a result of the medical treatment that they have to undergo.

On occasions, for medical reasons, it is not possible for people to have the full transition. There have been great medical advances, and treatment is much more sophisticated than it used to be. In the past, men in particular could not always have a new penis constructed. There was the famous case of Mark Rees, who for many years identified himself as and was a man, but did not have a penis, and who later, as the techniques developed, underwent the surgery. There was an interesting and moving television documentary about his experiences.

It is true, however, that the Bill does not require there to have been surgery but requires the individual to demonstrate that they have lived in that role for two years. There are good reasons for that. It may not always be medically possible for people to have the full reassignment surgery, but in my experience, the majority of transsexual people want to undergo the full transition.

The constituent who came to see me lived in great anxiety about being asked to show her birth certificate. She was worried about employment and told me that she had had to forgo promotion because of her unwillingness to show the certificate. She could not marry her partner. Unfortunately, she had also been raped, and at that time it was not recognised that a transsexual woman could be raped, but I am pleased to say that that was put right in the Sexual Offences Act 2004. It was her experience that led me to take an interest in this issue. She was unwilling to be public about her situation, but I am pleased that she put me in touch with many members of the trans community who, extremely bravely, were willing to come out as having undergone reassignment.

I pay particular tribute to those people, who did a very difficult thing. Their bravery has, in many ways, been responsible for the sea change in public opinion that has happened over the past 10 or 11 years. We organised our first fringe meetings at the party conferences in 1995. I pay tribute in particular to Christine Burns, who is vice-president of Press for Change, because she spoke at fringe meetings at the Conservative party conference, as she was an active member of the Conservative party at that time.

When we had the first fringe meeting at the Labour conference, I remember being in the lift with two journalists who had come to witness what they thought would be a freak show. The remarks that I overheard them making were, frankly, disgraceful. We still see evidence of such attitudes in some articles in the press, but I am pleased to say that that is slowly changing. It was wonderful to see the faces of those two female journalists drop when they saw the person who was there to talk about her experience as a transsexual.

Roger Sims talked about this in 1996 in the discussion of Alex Carlile's Gender Identity (Registration and Civil Status) Bill, a private Member's Bill that did not get very far in the House. He said that he had attended a fringe meeting organised by a lady representative, who was branch chairman and typical of the ladies whom many of my hon. Friends know in their constituencies—yet her birth certificate showed her as a man, so she could not legally marry. He went on to describe how he, too, was impressed by the way in which Christine Burns spoke about her experiences. I am sure that, if hon. Members who have doubts about the legislation met some of the wonderful people who have campaigned through organisations such as Press for Change and others—I single out the Gender Identity Research and Education Society—they would realise how important the Bill is to them.

The Bill is not about discriminating against other people. We all want to ensure that others do not suffer. Many transsexual people continue with their relationship in marriage, but in many cases the marriages end when someone undergoes a gender reassignment. It is a very difficult issue, which will arise again in Committee.

I welcome the changes in the other place, particularly on the establishment of a fast-track process for those who have lived in role for six years or more. Initially, that was to be allowed only for the first six months after the Bill's enactment. It will now be extended to two years, which I welcome. I should also like to highlight the fact that, in the draft Bill, there was no expiry date on the interim gender recognition certificate, and I wonder why the Government subsequently imposed the six-month time limit. Will the Minister explain in his winding-up speech why it is necessary to have such a time limit?

This is a good Bill, and it will mean a lot to a very small number of people. I greatly hope that it will have a fair wind in the House and that transsexual people will soon be able to enjoy the legal recognition that they deserve.

*Mr. Mark Oaten (Winchester) (LD)* I am pleased to have the opportunity to say a few words about the Bill. I profess straight away that I do not claim to be an expert on the issues, but I have listened carefully to the remarks of the Government and Opposition Front Benchers and of the hon. Member for Birmingham, Selly Oak (Lynne Jones), and I have been taken by the degree of consensus on the matter. The Liberal Democrats certainly want to give the Bill a fair hearing and we hope that it proceeds to its next parliamentary stages. 6.22 pm

I say that in acknowledgement of the fact that there are real concerns, particularly on the part of those holding strong religious beliefs, who struggle with the matter and have serious difficulties with the Bill. I read with interest the contribution of the Bishop of Winchester, whom I know well, in the other place. There comes a point, frankly, where one can argue as much as one likes, but people simply have to agree to differ on some of the issues because they are approached from a wholly different perspective. Little can be gained from getting into endless arguments on narrow points, when there are fundamental differences.

We support the measures in the Bill, largely because of the tradition in the House whereby we eventually—perhaps not as fast as some would like—catch up with social changes and reflect how society is moving. Sometimes we are ahead; other times we lag behind. On this particular issue, we have lagged behind, but it is a tradition, as I said, that the House acknowledges what is happening in the real world outside of both Houses. There is also an important tradition whereby we do all we can to protect minorities out there, many of whom are persecuted because of their position or beliefs. As ever, we politicians should protect those people's rights. The Bill recognises that we needed to catch up and put those rights in place. It is important to recognise that transsexuals have rights and I hope that, as the Bill proceeds, we are also aware, as other hon. Members have said, of the impact that conferring them could have on other individuals' rights.

Mr. Rendel Does my hon. Friend accept that those who have undergone the process are almost unanimously in favour of the Bill? I have a letter from the chair of the Gender Trust—the largest organisation working for transsexual and transgender people. She urged me “to support this Bill on behalf of transsexual people in general.. The Bill meets our needs and is vital in allowing transsexual people to integrate fully within society rather than forever remaining on the fringe attempting to live a 'stealth' existence.”

Mr. Oaten I certainly agree with that point and I congratulate those transsexuals, including some of my hon. Friend's constituents, who have persistently raised the issues in Parliament. The hon. Member for Birmingham, Selly Oak spoke about her constituents and people who have not been able to talk as openly as they would have liked about the issues. They will welcome our sensible and mature debate in Parliament today.

The process of arriving at the present position was partly set by European legislation, which was once again ahead of us. We have had rulings from the European Court of Human Rights, but we have also had valuable pre-scrutiny in the work of the other place and of the Joint Committee on Human Rights, so no one can accuse us of rushing to this particular stage. Many of the issues have been thoroughly examined.

The Bill has resolved several problems. The first, mentioned in the other place and in our earlier debate, is what I describe from a layman's view as the car insurance point. By that I mean the ridiculous circumstances under which someone who has changed sex can phone up and ask for car insurance under a woman's name—there is nothing wrong with that—but if an accident were to happen and a claim were made, that person would, as I understand it, be committing fraud on the basis that the person is really a male. That is daft, silly nonsense and it is the sort of problem that the Bill will help to sort out. We should all welcome that.

I also welcome the Government's clear commitment to putting in place a new birth certificate. It is another sensible, practical measure for someone to have a piece of paper that is requisite for many forms of legal documentation, which does not cause awkwardness or embarrassment.

Sir Patrick Cormack The hon. Gentleman is a fair-minded man and recognises that some of us are not lacking in sympathy for this small group of people, but do not believe that the Bill is right. I accept that the Bill will be passed, but does he accept that it is important to build in a conscience clause for registrars and others who find it offensive to take part in what they would view, frankly, as issuing fraudulent documents?

Mr. Oaten My inclination is to agree because I respect the hon. Gentleman's views, but I have to say that I cannot agree on this occasion, because the job of a registrar is to implement the law. If we were to allow some form of waiver on this particular issue, on what other laws would a registrar be allowed the same thing? Although I could be persuaded that conscience opt-outs are appropriate in some circumstances, I could not accept that in respect of an individual whose job is to manage and register the law. I could not therefore agree with the hon. Gentleman on that point.

The Bill also deals with access to pensions and benefits, and I believe that some of the measures will usefully tackle current problems. It is also important that individuals will have a right to marry under the new gender, which is wholly sensible and right

Rev. Martin Smyth (Belfast, South) (UUP). On that point, have I been misinformed that under case law, a person could be divorced on the grounds that a marriage was void because the person was transsexual?

Mr. Oaten I am sorry, but I did not quite understand the point of the hon. Gentleman's intervention. Perhaps I shall be able to answer it by moving on to my next point, which deals with the issue of how marriages currently stand. There is a problem there, and the Government have not moved far enough to deal with it. I hope that the Minister will reconsider the matter and not be so rigid about what happens to the tiny number of individuals—no more perhaps than 150 or 200—currently living in a marriage, who have undergone gender reassignment but want to continue to be married.

I am not being pre-judgmental, but it strikes me that for a marriage to be able to survive in those circumstances, and for people to stay together, there must be an incredibly strong bond between them. Given that bond, that love and that affection—there may even be children involved—if everybody is comfortable and happy with the situation, there must be a way round the problem. The Government must be able to allow the marriage to continue. We are talking about a very small number of people, and we do not wish to create difficulty, tension and unhappiness where none existed.

Even if it were not for that moral issue, I would still argue that there is a practical issue, which several hon. Members have raised—pension rights. Obviously, the ability to draw down a pension in such a partnership is dependent on whether, at a particular point, a marriage existed. If we require marriages to be dissolved, we could be jeopardising pension rights, so I hope that the Government will reconsider the issue.

*Peter Bottomley (Worthing, West) (Con)* Is not the way forward to accept that, except in cases of bigamy, which we are not discussing at the moment, marriages will not be put asunder in a civil sense unless someone applies for them to be ended in one way or another, or made void? Perhaps the Government could accept that without such an initiative, people could continue as they were.

*Mr. Oaten* Whether that would be legal is a complex and tricky question, and I would also have concerns about who might apply for the marriage to be broken up. It might be a way forward—but I am sure that when the detail is discussed in Committee, the issue will be revisited by Members who want to ensure that we get the balance right. When the Government get round to introducing the welcome legislation on civil partnerships, that may resolve some of the issues, but for the sake of those 150 or 200 people, I hope that they will think again now.

I welcome the provisions on privacy, and the fact that the Minister said that he was concerned to ensure that in the context of documentation and birth certificates, an individual's privacy would be protected as much as possible. He also said, however, that despite that desire for some form of privacy, we would need to ensure that police records were maintained. That is important. Either now or in Committee, will the Minister tell us how far that provision will be extended?

I am thinking in particular of access to such material through the Criminal Records Bureau, an organisation not known for the effectiveness of its operations. I would like to know at what level the information will be made available. For example, if an individual is likely to be employed in a school, or as a care worker, some sensitive issues will be raised. There will be information that could be made available, and some difficult judgments will have to be made about what information to release to a school governor or a head teacher—information that would completely take away someone's privacy. Will the school governing body suddenly have to judge whether it feels that gender recognition is an issue for it to deal with?

I would want to be very clear about where information will be passed on. I understand the need to have it in police records, but if it became available through the Criminal Records Bureau, it could suddenly become widely known. We should be very careful about how it might be used.

*Mr. Bercow* I am grateful to the hon. Gentleman, who is making a typically decent speech on this subject, for giving way to me. It follows, does it not, that where improper disclosure takes place, any redress that may be secured will necessarily be after the event? It will be retrospective, and therefore rather modest compensation for the wrong done. Does the hon. Gentleman therefore agree that the question is not merely the level at which information is disclosed or exchanged, but the number of people in an organisation who should ever have access to it?

*Mr. Oaten* I entirely agree. The way in which information is passed on means that it will become available to many more people. In the climate of concern that currently surrounds many such appointments, one individual may feel unable to take a decision alone and may wish to share the responsibility with a wider group, for fear of getting it wrong. There is a real problem, which we need to look at as the Bill proceeds.

I want to know how the panel will make its decisions. I intervened on the Minister earlier, but may I ask him again to

consider the process of appeal carefully? I understand that at the moment the right of appeal will not come in for six months, but I hope that whoever winds up the debate will give more information about the way in which the Government envisage the appeal process working, and on what grounds an appeal could be based. Would those be purely issues of law or fact, or would somebody be able to put a stronger case and try to strengthen the arguments with which they had originally failed to convince the panel? I would be worried if an appeal could be based only on a point of law, because someone might want to try again to put across an emotional case to the panel.

On a more sensitive and perhaps complex issue, there is some concern—to be honest, even I, as someone who supports the Bill, share that concern—about the need for clarity about whether a medical procedure has taken place. As I understand it, one of the arguments that has to be put to the panel, and which the panel has to consider, is whether a surgical procedure has taken place—but I think that the panel can also consider whether it is someone's intention to undergo a surgical procedure in future.

I confess that I have not read the Bill in great detail, and I would like to know whether the timing is crucial. The panel's decision could be taken on the assumption that a surgical procedure will take place. Would the certificate—the approval—apply only after the surgical procedure, especially if the panel had taken the decision on the assumption that that procedure would take place? If that had been the tipping point for the panel, there could be concern about whether the panel had checked whether the procedure had taken place. The timing is important, and as the Bill now stands, I do not think that there is enough detail in it to explain what would happen first, and at what point in the process.

*Mr. Eric Joyce (Falkirk, West) (Lab)* I think that it may help the hon. Gentleman if I tell him that I am fairly confident that the Bill says that there is no requirement for surgery to take place.

*Mr. Oaten* The Bill also says—or at least, when I read it through I understood it to say—that one of the issues that the panel will consider is whether a surgical procedure has taken place or will take place. I realise that that is not the only consideration, but it is one of the considerations. It seems to me that, in the context of making good law, if that had been the tipping point and the key consideration for the panel, there would be an issue about whether the procedure had happened or would happen. If somebody can be given a certificate because of a promise that in six months' time they will have a surgical procedure, the issue of timing must be clarified. I entirely recognise that that is not the only consideration, and that there is no requirement for a surgical procedure to take place, but it is one of the issues that the Committee will examine, and it would be helpful to know about the timing.

There is also the question of foreign nationals. Can the Minister who will wind up the debate clarify whether other countries have similar Bills going through, or similar legislation already in place? Would not one way to overcome the difficulty that the Minister raised in his opening speech be to introduce a reciprocal arrangement? That would not only benefit transsexuals who come to this country, but make the procedure easier for transsexuals who wish to travel abroad and perhaps to live there. There may be barriers in the way of their doing that now, so a reciprocal procedure would make sense.

Finally, in connection with the need to maintain some kind of privacy, I support the provisions covering birth certificates—but there are other certificates that people may be required to show more often than a birth certificate. I am thinking of public examination certificates—although I must confess that I have never been asked to show mine.

*Mr. Bercow* Let's see them.

*Mr. Oaten* It is probably a good thing that I have never been asked, because people probably presume that my results were better than they were. There may be a more practical day-to-day requirement for people to show certificates for public examinations, qualifications and training rather than birth certificates, and I imagine that there could be real embarrassment if somebody were suddenly required to do that.

Have the Government given any thought to such issues, as they will probably have a bigger day-to-day impact than

whether a person can have a new birth certificate?

A number of those questions will, I am sure, be resolved in Committee. I acknowledge the real doubts and concerns that individuals have expressed, but we shall have to agree to disagree. I welcome the measure; it is modern and it accepts and understands what is happening in society today. I hope that it will go some way to dealing with the real anxieties that the hon. Member for Birmingham, Selly Oak outlined earlier. There is hurt and real hardship for some individuals and I hope that the Bill will tackle some of those issues.

*Mr. Shaun Woodward (St. Helens, South) (Lab)* The Bill is very important; it is important because it will dramatically affect the lives of several thousand people in this country and because it will create a climate that will enable people who have experienced the issue in some way to feel more comfortable and more equal in our society in the future. The Bill does not give anybody special rights or special privileges; what it is doing—like so many things on what might be described as the equality or fairness agenda—is giving transsexual people in this country the same rights that everybody else is rightly free to enjoy. 6.40 pm

The Conservative party is to be congratulated on its decision to have a free vote on the measure, which is not something that we might realistically have imagined to be the case a few years ago. That decision genuinely represents a proper consideration of the need to address Britain as it is rather than Britain as some people might wish it to be.

I rise partly as the Member of Parliament representing a constituent who wrote to me only a few weeks ago asking for my support on the Bill, saying: “I would like to point out that the likes of me just blend into the crowd. I go to work, do my job, everybody likes me. I do not go around shouting for my rights on the radio and television, I just want to live a normal life which is in fact what I do on a daily basis.” That person wrote to me because they have actually experienced difficulties. The person says: “I have worked for a major clearing bank for the last 38 years, and during that time they have supported me whole heartedly and covered for me when I had my operation, saying that I did not work for the bank when the press came after me, those days are now over, thankfully.” When the Bill was being described earlier, the hon. Member for Blaby (Mr. Robathan) referred to it as nonsense. Hand on heart, charitably, I can only feel that the hon. Gentleman has never met someone who has experienced such things. Had he done so, he could not describe the Bill as nonsense.

I say that on behalf of my constituent and also on behalf of my sister, formerly my brother. I mention my sister not because I believe that it is a good idea to bring one's private life into the Chamber, but because when, four years ago, I made a certain political decision, certain parts of the media felt it incumbent on them to draw my sister into the argument. She was not drawn into the argument as a way of adducing factual information; certain tabloid newspapers and one broadsheet—one of whose sketch writers was in the Gallery earlier—felt it incumbent on them to refer to the fact that my sister “used to be a fella”. She found herself plastered over the front pages of various newspapers whose aim was to “get” me.

There is a real need to recognise that in this country, sadly, this legislation is still really important. It is about changing climates and attitudes, and recognising that we actually have an opportunity to do something right. The Bill is not, as the hon. Member for Blaby said, nonsense; it is sensible and very, very important.

Much work has gone into the Bill. As a member of the Joint Committee on Human Rights, I pay tribute to its officials and my colleagues on the Committee. I pay tremendous tribute to my hon. Friend the Member for Birmingham, Selly Oak (Lynne Jones) who has done a huge amount. When my sister began to talk to me about the issue, she was extremely aware of the work of the hon. Lady and asked me particularly to pay tribute to her today. I am aware of the hard work and commitment of the officials in turning the draft Bill into the current Bill.

However, the Government must look again at some issues, in our position as a revising Chamber for the other place.

*Andrew Selous* I share the hon. Gentleman's concern about the fact that the tabloid and other press often behave

hurtfully and irresponsibly in the ways to which he has referred, but I should like him to explain why he thinks the Bill can help deal with that. I am worried that certain things in the Bill could engender more concern and opposition, and could encourage the sort of irresponsible behaviour that we both find distasteful.

*Mr. Woodward* I thank the hon. Gentleman for his comments. In this Chamber, we often broadly discuss matters of principle. Sometimes it helps to listen to the individuals who are affected by legislation, to find out whether we may be applying our own principles highhandedly and, as a consequence—often with the best intentions—doing more damage rather than what we intended. In the course of my speech, I shall adduce the comments of some of the individuals who have written to me about the issue. I hope that that will convince the hon. Gentleman that the Bill is the right thing to do and that, rather than preserving our current inequalities, pursuing equality is always a step forward.

In relation to the Bill, I draw the Minister's attention to clause 22, on privacy. Will it do enough to protect individuals from the infringement of their right to a private life? That protection is needed because I am worried that we might continue to see gratuitous press intrusion, along the lines suggested by the hon. Member for South-West Bedfordshire (Andrew Selous), and, more specifically, the kind of thing that can easily happen unless people feel a duty to behave differently. I refer to my sister's experiences. She has received legal documents—for example, from a court—addressed to "Miss Lesley Woodward, formerly known as Mr. Leslie Woodward". That might seem a minor thing to hon. Members, but it is not to the individual concerned, and the Minister needs to be confident that those people are fully protected. Is he confident that there will be adequate protection in the future for people who have suffered that kind of thing? Will a duty of care be imposed on officials in such circumstances?

The second point I want to raise with the Minister relates to discrimination. The Joint Committee considered whether the Government should go further in their protections against discrimination. The Committee's response was that it "took the view that the most pressing need had been to amend the law in relation to employment and vocational training" It did not consider "that there was any evidence of a pressing need to protect transsexual people against discrimination in other fields." Housing is an extremely important field and the Minister should think carefully about whether the law will provide adequate protection. When many young people go through the experience of being transsexual it is coupled with psychiatric problems. In the most appalling circumstances, that can mean that the individual is ejected from their home and loses their job. Sometimes, they are destitute. A hostel, or somewhere to live, is critical at that point. It is thus essential that such an individual is not subject to the kind of discrimination whereby, because they may be presenting themselves as a woman, the person in charge at the hostel says, "I'm sorry you can't come here because really you are a man", or the other way around.

I am slightly worried by the Government's explanation of why they do not need to move—they feel that the issue is too complex to sort out. I say to the Minister that that is not a good reason for not trying to address the matter, which it is still incumbent on the Department to re-examine. When the legislation is scrutinised in Committee, we must be confident that further injustices will not be done to the same people.

*Mr. Bill Wiggin (Leominster) (Con)* The hon. Gentleman is discussing the amendments that are likely to be tabled in Committee. Does he believe that the Government will take away some of the amendments introduced in the other place or will the Bill stay as it is today?

*Mr. Woodward* I have no idea what is in the Minister's mind, but he may indicate what will happen in his winding-up speech. Hon. Members can obviously table amendments in Committee, but on Second Reading it is important to introduce concerns for consideration today or in Committee that have been raised by constituents who will be directly affected by the legislation.

During the debate a lot has been said about the Church. It is important to put on record comments by groups such as the Metropolitan Community Church of Manchester that wrote to the Joint Committee on Human Rights. It said how much it supports the Bill, which it does not regard as aberrant, wrong or nonsense. A particular member of that Christian community told the Committee: "On behalf of the Metropolitan Community Church of Manchester I am

writing to indicate our broad support for the bill. This reform is long overdue and will be warmly welcomed by our members... Many of our members are transgendered and we know how difficult the current legal situation is for people with gender dysphoria. The introduction of this bill by the Government helps to rectify injustice and is very good news and long overdue.” “I hope you are aware that many Christians will be supportive of this bill. Some Christian organisations, like the Evangelical Alliance”—” which was mentioned earlier— “and the Christian Institute, are very good at promulgating their views but they only represent one stream of Christian opinion. There are many churches and groups of Christians who are supportive of any and all moves towards justice and greater social inclusion and cohesion.”

*Mr. Robathan* I am sorry that I was not present at the beginning of the hon. Gentleman's speech, but I was watching the monitor and know that he mentioned me a couple of times. To avoid doubt, I assure him that I have met a transsexual. The hon. Gentleman says that the Bill is not nonsense, but why is he criticising it so much? I do not say that the Bill is nonsense because I lack sympathy for people in that difficult condition; I say that it is nonsense because I listened to the Minister's speech and he had no answers to the questions —indeed, he has no answers to the hon. Gentleman's questions.

*Mr. Woodward* The hon. Gentleman is right to qualify his position, but this is obviously an opportunity to say why he believes that the Bill is nonsense, in which case the Minister will answer his questions.

The Church argument that tends to be adduced in relation to this matter concerns marriage. It must be said at the outset that marriages go wrong. Things sometimes happen through no fault of the individuals concerned—equally, things sometimes happen that are the fault of individuals—that make it right to dissolve a marriage. The particular point about which I am concerned does not involve a marriage having gone wrong. As a consequence of the Bill and not because their marriage has gone wrong, several hundred people will be faced with what can only be described as a terrible choice.

I say to those hon. Members who perhaps think otherwise that it was not a matter of choice for my sister to take the gender that she felt herself to be. It was about putting something right that had gone wrong very early on; it was not a matter of choice. The Minister must consider whether it is appropriate to force people to dissolve marriages that may have lasted for 30 years or more to fulfil a legal obligation.

It is interesting to consider the evidence submitted to the Joint Committee on Human Rights. One couple said: “For any marriage to survive, it takes a huge investment of emotion, energy and money, and a great deal of love. This bill, if passed as proposed, would ignore the realities of people like us in the cruellest possible way. We would be put in the invidious position of having to choose between a female birth certificate” for one partner “and our marriage. We cannot believe that someone has actually suggested that we should have to trade one set of rights for another.” I pay tribute to the hon. Member for Sutton Coldfield (Mr. Mitchell) who has done a great deal of work with a couple who also came to see me—he took them to see the Minister concerned and presented their case. The couple, Joy and Christine, were written about sympathetically in *The Daily Telegraph* and have been married for 36 years. As one of them said: “One of us is going to feel disappointed” if they make this choice, and one of them will feel absolutely wrecked. The couple do not want to divorce, they have children and they married in church.

Their priest has written to them, and his comments are worth considering given the arguments adduced, He said that he had been thinking about this issue for some time, and that the character of their marriage vows—a lifelong and exclusive partnership for better or for worse—seemed uncompromised by their wish to remain together. He said: “It seems to me that the intention at your marriage was for you to be together and explore the nature of love. Your marriage has survived (as you put it) and I don't think that voidance”—” the word used in the Bill— “can be anything other than 'putting asunder', which is exactly what the state can't do ... the state can sanction divorce where the 'love' has broken down, or 'annul' where there was not intention of lifelong commitment .... But here these characteristics of marriage remain. I don't think that the state” should “sanction either a divorce, or an annulment or a 'void' whilesoever you continue to maintain the 'character' of marriage.” It is interesting to reflect on what the couple's priest says the Bill may unintentionally force them to do. The state is forcing them to wreck their marriage, which has nothing to do with

their wishes, and break their commitment to each other and their love. They feel that the situation will damage their children. Sometimes it is right for marriages to be broken, but neither Labour nor Conservative Members are saying that that is the right thing to do in this case, and the couple do not want to do it. However, the Bill would force them to destroy their marriage. Some people may genuinely feel that it is still appropriate to break that marriage because the matter is too near to the question of same-sex marriage, which everybody is frightened to discuss, and it would be better not to frighten the horses. In some cases, we may be doing more than forcing a terrible choice.

One couple wrote to me to say that about 15 years ago one of them came to accept that they were transgendered. They went on to say that the adopted policy was to put family first and gender considerations second and that this repression led to depression, resulting in failure to gain promotion and eventually in 1995 retirement on the grounds of ill health. The letter said that since then there had been a continued decline in the physical and mental health of one of them and that it became a choice between full gender reassignment or a very short life expectancy. They said that the problems seemed immense: their commitment to their children has meant that there has only ever been one income earner, and both of them now suffer health problems. Again, we are saying to such people, "Choose between your marriage and your certificate."

Perhaps the choice is not that simple. It is sometimes incumbent on us to be a little less judgmental and a little more understanding.

For those who may have experienced only one person coming to talk to then I about the issue, I simply say that thousands of people have experienced it, and perhaps we need to listen to them before we listen to our own prejudices.

*Andrew Selous* The hon. Gentleman mentioned the Evangelical Alliance and may have said that it was not a major part of the Church—[Interruption.] If I misheard him, I apologise, but I wish to make it clear for the record that the alliance has 1.2 million members and includes groups such as the Shaftesbury Society, the Tearfund and the Salvation Army. It is a large, well-respected organisation.

*Mr. Woodward* I am glad that the hon. Gentleman made his point, but it was not what I suggested. I simply represented the view of one Church group that felt it was necessary to correct the impression that the Church only has one argument, such as that put forward by the Evangelical Alliance, which has been good—as instanced by the hon. Gentleman—at getting its point across. Other Church groups have not been quite so efficient at doing so.

*Mr. Bercow* The hon. Gentleman is making a powerful speech. I just wish to suggest that although constituents' representations are important, they should not be regarded as the overriding—still less, the only—criterion that should influence Members. I have not received a single representation from a constituent urging me to vote for the Bill. I will do so because its principles are right.

*Mr. Woodward* I congratulate the hon. Gentleman, but as we are also here to represent our constituents when they do write to us, we might be forgiven for doing so.

My final point relates to pensions, which have been mentioned by several other hon. Members, including my right hon. Friend the Member for Birkenhead (Mr. Field). The Bill raises a serious issue that the Government need to think through. for two reasons. The first is the general point of principle and the second is the timing of the civil partnership Bill and the consequences if it is delayed for people adversely affected by this Bill. A case history may illustrate the problem.

Let us take two people we will call Claire and Barbara. Claire was a committed police constable who loved her job but was forced to leave when she told her boss that she was transsexual and was transitioning. She would not have left her job if she had not been asked to go. She had a 10-year police service record and was entitled to a pension. Let us suppose that something should tragically happen to Claire. Where would that leave her partner, Barbara? The problem is that for Barbara to qualify for the survivor's pension under the Police and Firemen's Pensions Act 1997—this is just one example—the couple must have been married both at the point of Claire's retirement from the police and at the

time of her death. So if they had to divorce as a consequence of the Bill, the partner would lose the rights to the pension.

We need to look carefully at the issue in Committee. We do not need to delay the Bill, because it is important for everybody affected by the issue. However, the Government must recognise the problem and the need to review it. It may be necessary to appoint individuals in the Department as points of contact for members of the public who may be affected by the Bill. Those individuals might also discover serious problems caused by the Bill and we would then be able to rectify the matter at the first possible opportunity. It would be tragic if, for the best of reasons—and I believe that the Government have the best of reasons at heart—the Bill adversely affected the lives of people caught up in circumstances through no fault of their own and who suffered as a result. The Government clearly do not intend that anyone should suffer by the Bill: indeed, they want to make life fairer and more equal for everybody in our country. However, the pensions issue is very important and we need to be open-minded about it in Committee.

*7.5 pm*

Mr. David Atkinson (Bournemouth, East) (Con) I support the Bill. As the Minister explained, because of a court ruling more than 30 years ago transsexual people in this country have been condemned to be always of the sex written in their birth certificate. That has sentenced them to a life of constant secrecy, fear and depression, at risk of suicide and self-mutilation. Their position in law prevents them from safeguarding themselves, their partners and their families. The Bill will do much to end that. I regret that it took five failed petitions to the European Court of Human Rights, before the two that succeeded, to bring forward the Bill.

There are two reasons why I want to speak in support of the Bill. Like several hon. Members who have spoken, the first is the experience of a constituent who sought my help in my surgery two years ago, in 2002. She was 62 years old, a post-operative transsexual male to female. She had always known her birth certificate was wrong. She had a particularly tragic childhood. She had a terrible puberty. No one knew what gender she was, except herself. She married, but was compelled to divorce. She paid for her surgery and subsequent treatment herself. She lost her male partner because they were unable to marry in this country. She pursued a teaching career. When she reached 60, she was told that because she was a woman she had to retire, but because she had been a man she would have to wait five years for her pension. Understandably, she became ill as a result of the financial problems that caused and the stress she faced.

In response to my representations, the then Minister of State, the right hon. Member for Makerfield (Mr. McCartney), confirmed that my constituent would not receive her pension until she reached the male age of retirement, 65. Of course, my constituent feels that she has been denied natural justice. By then, the European Court in Strasbourg had delivered its judgment in favour of *Goodwin v United Kingdom*. My constituent has rightly been pressing me for the legislation that is before us today.

The experience of my constituent and my sympathy for her compels me to support the Bill. Will the Bill enable transsexuals in my constituent's situation—described as male on her birth certificate, now a female—to enjoy a woman's pension from the age of 60? If so, will the pension be backdated in her case?

The second reason I support the Bill is that it is in response to the findings of the European Court of Human Rights in Strasbourg. It is as a member state of the Council of Europe that we are committed to the European convention on human rights. I accept that some of what the convention imposes and the ECHR finds is not always welcomed by Ministers, hon. Members or the public. For example, many hon. Members and the majority of the public do not accept the abolition of the death penalty. Home Secretaries cannot change sentences passed by the courts, despite outcry in the tabloids, because the ECHR says they may not. However, all of us, I believe, need to be reminded from time to time that the European convention on human rights, with its unique enforcement machinery of the ECHR, is a response to the genocide and discrimination that Europe experienced under the dictators. That discrimination, no doubt, applied to transsexuals.

Now, 50 years after the convention came into force, the rights of transsexuals in this country will also be protected by the Bill. Why has Britain been one of the only four Council of Europe member states that have until now refused permission for transsexuals to change the gender on their birth certificate?

I hope that the example of the Bill will be followed by similar legislation in the other three countries—Albania, Andorra and the Irish Republic—without the necessity of their citizens petitioning the European Court of Human Rights.

Given the existence of the [Human Rights Act 1998](#), why were two findings of the European court in 2002 required to change the British law on rights for transsexuals? Surely the Act provides for such rights to be protected without further application to the court in Strasbourg.

In conclusion, I regret that, of all the Churches, only the Evangelical Alliance has opposed the Bill, claiming that it will allow same-sex marriages—which, of course, it will not. I also regret that some in the Conservative party sought to oppose the Bill in the other place and that, from indications from my colleagues in the House, they will oppose it in this debate. I had hoped that the Conservative party today could accept human nature for what it is. Transsexual people are probably one of the smallest minority groups in this or any country. We have treated them atrociously these past 30 years. We should all give full support to the Bill, which will help to end their unhappy situation.

*Hugh Bayley (City of York) (Lab)* I welcome the Bill. It is a sensible and humane measure that will give transsexual people legal recognition of their acquired gender. It is right in its own terms, but it will also have the benefit of making UK law compliant with the ruling of the European Court of Human Rights.

7.11 pm

I have been approached by four constituents who either have undergone or are undergoing gender reassignment, all of whom support the Bill. In fact, one of the good things about the debate is how many Members have talked about constituents who have approached them. This really has been a representative Chamber during today's debate.

I shall vote for the Bill on Second Reading. I agree with my hon. Friend the Member for St. Helens, South (Mr. Woodward) that the reservations that some people have expressed should not hold up its enactment. Nevertheless, I remain concerned about the Minister's lack of clarity on pension entitlements, and further attention needs to be given to the pension rights and financial security of transsexuals' spouses.

I should like to describe to the Minister the dilemma faced by two of my constituents: one is a transsexual in the process of male to female gender reassignment; the other is the transsexual's wife. The couple have been married for 35 years, and they have three children. Since the first child was born 32 years ago, the wife has not worked full-time. Like many women, she has stayed at home to raise the children and relied on her husband to make pension contributions to provide her security in old age.

I understand why some wives, or husbands, of transsexuals cannot come to terms with their spouse's change of gender and seek divorce, but both my constituents are extremely clear that they wish to stay together and that they do not wish to divorce, and they have good reasons so to do. They care for, support and love each other, and they want the care and support that they mutually offer each other to continue in the years ahead. They want to keep their family together for their own sake and for the sake of their children. They recognise that they will be significantly better off financially if they stay married than if they divorce.

The trouble is that the Bill's drafting creates a conflict of rights—a conflict between the rights of a wife to marriage and security in old age and the rights of her partner to legal recognition in a new gender. The conflict arises because the Bill will require a couple to divorce before the full gender recognition certificate and, therefore, the new birth certificate can be issued in the transsexual's new gender. If a divorce goes ahead, pension-splitting procedures will, of course, follow, but they are almost certain to reduce the pension entitlement of both partners. So I have two questions for the Minister, and I hope that he will listen carefully to them and reply in summing up the debate. I am not sure which Minister will respond I see that the Under-Secretary of State for Constitutional Affairs, my hon. Friend the

Member for Shipley (Mr. Leslie) will do so.

First, is it right that the state should require a couple to divorce so that one person—the transsexual member of the couple—can obtain the right to gender recognition if neither partner wants to divorce? Secondly, if it is the Government's intention that there should be such a conflict of rights, is it right that the decision about whether to put the right to marriage—which, as the Human Rights Committee stated in its report, flows from the right to private and family life under ECHR article 8—before the right to gender recognition for the transsexual, or vice versa, should rest with the transsexual partner in the relationship, rather than with his or her spouse, or with the couple jointly?

In the case of my constituents, I suspect that they will jointly choose what to do if they face that dilemma, but the fact remains that the transsexual in the relationship has, in effect, the power to decide whether to put gender recognition before marriage, or vice versa, while the wife or husband of a transsexual person does not have the same right. My constituents would like the Bill to be amended to allow gender recognition for the transsexual, while allowing the marriage to continue. I recognise that that would give legal recognition to same-sex marriage in that specific circumstance. I believe that that would be the right thing to do, and I see no contradiction between the requirement that people have to be of different sexes when they marry and retaining a married relationship later if that situation alters because of gender change.

If the Government are not prepared, in the light of what hon. Members on both sides of the Chamber have said, to agree to that single and extremely specific exception to the normal prohibition on same-sex marriage, they must create in the Bill a new relationship that would retain for couples of the type that we are talking about the same legal and financial rights and responsibilities to one another, including the same pension rights, that they had enjoyed hitherto in their marriage, because the alternative would be to undermine the rights of the spouse, which are just as important as those of the transsexual person.

I can think of no other circumstance in which the state tells a couple who are married and who wish to remain married that they must get divorced. If there is such a circumstance, I invite hon. Members to tell me about it, but I do not believe that there is one. I believe that it is fundamentally wrong for the state to tell a couple who are married and wish to remain married to divorce, so an amendment to the Bill is needed.

I should like to put a final point to the Minister, which I hope is easier to deal with, about the gender recognition panel. Some of my constituents who are transsexuals have suggested that it is important that the membership of the panel should include transsexual people and partners of transsexual people. They suggest not that the panel should be comprised entirely of transsexual people and their partners, but that there should be some transsexual people and their partners among its members, so that it has the same experience as those in respect of whom it will adjudicate and knows what they have been through.

*Mr. Robert Key (Salisbury) (Con)* I intend to vote in favour of the Bill. It is the sort of legislation that political parties do not like, but that Governments have to face. It is certainly not the sort of issue that any party would put in its manifesto before a general election nor campaign on with any zeal or the expectation of reaping electoral rewards.

7.20 pm

The Bill began its course through Parliament in another place and, on Second Reading there, Ministers justified it on the grounds of constitutional reform, social inclusion and developing a culture of rights. Last of all, they admitted that the Bill had been influenced by judgments of the European Court of Human Rights, which has ruled that a system recognising transsexual people in their acquired gender must exist and that transsexual people must be granted their rights under article 8 of the European convention on human rights—the right to respect for private life—and under article 12 on the right to marry. The Law lords in this country judged in the case of *Bellinger* that the law must be changed so that transsexual people have the right to marry in their acquired gender.

The Government have therefore been forced to introduce the Bill, which was not in the Queen's Speech, but I make no complaint about that. Indeed, I welcome it. This is very difficult legislative territory and Members on both sides are on

their own in deciding how to cast their votes. The Whips will tread on this piece of law at their peril.

*Andrew Selous* I think that my hon. Friend will find that Government Members are under a three-line Whip.

*Mr. Key* I bow to my hon. Friend's superior knowledge, but we shall see. If Labour Members are under a three-line Whip, that is legitimate. It is Government legislation, and there is no reason why they should not be. However, I would be very surprised if the Whips were up to their usual tricks with anyone who had a conscientious objection to the Bill.

A great deal of time during the Bill's passage through the other place was spent discussing sex and religion. However, I have read the debates and spoken in the past few days to a number of transsexual people, and I am in absolutely no doubt that the most important reason for supporting the Bill is because it is about justice. It is about the justice denied to a very small minority of people down the ages, the justice denied because of taboo, prejudice and incomprehension and the justice denied because business managers and Cabinets can always find less controversial and more pressing matters to deal with. Now, that injustice is finally being confronted by the rule of law.

I go back a long way when it comes to issues of minority rights. When I was a student at university, the then Member of Parliament for Hampstead, Ben Whitaker, ran something called the Minority Rights Group and I read his reports avidly. As my hon. Friend the Member for Daventry (Mr. Boswell) said, the influence of constituents will always be important in our decisions.

A member of a Christian transgender group to whom I spoke only yesterday wished me to stress the fact that, as far as she is concerned, same-sex marriage is not on, that civil partnerships are equitable and that most transsexuals get by nicely until something goes wrong, but that by far the most important issue is the simple justice at stake here. I beg the House to remember that we are not arguing about angels dancing on the heads of pins. We are debating run-of-the-mill, everyday issues such as motor insurance. A person born a male, registered as a male at birth, currently remains a male legally even though she has, in fact, changed gender. If she has a car accident, she risks prosecution for driving without insurance and for fraud. She will also be forced to reveal her gender history to officials who are complete strangers. This is humiliation up with which you, Mr. Deputy Speaker, or I would not put.

Much reference has been made to pensions, which are an extremely important issue. I draw the House's attention to schedule 5. It deals not only with pensions but with state benefits, which are also at stake. It refers to the widowed mother's allowance, the widow's pension, the widowed parent's allowance, long-term incapacity benefit, the category A retirement pension and so on. The explanatory notes provided by the Department for that schedule are very revealing. Paragraph 112 on page 19 says: "In summary, these provisions ensure that a transsexual person who has been granted a full gender recognition certificate will be entitled to the state benefits which are appropriate to his or her acquired gender, and will no longer be entitled to a benefit or pension which is payable only to someone of his or her birth gender." I hope that my hon. Friends will pay great attention in Committee to paragraph 113. It says that "the Department is of the view that if there is any interference with the Article 8 rights of a transsexual person as a result of these provisions it is minimal, justified as a means of according full recognition to transsexual people in their acquired gender, and a proportionate means of obtaining that end." In other words, it is the Department's view that it is all right to have diminished pensions and to cut state benefits if transsexuals have their certificates because their object surely was to obtain their certificates. It is important that the Government listen to the view of Parliament and not just to the views of Department when it comes to these issues.

Clause 11 and schedule 4 raise important issues for all the Christian Churches and for other religions. Without going into the theology that might be more appropriate for Committee, let me say that I smiled quite broadly when the bishops lined up to vote against those Lords Temporal who thought themselves more religious than our Fathers in God. I am neither a theologian nor a clinician but, as a practising member of the Church of England, I take very seriously the teaching of Christian Churches on this issue. I have with me the excellent Church of England report on "Some issues in human sexuality" that was published last year with the authority of the Archbishops of York and Canterbury. I have read the report—as you can see, Mr. Deputy Speaker, it is quite well thumbed—and the good news

is that we cannot blame the Bible. Paragraph 7.3.2. of the report says that “there is general acceptance that there are no biblical texts that can be seen as addressing transsexualism as such” There are those who believe that human beings are either male or female because of their God-given biology and that nothing a surgeon can do can alter that fact. They say that sex reassignment surgery can never make a man a woman or vice versa, but is it fair to blame God in this way?

Others believe, as I do, that the existence of gender dysphoria is a consequence of the fact that we live in a fallen world and that it is right for us to take action to correct the consequences of our fallen state when God has given us the means for us to work out how to do it. My wife and I did not blame God when our first child died after a few days, more than 30 years ago. We did not blame anyone. We sought to find out what had happened, and whether it would happen again. We entered the world of genetics. We were told that he had a random, one in 8,000 genetic abnormality—a chromosome 13 partial monosomy. We assessed the risk; we took advice; and we now have three wonderful adult children all earning an honest living.

I had always taken my sex and the sex of others for granted. It all seemed so obvious, but it is not. Perhaps the most enlightening debate in the other place, where the Bill started, took place on 3 February when an amendment to schedule 4 sought to prohibit marriage between two persons each possessing XX chromosomes or each possessing XY chromosomes, or each possessing genitalia appropriate to the same sex. "After all," it was argued, "that is the undoubted determinant of biological sex," but it is not. What about Turner's syndrome, which affects women with only one X chromosome? Is one X chromosome enough to count as a woman? What of Klinefelter's syndrome, which affects men who have two Xs and a Y? Should they be classified as men or women? They believe that they are men.

Lord Turnberg also reminded their Lordships that many babies are “born with genitalia that are at variance with their chromosomes.” Many of them have surgery to place them firmly in one gender or the other. If those genders do not coincide with their chromosomes and if those people marry and try to have children, they will sadly be infertile.

As the hon. Member for Birmingham, Selly Oak (Lynne Jones) pointed out earlier, Lord Winston reminded us that “even in the case of Turner's Syndrome...it is possible to have an XY mosaic, with some of the cells carrying a Y chromosome and some having a deleted X chromosome.” Therefore, such people “may have varying degrees of masculinity or femininity.” He also said that most geneticists would “describe sex on six, totally separate, definitions.” They can be chromosomal, but they are also genetic. He pointed out that “genes on the Y chromosome are not the only genes that define sex. Although the SRY gene is by far the most common and important, there are genes on chromosome 17, chromosome 11, chromosome 10, chromosome 6 and chromosome 3 that ...can determine sex of various, kinds. Those people can carry on a completely normal life.” I am indebted to Shaun Fountain, of the Salisbury Fertility Centre, for taking time out from yesterday's Ireland versus Wales rugby match to explain to me about 46 XX males, who lack a single Y chromosome, and about 46 XY females, who have testicles and no uterus because of androgen insensitivity, and cannot respond to testosterone. So in addition to genetic sex and chromosomal sex, there is hormonal sex. Some people produce hormones that will tend to feminise them, while others will be masculinised. That can happen in utero. Serious medical evidence exists that some people who become transsexuals in later life have been exposed to an abnormal surge of either male or female hormones during pregnancy, which has caused them to have a psychological sex that is different from their genital sex.

As Lord Winston told the other place, we should be very cautious about defining sex in terms of chromosomal, genital or any other simple definition. He said: “It simply is not medically just, and I am sure that it would produce bad law”. —[Official Report, House of Lords, 3 February 2004; Vol. 657, c. 620.]” That is why the Government are right to establish in this Bill a system to recognise acquired gender in law, through the determination of an application for a gender recognition certificate. The original birth certificate will not be destroyed, but superseded. We are dealing here with the most intimate secrets of a human being. I will take some convincing that the Bill should be amended to allow access to those secrets by any other person—by right, and against the will of the person concerned—in any circumstances other than those described in clause 22. In fact, I have my doubts about some of those circumstances.

In recent weeks there has been correspondence about human gender in the columns of *The Tablet*. I end with the

remarkable contribution of Dr. Bernard Ratigan, of Loughborough university, who is a psychoanalytic psychotherapist. On 7 February, he wrote: "Simply put, we are all both male and female, and the 'physiological indicators' are only the surface markers but they are not the whole story. Given the vicissitudes of pre-natal and postpartum physical (and then psychological) development, the more experience I gain in the field of gender dysphoria the more I wonder at the mystery of human gender development. It is a triumph of nature that so many of us are secure in our gender and surprising, given the profound pressure to gender conformity, that so few suffer from gender dysphorias" In conclusion, I can do no better than echo the words of my noble Friend Baroness Buscombe, who said that because the Bill's measures involve some important Principles of law, we must proceed with caution. That will be achieved in Committee. Indeed, as the Bill proceeds through all its stages, it is important that we approach the many issues with care and with compassion for those for whom the measures are intended.

*Kali Mountford (Colne Valley) (Lab)* I want to begin where the hon. Member for Salisbury (Mr. Key) left off, and with the point that I made in my question to the Minister at the start of today's proceedings. 7.33 pm  
None of us can be absolutely sure of who we are at any point, and there is nothing wrong with that. My reading around this subject began in 1997, as a result of a constituent's case. I read about the question of where our gender identity comes from, and we certainly cannot find an answer by looking in medical books, because the arguments are many and varied. I am glad that the hon. Member for Salisbury discussed so thoroughly the various different conditions, as he has saved me the trouble of doing so. He is right: if we look in that direction for an answer, we might find no answer at all, or too many to come to a sensible and logical conclusion about who we are.

In trying to devise laws so that we can act out our daily lives with a proper sense of reality, it is therefore sensible to look to those individuals who find that any definition of themselves does not fit with their own sense of self. It is not for us to insist, as a result of any test that we might be able to devise as time goes by, that a given person is someone with whom they do not themselves identify. To decide gender on the basis of an XY chromosome, for example, might be to go down a very tricky path indeed. It is therefore right for people to present for themselves what they perceive as a problem in their own lives.

That leads us to the question of how to proceed sensibly from there. We have already made some progress on that front. By deciding that people can have treatment, with national health service support, that properly identifies their physical appearance, we go some way towards recognising gender dysphoria as a true and proper medical condition. That has taken some people a long way forward, but not nearly far enough. Nor will this Bill take us the entire way. Our society is in transition, as, indeed, is our medical profession and this House. And the same is true of some of the people whom we are talking about. In this period of transition, there are some specific issues that we need to address carefully.

The issues that we face today will not be those that we face in future. We are discussing very complicated family relationships that have evolved because the recognition of somebody's gender has been decided on later in life. There are many reasons why people might want to conform to their physical appearance. We could debate that issue at length and it would not help us very much, but at this stage of our social maturity, people are presenting at a much later stage in life than might be the case in the future. That will change because social attitudes will change. We have had many debates on people's sexuality, but in generations to come, as people go through puberty their gender identity will not be so difficult to address. Indeed, such progress might not be that far into the future. During development in puberty and early adult life, it might be more possible for people to say, "The person who you think I am is not who I really am after all." It might be possible to make such decisions much sooner, so that there are fewer complicated family relationships involving marriage. That will be a natural social progression.

But we are in a different place at the moment. Complicated family relationships already exist, and they will exist whether or not we legislate. The fact remains that marriages break down because of gender identity. They do not break down as a result of the state; they dissolve because the differences between the people involved are irreconcilable, and they feel that they cannot go on. It is also true that some people can overcome apparently irreconcilable differences and carry on with a relationship that they have developed over 20 or 30 years. They do not stay together simply

because the financial situation is easier that way, or because it is easier to manage their family; they do so because they truly believe that they are meant to be together.

Those whom I have met the same is true for many other Members of this House find that their life together is incredibly difficult. There is no easy solution. My hon. Friend the Member for City of York (Hugh Bayley) pointed out some of the very painful decisions that people will be required to take. I agree with him entirely, but I am not sure that this legislation will be the end of the matter. I hope that, over time, the House will develop other solutions that might not fall within the Bill's parameters. It is difficult to make such choices, but the fact is that people make difficult choices throughout their lives. Even as things stand, the choice between staying together and divorcing is a painful and difficult one for families.

The choice between staying together or divorcing—the decision to put gender before marriage—will be difficult, but the question is: are we ready to accept same-sex marriages? I am—the prospect does not trouble me at all—but I can see that there would be substantially greater opposition to the Bill if I were to insist on such marriages forming part of it. So I look at the situation pragmatically, and ask myself what it is that I can accept. I must also recognise that some of my constituents will not agree with me. Some will think that I am taking a step too far, while others will say, "Kali, I really need you to go a lot further than this. Please support more such measures. Please think about my life."

I have to offset one set of concerns against another. I have reached the view that the Bill might be about right for where we are, but I do not think that the situation will remain static because things will have to be addressed as a result of changes to relationships after it is enacted.

We must consider how complicated family relationships will affect people's finances. Pension rights, which have been addressed by several hon. Members, clearly present a difficult problem. The Minister could not give unequivocal answers about what will happen as a result of future partnership arrangements, but the Government have made significant moves to give an indication of what we can expect. We will not simply ask people to divorce, accept their new gender and have their birth certificate as they wish it to be, and then leave them in a void with nothing in place. We must ensure that the legislation that we expect to be introduced in this Session dovetails properly with the Bill; otherwise the system will not work.

Measures on people's benefit rights, entitlements and pensions have already been introduced that provide for more equality between the genders so that men's rights are now more similar to women's rights and vice versa. That was achieved especially by the consideration of the rights of widows and widowers. Now that men have the same rights as widowers that widows used to have, we have made progress toward ensuring that men and women have similar support.

*Mr. Bercow* rose—

*Kali Mountford* I see that the hon. Gentleman is eager to speak; I give way to him.

*Mr. Bercow* The issue of obligatory divorce, which was highlighted by the hon. Members for St. Helens, South (Mr. Woodward) and for City of York (Hugh Bayley), is of the first importance and should surely be decided on its merits. The hon. Lady would always be the first to stand up for what is right rather than what is simply convenient. Does she honestly think—I am listening closely to her argument—that the opposition to the Bill would be that much greater if it were amended in the terms that the hon. Gentlemen suggested? It does not seem to me that it would make much difference—those who are against the Bill are just again it, full stop.

*Kali Mountford* I understand what the hon. Gentleman is trying to say, and I think that that would be true of several hon. Members who have debated the matter. However, I am not sure that it is true of all my constituents or many communities in my constituency. For some people, the question of a man and women being married—with that being the nature of marriage—is so fundamental that they cannot see around it. As I have already said, that is not a problem for me. I do not feel troubled by it, and I would not have been troubled if such a measure were in the Bill. I hope that

there will be a time when the matter is not an issue in society, but we must accept that it is an issue now. Many more people would have hammered down my door to oppose the Bill if it had included such a measure. I, and many transsexual people whom I know, expected a much more heated debate than we have had. As there is compromise on both sides of the debate, we have found a position in which people may find consensus.

*Mr. Woodward* Just as a point of clarification—my hon. Friend and I certainly do not disagree on these matters—it is essential to recognise that the question is not about something to be promoted for the future. We are dealing with a situation with happily married people who married in good faith and wish to stay together after something has happened in that context. We will be saying, "You now have to divorce so that you can be recognised as being yourself." If we presented the argument to our constituents in the context of forcing existing couples to divorce, I wonder whether, if the House really came together on the issue, it would be that hard to convince them that we were doing the right thing by enabling couples who want to stay together to be together.

*Kali Mountford* My hon. Friend makes a valid point, but I would then expect other people to come to me and say, "What is so inequitable about my relationship that I must have a civil partnership registered yet I cannot marry?" That would be a reasonable position for people to take and if we reached that situation, we would have to accept that we were entering a new form of marriage. Many people currently think that that would be a step too far. It is not a step too far for me to accept that, but I appreciate that it would be for other people. I am trying to find a way to set complex moral values against actual situations to try to make sense of people's lives and allow them to make reasonable decisions.

*Hugh Bayley* If, for reasons of pragmatism rather than conscience, my hon. Friend cannot go along with my view that there should be one clearly defined and specific circumstance in which same-sex marriage could be permitted, will she go along with the alternative that I put to the Minister: we should construct within the Bill a legal relationship that would preserve for a formerly married couple who had to divorce because of the Bill all financial and legal rights between each other, including pension rights, that they had when they were married?

*Kali Mountford* My hon. Friend makes the right point—that is what I would like to be preserved. There is no great strength in arguments about whether we recognise relationships in one way or another under law—or before God, if that is people's preferred way of recognising their relationships. However, when making legislation, it is important to ensure that we do not disrupt people's lives in such a way that a decision becomes impossible. That is why we want the measures that we hope will be contained in pension legislation and, most importantly, the Bill to recognise same-sex relationships in a civil manner because the dovetailing of the Bill with new legislation will be absolutely crucial. We will make decisions on the Bill today and in Committee in the light of suspicions about legislation to come, but without any guarantee of that. That is always a difficulty, but is not life always like that?

Friends of mine. Who, are in the same situations as the constituents of my hon. Friend the Member for City of York, are faced with the abhorrent decision of whether to stay together or for the gender of one of them to be recognised as she believes herself to be. That is difficult, but there are difficult choices to make in marriages and all relationships. Some people will choose to stay married—that is their choice. It is not for the House to say to them, "You must put asunder what you have always had." However, we propose that they should at least have a choice that has not been available to them before. That choice will be paramount for some people.

We have heard about relationships that have survived for 35 years through all sorts of ups and downs—not least of which being the gender of each partner. Such people have relationships in which those matters may be discussed. I suggest that people without such a relationship probably parted many moons ago, so the Bill will help them not one bit. The way in which society views marriage and gender is in transition—it is changing quickly over time. It has changed more quickly over the past 10 years than it did during the 50 years of my life so far. There have been amazing changes that I thought that I would never see when I was young, but that are now considered to be mundane and ordinary. Although television programmes are made about people's actual lives, transsexual people now turn up all over the place in soaps and dramas without people flickering an eyelid about how odd that might be.

Society is moving faster than legislation in some ways, but it is moving slower in other ways. There is a conflict in social opinion between those individuals people know and recognise and what they feel about institutions. We need to get a balance between those real people's lives and attitudes to institutions. That is the situation we encounter when we discuss the institution of marriage in the light of the decision by a small number of people to stay together irrespective of their gender. That is a difficult problem to conjure with, but the Bill will take us a long way towards changing people's actual lives. There will be difficulties for some people, but others will benefit hugely from the Bill.

I talked to some of my friends about deciding between gender recognition and marriage. The big step forward in opinion, legislation and people's rights has been of such benefit to them that although they might decide that they cannot make use of the legislation now, which will be seriously distressing for them, they will accept that many others will benefit because the Bill will change social attitudes so much and so quickly—even more quickly than changes experienced so far—that the benefits for future generations will be immense. The Bill's contents place it in the middle of enormous social change.

Another set of relationships is vital and has only been touched on. It is difficult to legislate for the relationship between parent and child in the best of circumstances, but it is even more difficult in the circumstances that we are discussing. It behoves us to ensure that if the relationship can be maintained, it should be supported in every way. To decide on the title of a parent post-change is not very helpful. We need to ensure that the relationship between the parent and the child is maintained in law and maintained financially. I know the Bill does not deal with that, but we need to mention that the child should be supported through the Child Support Agency in the same way as he or she would be should the parents decide to part. It is crucial that if the child decides to break contact with a parent because of family circumstances, that child's support is at least maintained. I hope that social structures can be changed over time so that the proper relationship between parents and child can be properly maintained.

In the cases of the people I know, children found it difficult when one parent changed gender, but the love and bond between parent and child was so strong that it was not changed for ever and the good, close, loving relationships continued. Sadly, however, that is not always the case. We need assurances that support for children will be maintained. I have not detected anything in the Bill that makes me think that it will not be, but it needs to be mentioned so that people are clear, when reading the debate, that we are not overlooking children and their basic need for contact with their parents.

I want to pay a couple of tributes. The first is to the House for its maturity. My friends who advised me on speaking in the debate said that I could expect to encounter terrible hostility and cruel and harsh words. I hope, on watching the debate, that they will be relieved that their particular relationships have been held in regard by the House. That will be of some comfort. The debate has been mature and it reflects the maturity of society at large.

In particular, I pay tribute to my hon. Friend the Member for Birmingham, Selly Oak (Lynne Jones) whose fortitude and persistence over the years deserves recognition. Some of my constituents who are members of Press for Change have written to her a number of times. They think that our debate is largely, if not entirely, a result of her hard work over many years. The House owes her a great debt of gratitude.

I hope that the House will continue in its mature vein in the years to come.

Andrew Selous (South-West Bedfordshire) (Con) I very much hope that the tone of the debate will continue. I think we would all agree that we have had a measured and reasonable discussion of the subject. I especially hope that that mood will continue, given that I am probably going to be the only Member who expresses a view that is contrary to those expressed so far.

7.54 pm

When we talk about the issue it is tremendously important that we express both sympathy and compassion for those who suffer gender dysphoria and that we do all in our power to help people in that condition with some of the practical everyday problems that they face in their lives. At the same time, however, it is important that we are rigorously intellectually honest with what we are about to ask the House to do. My fear is that we are not being as

rigorously intellectually honest as we should be.

I ask the House to pause and consider exactly what it is that we are planning to do when we are prepared to say that someone born a biological man will be regarded, with the full force of the law, as a woman, and vice versa. That has profound implications for our Parliament and we should reflect on that. My feeling is that we are not going about the Bill's sensible ambitions to deal with practical problems, which we all want addressed, in the right way and are not applying the right, the appropriate or the really honest solutions.

We heard a bit about the medical background as to what causes gender dysphoria, such as the genetics before people are born. As parliamentarians we have to accept that we are not experts in the field and should defer to those in the medical profession who have studied the subject. I note, however, that when the Government were under pressure and in difficulty in the other place when the medical matters were discussed, it appeared to a number of commentators that Lord Winston was brought in to help them out. I have the greatest respect for Lord Winston. He is an eminent fertility expert who trained as a gynaecologist and an obstetrician, but even he would say that he is not an expert or trained in gender dysphoria. The people who are expert on gender dysphoria are psychiatrists. If hon. Members had taken the trouble to contact the Royal College of Psychiatrists, its past presidents and others, they would have heard a different take from the one proposed by Lord Winston in the other place on the question of whether sex was conditioned before birth.

*Lynne Jones* I draw the hon. Gentleman's attention to a document produced by the parliamentary forum on the medical view of the aetiology of transsexualism. There is a link to that report on my website, and work is being done to update that view. The forum is attended by the people who are most expert in the condition and it is advised by them. It is not correct to say that the Royal College of Psychiatrists takes that view. Its lead member on its panel attends and advises the forum.

*Andrew Selous* I hear what the hon. Lady says, but I challenge her and any other hon. Member to produce a list of experts in the field who genuinely believe that the matters are absolutely predetermined physiologically and genetically. I am not saying that there is no physiological element. However, a number of the doctors at the two main centres in this country which deal with the condition—the unit at the Charing Cross hospital and the Portman clinic—have gone into print, and have suffered considerable hostility as a result, saying that they do not share that view. Even research undertaken in the Netherlands is not accepted as conclusive.

*Mr. Woodward* Does the hon. Gentleman appreciate that the logic of what he is saying is effectively to reduce all the surgeons who carry out this work to nothing more than cosmetic surgeons, doing it because somebody comes along and says, "Well, I just fancy changing my gender"? That is not what happens. Years of work lie behind such operations, some of it very distressing to the individuals. After having counselling and living in the other gender, there is then a big decision to be made about the operation. The hon. Gentleman must bear it in mind that no doctor would undertake that work as a flight of fancy. It is not a cosmetic procedure; it is a very serious procedure. The hon. Gentleman must reflect on what he is suggesting doctors are doing in these cases because, in my view, they think that they are providing a necessary medical remedy.

*Andrew Selous* I take the hon. Gentleman's sensible point that this is a major, serious operation. There are provisions in the Bill to ensure that gender change cannot happen in a short period, as it currently does in some cases, which causes concern.

I am simply making a general point that a range of factors cause gender dysphoria, and they are principally psychiatric conditions. Reference has been made to the fact that in every case people who want to change their gender have been preconditioned genetically and physiologically so to do. I am not questioning their right to do so or the fact that they face discrimination. I am merely making the point, which I think a large number of clinicians and others accept, that this is a psychiatric matter as much as it is a matter of genetics or is in any way preordained.

I have not yet heard in the debate a proper answer to the case of those transsexuals who move from one gender to the

other and then back again. That supports my case that these matters are not inherently determined in people's genes. People who choose to go back to their original gender do exist, and the Bill will have to cope with those circumstances. As I said, I do not want to get bogged down in a medical argument because I do not think that we are the right people for that, but it is important to make those general points.

It is important also to note that we are not discussing intersex conditions—a point that the hon. Member for Colne Valley (Kali Mountford) established early on in a useful intervention on the Minister. Those are a separate category from the transsexual issues that we are discussing.

If the Bill is enacted in its current form it will very much affect marriage, as it will, in effect, legalise same-sex marriage. We should be concerned about that. These points were made by the Bishop of Winchester in the other place, as the hon. Member for Winchester (Mr. Oaten) made clear, and he accepts that he has a difference with the Bishop of Winchester on the matter. We have to accept that if we pass the Bill we will be allowing two men or two women to marry. I have sympathy with the point made by a number of Labour Members that when a married person wants to adopt a different gender the couple should not be forced to dissolve their marriage: I think that they should be able to stay together. I know that the Government are trying to support the principle that marriage applies purely to a man and a woman, but they are going about it the wrong way and putting gender before sex. As the plaque on every registrar's wall says: "Marriage according to the law of this country is a union of one man with one woman".

*Kali Mountford* I am grateful to the hon. Gentleman for advancing the argument about same-sex marriages, which I expected to hear in this debate but had not yet heard. Those are explicitly excluded from the Bill. A moment ago, the hon. Gentleman said that this is a problem to which the Bill is not the answer. Perhaps he would like to tell the House what the answer is.

*Andrew Selous* I shall deal with those two points in turn. The hon. Lady says that same-sex marriage is excluded from the Bill. I disagree. I think that it is same-gender marriage that is not included, because I come from the premise that one cannot change the biological make-up of a human being. I accept that people may want to adopt a different gender, and we have heard movingly from the hon. Member for St. Helens, South (Mr. Woodward) about his sister. I am not denying that people should have the opportunity to do that if they so choose. However, if one accepts that a human being has a unique biological make-up, which any law made in this House cannot change, we are talking about the ability of a man to marry another man and of a woman to marry another woman. There cannot be any dispute about that.

The hon. Lady asked what other means we could use to prevent some of the problems that transsexuals face. We could deal with employment problems by using employment legislation to ensure that there could be no discrimination. Insurance has been mentioned a number of times, and there are ways of dealing with that. I think that I may be the only chartered insurer who is a Member of the House—I am certainly one of very few. Believe it or not, underwriters are reasonable, understanding people, and I am sure that separate arrangements could be made with insurance companies.[Interruption.] Perhaps not all hon. Members are prepared to accept that, but having been a member of the underwriting community for a while I contend that they are.

*Lynne Jones* Will the hon. Gentleman give way?

*Andrew Selous:* In a moment.

We should be very keen to stop any form of harassment. We have legislation to stop race-hate and homophobic bullying, and I would be very much in favour of legislation to make sure that transsexual people were not harassed or intimidated.

*Mr. Bercow* Will my hon. Friend give way?

*Andrew Selous* I said that I would give way to the hon. Member for Birmingham, Selly Oak (Lynne Jones).

*Lynne Jones* I just wanted to inform the hon. Gentleman that there is legislation preventing discrimination in employment: the Sex Discrimination (Gender Reassignment) Regulations 1999. That provides guidelines but it does not deal with cases in which employers require to see birth certificates, so people often censor themselves in applying for jobs and promotion. That problem cannot be overcome other than by full legal recognition, enabling transsexual people to have a reissued birth certificate.

*Andrew Selous* The hon. Lady makes a practical point, and one way to get round it might be to say that a gender recognition certificate could be used in place of a birth certificate.[Interruption.] The hon. Lady shakes her head but I see no reason why that would not work while we were looking at practical alternatives. I now give way to my hon. Friend the Member for Buckingham (Mr. Bercow).

*Mr. Bercow* I admire my hon. Friend's courage and principle in standing up for that in which he believes. I put to him two simple questions. First, would he acknowledge that at heart his motivation for opposing the Bill is a religious one, which may be convincing to him, but is not necessarily convincing, or a basis for legislation, in the minds of many others?

Secondly, I put it to him that his opposition to discrimination, harassment and ill treatment would probably sound more convincing if he had argued for practical equality before the law prior to the Second Reading of this Bill.

*Andrew Selous* I shall deal in turn with those points raised by my hon. Friend and parliamentary neighbour. First, I speak today, as do several hon. Members, from personal religious conviction. However, I have received letters from constituents who are worried about the Bill but do not have a personal faith. People of all faiths and none will be concerned that Parliament is being asked to legislate to create a legal case for something that I do not believe to be valid in terms of biology and physiology.

I do not quite understand my hon. Friend's second point. I am on the record as having expressed concerns about homophobic bullying, race harassment and so on, and I repeat that I would not want that to happen to transsexual people.

*Mr. Bercow* My hon. Friend has been very fair, and it is right that I should clarify my second question for the avoidance of doubt. I do not dispute that he is opposed to harassment and violence. My question is this: if he believes that transsexuals experience day-to-day discrimination and disadvantage, and he has long been conscious of that, why did he not argue for reform of the law before, instead of declaring a willingness to consider the matter on Second Reading of this Bill, to which he is explaining that he is opposed?

*Andrew Selous* I plead guilty as charged to not having taken the course of action that my hon. Friend urges upon me. Indeed, there are probably many other worthy causes that I have not taken up owing to insufficient time or interest. However, that does not invalidate my basic point, which is that through the Bill we are legislating to enshrine secrecy and to put into law the case that someone's sex is other than that which has been biologically determined.

As I said, that has implications for marriage. It also affects many other groups of people. First among those would be the families of those affected, by whom I mean the spouse, partner, children or wider family members. I was pleased that the Minister said that those family members will have the chance to be represented on the gender recognition panel, and I hope that the Under-Secretary of State for Constitutional Affairs, the hon. Member for Shipley (Mr. Leslie), will give the House more detail about that.

*The Parliamentary Under-Secretary of State for Work and Pensions (Maria Eagle)* indicated dissent.

*Andrew Selous* The Minister's colleague is shaking her head. Perhaps I am confused, but I thought that he said that family members will be fully represented on the gender recognition panel. That is tremendously important, because large numbers of people are affected by someone's decision to change their gender. We exist not as individuals, or as atomised beings who are on our own in society, but in relationships with other people as families and communities. Of course, such decisions have profound and personal consequences for the individual concerned, but so too do they for

their wider families and for many other people. If those people really care for that individual, they should be able to appear before the gender recognition panel to make any points that they wish—especially given that some transsexuals move from their original gender to an adopted gender, then back again.

As regards registrars, I have to disagree with the comments made by the hon. Member for Winchester in response to my hon. Friend the Member for South Staffordshire (Sir Patrick Cormack). Of course I agree that public officials have a general duty to obey the law, but this is surely a matter of conscience involving issues of principle about which people may feel strongly. There have recently been comparable cases in which social workers have lost their jobs over adoption decisions following the recent change in the law in that area. Hon. Members will have to be mindful of the position of registrars who, for the highest motives, find themselves having to make a genuinely difficult personal decision.

*Hugh Bayley* I recognise that the hon. Gentleman is arguing against the Bill. However, if it passes into law and a transsexual is able to apply for a birth certificate in their acquired gender, how on earth would the registrar know that the person was a transsexual who had changed gender? When applying for marriage, they would simply use their birth certificate.

*Andrew Selous* I am talking about the specific circumstance whereby a registrar is asked to provide a different birth certificate to change a male birth certificate to a female one, or vice versa, which may well give rise to issues of conscience. The hon. Gentleman may have thought of wider examples that I have not considered.

Many Churches are worried that they will find themselves open to legal challenge on this matter. That may occur purely in relation to pastoral arrangements—for example, the senior minister may want to share some information with other members of the pastoral team and find that he or she is unable to do so. There is also the worry that malicious legal action may take place. I remind the Minister that the former Home Secretary, who is now Foreign Secretary, said unequivocally in this House on 20 May 1998 that Churches act as public authorities when they conduct a marriage. I hope that people's fears are unfounded and that they can be allayed during the progress of the Bill. However, I have a copy of a letter that a Church recently received in which it was threatened with legal action and told that it would find itself in a more difficult legal position once the Bill becomes law. Churches should not be looking to exclude transsexuals, who should be able fully to involve themselves in the life of a Church.

However, there are concerns about vindictive legislation that will cost Churches a great deal of cash that they can ill afford. I therefore hope that the Minister can reassure us about that; I can assure him that it is an issue of concern.

Pension rights were mentioned earlier. We have not received proper answers to the points made about that. I hope that in Committee we will get some proper answers.

*Mr. Boswell* With the leave of the House—

*Miss Widdecombe* rose—

*Mr. Boswell* I shall let my right hon. Friend speak.

*Miss Ann Widdecombe (Maidstone and The Weald) (Con)* I apologise to my hon. Friend the Member for Daventry (Mr. Boswell); I believe that we were called simultaneously. It was undeniably my fault for not being quick enough on my feet, and I thank you for calling me, Madam Deputy Speaker.

8.20 pm

Even if the Bill were the most perfect measure, I could not vote for it on the ground of conscience. However, the measure should cause everybody, even those who support its principle, to pause for thought. It is muddled and a legal quagmire. Despite the fact that it has been through the other place, there are massive, important questions that the Minister could not answer today. I do not say that abusively; he simply could not answer them.

No man or woman is an island. When we try to rectify an injustice, we must examine the impact on others and on

society. Until we have managed to answer the questions that are raised in that examination, we should not rush into passing the Bill. Again, I stress that even if one accepts the principle—and I make no bones about the fact that I do not—this is a bad Bill.

*Kali Mountford* Will the right hon. Lady give way?

*Miss Widdecombe* Let me make some progress and I shall.

First, the subject of pensions has been raised time and again. My hon. Friend the Member for Salisbury (Mr. Key) pointed to schedule 5. The issue is not the individual's rights to a pension but those of dependants, especially in circumstances in which the state has enforced a divorce as a result of the Bill, and the impact on the former spouse. That has not been worked through. It must be done, and I do not believe that Committee is the appropriate place in which to do it. The issue is of such fundamental underlying importance—[Interruption] I can see the hon. Member for Colne Valley (Kali Mountford) getting agitated; I will not sit down without giving way.

The Minister must deal with the important issue that I mentioned quite separately from civil registration because, as a result of the Bill, the state will force a divorce on some people who will not wish to stay with the former spouse in a civil relationship. They will therefore become separate entities whose pension needs require tackling and clarifying. They need a guarantee that they will not suffer loss.

Secondly, I made a point earlier about the identity of the legal mother of a child in specific circumstances. If the Minister had said that, from the moment that a surgical procedure and a sex change takes place and someone is recognised as being legally of another gender, rights accrue, the Bill would at least be more coherent, although I would still disapprove. The problem arises in rewriting history and in the state establishing a life so that a birth certificate has to be issued that provides a name and a gender that were not given at birth. History is thus rewritten.

Elements of the Bill are farcical, including not providing information about the past. If one has a sex change, everyone from the past knows about it. Everybody knows one as the person one was; they played games at school with David not Davina. Former employers who are asked for references know people only in the gender that they had when they were in that employment. It is nonsense to try to throw a veil of secrecy, enshrined in law, over the past, suggesting that one can rewrite it or wipe it out.

Changes in life do not mean that the past is rewritten. A marriage can be dissolved but nobody says that it did not exist, that that period of one's life, however unhappy or difficult, did not happen. Rewriting history causes many of the measure's problems. I shall now honour my promise to give way to the hon. Member for Colne Valley.

*Kali Mountford* In the light of the right hon. Lady's clear compassion for people who will be affected by the Bill, how does she believe that their treatment will be worse as a result of the measure? Given that people already assign their gender in a new way, the Bill is simply a matter of recognising that and the consequent choices.

*Miss Widdecombe* There is a difference between allowing something to happen and institutionalising it, with all the legal consequences that flow from that. When someone changes gender, there is a great difference between simply recognising that and saying that it has always been so, with all the resultant implications, for families, financial organisations, responsibilities and, in some instances, employers.

The Bill is appalling. It is a muddle and a quagmire. It is nonsense. I uphold the views of my hon. Friend the Member for Blaby (Mr. Robathan). I shall not pretend that, if it were the most brilliant Bill on earth, I would not oppose it. However, the measure should give everybody pause for thought. In our desire to rectify a wrong, we should not create more wrongs in its place.

*Mr. Boswell* For the second time, with the leave of the House, I am grateful for hon. Members' indulgence in allowing me to respond briefly. The debate has spoken for itself and I need only pick up one or two points briefly.

We have heard nine passionate speeches, which were clustered in an interesting way. Let me begin by topping and tailing the debate. I was grateful to the hon. Member for Birmingham, Selly Oak (Lynne Jones). It was clear from several contributions, including mine, that hon. Members felt that her work in converting her constituents' concerns into a campaign that is within a whisker of bearing fruit was praiseworthy. As she knows from my earlier remarks, I am personally in sympathy with the campaign.

However, I also believe that hon. Members should be grateful for the contributions of my hon. Friend the Member for South-West Bedfordshire (Andrew Selous) and of my right hon. Friend the Member for Maidstone—

*Miss Widdecombe* And the Weald.

*Mr. Boswell* I meant my right hon. Friend the Member for Maidstone and The Weald (Miss Widdecombe). We would do no service to anybody, transgendered or not, if we pretended that the issues were easy and that there were no debate to be had.

I derive encouragement from the conduct of the debate. As the hon. Member for Colne Valley (Kali Mountford) said, it was not characterised by the sort of heat and nastiness that it could have been. That does us credit. We should not rest on our laurels; we should sometimes take such an issue and debate it properly. We have done our best to do that. That applies to all Members who have contributed, including my hon. Friends the Members for Bournemouth, East (Mr. Atkinson) and for Salisbury (Mr. Key), who supported my line on the Bill, and Labour Members who spoke from personal experience or their experience of, for example, the social security system and developed a position. Occasionally, therefore, we can come away with a sense of a worthwhile debate that was well conducted.

On such a subject, about which views differ, it would be impossible to hammer out consensus. Indeed, it would not be sensible. However, it is possible to light on several themes that will be germane to the Committee stage.

There is a very strong concern in principle. The Minister knows that I am on his side, and not that of certain others, over the implications for continuing marriages. We must have a firm debate on that in Committee, and consider any other possible procedures in relation to the transition to civil partnerships, or whether there are other assurances that can be given on that. That matter relates to legal status, and leads to the important issue of pensions. One or two comments that have been made on that are possibly not wholly fair to the Government. Anyone who reads schedule 3—I recommend it for insomnia—will realise that it addresses many issues. It might not always be congenial to people, because the basic principle on which the Government are operating is that if a person changes gender, everything else follows from that and there will be no other advantage. However, the consequences to which my right hon. Friend the Member for Maidstone and The Weald referred could well flow from a divorce that took place with no reference at all to transgender issues. We will certainly need to consider that matter.

The hon. Member for Winchester (Mr. Oaten) made some interesting points, especially on confidentiality issues. I can just imagine the difficulties if someone asked for a person's GCSE certificate, and it had not been changed because no one was under a legal duty to change it or to consider that matter. We will want to look at such situations.

We have had a debate, if not of consensus, involving a remarkable consensus of tone. That is a good start, working on the assumption that the Bill receives a Second Reading, but it is not sufficient in itself. I am passionately committed to trying to get the legislation as right as I can—although that is sometimes a little difficult for a lay person—and I give Ministers and the House genteel notice that I intend to table amendments, as and when the Bill has received a Second Reading, precisely so that they can form part of the debate. I hope that other hon. Members, if they are prepared to participate in the Committee, will feel that they, too, can do that. It is greatly to our benefit to debate amendments thoroughly and properly, and I hope that we will not be rushed in doing so.

I have picked up from my hon. Friends their real concern that in their view, because they feel that the change of gender cannot have taken place, the Bill would allow two men or two women to marry. All I would say in response is that there are essential difficulties in this field. I might throw back to them the situation that can arise now in which a

man and a woman are legally married but, because one of them has changed gender, the marriage now exists between two people of the same gender. In the same way, on registration and certification, if someone's birth certificate declares that they are a man, but for all practical purposes they are now living as a woman, I am not sure whether it is happier or more honest to say, "That's a man", or to recognise the fact that that person is now a woman. Then there are all the confusions, difficulties and ambiguities over the medical evidence. Perhaps my hon. Friends have realised that these issues are not straightforward. Some of them feel that they cannot live with the Bill, which I can understand, but equally, aspects of the status quo are not comfortable either.

That suggests that we need to proceed with a delicate balance. My hon. Friend the Member for Salisbury quoted our noble Friend the Baroness Buscombe as having said in another place that we need to proceed with caution—I am sure that that is right, because the law must be got right—but he then added the rider that we must also proceed with compassion. That is the right balance. In my view, if in doubt—this will drive my support for the Bill—we should look at the people concerned and the problems that they face, and try, if we humanly can, although not regardless of any other implication, to meet their needs. The Bill is not perfect, but it is a lot better for the long process of debate and discussion that has already taken place. We can have a further go at improving it, and we intend to do so.

*The Parliamentary Under-Secretary of State for Constitutional Affairs (Mr. Christopher Leslie)* May I say how impressed I am by the conduct of the debate? In my time in Parliament, I have not been involved in such a thorough, sensible and calm debate, which has brought out many of the important issues at the nub of the Bill. I feel privileged to have taken some part in today's debate. It was particularly marked that the hon. Member for Daventry (Mr. Boswell) had such a constructive approach, which I welcome. That constructive attitude will be brought to Committee, and my hon. Friends the Ministers who will take the Bill through Committee—the Under-Secretary of State for Affairs, my hon. Friend the Member for Tottenham (Mr. Lammy) and the Under-Secretary of State for Work and Pensions, my hon. Friend the Member for Liverpool, Garston (Maria Eagle)—are no doubt looking forward to that experience. 8.34 pm

My hon. Friend the Member for Colne Valley (Kali Mountford) commented on the nature of gender dysphoria and said that the way in which some individuals define themselves and see their identity is a critical, and very personal, issue. It is important to recap what we are talking about. Transsexual people feel a deep conviction of the need to present themselves in the appearance of the opposite sex, changing their names and identities to live in the acquired gender. Some take hormones and have cosmetic treatment to alter their physical appearance, and some undergo surgery to change their bodies to conform more to their acquired gender. However, the medical condition whereby an individual born to one gender feels adamantly that they are in fact of a different gender is known as gender dysphoria. It is a real phenomenon, albeit one that affects only an estimated 5,000 people in the United Kingdom. Those individuals sometimes feel so strongly that they are of a different gender that they seek gender reassignment socially, hormonally or even surgically.

The hon. Member for Winchester (Mr. Oaten) stated that when we debate those issues and try to find solutions, which the Government have genuinely tried to do with the Bill, a point comes at which we have to take a view on the principles that we hold. The Bill enables such a decision to be made, although I realise that there will be different opinions.

The basic principles behind the Bill are clear. Although it concerns a minority, the test of how civilised a society is rests in part on the care and respect that it gives to minorities. Tolerance and respect are important, and recognition of difference is a key ingredient of that. Giving legal recognition to transsexual people is one step towards removing a sense of exclusion from society for a minority in our community—so there is an important principle at stake. That was the point that my hon. Friend the Member for St. Helens, South (Mr Woodward) made in a powerful and moving speech as many Members heard. The Government believe, as does he, that all people should be entitled to basic rights and allowed to live their lives freely and legitimately, as they determine. If some people lack legal status or recognition, that can inhibit their freedom and their ability to take part in society at large.

Even if that problem affects only a small number of people, it is our duty to address it and to find solutions where we

can. My hon. Friend the Member for Birmingham, Selly Oak (Lynne Jones), as several hon. Members noted, has campaigned strenuously over a long period for many if not the bulk, of the provisions in the Bill. She made her points exceptionally strongly, and I pay tribute to her for her contribution.

Basic rights to legal recognition are needed to allow transsexual people the right to privacy, without the need continually to describe their gender history to complete strangers in the course of their daily lives. That is another specific reason why this reform is necessary. Of course, the Bill will also enable us to meet our international obligations and honour various rulings of the European Court of Human Rights. The time has come to join a number of European and other states in giving legal recognition to transsexual people. We acknowledge that that will involve changing significant parts of our legislation, and that we need to begin to recognise more fully the human rights of that group in our society.

The hon. Member for Daventry said that we often come to understand these issues through listening to the views expressed by our constituents. Indeed, many hon. Members have mentioned hearing such views.

*Mr. Alex Salmond (Banff and Buchan) (SNP)* Will the Minister say a little more about the schedule relating to exceptions for clergymen in England and Wales in regard to their obligation to solemnise a marriage? How will a clergyman know whether he is in a position to exercise such an exception? Why are such exceptions not necessary in Scotland and Northern Ireland? I know why they are not necessary, but it might be helpful if the Minister answered that question for the record.

*Mr. Leslie* As the hon. Gentleman knows, various Sewel motion activities and other Scottish Parliament implications exist in relation to extending some of the UK provisions to Scotland, and I shall deal with some of the exemptions shortly, including what has been termed the conscience clause. That proposes that those in the established Church who are under a legal obligation to solemnise a marriage when a person requests them to do so will have the ability effectively to opt out of that legal obligation. That provision has been put in place to allow those clergymen and women to have that opt-out, and it is now part of the Bill.

The determinants of gender are important, and the hon. Member for Salisbury (Mr. Key) quoted a number of sources in that regard. In the Court of Appeal, Lord Justice Thorpe concluded in the *Bellinger* case that: “The test that is confined to physiological factors, whilst attractive for its simplicity and apparent certainty of outcome, is manifestly incomplete. There is no logic or principle in excluding one vital component of personality, the psyche.” That is an important point. This involves not only physiological issues; psychological considerations are important, too. There is a growing body of medical opinion in this field, including practitioners and chartered psychologists. The Bill has been discussed with the British Medical Association, the General Medical Council, the Royal College of General Practitioners, the Royal College of Psychiatrists and the British Psychological Society. No objections were raised about the general principles of the Bill.

The hon. Member for South-West Bedfordshire (Andrew Selous) said that hon. Members should defer to those with medical qualifications and experience in these matters. The chief medical officer himself has informed Government thinking and concluded that gender dysphoria is a medical condition that needs to be addressed. We must face up to these problems and issues, and not bury our head in the sand and pretend that there are no issues to be addressed.

The Bill has already undergone detailed scrutiny, not least in the other place, and it had its genesis in the interdepartmental working group back in 2000. The Joint Committee on Human Rights has considered the draft Bill. The noble Lord Filkin has taken a great interest in the formulation of the Bill, and I would also like to pay my own tribute to the Minister of State, Department of Health, my hon. Friend the Member for Doncaster, Central (Ms Winterton), for her part in devising and framing it when she was a Minister in the then Lord Chancellor's Department.

The Bill contains a number of specific proposals. A panel of lawyers and doctors or chartered psychologists will be established and will be capable of issuing gender recognition certificates to individuals who are assessed as having the medical condition of gender dysphoria. My hon. Friend the Member for City of York (Hugh Bayley) pressed for hon.

Members to include transsexual persons on the panels, but that requirement is not in the Bill and we have no plans to go down that particular avenue. The panel will be set up to take evidence from a wide number of experts, family members and others, and that will be the manner in which it will be informed of relevant experience and expertise, rather than by trying to break down the composition of the panel. However, I understand where my hon. Friend is coming from on this issue.

The medical condition assessment will require the applicant to provide evidence of a diagnosis of gender dysphoria, details of any treatment undergone for gender dysphoria and of whether the applicant has, in practice, lived in their acquired gender for at least two years—family evidence of this will be an important factor, as the hon. Member for South-West Bedfordshire pointed out—and whether they intend to continue to do so permanently. Evidence of treatment will not solely relate to surgical treatment. Although most transsexual people have had surgery, some have not and should not—perhaps for other health reasons. The key test will be whether a person has taken decisive steps to live fully and permanently in the acquired gender, as the hon. Member for Winchester observed.

The issue of a new birth certificate will overcome a number of problems currently encountered by transsexual people. The hon. Member for Winchester highlighted the point about insurance, which was a good example. Insurance can be taken out in the acquired gender once a new birth certificate has been issued, so that, in the event of an accident, there would no longer be a risk of prosecution for fraud or driving without insurance, as legal recognition would remove the discrepancy between what the insurance documents record and the reality of how a person presents to the wider world.

My hon. Friend the Member for Birmingham, Selly Oak mentioned the interim gender recognition certificates, and asked why a six-month time limit had been decided upon. The only purpose of the interim certificate will be to allow the dissolution of an existing marriage, and six months was felt to provide sufficient time for those proceedings to begin. As the interim certificate provides grounds for ending a marriage, allowing unlimited time would create too much uncertainty for the other partner. It is therefore only fair to limit its use to six months. I am sure, however, that this issue will come up in Committee.

A number of hon. Members have mentioned the provisions in clause 22 on disclosure of information. It is clear from the approach that the Government have taken in respect of the issuing and recording of birth certificates that we have tried hard to strike a fair balance in the Bill between protecting the privacy of transsexual people and preventing disclosure by public authorities, while not acting excessively and criminalising all aspects of disclosure. For example, when a person acquires information about a person's gender history in the course of official duties, this will be regarded as protected information, and disclosure would be an offence.

However, there are exemptions that will allow disclosure for valid public policy reasons, such as preventing or investigating crime—as mentioned by the hon. Member for Winchester—and there will be no prohibition on disclosure if information is acquired in a private capacity. If the individual is not identifiable, disclosing protected information will not be an offence—for example, in the use of information for statistical reporting purposes. The Government believe that this approach strikes the right balance between protecting the privacy of individuals and safeguarding the public interest. My hon. Friend the Member for St. Helens, South asked whether officials would be bound to have a duty of care in regard to the use of protected information. My understanding of the Bill is that that will be the case, because they will be covered by the tightly defined offence involving the misuse of protected information. I believe that it is right to have that provision in the legislation.

The issue of marriage was raised by several hon. Members. Transsexual persons will be able to marry persons of the opposite sex. These would not be same-sex marriages—as the hon. Member for South-West Bedfordshire wrongly asserted—as the change of gender would allow a valid marriage to proceed between a male and a female in law. That is the principle that we have followed.

*Andrew Selous* I feel that the Minister is falling into a slight confusion between sex and gender. One could argue that it would be same-sex marriage. His case is that it would be marriage between people of different genders, but it is not

the case that it would not be same-sex marriage.

*Mr. Leslie* I do not think that the hon. Gentleman has understood our proposal for the use of the gender recognition certificate to acknowledge, on behalf of society, that individuals have been reassigned by their own volition and have acquired their gender—men and women, as defined by the panel on gender recognition.

*Mr. David Heath (Somerton and Frome) (LD)* May I bring the Minister back to information held by public bodies? He has not made it clear whether provision exists for a requirement on public bodies to amend registers that they hold, perhaps on professional or academic qualifications. Does he anticipate any change on that basis within the legislation?

*Mr. Leslie* The only core change that the Bill proposes is in respect of the issuing of a new birth certificate through the gender recognition register. That is the main register that will effectively be created by the Bill. No specific consequential series of changes will be made to public information held elsewhere, and, as was said, there will be no attempt to rewrite history. The original birth certificate will remain on record, with the new birth certificate on the gender recognition register. I take the hon. Gentleman's point about wider public information, however, and those are the sorts of issues that we will need to consider in Committee.

The Government intend to introduce separate civil partnership legislation in this Session following consultation about a framework for the legal recognition of same-sex couples. Indeed, 83 per cent. of respondents to the consultation supported the principle of a civil partnership scheme. That is an entirely different issue, which is unaffected by this legislation, but it is important to bear it in mind that the Government are attempting to address some of the other questions in different pieces of primary legislation.

The issue of pre-existing marriages is a difficult one, about which the right hon. Member for Maidstone and The Weald (Miss Widdecombe) and my hon. Friends the Members for St. Helens, South and for City of York were asking. Pre-existing marriages would need to be dissolved in order for legal recognition for a newly acquired gender for married persons to be achieved: marriage in the UK is between a man and a woman, and the panel would therefore issue only an interim gender recognition certificate, which would be grounds for dissolving the marriage, at which point the court would issue a full gender recognition certificate. That is because marriage is an institution distinctly for opposite-sex couples. I accept, however, that careful consideration of this matter is needed, and my hon. Friend the Member for Colne Valley expressed carefully and pragmatically the difficult judgments that come into play on this issue.

On the complicated question of pensions and benefits, my hon. Friend the Member for City of York asked two specific questions and made several other comments, as did the hon. Member for Bournemouth, East (Mr. Atkinson), the right hon. Member for Maidstone and The Weald, the hon. Member for Salisbury and others. The basic principle that we are following is that pensions and benefits follow the entitlement for the new acquired gender. A male-to-female transsexual person, say, aged 62, will gain state pension eligibility from the date of that gender recognition certificate. It will not be backdated, because we do not have retrospective legislation.

My hon. Friend the Member for City of York raised a specific example of a case in which an individual whom we will call Y is a male-to-female transsexual person, and X is the wife of that original male individual. Were Y to apply for a gender recognition certificate, but is married to his wife, X, they will have their marriage dissolved. While X will lose her category B married woman's pension, the court will be able to institute a pension sharing order for occupational and other pension sharing rights, and X will be entitled to some category A state pension based in part on the national insurance contributions record of the former husband, Y, or on X's national insurance contributions record.

My hon. Friend asked whether it was right to require a couple to divorce in order to obtain recognition if neither party wanted to do so. As I said, marriage is an institution between persons of the opposite sex, and that is part of the essential nature of a marriage contract and the marriage legislation. We must look towards some sense of consistency in our legislation. He then asked whether it was fair to put the right to marriage, in some sense, before the right to gender recognition, and to give that spouse less power in the relationship. That is a difficult judgment to make, and we

are trying to resolve some of these problems, not least through the civil partnership legislation. which needs to be considered in tandem with this Bill

*Hugh Bayley* I thank my hon. Friend for his full and thoughtful response to my question. My follow-up question relates to the occupational pension entitlement of the spouse—the wife, in this instance—rather than entitlement to the state pension. If my hon. Friend intends not to change his mind on the question of dissolving the marriage, would the Government be prepared to table an amendment requiring the supplier of the occupational pension to treat the wife as she would have been treated had the marriage not been dissolved—in other words, to protect the rights of the partner?

*Mr. Leslie* That is an important point, but, I suspect, a point of detail that the Committee would be better placed to address.

I believe that the test of a civilised society is its approach to minorities and the respect that we have for their rights. Transsexual people face obstacles and legal problems on a day-to-day basis, quite unnecessarily. They have human rights that need defending, and freedoms that deserve respect. The Bill will right a wrong that currently exists, and I commend it to the House.

*Question put, That the Bill be now read a Second time:—*

*The House divided: Ayes 335, Noes 26.*

Division No. 55]	[8:56 pm
AYES	
Abbott, Ms Diane	Caborn, rh Richard
Ainger, Nick	Cairns, David
Ainsworth, Bob (Cov'try NE)	Campbell, Alan (Tynemouth)
Alexander, Douglas	Campbell, Mrs Anne (C'bridge)
Allen, Graham	Carmichael, Alistair
Anderson, rh Donald (Swansea E)	Casale, Roger
Anderson, Janet (Rossendale & Darwen)	Caton, Martin
Arbuthnot, rh James	Challen Colin
Armstrong, rh Ms Hilary	Chayton David
Atkins, Charlotte	Chidgey, David
Atkinson, David (Bour'mth E)	Clapham, Michael
Bailey, Adrian	Clark, Mrs Helen (Peterborough)
Baird, Vera	Clark, Dr. Lynda (Edinburgh Pentlands)
Banks, Tony	Clark, Paul (Gillingham)
Barker, Gregory	Clarke, Tony (Northampton S)
Barnes, Harry	Clelland, David
Barron, rh Kevin	Clwyd, Ann (Cynon V)
Battle, John	Coaker, Vernon
Bayley, Hugh	Cohen, Harry
Beard, Nigel	Coleman, Iain
Beckett, rh Margaret	Connarty, Michael
Begg, Miss Anne	Cook, Frank (Stockton N)
Bell, Sir Stuart	Corbyn Jeremy
Benn, rh Hilary	Cousins, Jim
Bercow, John	Crausby, David
Berry, Roger	Cruddas, Jon
Best, Harold	Cryer, Ann (Keighley)
Betts, Clive	Cummings, John
Blackman, Liz	Cunningham, Tony (Workington)
Blears, Ms Hazel	Darling, rh Alistair
Blizzard, Bob	Davey, Valerie (Bristol W)
Blunt, Crispin	David, Wayne
Boswell, Tim	Davies, rh Denzil (Llanelli)

Bottomley, Peter (Worthing W)	Davies, Geraint (Croydon C)
Bradley, rh Keith (Withington)	Dawson, Hilton
Bradley, Peter (The Wrekin)	Dean, Mrs Janet
Bradshaw, Ben	Denham, rh John
Brennan, Kevin	Dhanda, Parmjit
Brooke, Mrs Annette L.	Dismore, Andrew
Brown, Russell (Dumfries)	Dobson, rh Frank
Browne, Desmond	Donohoe, Brian H.
Bryant, Chris	Doran, Frank
Buck, Ms Karen	Dowd, Jim (Lewisham W)
Burden, Richard	Dunwoody, Mrs Gwyneth
Burgon, Colin	Eagle Angela (Wallasey)
Burnett, John	Eagle Maria (L'pool Garston)
Burnham, Andy	Edwards, Huw
Efford, Clive	Jones, Kevan (N Durham)
Ellman, Mrs Louise	Jones, Lynne (Selly Oak)
Ennis, Jeff (Barnsley E)	Jones, Martyn (Clwyd S)
Farrelly, Paul	Joyce, Eric (Falkirk W)
Field, Mark (Cities of London & Westminster)	Kaufman, rh Gerald
Fisher, Mark	Keeble, Ms Sally
Fitzsimons, Mrs Lorna	Keen, Alan (Feltham)
Flint, Caroline	Kemp, Fraser
Flynn, Paul (Newport W)	Key, Robert (Salisbury)
Foster, Michael (Worcester)	Kilfoyle, Peter
Foster, Michael Jabez (Hastings & Rye)	Kirkbride, Miss Julie
Francis, Dr. Hywel	Kirkwood, Sir Archy
Gapes, Mike (Ilford S)	Knight, Jim (S Dorset)
Gardiner, Barry	Kumar, Dr. Ashok
Garnier, Edward	Ladyman, Dr. Stephen
George, rh Bruce (Walsall S)	Lammy, David
Gerrard, Neil	Lawrence, Mrs Jackie
Gibb, Nick (Bognor Regis)	Laws, David (Yeovil)
Gibson, Dr. Ian	Leslie, Christopher
Gidley, Sandra	Levitt, Tom (High Peak)
Gilroy, Linda	Llwyd, Elfyn
Godsiff, Roger	Love, Andrew
Goggins, Paul	Lucas, Ian (Wrexham)
Greenway, John	Luke, Iain (Dundee E)
Griffiths, Jane (Reading E)	McAvoy, Thomas
Griffiths, Win (Bridgend)	McCabe, Stephen
Grogan, John	McCafferty, Chris
Hall, Mike (Weaver Vale)	McDonagh, Siobhain
Hall, Patrick (Bedford)	MacDougall, John
Hamilton, David (Midlothian)	McIsaac, Shona
Hamilton, Fabian (Leeds NE)	Mackay, rh Andrew
Hancock, Mike	McKechin, Ann
Hanson, David	McKenna, Rosemary
Harris, Dr. Evan (Oxford W & Abingdon)	Mackinlay, Andrew
Harris, Tom (Glasgow Cathcart)	McNulty, Tony
Havard, Dai (Merthyr Tydfil & Rhymney)	Mactaggart, Fiona
Healey, John	McWalter, Tony
Heath, David	Mahmood, Khalid
Henderson, Doug (Newcastle N)	Mahon, Mrs Alice
Henderson, Ivan (Harwich)	Mallaber, Judy
	Mandelson, rh Peter
	Marris, Rob (Wolverh'ton SW)
	Marsden, Gordon (Blackpool S)
	Marshall, David (Glasgow)

Hepburn, Stephen	Shettleston)
Hesford, Stephen	Marshall-Andrews, Robert
Heyes, David	Martlew, Eric
Hill, Keith (Streatham)	Meale, Alan (Mansfield)
Hinchliffe, David	Mercer, Patrick
Hodge, Margaret	Miliband, David
Hoey, Kate (Vauxhall)	Miller, Andrew
Hood, Jimmy (Clydesdale)	Moffatt, Laura
Hoon, rh Geoffrey	Moore, Michael
Hope, Phil (Corby)	Moran, Margaret
Howarth, rh Alan (Newport E)	Morley, Elliot
Howarth, George (Knowsley N & Sefton E)	Moss, Malcolm
Hoyle, Lindsay	Mountford, Kali
Hughes, Beverley (Stretford & Urmston)	Mudie, George
Hughes, Kevin (Doncaster N)	Munn, Ms Meg
Humble, Mrs Joan	Murphy, Denis (Wansbeck)
Hurst, Alan (Braintree)	Murphy, Jim (Eastwood)
Iddon, Dr. Brian	Naysmith, Dr. Doug
Illsley, Eric	Oaten, Mark (Winchester)
Irranca-Davies, Huw	O'Brien, Mike (N Warks)
Jackson, Glenda (Hampstead & Highgate)	O'Brien, Stephen (Eddisbury)
Jackson, Helen (Hillsborough)	O'Hara, Edward
Jamieson, David	Oler, Bill
Jenkins, Brian	O'Neill, Martin
Johnson, Alan (Hull W)	Osborne, Sandra (Ayr)
Johnson, Miss Melanie (Welwyn Hatfield)	Ottaway, Richard
Jones, Helen (Warrington N)	Owen, Albert
Jones, Jon Owen (Cardiff C)	Palmer, Dr. Nick
Pope, Greg (Hyndburn)	Perham, Linda
Pound, Stephen	Picking, Anne
Prentice, Ms Bridget (Lewisham E)	Plaskitt, James
Prescott, rh John	Pollard, Kerry
Price, Adam (E Carmarthen & Dinefwr)	Steinberg, Gerry
Primarolo, rh Dawn	Stevenson, George
Prosser, Gwyn	Stewart, David (Inverness E & Lochaber)
Purchase, Ken	Stewart, Ian (Eccles)
Quin, rh Joyce	Stinchcombe, Paul
Quinn, Lawrie	Stoate, Dr. Howard
Randall, John	Strang, rh Dr. Gavin
Rapson, Syd (Portsmouth N)	Straw, rh Jack
Raynsford, rh Nick	Stringer, Graham
Reed, Andy (Loughborough)	Stuart, Ms Gisela
Reid, rh Dr. John (Hamilton N & Bellshill)	Sutcliffe, Gerry
Rendel, David	Taylor, rh Ann (Dewsbury)
Robertson, Angus (Moray)	Taylor, Dari (Stockton S)
Robertson, Hugh (Faversham & M-Kent)	Taylor, David (NW Leics)
Robinson, Geoffrey (Coventry NW)	Thomas, Gareth (Clwyd W)
Roche, Mrs Barbara	Thomas, Simon (Ceredigion)
	Thurso, John
	Timms, Stephen
	Todd, Mark (S Derbyshire)
	Touhig, Don (Islwyn)
	Trickett, Jon
	Truswell, Paul
	Turner, Dennis (Wolverh'ton SE)
	Turner, Dr. Desmond (Brighton)

Rooney, Terry	Kemptown)
Ross, Ernie (Dundee W)	Turner, Neil (Wigan)
Roy, Frank (Motherwell)	Twigg, Derek (Halton)
Ruane, Chris	Tyrie, Andrew
Russell, Bob (Colchester)	Vaz, Keith (Leicester E)
	Vis Dr Rudi
Russell, Ms Christine (City of Chester)	Ward, Claire
	Wareing, Robert N.
Ryan, Joan (Enfield N)	Watson, Tom (W Bromwich E)
Salmond, Alex	Watts, David
Sanders, Adrian	Weir, Michael
Sarwar, Mohammad	White, Brian
Savidge, Malcolm	Whitehead, Dr. Alan
Sawford, Phil	Wicks, Malcolm
Sedgemore, Brian	Wiggin, Bill
Shaw, Jonathan	Williams, Betty (Conwy)
Shephard, rh Mrs Gillian	Williams, Hywel (Caernarfon)
Sheridan, Jim	Winnick, David
Skinner, Dennis	Winterton, Ms Rosie (Doncaster)
Smith, rh Andrew (Oxford E)	C)
Smith, Angela (Basildon)	Wishart, Pete
Smith, rh Chris (Islington S & Finsbury)	Woodward, Shaun
	Woolas, Phil
Smith, Geraldine (Morecambe & Lunesdale)	Worthington, Tony
	Wright, Anthony D. (Gt Yarmouth)
Smith, Jacqui (Redditch)	
Smith, Llew (Blaenau Gwent)	Wright, David (Telford)
Smith, Sir Robert (W Ab'd'ns & Kincardine)	Wright, Tony (Cannock)
	Wyatt, Derek
Soley, Clive	
Spink, Bob (Castle Point)	Tellers for the Ayes:
Starkey, Dr. Phyllis	Mr. John Heppell and
Steen, Anthony	Jim Fitzpatrick
NOES	
Beresford, Sir Paul	Rosindell, Andrew
Burnside, David	Selous, Andrew
Chope, Christopher	Syms, Robert
Cormack, Sir Patrick	Taylor, Sir Teddy
Djanogly, Jonathan	Trimble, rh David
Dodds, Nigel Forth, rh Eric	Turner, Andrew (Isle of Wight)
Grieve, Dominic	Watkinson, Angela
Hunter, Andrew	Wilshire, David
Leigh, Edward	Winterton, Ann (Congleton)
Lilley, rh Peter	Winterton, Sir Nicholas
Loughton, Tim	(Macclesfield)
McIntosh, Miss Anne	
Paisley, Rev. Ian	Tellers for the Noes:
Robertson, Laurence (Tewk'b'ry)	Miss Ann Widdecombe and
Robinson, Peter (Belfast E)	Mr. Anderw Robathan

*Question accordingly agreed to.*

*Bill read a Second time.*