

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

SUPPLEMENTARY SUBMISSION FROM SCOTTISH TRANSGENDER ALLIANCE

We request that the Committee please consider this supplementary evidence, which focusses on providing information on some of the issues discussed in oral evidence sessions. We are happy for this evidence to be published under our name.

Spousal Veto

The Committee received evidence from the Cabinet Secretary for Health and Wellbeing (Alex Neil, 3rd Oct, OR col 1588) that the Scottish Government's intention in drafting this provision was not that the spouse would be required to consent to the trans person obtaining gender recognition, but rather would consent to remaining a party to the marriage once gender recognition had been awarded. However as the Bill is currently drafted we are of the view that this policy aspiration is not achieved due to the fact that at the same time as withholding spousal consent an uncooperative spouse can also delay divorce proceedings for a number of years and therefore unfairly prevent the trans person from having their gender legally recognised.

We believe that the rights of the non-trans spouse and the rights of the trans person have not been appropriately balanced. There are numerous actions which a person can take which may impact greatly on their spouse, for example risking serious physical health consequences by refusing medical treatment, but which can nonetheless be done without spousal consent. In all such situations the person is still afforded the personal autonomy to make the decision for themselves; the only recourse open to an aggrieved spouse is to initiate divorce proceedings after the action has been taken. In the same way, a trans person should be able to make their own decision to have their gender legally recognised, and if their spouse is unhappy with that decision they are then free to divorce them.

We wish to draw the Committee's attention to the fact that no-one giving oral evidence, including those representing religious organisations, expressed any concerns about our proposed amendment. Nor has the Committee received any evidence from spouses of trans people supporting the need for the spousal consent provision. Indeed, spouses of trans people who have contacted the Scottish Transgender Alliance about this feel that the provision requiring spousal consent is unnecessary and offensive, and they support our proposed amendment.

Engender, which works and campaigns around gender equality, stated that: "the spousal veto is inimical to the principle of individual autonomy. It places an unnecessary strain on couples' relationships by imposing an artificial deadline for non-transitioning spouses to opt themselves in or out of marriage." It therefore appears to us that the provision in the Marriage (Same Sex Couples) Act has been transposed into the Scottish legislation without evidence of its necessity, in a way which harms the human rights of transgender people.

The Cabinet Secretary (Alex Neil, 3rd Oct, OR col 1588) also suggested that, although a non-trans spouse has remained in the marriage throughout the two years

that their partner has been living full-time in their acquired gender, the gender recognition application may cause them to reconsider whether to remain in the marriage. Some non-trans spouses have told us that they indeed feel they need a lot longer than two years to make a final decision about the continuation of their marriage. However as currently drafted the Bill does not afford the non-trans spouse this opportunity, and rather puts intense pressure on them to decide whether they can consent to remaining in the marriage once the trans person has been living in their acquired gender for two years or face being divorced by their spouse. In contrast, by separating out the option to divorce from the granting of gender recognition our amendment enables the non-trans spouse to take the time they need to decide whether or not to continue in the marriage once their spouse has obtained gender recognition.

Although fewer in number than lesbian, gay and bisexual people, transgender people are most egregiously affected by the current gender-segregation of the marriage and civil partnership systems. We believe therefore that this legislation can only be truly regarded as successful if it fully resolves the marriage inequalities which transgender people face. The Marriage (Same Sex Couples) Act 2013 unfortunately failed to resolve such inequalities. Many transgender people feel that the legislation was progressed too quickly to take account of their needs, and feel acutely let down as a result. This Bill has the opportunity to fully consider the needs of transgender people and ensure that these inequalities are properly resolved. We are very encouraged by the excellent work of the Committee in enabling the concerns of transgender people, often the most affected but least understood, to be heard. We hope that the Committee can continue in this vein and ensure that the complex equality needs of this marginalised group are properly met by the details of the legislation.

Gender Neutral Ceremonies

The Committee was advised by the Scottish Government (Simon Stockwell, 3rd Oct, OR col 1589) that in considering this proposed amendment it wants to make sure that no difficulties are caused for denominations who do not want to use the gender-neutral marriage declaration when marrying an opposite sex couple.

We would like to draw to the Committee's attention to the fact that our proposed amendment is specifically designed to ensure that denominations who wish to continue to use the terms "husband and wife" in their marriage ceremonies will be unaffected. We fully respect the right of religion and belief bodies to continue to conduct their marriage ceremonies as they always have done. However, just as the Bill provides religion and belief bodies the religious freedom to opt-in to providing same-sex marriages for lesbian, gay and bisexual people with no legal compulsion to do so, so too should the Bill provide them with the freedom to opt-in to using the gender-neutral wording for mixed sex couples who would prefer it, with no legal requirement to do so. In our view, the same safeguards which will protect celebrants and denominations not wishing to opt-in to same-sex marriage will protect celebrants and denominations not wishing to make use of this amendment.

Long-term transitioned people

The Committee was advised by the Scottish Government (Simon Stockwell, 3rd Oct, OR col 1588) that it intends to submit an amendment at Stage 2 relating to the evidence required by the Gender Recognition Panel for people who have been living in their acquired gender for 6 years or more. While we very much welcome this, and in order to ensure equity of access to all long-term transitioned people we urge the Committee to recommend that this amendment:

1. Not be limited to applicants who are, or have been, married. This is important because many unmarried long-term transitioned people did not make use of the temporary provision that was available from 2005 -7, either because they had not heard of gender recognition or did not apply as a matter of conscience while the right was not provided to married people.
2. Provide that evidence from a medical practitioner of having undergone any gender reassignment related medical treatment (such as hormone treatment), together with proof of having lived in the acquired gender for at least six years, should be sufficient to obtain gender recognition. We suggest this as an alternative to evidence of having undergone surgery because some NHS Boards in Scotland have not funded gender reassignment surgery until very recently and some trans people are unable to have surgery due to other medical conditions. Furthermore, surgery is not a requirement for gender recognition via the standard, 2 year transitioned, route, so it should not be a requirement via the 6 year, long-term transitioned route.

The Committee requested, that the Scottish Transgender Alliance provide information about the number of people who had used the long-term transitioned route when it was first in operation from 2005-2007 (Marco Biagi, 5th Sept, OR Col 1390). We are now able to inform the Committee that:

- By 2000, the UK Government had changed the gender on the passports of around 5000 people¹ meaning that when the Gender Recognition Act 2004 came into effect, on 4th April 2005, at least 5000 people would have been eligible to apply for a gender recognition certificate;
- By 31st Jan 2010², only 1443 people had received gender recognition via the long-term transitioned 'fast track' route, and a further 1056 people had received gender recognition via the standard route;
- Therefore, approximately half (2500 people) of those who had already transitioned by 2000 (13 years ago) are likely to still be without gender recognition. In addition, the hundreds of people who are likely to have transitioned between 2000 and 2006, will now be long-term transitioned.
- We therefore estimate that at least as many more people could apply via a new long-term transitioned route than have received gender recognition to date.

¹ Home Office, 2000. Report of the Interdepartmental Working Group on Transsexual People

² http://www.justice.gov.uk/downloads/tribunals/gender-recognition-panel/grp_minutes_18Mar10.pdf.pdf

Age for Gender Recognition

It was suggested by the Cabinet Secretary (Alex Neil, 3rd Oct, OR col 1591) that if the minimum age for applying for gender recognition was reduced from 18 to 16, such applicants would have difficulty in providing evidence of having lived permanently in their acquired gender for over two years, because of their young age.

However, having consulted with Mermaids, the UK's leading support group for families of gender variant children and adolescents, and with 26 young people via LGBT Youth Scotland's transgender residential event, it would appear that this is not the case. We found that a significant number of 16 year old trans people would have ample evidence to show that they have been living in their acquired gender for over two years and in many cases over four years.

Young people in this situation have told us that by the age of between 12 and 14, with their parents' support, they have been able to successfully obtain a statutory declaration of change of name and update all of the following identity documents and records to reflect their acquired gender:

- passport;
- young person's bank savings account;
- young person's bus pass;
- secondary school reports;
- medical records;
- dental records;
- youth group records.

The Gender Recognition Panel only requires two or three such documents as evidence, together with two medical reports detailing the person's diagnosis of gender dysphoria and any treatment received. Therefore, young trans people aged 16 are able to easily meet the evidence requirements necessary to obtain gender recognition. The gender recognition certificate is the very final stage of this process and only changes an applicant's birth certificate.

At age 16 in Scotland, people are considered legally old enough to leave school, get married and found a family. This is in spite of the fact that making a decision which they later regret in any of these areas of life could have profound consequences and cause significant harm to the young person and others. In contrast, obtaining legal gender recognition is a purely paper exercise which carries no risk of harm as the young person must already be living all of their day to day life in their acquired gender, regardless of whether or not their birth certificate has been amended.

It is also important to recognise that allowing trans people to apply at age 16 for gender recognition is not linked in any way to them receiving medical treatment, such as medical treatment to delay puberty. Indeed specialist medical practice for young people who are profoundly and consistently gender dysphoric and living in

their acquired gender, is to begin such treatment at Tanner Stage 2 of puberty³ (around age 12). This is current practice in Scotland and will not be affected in any way by changing the age for legal gender recognition.

Foreign Civil Partnerships

The Scottish Government confirmed in evidence that a couple resident in Scotland who are in a foreign civil partnership would be, uniquely, unable to marry, as the bill stands. The Cabinet Secretary advised the Committee (Alex Neil, 3rd Oct, OR col 1584) that the Scottish Government were concerned about the complications which may arise in relation to the recognition of a couple's relationship in other jurisdictions if they were able to change a foreign civil partnership to a marriage in Scotland. The international framework for recognising civil partnerships and gender recognition is already extremely complex, and in some instances unknown. In our view therefore it is unlikely that enabling couples with foreign civil partnerships to marry here will significantly add to this confusion. Indeed, once a couple are married, their status in other jurisdictions is likely to be clearer because they will be recognised as being married in any country which has same sex marriage.

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28 October 2013

³ P. Cohen-Kettenis and F Pfafflin, *Transgenderism and Intersexuality in Childhood and Adolescence: making choices*, Sage Publications, 2003, p. 145