I am a woman with a transsexual history. I was married almost 20 years ago while living in Scotland, and would very much like to return to live there some day. I am still living with my wife and teenage children, and have foregone gender recognition (available to me since 2006) because my wife and I did not want to dissolve a loving and stable marriage.

I welcome the principles behind the Bill.

When people say that marriage is between a man and a woman, I usually want to ask how they define those terms. While it is true that the vast majority of people identify as one or the other, and their bodies are congruent with their identity, there are a small number of people (including trans and intersex people) who do not fit easily into this binary model of gender. Therefore opening up marriage to all regardless of their gender is a huge step forwards, and removes unfairness and some idiosyncrasies.

In my own situation, my wife and I have lived in a practically same-sex marriage since 2004, even though it may not yet legally be recognised as such. The Bill would allow me to seek gender recognition without the requirement to dissolve or annul my marriage – something that is greatly welcomed.

However there remain some issues with the Bill as currently worded. They are similar to the issues that I engaged with many politicians in Westminster about – including Government Ministers and opposition spokespeople.

The first is the requirement for spousal consent should someone in my situation seek gender recognition.

The law has, over many years, removed the idea that wives are their husband’s property, and has relied on the principle that parties to a marriage are responsible within it. If one party to a marriage undertakes an action, the other party is assumed to consent. If the other party does not consent, and the disagreement is fundamental, then the established route to resolve the situation is to dissolve the marriage through the divorce courts.

By requiring the spouse of a trans person to provide formal consent as part of the trans person’s gender recognition process, this Bill reverses that process. It is saying that, uniquely, trans people cannot be trusted within their marriage, and that this course of action must be confirmed independently with their spouses. As such it probably breaches Article 8 of the Human Rights Act – as the state is interfering in the private and family life of the trans person.

Marriages that do survive gender transition are relatively rare. While no formal statistics exist, I estimate that around 10% of marriages survive, meaning that
around 90% fail. Over recent years I have noticed that more marriages do appear to survive, but they are still very much the minority. A recent study indicated that, in a majority of marriages, the spouse attempts to obstruct the gender transition process, and that around a third of spouses actively obstruct the divorce process. The Bill makes no distinction between couples that wish to stay together and those who are currently divorcing. The Bill, as currently worded, may well place the fundamental right of gender recognition into the hands of a hostile spouse. If a spouse does not give formal consent then the trans person’s gender recognition is vetoed until the marriage ends. This is fundamentally wrong.

Additionally it is important to clarify that the trans person must be able to provide proof of living in their “acquired” gender for a minimum of two years before commencing the gender recognition process. As in my case, the marriage will have functionally been a same-sex marriage for most, if not all, of that time. Spousal consent is not required for name change (which is one of the key determinants of proof for gender recognition), nor for any gender-related surgery. Indeed, to require spousal consent for any medical practice is regarded as ethically unsound. Yet the proposal is to single out gender recognition, well after all practical aspects of a gender transition may have been completed, as the sole step requiring spousal consent.

Because of these three reasons, the message that trans people cannot be trusted, handing the right of recognition to someone else who may well be hostile and obstructive, and the ethical problems, the requirement for spousal consent should be removed.

The Westminster government’s defence was that marriage had been contracted between a man and a woman, and that the change in gender status created a fundamental change to the marriage. This view appeared to be based upon the wording of the marriage vows. Yet marriage vows also include the names of the individuals consenting to the marriage, yet spousal consent is not required for one of those parties to change their name. And we return to the ethical problems outlined above should we wish to say that a medical procedure creates a fundamental change.

My wife has the view that she married a person, not a role or a label. We have taken the “till death do us part” wording seriously. She has recognised that, while certain of my biological aspects might have changed through medication and surgery, I am still fundamentally the person she married. I am more than my genitals. To reduce someone to the status of their genitalia is both inaccurate and demeaning, and actually not compliant with the Gender Recognition Act 2004.

In Scotland the mechanism exists for re-registering a marriage. If this is done post-gender recognition, it is only fair that both parties must give consent for the marriage to be re-registered, but that should be argued as a point separate from gender recognition. If any marriage is to be re-registered in Scotland, both parties should give consent.
A second concern is the omission of any fast-track gender recognition procedure.

When the Gender Recognition Act was passed in 2004, it was recognised that some trans people would have difficulties in providing the medical evidence required, due to the retirements or deaths of doctors, or the general passage of time. Section 27 of the Act allowed for a fast-track gender recognition procedure, whereby people who had lived in their “acquired” gender for six years or more, and could provide proof of that, needed to supply less formal medical evidence. This section was “sunsetted” in 2007.

The Marriage (Same Sex Couples) Act 2013, recently passed in Westminster, reintroduces the fast-track gender recognition process for a similar group of people. It was accepted that the arguments about providing historic medical evidence were as valid now as they were in 2004, and also that many trans people (such as myself) would have been eligible for gender recognition for many years but chose to remain married instead.

A fast-track gender recognition procedure should be added to the Bill. The Westminster Act includes the requirement that the trans person is in a marriage at the time that they apply for gender recognition, which leads to the possibility that a trans person may get married in order to apply for gender recognition. This requirement is unnecessary, and also discriminates against those who were married but are no longer for whatever reason, including recent death of their spouse. The fast-track procedure should simply be open to all people who have lived in their “acquired” gender for a minimum period of 6 years.

Trans people may already be in civil partnerships. As the Bill stands, they would be required to convert these civil partnerships into marriages before they could apply for gender recognition, or dissolve their civil partnership. The introduction of mixed-sex civil partnerships would remove this requirement. Civil partnerships, as with marriages, should be made available to all regardless of gender.

If a trans person is in a civil partnership to someone they were previously married to, the marriage having ended because of the gender recognition requirement, they should not have to pay to have their civil partnership converted back into a marriage.

Turning to the marriage ceremony, it is also important that marriages can be conducted in non-gendered terms if the parties so wish. Again this protects those who do not identify as either male or female, but also marriages involving trans people, where one party may not view the other as their husband or wife.

Helen Belcher
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